

RESOLUTION OF THE
BUDGET AND FINANCE COMMITTEE
of the 25th NAVAJO NATION COUNCIL - Fourth Year, 2026

AN ACTION

RELATING TO THE BUDGET AND FINANCE COMMITTEE; ENACTING THE
PROCUREMENT REGULATIONS REQUIRED BY NAVAJO NATION COUNCIL
RESOLUTION CMA-22-26

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Budget and Finance Committee is a standing committee of the Navajo Nation Council that oversees and regulates the fiscal, financial, investment, contracting and audit policies of the Navajo Nation. 2 N.N.C. §300(C)(1).
- B. Pursuant to Resolution CMA-22-26, *AN ACT RELATING TO THE LAW AND ORDER COMMITTEE, BUDGET AND FINANCE COMMITTEE, NAABIK'ÍYÁTI' COMMITTEE AND NAVAJO NATION COUNCIL; ENACTING A NEW NAVAJO NATION PROCUREMENT ACT, 12 N.N.C. § 301 ET SEQ.*, the new Navajo Nation Procurement Act does not become effective until the Budget and Finance Committee has promulgated Procurement Regulations. CMA-22-26, Section Six.

SECTION TWO. FINDINGS

- A. In May of 2026, the Navajo Nation Council adopted Resolution CMA-22-26, incorporated herein by reference, enacting a new Navajo Nation Procurement Act. CMA-22-26 was subsequently signed into law by the Navajo Nation President.
- B. In order to adopt the new Procurement Act, CMA-22-26 amended 12 N.N.C. §301 et seq. to include, among other things, specific provisions concerning Procurement Regulations as follows:

§ 320. Procurement Regulations

- A. Pursuant to its authorities and responsibilities set forth at 2 N.N.C. §§ 300 et seq., the Budget and Finance Committee of the Navajo Nation Council shall adopt Procurement Regulations (hereinafter "Procurement Regulations" or "Regulations") recommended by the Office of the Controller, after

consultation with the Business Regulatory Department; Department of Justice; and Office of Legislative Counsel, and shall apply to all Procurements subject to this Procurement Act.

- B. The Budget and Finance Committee shall not delegate its authority to approve the Procurement Regulations or subsequent amendments therein.
- C. The Procurement Regulations shall address all Navajo Nation Procurement related matters including, but not limited to, procedures and methods related to developing, issuing, publishing, correcting, or canceling solicitations; managing Procurement Files; available methods of Procurement; offer acceptance, corrections, withdrawals, opening, and evaluation; and all enforcement procedures and activities.
- D. The Procurement Regulations are intended to comply with and supplement the Procurement Act in concert with applicable Navajo Nation laws and regulations, including the NBOA, NBPA, and any underlying rules and regulations for either, as amended from time to time.
- E. The purpose of the Procurement Regulations is to ensure uniformity, control, efficiency, and fair and open competition of Procurements utilizing all Public Funds regardless of source, such as those:
 - 1. appropriated by the Navajo Nation;
 - 2. awarded by Federal Agencies;
 - 3. awarded by State and Local Agencies; and/or
 - 4. from any other source not contemplated above.
- F. The Procurement Regulations shall be read and interpreted in a manner consistent with the Procurement Act; however, the Procurement Act shall govern with respect to any inconsistency.
- G. The Procurement Regulations shall be liberally construed in favor of the Navajo Nation and are not intended to limit or repeal any power, authority, right, or immunity possessed by the Navajo Nation or any of its Employees.

- H. Nothing contained in the Procurement Regulations shall be construed to waive any rights, remedies, or defenses the Navajo Nation has or might have under any laws of the Navajo Nation.
 - I. Nothing in the Procurement Regulations is intended to, nor shall it, waive any right of the Navajo Nation of any nature whatsoever reserved under any treaty or provided for under federal law; limit any rights, powers, or privileges retained by the Navajo Nation under any law; grant; expand; or confirm, in any way whatsoever, the jurisdiction of any State.
 - J. The Procurement Regulations cannot be waived for any Procurement without the express approval of the Budget and Finance Committee through resolution.
 - K. All Navajo Nation employees and elected officials shall adhere to the Procurement Regulations and are subject to disciplinary actions up to termination or NNEGL actions for willful non-compliance with the Procurement Regulations.
- C. The proposed Procurement Regulations, attached as **Exhibit A** and incorporated herein, were developed collectively by the Department of Justice, Office of the Controller and Office of Legislative Counsel. The Business Regulatory Department, Risk Management Department, and Office of Hearings and Appeals provided comments to the Department of Justice before the proposed Procurement Regulations were finalized.

SECTION THREE. APPROVAL

The Budget and Finance Committee hereby approves and adopts the Navajo Nation's Procurement Regulations as set forth in **Exhibit A**.

SECTION FOUR. IMPLEMENTATION

- A. These Procurement Regulations shall be deemed enacted when approved by the Budget and Finance Committee.
- B. These Procurement Regulations shall become effective and implemented on the date the Controller determines that the Enterprise Resource Planning ("ERP") software will go-live.

- C. The Controller shall notify the Budget and Finance Committee, President and Vice-President, Speaker of the Navajo Nation Council, and Chief Justice of the ERP go-live date at least five business (5) days in advance. The notice shall be in writing.
- D. With one (1) business day advance written notice to the Budget and Finance Committee, President and Vice-President, Speaker of the Navajo Nation Council, and Chief Justice, the Controller shall have authority to cancel, postpone, or rescind the ERP go-live date.
- E. Once effective and implemented, the Controller shall not rescind the implementation of these Procurement Regulations. Cancelling, postponing, or rescinding the ERP go-live date, if after implementation, shall not affect the effectiveness of these Procurement Regulations.

CERTIFICATION

I, hereby, certify that the following resolution was duly considered by the Budget and Finance Committee of the 25th Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which quorum was present and that same was passed by a vote of 05 in favor, 00 opposed, on this 07th day of August 2026.



Carl R. Slater, Vice-Chairperson
Budget and Finance Committee
Of the 25th Navajo Nation Council

Motion: Honorable Cherilyn Yazzie
Second: Honorable Lester C. Yazzie

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NAVAJO NATION PROCUREMENT REGULATIONS

PART 1. GENERAL

Section 1. Authority; Application

1.01 Authority

The Budget and Finance Committee of the Navajo Nation Council approves these Navajo Nation Procurement Regulations (hereinafter "Procurement Regulations" or "these Regulations") pursuant to the Navajo Nation Procurement Act (hereinafter "Procurement Act"), 12 N.N.C. §§ 301-80, as amended by Resolution CMA-22-26 and as may be amended from time to time.

- A. These Regulations are promulgated under the statutory authority granted by the Procurement Act, and are intended to comply with and supplement the Procurement Act, in concert with Navajo Nation laws and regulations, including, but not limited to, the Navajo Business and Procurement Act (hereinafter "NBPA"), 12 N.N.C. §§ 1501-16; the Navajo Nation Business Opportunity Act (hereinafter "NBOA"), 5 N.N.C. §§ 201-15, any underlying rules and regulations for such, and subsequent amendments to these or any other applicable acts and underlying regulations, as may occur from time to time.
- B. Where these Regulations conflict with other rules and regulations, either internal or external to the Navajo Nation, these Regulations shall preside. These Regulations are designed to achieve uniformity, control, efficiency, and fair and open competition when purchasing with Public Funds:
 - 1. Appropriated by the Navajo Nation;
 - 2. Awarded by Federal Agencies;
 - 3. Awarded by State and Local Agencies; or
 - 4. From any other source not contemplated above.
- C. These Regulations shall be read and interpreted in a manner consistent with the Procurement Act; however, the Procurement Act shall govern with respect to any inconsistency.
- D. These Regulations shall be liberally construed in favor of the Navajo Nation and are not intended to limit or repeal any power, authority, right, or immunity possessed by the Navajo Nation or any of its employees.
- E. Nothing contained in these Regulations shall be construed to waive any rights, remedies, or defenses the Navajo Nation has or might have under any laws of the Navajo Nation.
- F. Nothing in these Regulations is intended to, nor shall it, waive any right of the Navajo Nation of any nature whatsoever reserved under any treaty or provided for under federal law; limit any rights, powers, or privileges retained by the Navajo Nation under any law; Grant; expand; or confirm, in any way whatsoever, the jurisdiction of any State.
- G. Compliance with these Regulations cannot be waived without the express approval, through resolution, of the Budget and Finance Committee, unless otherwise excepted by the Procurement Act or by Resolution of the Navajo Nation Council.

- H. These Regulations cannot be waived in any appropriation action or executive order by the Office of the President and Vice President.
- I. Procurements under these Regulations shall comply with all conditions of appropriations as enacted by the Navajo Nation Council, when such conditions are not contrary or inconsistent with the Procurement Act or other applicable laws of the Navajo Nation or federal government.
- J. Nothing in these Regulations is intended to, nor shall it, negate the Procuring Party's responsibility to allow sufficient time for an efficient and cost-effective Procurement process. Such process includes proper planning, execution, and record-keeping by a Procuring Party.
- K. Nothing in these Regulations is intended to, nor shall it, create any rights for, or in, any third party to any particular application or interpretation of these Regulations in any Contract, Solicitation, Offer, or Quote.

1.02 Application

- A. These Regulations apply to all Procurements and Procurement Activities by any Navajo Nation Division, Department, Office, or Program that is subject to the Procurement Act.
- B. All Navajo Nation employees shall adhere to these Regulations and are subject to disciplinary actions up to termination or action under the Navajo Nation Ethics in Government Law (hereinafter "NNEGL"), 2 N.N.C. §§ 3741 *et seq.*, for willful non-compliance.
- C. While these Regulations apply to Procurements and Procurement Activities using Navajo Nation Public Funds, which includes funds from private, donated, general, state, or federal sources, nothing in these Regulations shall, nor is intended to, prevent any Navajo Nation Division, Department, Office, or Program from complying with the purposes, terms, and conditions of public or private Grant; gift; bequest; or Contract, including federal or state Contracts and intergovernmental joint powers or cooperative agreements.
- D. While these Regulations apply to Procurements and Procurement Activities using Navajo Nation Public Funds, the procedures set forth in these Regulations supplement, but do not replace, federal law and regulations governing the receipt and use of federal funds, such as, but not limited to, as amended or issued from time-to-time, Public Law 93-638 Funding Agreements; the Federal Acquisition Regulations, Part 2 of the Code of Federal Regulations ("Uniform Guidance"), applicable United States Office of Management and Budget ("USOMB") Circulars; or when a funding agreement requires prior approval for expenditure from a Federal Awarding Agency.
- E. The Procuring Party shall utilize the Procurement Act and these Regulations where an Agreement or federal or state law and regulation require compliance with the Tribe's laws, and where an Agreement or federal or state law and regulation allows the Navajo Nation a choice between following tribal, federal, state, or local laws and regulations for expending funds.
- F. In 2024, the USOMB updated the Uniform Guidance at 2 C.F.R. § 200.317, as amended from time to time, to require tribes "conducting procurement transactions under a Federal award" "to follow the same policies and procedures they use for Procurements with non-Federal funds" while complying with "the procurement standards at parts 200.321, 200.322,

200.323, and 200.327.” As such, these Regulations govern all Navajo Nation Procurements and Procurement Activities using Navajo Nation Public Funds, regardless of the funding source or Procuring Party.

1.03 Exceptions

- A. Procurements, and the resulting Contracts, noted in this Subsection are not subject to the Procurement Act and these Regulations, unless this Subsection states otherwise.
1. Contracts, including the Navajo Nation’s subsequent expenditure of such funds, between the Navajo Nation and any federal, state, and local governments, including prime Contracts and Grants, for the provision of governmental services to Navajos regardless of where they reside and other Persons residing within the Navajo Nation where the other government has allocated the Public Funds for a specific Person or purpose.
 - a. A Contract is excepted from the Procurement Act and Regulations based on its Scope of Work to provide governmental services regardless of what it is called, which may be agreement, intergovernmental agreement, prime Contract, Grant, or some other name.
 - b. If such a Contract requires the Navajo Nation to adhere to its own fund expenditure laws and regulations, or allows the Navajo Nation to choose between adherence to tribal or federal law and regulation, then that Contract and any subsequent expenditures pursuant to it shall follow the Procurement Act and these Regulations.
 2. Procurement for permits, licenses, or leases of real estate, including appurtenant rights. This exception applies regardless of the Navajo Nation’s role in the agreement, such as:
 - a. When the Navajo Nation seeks to enter into a permit, license, or lease of real estate with a landholder where the Navajo Nation is the permittee, licensee, or lessee;
 - b. When the Navajo Nation seeks outside parties to enter into agreements where the Navajo Nation is the permittor, licensor, or lessor; or
 - c. When the Navajo Nation is the Lessee for office space, regardless of whether the Lessor is a public or private Person.
 3. Procuring for, and contracting with, expert witnesses for any litigation overseen by the Navajo Nation Department of Justice or the Office of Legislative Counsel, and engaged on behalf of the Navajo Nation.
 - For example, the Navajo Nation wishes to engage an expert in a lawsuit overseen by the Department of Justice. The Department of Justice may directly select and enter into a Contract with such an expert with the approval of the Attorney General.
 - For example, a law firm engaged by the Attorney General requires an expert witness for litigation in which the Navajo Nation is a party. While the Attorney General shall have followed the Procurement Act and these Regulations when it procured and entered into a Contract with the law firm, either the law firm or the Navajo Nation may select and hire an expert witness.
 4. Public Funds appropriated for a specific purpose to a specific Person; Navajo Nation Division, Department, Office, or Program; Local Governance Act (hereinafter “LGA”), 26

N.N.C. §§ 1 et seq., governance certified Chapter; or tribal enterprise, corporation, or authority through an appropriation enacted by Navajo Nation Council.

- B. The exception of a Procurement from these Regulations does not except or exempt it from legal or compliance reviews required by other laws and regulations.
- C. The Procuring Party shall first seek written confirmation from the Procurement Department pursuant to Section 2.07 that one of the above-mentioned exceptions apply before initiating any excepted Procurement. A Procurement exception shall only be initiated after the Procuring Party receives written concurrence by the Procurement Department.

1.04 Fair and Open Competition

- A. The Navajo Nation must conduct all Procurements and Procurement Activities, including those funded under a Federal award, in a manner that provides fair and open competition.
 - 1. To ensure objective Contractor performance and eliminate unfair competitive advantage, Contractors that develop or draft any part of a Solicitation such as Specifications, requirements, Scopes of Work, or evaluation criteria shall be excluded from competing on or receiving a Contract Award for those Procurements.
 - 2. Examples of situations that may restrict competition include, but are not limited to:
 - a. Placing unreasonable requirements on Offerors for them to qualify to receive a Contract Award;
 - b. Requiring unnecessary experience and excessive security or bonding;
 - c. Non-Competitive pricing practices between firms or between affiliated companies;
 - d. Non-Competitive Contracts to consultants that are on retainer Contracts;
 - e. Organizational Conflicts of Interest;
 - f. Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the Procurement; and
 - g. Any arbitrary action in the Procurement process.
- B. Only in strictly limited and regulated situations may the Navajo Nation procure using Source Selection Methods without Competitive Selection, as authorized by the Procurement Act and these Regulations, which are Micro-Purchases and Non-Competitive Procurements. Even so, in such cases, the Procuring Party shall endeavor to provide preference to Persons with an NBOA Priority Classification to the extent practicable.

1.05 Severability

If a court of competent jurisdiction holds any provision or application of these Regulations invalid, such judgment shall not affect, impair, or invalidate the remainder of these Regulations, which shall continue in full force and effect.

1.06 Effective Date

Consistent with Subchapter 2 of the Procurement Act, these Regulations shall become effective on the date established in the Budget and Finance Committee resolution that approves and adopts

these Regulations.

Section 2. General

2.01 Definitions

- A. The words used in these Regulations shall have their ordinary meanings unless:
 - 1. the context in which they are used clearly requires a different meaning, such as being an industry standard term; or
 - 2. a definition is provided for in the Procurement Act or in these Regulations.
- B. Where a word or phrase is defined, any other part of speech or other grammatical form with respect to such word or phrase shall, unless the context clearly requires otherwise, have a corresponding meaning.
- C. The terms defined in the Procurement Act Section 304(B) are noted below for ease of reference. The list in these Regulations shall include any amendments made from time to time to the Procurement Act whether duplicated below.
 - 1. "Business" means any legal organization, including but not limited to a corporation, limited liability company, company, partnership, individual, sole proprietorship, joint venture, or non-profit entities. It does not mean a legal organization owned, wholly or in-part, by the Navajo Nation, such as a tribal corporation, enterprise, or authority.
 - 2. "Navajo Nation Division, Department, Office, or Program" means any Division, Department, Commission, Council, Board, Bureau, Committee, Institution, Legislative Body, Agency, non-LGA governance certified Chapter, political subdivision, or other establishment or Public Official of the Executive, Legislative, or Judicial Branch of the Navajo Nation government. It does not mean an LGA governance certified Chapter, tribal corporation, enterprise, or authority.
 - 3. "Person" means any individual, Business, union, committee, club, other organization, or group of individuals.
 - 4. "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any Goods or Services, unless explicitly excluded from this Procurement Act or by some other provision of Navajo Nation law. It also includes all functions pertaining to the acquisition of any such Goods or Services.
 - 5. "Procuring Party" means the Navajo Nation Division, Department, Office, or Program, including the Procurement Department of the Office of the Controller, responsible for a Procurement pursuant to this Act and its Regulations.
 - 6. "Public Funds" means all funds as provided for in 12 N.N.C. § 810(R), as amended from time to time, which includes funds from external sources.
- D. The terms defined in these Regulations are:
 - 1. "Aggrieved Person" means any Offeror or Contractor who is aggrieved in connection with a Solicitation or Contract Award; any Person who is aggrieved in connection with a Debarment or Suspension decision.
 - 2. "Anti-Competitive Practice" means an act that harms, prevents, restricts, or distorts

competition for a Procurement, or Contract opportunity, whether by fraudulent action or action taken in bad faith.

3. "Bid" means an Offer to perform a Contract for the provision of Goods, and any attendant Services, at a specified price in response to the requirements contained in an Invitation for Bids.
4. "Blanket Purchase Agreement" means a Purchase Order that allows the Procuring Party to fill anticipated, repetitive needs for limited quantities of Goods through an established charge account with a Responsive and Responsible vendor. A Blanket Purchase Agreement shall list all Goods subject to it and the established price for said Goods, but may note delivery date and quantities are to be determined. The Office of the Controller shall establish the appropriate form of the Blanket Purchase Agreement in the Internal Procurement Procedures.
5. "Budget" means the detailed or itemized costs of the Procurement that are to be incurred prior to project completion and Contract expiration or termination. The Budget shall be based on or the same as the Offeror's Cost Proposal and incorporated into the Contract.
6. "Change Order" means a written order directing the Contractor to make changes in the Scope of Work, term, or price in a Construction, architect, engineer, or land surveyor Contract only as authorized by the Contract. A Change Order is a Contract Modification.
7. "Collusion" or "Collusive" means an arrangement between two or more Persons designed to achieve an Anti-Competitive Practice purpose, including to improperly influence the actions of another Person.
8. "Competitive Selection" means a process where a Solicitation is issued in a manner, usually through Public Notice or by directly seeking multiple Quotes, that is designed to receive Offers or Quotes from a vendor that could provide the Good or Service. A Procurement Method that does not require Public Notice or seeking multiple Offers or Quotes is not Competitive Selection; the Sealed Bidding, Sealed Proposals, and Simplified Acquisitions Procurement Methods, as detailed in these Regulations, require some form of Competitive Selection.
9. "Conflict of Interest" means a Conflict of Interest as defined in the NNEGL, 2 N.N.C. § 3743(G), as amended from time to time.
10. "Construction" means the process of building, altering, repairing, improving, installing, renovating, or demolishing any structure or building, or other improvements of any kind to any real property. Construction is a type of Service. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.
11. "Contract Award" means a written, formal notice to an Offeror that the Procuring Party has selected its Offer or Quote and that the next steps will include finalizing the Contract for the Procurement. Contract Awards may be issued through electronic mail. Making a Contract Award is the same as selecting an Offer or Quote.
12. "Contract" means any type of Navajo Nation agreement, regardless of what they may be called, obligating the seller to provide Goods or Services and the Navajo Nation to pay for them, including all types of commitments that are in writing that obligate the Navajo Nation to an expenditure of appropriated funds, unless it is the type of agreement

excepted in Section 304(C) of the Procurement Act or Section 1.03 of these Regulations. In addition to bi- or multilateral instruments, Contracts include, but are not limited to orders, such as Purchase Orders, under which the Contract becomes effective by written acceptance or performance; Contract Modifications; and completion of a purchase at a point of sale with a Purchase Card.

13. "Contractor" means any Person, including vendors, having a Procurement Contract with a Navajo Nation Division, Department, Office, or Program.
14. "Cost Proposal" means the cost of the Procurement proposed by the Offeror in response to the Solicitation's Specification or Scope of Work, including any other technical requirements. If a Solicitation seeks Offers for a multi-year Contract, the Cost Proposal shall include annual Budgets for all subsequent fiscal periods and a summary Budget.
15. "Data" means recorded information, regardless of form or characteristic.
16. "Debarment" or "Debar" means the action taken by the Debarring authority to exclude a Person from contracting or otherwise receiving business opportunities from the Navajo Nation for a specified period of time. A Person that is excluded is automatically Debarred.
17. "Designee" means an individual who is an appropriately authorized representative acting within the limits of their appropriate authority.
18. "Document Review" means the process by which any branch of the Navajo Nation government reviews and approves the contents of a Contract packet or Procurement File, for consistency with any statutory, regulatory, or policy requirements. This includes reviews and approvals required by 2 N.N.C. § 164 and to execute a Contract pursuant to 2 N.N.C. § 222.
19. "Emergency" means a need following an unexpected occurrence or occasion that requires immediate action to protect the public health, welfare, safety, or sovereignty of the Navajo Nation, its people, or its property.
20. "Goods" means all property, except land or interest in land, including but not limited to supplies, products, equipment, materials, printing, software, and insurance.
21. "Grant" means the receipt or provision of any assistance, financial or otherwise, under a program authorized by Navajo Nation, state, or federal law, private, or philanthropic sources for the primary purpose of carrying out an approved project or activity. It does not include a Contract Award with the primary purpose of obtaining an end product, whether in the form of a Good or Service. A Contract resulting from such a Contract Award is not a Grant, rather, it is a Procurement Contract.
22. "Internal Procurement Procedures" means the Office of the Controller documented procedures, including approval steps, roles, and controls used to plan, request, evaluate, authorize, and complete Procurement Activities according to legal requirements, Budget limits, ethical standards, and organizational goals.
23. "Invitation for Bids" means a Solicitation issued by a Procuring Party seeking Offers where the Offer providing the lowest price serves as the basis for the Contract Award, so long as that Offeror is Responsible and Responsive.
24. "Lease" means a non-real estate rental or tenancy arrangement that does not result in title passing between the Parties.

25. "Maximum Feasible Price" means the cost, including profit, taxes, and other processing fees, that the Procuring Party estimates it will have to pay for the Procurement, which it establishes through a combination of research and professional judgment.
26. "May" denotes the permissive and shall apply if the word is not capitalized.
27. "Micro-Purchases Procurement" or "Micro-Purchases" means the Procurement Method where the Procuring Party seeks Goods or Services according to the streamlined purchasing procedures of these Regulations with an established Maximum Feasible Price not exceeding the threshold established in these Regulations.
28. "Modification" means any written document that amends the original Contract by mutual action and is signed by the Parties to the Contract.
29. "NBOA Priority Classification," "NBOA Priority 1," and "NBOA Priority 2" mean the certification of a Person by the Business Regulatory Department establishing that the Person meets the established criteria for Priority 1 or Priority 2 status in NBOA Section 205(A)-(B), as amended from time to time. A Person's NBOA Priority 1 or NBOA Priority 2 status is evidenced by a certificate from the Business Regulatory Department, which is valid for one (1) year from the date of issuance, unless provided otherwise in the NBOA or its regulations. The certificate shall be valid at the time of the Offer Opening.
30. "Non-Competitive Procurement" means a Procurement Method where the Procuring Party seeks Goods or Services according to the procedures of these Regulations and makes a Contract Award to a vendor without Competitive Selection.
31. "Non-Professional Service" means any Service not specifically identified as a Professional Service.
32. "Notice of Non-Compliance" means the written report made by the Office of the Controller or other Navajo Nation Division, Department, Office, or Program, as appropriate, of a Person or Navajo Nation Division, Department, Office, or Program's failure to comply with the requirements of these Regulations.
33. "Offer Evaluation" means the written results of the action taken by the Procuring Party, Sponsoring Entity, or others to determine an Offer or Quote's Responsiveness to the Solicitation.
34. "Offer Opening" means the meeting at which the Procuring Party opens and evaluates Offers or Quotes received in response to a Solicitation. The Offer Opening may be public or private, at the discretion of the Procuring Party, unless the Procurement Method used requires otherwise.
35. "Offer Security" means a Bid bond or deposit submitted with an Offer or Quote to guarantee to the Procuring Party that the Offeror, if awarded the Contract, will execute the Contract within the specified period of time and will furnish any bonds or other requirements of the Solicitation.
36. "Offer Submission Deadline" means the time, date, and manner of submission stated in the Solicitation by which an Offeror shall submit its Offer or Quote.
37. "Offer" means an Offeror's written submission in response to a Solicitation.
38. "Offeror" means the Person who provides a timely, written response to a Solicitation.
39. "Party" or "Parties" means the Contractor and Procuring Party of a Procurement

Contract, as it pertains to these Procurement Regulations.

40. "Past Performance" means a Person's recent or prior performance on active or fully completed Procurements and their Contracts.
41. "Piecemeal" or "Piecemealing" means the willful attempt to split up or separate a Procurement into smaller purchases to circumvent price limitations set for a specific Procurement Method.
42. "Preponderance of the Evidence" means, when the defined term is used for the purposes of these Regulations, proof established by information that, compared with any opposing information, leads to the conclusion that the fact at issue is more probably true than not.
43. "Procurement Activity" or Procurement Activities" means any function pertaining to the Procurement of Goods or Services by Contract. Procurement Activities begin at the point where the Procuring Party's needs are established and include the Specification or Scope of Work, Solicitation, and procedures of the Procurement Method, Contract negotiation, Past Performance, Contract administration, and other functions directly related to fulfilling Procuring Party needs.
44. "Procurement Contract" means a Contract entered into for the purposes of effecting a Procurement.
45. "Procurement Department" means the department within the Office of the Controller, currently the Purchasing Department in its Plan of Operations, authorized to conduct and oversee Procurement Activities of the Navajo Nation.
46. "Procurement File" means the details and assembled Records, regardless of form, of all Procurement Activities, including but not limited to pre-solicitation activities through completion of the purchase or expiration or termination of the Contract or any warranties, whichever is later in time. A Procurement File is a collection of Records.
47. "Procurement Method" or "Source Selection Method" means the process by which the Procuring Party issues Solicitations and reviews Offers or Quotes for a Procurement. A Procurement may utilize only one Procurement Method at a time.
48. "Professional Service" means a Service that requires that the provider obtain a license or other legal authorization in the State where the Procurement is located as a condition precedent to providing the Service. A license issued in a state different from where the Procurement is located is acceptable only if the state where the Procurement is located accepts it through reciprocity.
49. "Proposal" means an Offer to perform a Contract submitted by an Offeror in response to requirements contained in a Request for Proposals.
50. "Public Notice" means Publication in a manner by which a Solicitation is made available to the general public.
51. "Public Official" means a Public Official as defined in the NNEGL, 2 N.N.C. § 3743 (S), as amended from time to time.
52. "Publication" means, for the purposes of this Procurement Act, any commonly utilized or easily accessible report, article, educational material, handbook, brochure, pamphlet, press release, public service announcement, web page, audio or visual material, or other communication for public dissemination.

53. "Purchase Card" means a Navajo Nation-issued payment card that lets approved employees make small, routine, or urgent purchases using the Micro-Purchases Procurement Method while still following Purchase Card spending limits, documentation rules, and accountability requirements.
54. "Purchase Order" means the written authorization issued to acquire the specific, detailed Goods or Services at set quantities and agreed prices, which is approved by the Procurement Department before issuance. The Procuring Party shall only use Purchase Order templates that the Department of Justice has reviewed and approved; Purchase Orders using templates not reviewed and approved by the Department of Justice shall not be valid or legally binding.
55. "Purchase Requisition" and "Purchase Requisition Form" means the written, initiating document for the Procurement of Goods through a Blanket Purchase Agreement and shall be completed in its entirety by the Procuring Party. The Office of the Controller shall establish the appropriate form of the Purchase Requisition Form in the Internal Procurement Procedures.
56. "Quotation" or "Quote" means a response to a Solicitation for a Simplified Acquisitions, Micro-Purchases, or Non-Competitive Procurement and that includes the estimated cost for Goods or Services sought.
57. "Reasonable" means, for the purposes of these Regulations, documentation establishing that the conclusion giving rise to the matter at issue is sound, logical, and appropriate.
58. "Receiving Report" means written evidence that indicates the Procuring Party or Sponsoring Entity's acceptance of the Goods delivered. The Office of the Controller shall establish the appropriate form of the Blanket Purchase Agreement in the Internal Procurement Procedures.
59. "Record" means a Record as defined in the Navajo Nation Privacy and Access to Information Act (hereinafter "Privacy Act"), 2 N.N.C. § 83(E), as amended from time to time.
60. "Request for Proposals" means a Solicitation issued by a Procuring Party seeking Offers where the Contract Award is based on meeting stated evaluation factors beyond just price.
61. "Responsibility Review" means the Pre-Contract Award assessment performed by the Procuring Party as to the Responsibility of every Offeror that has submitted an Offer or Quote specific to the Procurement then being evaluated.
62. "Responsible Offeror" means a Person who has submitted Offer or Quote and has been determined to be Responsible by the Procuring Party.
63. "Responsible" or "Responsibility" means the Offeror's capability to fully perform the Procurement and Contract requirements noted in the Solicitation, and that the integrity and reliability of the Offeror assure good faith performance. Use of the term "Non-Responsible" indicates that an Offeror does not meet the requirements to be found Responsible.
64. "Responsive Offeror" means a Person who has submitted an Offer or Quote that has been determined to be Responsive by the Procuring Party.

65. "Responsive" means that an Offeror submitted an Offer or Quote that conforms in all material respects and technical requirements of the Solicitation and these Regulations. Use of the term "Non-Responsive" indicates that an Offeror does not meet the requirements to be found Responsive.
66. "Responsive-Responsible Offeror" means an Offeror who the Procuring Party determines to be a Responsible Offeror having submitted a Responsive Offer or Quote.
67. "Scope of Work" means the terms describing the Goods, including their Specification, to be provided or the Services to be performed. The Scope of Work shall include, but is not limited to, the details for successful completion of the Procurement, its Contract, any milestones, reports, deliverables, and end products that are expected to be provided by the Contractor and should include a timeline.
68. "Sealed Bidding" means a formal Procurement Method where the Procuring Party seeks confidential, closed Bids that are all to be opened publicly at a designated time and place, whether physical or virtual, to ensure fairness and transparency, and the Contract Awarded to the Responsive-Responsible Offeror submitting the lowest price.
69. "Sealed Proposals" means a formal Procurement Method where the Procuring Party seeks confidential closed Proposals which are to be evaluated to determine the most qualified Offeror, using multiple factors, such as but not limited to, technical quality, approach, experience, and cost, and when the offering the lowest price is not the only deciding factor.
70. "Self-Insurance" means the assumption or retention of the risk of loss by the Contractor, whether voluntarily or involuntarily. Self-Insurance includes the deductible portion of purchased insurance.
71. "Services" means the furnishing of labor, time, or effort, not involving the delivery of Goods other than those incidental to the required performance. Services include but are not limited to performance of work that is (1) intangible; (2) unique & specific as identified in the Scope of Work; (3) requires an infrequent function that is an advisory or consulting role involved interaction where there is significant management involvement and interaction with the Contractor, or (4) where the end result or end-product tends to be complex with regard to the subjective nature of the results. This term shall not include employment agreements or collective bargaining agreements. This term also includes Construction, Professional Services, and Non-Professional Services.
72. "Shall" denotes the imperative and shall apply if the word is not capitalized.
73. "Should" means an expected course of action or policy that is to be followed unless inappropriate for a particular circumstance and shall apply if the word is not capitalized.
74. "Signature" or "Sign" means the discrete, verifiable symbol of an individual that, when affixed to a Writing with the knowledge and consent of the individual, indicates a present intention to authenticate the Writing. This includes "wet" or physical Signatures and electronic symbols or representations thereof.
75. "Simplified Acquisitions" means a Procurement Method where a Procuring Party seeks Goods or Services according to the procedures of these Regulations with an established Maximum Feasible Price not exceeding the threshold established in these Regulations.
76. "Solicitation Notice Webpage" means the Office of the Controller's web page specifically

maintained for publicly posting Solicitations.

77. "Solicitation" means the process of issuing written document(s), whether attached or incorporated by reference, to obtain information or pricing from an Offeror. Solicitations are issued in the form of an Invitation for Bids, Request for Proposal, or requests for Quotes when utilizing one of the following Procurement Methods: Simplified Acquisitions, Micro-Purchases, or Non-Competitive Procurement.
78. "Specification" means the description of the physical, technical, functional, or performance characteristics of Goods to be procured. A complete Specification includes, but is not limited to, where applicable, requirements for set-up, delivery, inspection, and testing. Specifications shall be drafted with the objective of clearly and fully describing the Procuring Party's requirements.
79. "Sponsoring Entity" means the Navajo Nation Division, Department, Office, or Program, which would otherwise be the Procuring Party, but it is seeking a Procurement using the Sealed Bidding or Sealed Proposals Source Selection Methods.
80. "Submission Notice" means the unconcealed written notice provided by the Offeror with its Offer or Quote.
81. "Suspension" or "Suspend" means the action taken by the suspending authority to temporarily disqualify a Person from contracting with or otherwise receiving business opportunities from the Navajo Nation for a specified period of time. A Person who is disqualified is suspended.
82. "Telephonic Communication" means interactive communication by two or more physically distant Persons through the electronic transmission of Data accomplished via cellular, fixed-line wired, or internet protocol services. This includes phone calling, text or instant messaging, video calling, video conferencing, voicemail, and call recording. For the purposes of these Regulations, facsimile is not a Telephonic Communication.
83. "Total Purchase Price" means the entire cost the Navajo Nation is obligated to pay, after Contract execution, for the Procurement, including profit, taxes, other processing fees, and any subsequent Contract Modifications.
84. "Writing," "In Writing," or "Written," means, regardless of capitalization, any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.
- E. Unless otherwise stated in these Regulations or the Procurement Act, words which have well-known technical or industry meanings may be used in the Procurement Solicitation and Contract in accordance with industry recognized meanings.

2.02 Conflicts of Interest

No employee, Public Official, program staff, agent, or representative of the Navajo Nation shall participate in any Procurement Activity — including planning, solicitation, evaluation, selection, award, administration, or monitoring of a Contract — when a real, potential, or apparent Conflict of Interest exists.

2.03 Procuring Party

The Source Selection Method used shall determine the appropriate Procuring Party for a Procurement.

- A. The Procurement Department shall be the Procuring Party of the Navajo Nation for Procurements utilizing the Sealed Bidding and Sealed Proposal Source Selection Methods.
 - 1. The Procurement Department shall be responsible for the Procurement Activities as the Procuring Party up to issuing the Contract Award. At that time, the Sponsoring Entity shall take over the Procurement Activities to complete the Contract.
 - 2. The Procurement Department shall complete all Procurement Activities in consultation with, and with the concurrence of, the Sponsoring Entity seeking the Goods or Services and responsible for the funding of the Procurement.
 - 3. The Procurement Department shall consult with the Navajo Nation Division, Department, Office, or Program that is the subject matter expert regarding the Procurement's Specification or Scope of Work when developing and evaluating Solicitations.
 - 4. If the Procurement Department determines that the appropriate Procurement Method to complete a Procurement is not Sealed Bidding or Sealed Proposals, it shall refer the Procurement to the Sponsoring Entity.
- B. Procurements utilizing other Source Selection Methods that have not been explicitly made the responsibility of the Procurement Department in the Procurement Act shall be completed by the Navajo Nation Division, Department, Office, or Program, or Office seeking the Goods or Services. If the Navajo Nation Division, Department, Office, or Program determines that the appropriate Procurement Method to complete a Procurement is Sealed Bidding or Sealed Proposals, it shall refer the Procurement to the Procurement Department.

2.04 Procurement Department

- A. The Procurement Department, with written approval by the Controller, shall have the sole authority to determine the appropriate Procurement Method for a Procurement after Reasonable review of the facts; such decision shall be consistent with these Regulations.
- B. Consistent with their authority over the Office of the Controller, the Controller may override decisions of its employees, including those within the Procurement Department. Action by the Controller shall be accepted the same as action by any employee of the Office of the Controller.
- C. The Office of the Controller shall develop, document, and maintain Internal Procurement Procedures for completing Procurement Activities and supporting its implementation of the Procurement Act and these Regulations, including prescribing forms, to be used in requisitioning, ordering, and reporting of Goods or Services, unless otherwise provided for in other law or regulation. The Procurement Department may prescribe forms as it determines appropriate, including use in either a physical or digital manner, such as requiring use of the enterprise resource planning software.
 - 1. The Office of the Controller is the sole authority for establishing the Internal Procurement Procedures, which it may issue and amend without approval of the Budget and Finance Committee.
 - 2. The Controller shall approve the Internal Procurement Procedures, which shall not go into effect until published on the Office of the Controller's website.
 - 3. The Internal Procurement Procedures shall at all times comply with the Procurement Act,

these Regulations, and all applicable Navajo Nation law and regulations.

4. The Internal Procurement Procedures shall ensure that all Solicitations comply with the requirements of these Regulations, including the need to:
 - a. Promote Fair and Open Competition;
 - b. Incorporate a clear and accurate purchase description of the technical requirements for the Goods or Service being procured;
 - c. Identify any additional requirements that the Offerors must fulfill and all other factors that will be used in evaluating Bids or Proposals;
 - d. Include procedures to select and keep private the randomly selected employee to be a part of the Procurement awarding team; and
 - e. ensure that all pre-qualified lists of Persons, firms, or products used in Procurement transactions are current and include enough qualified sources to ensure maximum open competition.
- D. Subject to specifically appropriated funding for such, the Auditor General shall audit the Procurement Department's Internal Procurement Procedures and the Office of the Controller's written internal policies and procedures every two (2) years for a determination of compliance with the then in effect Procurement Act and these Regulations.
- E. When establishing or amending prequalified lists, the Procurement Department must consider objective factors that evaluate price to maximize competition. The Navajo Nation must not preclude potential Offerors from qualifying during the solicitation period.
- F. Using the procedures provided in Section 36, the Procurement Department shall report for non-compliance any Person or Navajo Nation Division, Department, Office, or Program that attempts to force, influence, or persuade the Office of the Controller, to:
 1. Override or ignore these Regulations or the Internal Procurement Procedures;
 2. Change internal procedures or practices in a manner inconsistent with these Regulations; or
 3. Otherwise, verbally or in writing, harass the Office of the Controller in a manner designed to prevent compliance with these Regulations.
- G. The verbal or written authorization or promise to pay given to any vendor to proceed with delivery of Goods or Services before or without following the Procurement Methods herein shall be determined to be a willful non-compliance of these rules and regulations, and the Office of the Controller shall report such using the procedures provided in Section 36.

2.05 Contractor Performance Database

- A. The Procurement Department shall maintain a Contractor Performance Database documenting for all Navajo Nation Contractors the details of:
 1. Completed and active Procurement Contracts;
 2. Effective Procurement Contract terminations;
 3. Contract defaults;
 4. Contract Past Performance deficiencies, as noted by the Procuring Party;

5. Pending, active, or past Debarments or Suspensions;
 6. Current litigation related to Procurement Contracts; and
 7. Active or past audit findings for the Navajo Nation related to contractor performance.
- B. The Procurement Department shall update this Contractor Performance Database quarterly and make it available to the Navajo Nation Council and its committees and to authorized Navajo Nation oversight bodies, including the Office of the Controller, the Office of the Auditor General, the Ethics and Rules Office, and the Department of Justice.
 - C. The Contractor Performance Database shall not be a public Record pursuant to the Privacy Act. For requests of Records contained in the database that are explicitly deemed public under the Privacy Act, the Procurement Department shall appropriately redact all other protected information.
 - D. The Contractor Performance Database shall not include any complaints made to the Business Regulatory Department for Past Performance or other actions utilized in completing a Responsibility Review, as noted in Sections 15 and 37. A Procuring Party making a complaint under Section 37 shall separately submit notice of Contract Past Performance deficiencies to the Procurement Department for inclusion in the Contractor Performance Database.
 - E. The Procurement Department shall implement the Contractor Performance Database , eight (8) months of the effective date of these Regulations.
 - F. The original Record of the information contained in the database shall be maintained in each Procurement's Procurement File.

2.06 Procurement Department Required Reporting and Publications

- A. The Office of the Controller shall submit written quarterly reports to the Budget and Finance Committee, Office of the Chief Justice and Office of the President and Vice-President to provide transparency of ongoing Procurements.
 1. Such Procurement Transparency Reports shall be issued within twenty (20) business days of the quarter's end and shall list all Procurements during the reporting period for:
 - a. Contract Awards made for Procurements exceeding the Simplified Acquisition amount;
 - b. Executed Contract modifications;
 - c. Completed Contract terminations, regardless of the reason;
 - d. Persons Actively Debarred or Suspended; and
 - e. Non-Competitive Procurements approved for Emergency purposes.
 2. For every Procurement listed in the Procurement Transparency Report, the report shall provide:
 - a. The Offeror's name and, if applicable, the Offeror's Authorized Agent;
 - b. The Procurement Method utilized; and
 - c. The final contract amount, if executed, or the expected Contract amount if pending execution; and

- d. The applicable funding sources.
- B. The Office of the Controller shall submit written reports to the Budget and Finance Committee, Office of the Chief Justice, and Office of the President and Vice-President of completed Contract Modifications pursuant to this Subsection.
 - 1. Such Contract Modification Reports shall be issued within thirty (30) days of execution of a single or cumulative impact of multiple Contract Modifications exceeding:
 - a. Twenty percent (20%) of the original contract amount; or
 - b. Five hundred thousand dollars (\$500,000).
 - 2. For every Modification listed in the Contract Modification Report, the report shall provide:
 - a. The reason for the Modification;
 - b. Any budgetary or other financial impact;
 - c. Any impacts on the Procurement Contract's schedule; and
 - d. Whether additional appropriations or funding was required.
- C. The Office of the Controller shall submit written reports to the Budget and Finance Committee, Office of the Chief Justice, and Office of the President and Vice-President of Non-Competitive Procurements approved for Emergency purposes.
 - 1. Such Non-Competitive Emergency Procurement Reports shall be issued within thirty (30) days of the Procurement Department's approval of the Non-Competitive Emergency Procurement and include:
 - a. A description of the Emergency, including the factual basis for the Emergency supplied in the documentation seeking the Non-Competitive Procurement pursuant to Section 26.02(A)(3)(d);
 - b. The name of the Contractor selected;
 - c. The Procurement's original contract amount; and
 - d. If applicable, steps taken to return to normal Procurement procedures.
- D. The Procurement Department's required reports shall be public Records except where the information provided is protected by law or regulation.
- E. When completing Procurements through the Sealed Bidding or Sealed Proposals Procurement Methods, the Procurement Department shall, within ten business days of making a Contract Award, publish on its website the Procurement's:
 - 1. Solicitation unique identifier;
 - 2. Selected Offeror;
 - 3. Selected Offer amount;
 - 4. Expected Contract duration; and
 - 5. Sponsoring Entity.

2.07 Procurement Department Approvals Required Prior to Initiating Procurement

When required by these Regulations, the Procuring Party shall seek written confirmation or approval

from the Procurement Department as follows:

- A. Prior to initiating the Procurement, the Procuring Party shall submit a notice in writing to the Procurement Department indicating that it intends to complete a Procurement requiring confirmation or approval from the Procurement Department.
- B. The Procurement Department shall respond to the notice in writing within five (5) business days of receipt of the notice indicating its agreement.
 - 1. If the Procurement Department concurs or approves of the Procuring Party's determination, it shall Counter-Sign the written notice indicating approval.
 - 2. If the Procurement Department does not concur or approve, it shall issue the reason for its non-concurrence in writing and list the available Procurement Methods or other next actions to the Procuring Party.
- C. Failure of the Procurement Department to respond within the required time period shall not constitute approval. The Procuring Party shall not proceed without explicit written approval from the Procurement Department.
- D. Copies of the written notices and concurrences or approvals shall be maintained in the Procurement File.

2.08 Procedures & Policies Implementing the Procurement Regulations

- A. Navajo Nation Divisions, Departments, Offices, or Programs responsible for compliance with these Regulations may adopt internal procedures establishing formal requirements to be met when completing Procurement Activities. Such procedures shall:
 - 1. Not conflict with the Internal Procurement Procedures;
 - 2. Clearly establish how adherence results in compliance with these Regulations;
 - 3. Be reviewed and approved by the Department of Justice prior to implementation;
 - 4. Be formally transmitted to all Navajo Nation Division, Departments, Offices, or Programs noting the date of implementation; and
 - 5. Be made publicly available on the respective website of the Navajo Nation Division, Department, Office, or Program prior to implementation.
- B. In no case shall any Navajo Nation Division, Department, Office, or Program require adherence to procedures, policies, or use of forms not formally adopted pursuant to this Section.
- C. All procedures created and issued by any Navajo Nation Divisions, Departments, Offices, or Programs related to the implementation of the Procurement Act and these Regulations shall be made available on a public webpage.

2.09 Reading the Procurement Regulations

- A. Use or reference to any official title, Person, department, Procuring Party, or employee that is authorized to make any determination, give any approval, or take any other action required or permitted by these Regulations includes reference to any Designee or supervisor.
- B. The examples provided in these Regulations serve only to assist in understanding of the requirements and do not, and shall not be, construed as a comprehensive or sole listing of

the actions, types of projects, or Procurements to which these Regulations apply.

Section 3. Limitations on Procurements

3.01 Piecemealing

- A. Piecemealing is prohibited; such act shall be considered a willful non-compliance of these Regulations, and the Office of the Controller shall issue a Notice of Non-Compliance as required in these Regulations.
- B. This shall not apply to any Non-Competitive Procurement for Emergency Goods or Services for the wellbeing of or the public safety and general wellbeing of the People or employees of the Navajo Nation.
- C. There may be reasons resulting in economic harm or liability to the Navajo Nation that warrant exceptions to this rule, and those will be determined solely by the Controller under the advice of the Department of Justice.

3.02 Prohibition of Immediate, Identical Procurements

- A. The Procuring Party is prohibited from initiating a Procurement for identical Goods or Services for three (3) months following the Contract Award of the prior identical Procurement, except as provided in this Subsection. If the Procuring Party knows or has reason to believe that identical Goods or Services are necessary, it should plan the anticipated timeframes during which the Goods or Services will be needed to procure accordingly.
- B. This Section shall not apply to Non-Competitive Procurement for Emergency needs.
- C. Should a Procuring Party need to conduct an identical Procurement during the three (3) month prohibition, it shall first seek written approval from the Procurement Department pursuant to Section 2.07.

3.03 Avoidance of Unnecessary and Duplicative Goods

- A. Without Piecemealing, the Procuring Party shall consider whether to consolidate or break out Procurements to obtain a more economical purchase.
- B. When appropriate, the Procurement Department shall work with Navajo Nation Divisions, Departments, Offices, or Programs to conduct an analysis between leasing and purchasing Goods such as property or equipment to determine the most economical approach.
- C. Procuring Parties are encouraged to utilize excess and surplus Navajo Nation property instead of purchasing new equipment and property when feasible.
- D. When appropriate for the use of common or shared goods, Navajo Nation Divisions, Departments, Offices, or Programs are encouraged to enter into intradepartmental agreements that include payment of costs rather than completing Procurement transactions.
 - 1. These or similar Procurement arrangements, utilizing strategic sourcing, may foster greater economy and efficiency.
 - 2. Documented transactions of this type will meet the competition requirements of the Act.

3. The Procurement Department, with the assistance of the Department of Justice, will create procedures governing the use of interdepartmental agreements for Procurement transactions as part of the Internal Procurement Procedures. The Department of Justice shall develop the interdepartmental agreements.

Section 4. Procurement File: Data Collection, Retention, and Inspection

4.01 Data Collection

- A. The Navajo Nation shall collect and maintain complete Records for all Procurement Activities in the Procurement File. Both the Procurement Department and the Navajo Nation Division, Department, Office, or Program responsible for the Procurement shall maintain Records related to every Procurement.
 1. For the purpose of auditing the Navajo Nation's records, the Procurement Department shall be responsible for creating and maintaining the official Record of a Procurement.
 2. The Navajo Nation Division, Department, Office, or Program seeking the Procurement shall retain its Records related to a Procurement in: (1) its own Procurement File; or (2) with the Procurement Department pursuant to an agreement to transfer all related Records to the Procurement Department.
- B. Records shall be accurate, timely, and safeguarded against alteration.
- C. The preferred manner of storage for all Procurement Records is in an electronic form within the Procurement Department's financial management system.

4.02 Contents of the Procurement File

- A. The Records within the Procurement File shall detail the history of all Procurement Activities for each Procurement through the expiration of any Contract or later in time warranties, whether digital or physical, including but not limited to:
 1. The rationale for determining the Maximum Feasible Price and the Procurement Method used;
 2. The Solicitation, including any amendments, corrections, or other attachments and exhibits;
 3. Bids, Proposals, or Quotes, or copies of those received;
 4. The Offer Evaluation results, including Offer Opening attendance, regardless of whether the Offer Opening was public or private; scoring details; and the process of selecting or rejecting Offers or Quotes;
 5. The Contract Award, accepted by the Offeror;
 6. The Contract, including the Purchase Order, and exhibits and attachments, and any subsequent Modifications;
 7. The Purchase Order created by the Navajo Nation accounting system, including the enterprise resource planning software connected to the Procurement;
 8. Invoices;
 9. Referenced material related to the Specifications or Scope of Work or, when too large or

complicated to include in the Procurement File, a detailed description of such;

- For example, a Procurement for Construction Services that incorporates architectural drawings in the Solicitation requires inclusion of the drawings in the Procurement File. These may be included either as full and complete drawing(s), or if too large to include, a detailed description of all drawings and related materials, such as an index.

10. Conflict of Interest disclosures;

11. Records of Document Review submission and results to other Navajo Nation Divisions, Departments, Offices, or Programs;

12. Communications, memoranda, notices, or other Records;

- For example, the Procuring Party shall include any communications sent to or received from a Person seeking Offers or to make a Vendor aware of an issued Solicitation in the Procurement File;

13. Proof of Public Notice of the Solicitation, when required by the Procurement Method;

14. Any applicable governing documentation, advisory memoranda, letter, or other governmental orders created specifically for or in relation to the Procurement or, when too large or complicated to include in the Procurement File, a detailed description of such, except that the Procuring Party is not required to include copies of any federal, state, or tribal code or any attendant policies or regulations adopted at that time;

- For example, when the Procuring Party obtains a Risk Management Program letter noting compliance with insurance requirements, it shall include such letter in the Procurement File.
- For example, when the Navajo Nation Council adopts a resolution that appropriates Public Funds pursuant to a section of Navajo Nation law, regulation, plan, or policy, the Procuring Party shall include the resolution in the Procurement File, but does not need to add a copy of the referenced or attached material so long as the resolution includes an identifying reference.

15. A copy of the NBOA Source List available at the time the Solicitation was issued;

16. All certificates and documents are required to ensure the selected Offeror's compliance with Navajo Nation laws and regulations; and

- For example, the selected Offeror is a corporation organized under the laws of the State of Arizona. The Procurement File shall include a current copy of the Offeror's Certificate of Good Standing issued by the Business Regulatory Department as evidence that the Offeror is registered as a foreign corporation on the Navajo Nation and maintains its annual reporting requirements.
- For example, the selected Offeror plans to use sub-Contractors in its completion of the work for a Procurement. The Procurement File shall include the Prime Contractor's subcontracting plan for the Procurement pursuant to the NBOA, 5 N.N.C. § 206(E); and
- For example, the selected Offeror wishes to enter into a business opportunity with the Navajo Nation. The Procurement File shall include all written compliance checks

obtained to verify a Person's eligibility to transact business with the Navajo Nation under the NBPA and other laws.

17. For Procurements using Public Funds from the United States where the Procurement is subject to federal Procurement requirements as noted in Section 1.02(C)-(D), prior to issuing the Solicitation, the Procuring Party shall include a written certification detailing:

- a. Citations to applicable federal statutes and regulations, including any applicable Uniform Guidance requirements; and
- b. All funding agreement conditions specifically applicable that are inconsistent with the Procurement Act and these Regulations.

B. Expect for complying with a Method's required pre-requisites to issuing a Solicitation and Public Notice procedures, failure of the Procuring Party to include a required Record in the Procurement File, or in the Contract packet for Document Review, shall not explicitly prohibit a Procurement from proceeding. If the Office of the Controller or the Department of Justice, or the Office of Legislative Counsel for Legislative Branch Procurements or the Judicial Branch Administration for Judicial Branch Procurements, determines a required Record is missing during the Document Review process, they shall work with the Procuring Party to supply the missing Record for the Procurement File. This does not include creating a Record where none exists or the Procuring Party's requirement to comply with the specific Solicitation and Offer requirements, as applicable to each Procurement Method.

4.03 Retention; Maintenance

- A. Procurement Records shall be retained for at least five (5) years after final payment or Contract completion, or longer if required by federal funding terms or ongoing audits, investigations, or litigation. If a Contract or warranty is extended for any reason, the new date of termination for either shall re-start the maintenance 5-year retention timeline, beginning on whichever date is later in time.
- B. Every Navajo Nation Division, Department, Office, or Program is responsible for secure storage—physical or electronic—of Procurement Records and for ensuring Records remain accessible and protected from loss or unauthorized access.
- C. A Procurement File shall be maintained pursuant to these Regulations regardless of whether the Procurement is ultimately completed, and shall be updated at the time a Record is created, sent, or received.

4.04 Inspection and Access

- A. The Procurement Department and the Navajo Nation Division, Department, Office, or Program seeking the Procurement, shall ensure the contents of its Procurement Files are only accessible by authorized employees. A Procurement File shall not be open to public inspection unless deemed a Public Record pursuant to the Privacy Act, except that:
 1. No Record shall be made publicly available until the Procuring Party makes a Contract Award or the Procurement is canceled or otherwise unable to move forward;
 2. The established Maximum Feasible Price shall not be disclosed prior to execution of a Contract for the Procurement; and
 3. No portion of a Record shall be made publicly available where the Offeror appropriately

marks said portion as proprietary, unless such disclosure is otherwise required by federal, state, or tribal law and regulation.

- B. Procurement Records shall be made available, upon request, to authorized Navajo Nation oversight bodies, including the Office of the Controller, the Office of the Auditor General, the Ethics and Rules Office, and the Department of Justice. Federal agencies may inspect records when required by Grant or funding conditions. Navajo Nation Divisions, Departments, Offices, or Programs must cooperate fully and provide timely access.

4.05 Destruction of Procurement Records

- A. After the required retention duration, a Procurement File may be destroyed so long as the destruction is performed in a manner that does not disclose protected Records, including private, personally identifiable, or proprietary information. The method of destruction shall be appropriate to the manner of storage used.
- For example, destruction of a Record within a software program includes complete erasure of the Data, including Meta-Data, from the software and ensuring all Data is fully eliminated from the servers maintaining the software program.
 - For example, destruction of a Record stored on a storage drive, such as a computer hard drive; flash drive; or other independent back-up drive, shall include complete erasure of the Data and Meta-Data from the drive.
 - For example, destruction of a physically stored Record, such as a document within a paper filing system, shall be done in a manner that confidentially eliminates the Record making it no longer readable—e.g., by comprehensively shredding the Records.
- B. The Procurement Department and the Navajo Nation Division, Department, Office, or Program seeking the Procurement shall consult with the Department of Justice prior to destroying any Record to ensure no Records necessary for potential or actual litigation are destroyed.
- C. Record destruction may occur through use of a Record destruction Vendor, so long as the Vendor complies with the requirements of this Section.

PART 2. SOLICITATIONS

Section 5. Pre-Requisites to Issuing a Solicitation

5.01 Establishing the Maximum Feasible Price

- A. The Maximum Feasible Price is an estimate made by the Procuring Party to help determine, in the Procuring Party's best judgement, what is a fair and reasonable price that the Navajo Nation should be expected to pay for the Procurement.
1. The Procuring Party shall establish the Maximum Feasible Price for each Procurement completed using the Sealed Bidding, Sealed Proposals, Simplified Acquisitions, and Micro-Purchases Procurement Methods.
 2. The Procuring Party is not required to establish a Maximum Feasible Price for Procurements completed using the Non-Competitive Procurement Source Selection Method.

- B. The Maximum Feasible Price does not restrict the Procurement's Total Purchase Price.
- C. The Procuring Party shall establish the Maximum Feasible Price by considering the below factors:
 - 1. Current market price, such as those from a vendor's catalog or other competitively published price lists or advertisement such that it provides the best value for the Navajo Nation;
 - 2. Historical prices paid, whether by the Navajo Nation or others, for the same or similar Goods or Services;
 - 3. Evidence of estimated project costs based on research into past work experiences, similar projects, or other expertise;
 - 4. The total appropriated funds available at the time of the Procurement and accompanying funding expiration deadlines;
 - 5. The expected project duration; and
 - 6. Any other factors or activities relevant to the pricing of the Procurement.
- D. The Procuring Party shall document the established Maximum Feasible Price, along with the research and reasoning behind its determination, in writing prior to issuing the Solicitation. The Procuring Party's employee establishing the Maximum Feasible Price shall Sign and date the writing.
- E. At no point shall the Maximum Feasible Price be publicly disclosed prior to execution of a Contract for the Procurement.
- F. The Maximum Feasible Price shall serve as any cost/price analysis mentioned in the Uniform Guidance.

5.02 Pre-Solicitation Activities

- A. As applicable to the Procurement Method used, prior to issuing any Solicitation, the Procuring Party shall perform and document the following:
 - 1. Develop a purchase description to include in the Solicitation that provides, as applicable, the Procurement Scope of Work, Specifications, any milestones, reports, deliverables, or other end products expected from the Contractor, and a timeline for completion;
 - 2. Document the Procurement's Maximum Feasible Price, as applicable, including noting all relevant funding sources and timelines; and
 - 3. Determine, and include in the Solicitation, the evaluation criteria or scoring system, if any, for assessing all submitted Offers or Quotes.
- B. The Procuring Party or Sponsoring Entity may submit a final draft of a Solicitation for Department of Justice legal review when it desires to determine the Solicitation's compliance with the Procurement Act, these Regulations, NBOA, or any other applicable law, regulation, or policy.

5.03 Solicitation Minimum Requirements

- A. The Procuring Party shall not issue a Solicitation unless the Procuring Party has complied

with the requirements of this Section, unless otherwise specified for the Procurement Method used.

B. A Solicitation shall include, at a minimum, the below details to adequately provide notice of the Procurement requirements:

1. The required form and format of an Offer or Quote, including any page limits or other format specific criteria;
2. The date, time, location, and manner of the Offer Submission Deadline;
3. The name and title of the employee to whom to submit an Offer or Quote;
4. The address, physical or electronic, to which the Offeror shall deliver its Offer or Quote, including the manner of delivery;
5. The date, time, and location of any Pre-Offer submission conferences, including whether attendance is mandatory or voluntary;
6. Instructions to visibly mark the exterior, or Submission Notice, of the Offer or Quote with the Offeror's NBOA Priority Classification, if applicable;
7. Instructions to visibly mark each part of the Offer or Quote containing proprietary information as "Proprietary;"
8. A fully developed purchase description, which includes, but is not limited to the Specifications or Scope of Work; expectations related to the desired quality of the Goods or Services sought; the project timeline and completion time; and form of delivery;
9. Information related to the Goods or Services sought so the Offeror is able to understand all expectations of the Procurement and provide a Responsive Offer or Quote that accounts for the Offeror's expected costs, Scope of Work, potential delays, and necessary time for completion;
10. The evaluation criteria or factors, including any scoring system, if used, according to which the Procuring Party will assess all Offers or Quotes received in response to the Solicitation;
11. Notice of Contract terms expected to be required by these Regulations for the Goods or Services sought, including any applicable warranty requirements;
12. Whether a Budget or Cost Proposal is required to be submitted with the Offer or Quote and the required form, formatting, and other details for submitting such;
13. When the Procurement type, or the Procuring Party chooses to, requires insurance coverage:
 - a. Requirement to provide the Contractor's Certificate of Insurance;
 - b. Requirement that the Offeror, if made a Contract Award, shall name the Navajo Nation and any other enterprises, subsidiaries, or parties related to the Navajo Nation as an additional insured consistent with Section 31;
 - c. Notification that determination of appropriate insurance limits is to be determined by the Risk Management Program, and, if provided, any pre-determined limits are subject to change after Contract Award but prior to Contract execution to adequately address the details of the Procurement's Contract, Specification, or Scope of Work;

14. The Offeror's requirement to provide;

- a. Evidence of active licensure that is required to provide the Goods or Services sought, if applicable, such as when required by the State where the Procurement is located;
- b. Attestation of good faith participation in the Procurement Solicitation process with no Anti-Competitive or Collusive practices;
- c. Attestation of no active or pending Debarment or Suspension in any jurisdiction;
- d. Attestation of responsibility for Subcontractors, if Contractor is a Prime Contractor pursuant to the NBOA, 5 N.N.C. § 206;
- e. A completed W-9 on the current Internal Revenue approved form; and
- f. Copies of any joint venture, teaming, partnership, or other agreement where two or more Persons agree to work together to submit an Offer or Quote, if applicable; and

15. Notification to Offerors that the Navajo Nation, with respect to any executed Contract, shall include:

- i. A statement that Any provisions requiring that litigation, arbitration, or other dispute resolution proceeding arising from the Contract be conducted in any state tribunal is against the Navajo Nation's public policy and is void and unenforceable, except when such action is completed through appropriate action authorized under the Navajo Nation Sovereign Immunity Act, 1 N.N.C. §§ 551-55, and Navajo Nation Arbitration Act, 7 N.N.C. §§ 1101 *et seq.*;
- ii. Provisions noting that when Public Funds are not appropriated or otherwise made available to support continuing performance for a Contract in a current or subsequent fiscal period, the Contract shall be terminated, and the Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred up to the date of termination. The cost of termination may be paid from any appropriations available for such purposes at the Navajo Nation's discretion; and
- iii. Provisions noting that the Navajo Nation may terminate Procurement Contracts for cause or convenience.

- C. Notice of expected Contract terms does not require the Procuring Party to include the exact language of all terms that will be included in the final Contract. Rather, it is the policy of the Navajo Nation to make Offeror's aware of the types of terms to expect for the final Contract, which includes those topics noted in Part 6 of these Regulations, but to allow for appropriate Contract negotiation when deemed appropriate by the Department of Justice.

5.04 Purchase Description

- A. The purchase description for a Procurement includes the Specification or Scope of Work, which may include a statement of the qualitative nature of the Goods or Service to be procured, expectations related to the desired quality of the Goods or Services sought; the project timeline and completion time; and form of delivery. When necessary, the purchase description must provide minimum essential characteristics and standards to which the Goods or Services must conform.
- B. Specification.
 - 1. A Specification serves as a basis in obtaining Goods in a cost-effective manner that are

adequate and suitable for the Navajo Nation's needs while taking into account, to the extent practicable, the cost of ownership and operation. It is the policy of the Navajo Nation that Specifications shall permit maximum practicable competition.

2. In developing Specifications, the Procuring Party shall use commercially accepted standards. Detailed product specifications should be avoided whenever possible. When it is impractical or uneconomical to describe the technical requirements clearly and accurately, a "brand name or equivalent" description of features may be used to provide Procurement requirements. The desired specific features of the named brand must be clearly stated. It is the policy of the Navajo Nation to procure standard, commercially available Goods, whenever practicable.

C. Scope of Work.

1. The Scope of Work serves as the basis by which the Navajo Nation obtains cost-effective Goods or Services adequate and suitable for its needs in a manner that permits maximum practicable competition.
 2. At a minimum, the Scope of Work should include the following:
 - a. The complete, comprehensive, and accurate descriptions of the specific Goods or Services desired; and
 - b. An expected performance schedule or length of Contract.
- B.** The Procuring Party is responsible for including the purchase description in the Solicitation. Failure to do so may result in undue delay in processing a Contract for the Procurement because of incomplete, inaccurate, or otherwise erroneous description of the Services requested.

5.05 Offeror Budget or Cost Proposal

When a Budget or Cost Proposal is required as part of, or submitted with, an Offer or Quote, the Solicitation shall ensure that Offerors have enough information and instructions to provide such in both form and format, including at a minimum, the funding sources expected to be utilized.

5.06 Pre-Offer Submission Conference Notification Requirements

- A.** The Procuring Party may hold public conferences with prospective Offerors prior to the Offer Submission Deadline so long as it provides notice of such conference(s) in the Solicitation including the following information:
1. The date and time of the conference;
 2. The location or digital joining information of the conference, including whether it will be held virtually, in-person, or both; and
 3. Whether attendance at the Pre-Offer submission conference is mandatory for the Offeror to receive a Contract Award or otherwise voluntary.
- B.** Failure to include details of a voluntary or mandatory Pre-Offer submission conference in a Solicitation may be corrected by issuing a corrected or amended Solicitation prior to the date and time of the Pre-Offer submission conference.

Section 6. Public Notice of Solicitations

6.01 Duration of Public Notice

- A. The Procuring Party shall give Public Notice of a Solicitation for a minimum of ten (10) business days when the Procurement Method requires Public Notice.
- B. The full duration of a Procurement's Public Notice should be designed to provide the greatest ability for potential Offerors to prepare Offers or Quotes for the Goods or Services sought.

6.02 Preferred Manner of Public Notice

- A. Public Notice shall be made through a Publication in a manner that provides notice of the Solicitation to the Navajo Nation and the general public—such notice may include general details of the Procurement with direction to access the full Solicitation via web link.
 - 1. All Solicitations for Sealed Bidding and Sealed Proposals Procurements shall be, at a minimum, posted to the Office of the Controller's Solicitation Notice Webpage.
 - 2. The Procuring Party shall determine the appropriate Publication for Solicitations issued for other Procurement Methods, consistent with the requirements for the Procurement Method used.
- B. Publication in another manner, such as through other web pages, public advertisement, or other commonly utilized or generally, easily accessible Publications methods may be used but are not required.
 - 1. When Sealed Bidding or Sealed Proposals Procurement Methods are used, the Sponsoring Entity shall determine whether and to which additional Publications to issue the Solicitation other than the Solicitation Notice Webpage. The use of additional Publications shall be reasonable.
 - 2. All costs related to such Publications shall be paid by the Procuring Party, not the Sponsoring Entity.

Section 7. Solicitation Correction; Amendment; Cancellation

7.01 Correcting or Amending a Solicitation

- A. The Procuring Party shall make every effort to anticipate changes in a Solicitation's details or requirements and provide notice of such to prospective Offerors prior to the Offer Submission Deadline.
- B. The Procuring Party shall issue a correction or amendment to the Solicitation in the same manner that the Solicitation was originally published and through the Solicitation Notice Webpage thereby notifying Offerors of any need to modify their Offers or Quotes prior to the Offer Submission Deadline.
 - 1. Additionally, the Procuring Party may directly notify any Person of any corrections or amendments to the Solicitation when that Person has previously provided written notice of its intent to make an Offer or Quote.
 - 2. Notice of correction or amendment to a Solicitation may include, but is not limited to, correction of form or formatting requirements, extension of the Offer Submission Deadline, clarification or change of the Offer Opening date and time, or changes to the

Procurement's Specification or Scope of Work.

7.02 Cancelling a Solicitation

- A. The Procuring Party may cancel a Solicitation, in whole or in part, if the Procuring Party determines in writing that it is in the best interest of the Navajo Nation. Reasons to cancel a Solicitation, in whole or in part, include but are not limited to:
 - 1. Inadequate or ambiguous Specifications cited in the Solicitation;
 - 2. Specifications or descriptions require extensive revision such that it will drastically change the Scope of Work;
 - 3. The Procuring Party no longer requires the Goods or Services to be procured;
 - 4. The Procurement's Maximum Feasible Price did not adequately account for all factors associated with the Procurement's cost to the Navajo Nation;
 - 5. The Offers or Quotes received indicate that the needs of the Navajo Nation may be satisfied by less expensive Goods or Services that differ from those provided in the Solicitation;
 - 6. All Responsive Offers or Quotes received exceed the Maximum Feasible Price, even after opportunity for negotiation pursuant to these Regulations; or
 - 7. The Procuring Party, upon consultation with the Department of Justice, determines that the Offers or Quotes received were not independently arrived at in open competition, were Collusive, or were submitted in bad faith.
- B. The Procuring Party shall provide written notice of the cancellation based on the step in the Procurement process at which the cancellation occurs.
 - 1. Prior to the Offer Submission Deadline, the Procuring Party shall cancel a Solicitation by issuing notice in the same manner that the Solicitation was originally published and on the Solicitation Notice Webpage.
 - 2. After the Offer Submission Deadline, and regardless of whether the Offer Opening has occurred, the Procuring Party shall cancel a Solicitation by emailing or mailing written notice of cancellation to all Offerors having submitted Offers or Quotes.
- C. If a Solicitation is cancelled and an Offeror requests return of its Offer or Quote, the Procuring Party shall return the Offer or Quote, at the Offeror's expense, after making and retaining a copy of said Offer or Quote for the Procurement File, subject to the following:
 - 1. For any Offers or Quotes the Procuring Party opened, prior to returning it, the Procuring Party shall make a complete copy of the Offer or Quote; and
 - 2. For any Offers or Quotes the Procuring Party did not open, prior to returning it, the Procuring Party shall make a copy of the Offer or Quote's Submission Notice and exterior, including the time, date, and details of the submission, but shall not open the Offer or Quote at any point.
- D. The Procuring Party shall include copies of the written notices and the reason(s) for cancelling a Solicitation in the Procurement File.

7.03 Obtaining Additional Quantities of Goods or Services

- A. As a general rule, a Solicitation should not be canceled due solely to an increased need for quantities of the Goods or Services sought. The Procuring Party shall evaluate the changing needs of the Procurement to determine whether to amend or cancel the Solicitation.
1. If the additional quantities required do not substantially change the Solicitation Specification or Scope of Work and is within the established Maximum Feasible Price, the Procuring Party should make a Contract Award according to the requirements of the Solicitation and subsequently incorporate the additional quantities required after the Contract is executed, or otherwise valid and enforceable, through a Modification.
 - For example, the Procuring Party issues a Solicitation for three-thousand (3,000) customized notebooks with a Maximum Feasible Price of \$4,000.00. After receiving Offers, the Procuring Party determines it requires an additional two hundred (200) units. The additional quantity will increase the Maximum Feasible Price by eight percent (8%) but does not go above the Maximum Feasible Price.

In this case, the Procuring Party should make a Contract Award from the original Offers received based on the original quantity requested. Once the Contract is effective, the Procuring Party should complete a Modification for the additional two-hundred (200) notebooks.
 2. If the additional quantities required substantially change the Solicitation's Specification, Scope of Work, or Maximum Feasible Price, the Procuring Party should either cancel and re-issue the entire Solicitation for the new quantity or make a Contract Award according to the initial quantity of the Solicitation and create a new, separate Procurement for the additional quantities.
 - For example, the Procuring Party issues a Solicitation for two-thousand (2,000) customized notebooks with a Maximum Feasible Price of \$3,000.00. After Offer Opening, the Procuring Party determines it requires an additional one-thousand five hundred (1,500) units. The additional quantity will increase the Maximum Feasible Price by more than fifty percent (50%).

In this case, the Procuring Party has two choices. It may either cancel the Solicitation in its entirety and issue a new one for three-thousand five-hundred (3,500) units or it may make a Contract Award from the Offers received for two-thousand (2,000) notebooks and subsequently issue a second Solicitation for the additional one-thousand five hundred (1,500) notebooks.
- B. An Offeror that received a Contract Award for the original quantities requested under a Solicitation may also make an Offer or Quote on any subsequent Solicitation requesting additional quantities.

PART 3. OFFERS & QUOTES

Section 8. Offer and Quote Submission

8.01 Methods for Submitting Offers and Quotes

The Procuring Party shall only accept written Offers and Quotes, and shall be responsible for ensuring the Solicitation explicitly states the allowed manner of written Offer or Quote submission, correction, or amendment.

- A. When using the Sealed Bidding or Sealed Proposals Procurement Methods, all Offers shall be submitted digitally to an email address designated and monitored by the Procurement Department for Offer submissions, which shall be provided in the Solicitation.
- B. For all other Source Selection Methods, the Procuring Party may accept written Offers or Quotes, at its discretion, via mail, hand-delivery, or other alternative written form, such as facsimile.
- C. At no time shall a Procuring Party accept Offers or Quotes through Telephonic Communication.

8.02 Sealed Offers & Cost Proposals Required

- A. All Offers and, when required to be submitted separately, Cost Proposals, shall be submitted in a manner that conceals its content from review until evaluation at the Offer Opening.
- B. Quotes may be submitted unsealed, unless providing a sealed Quote is a requirement the Procuring Party made part the Solicitation. In such case, the requirements in these Regulations for sealed Offers shall be applied to the sealed Quote.

8.03 Offer Submission Notice Required

- A. Every Offer or Quote submitted shall have an unconcealed Submission Notice, which shall include:
 - 1. The Identifying information of the Solicitation to which the Submission Notice is responding;
 - 2. The name of the Offeror;
 - 3. The authorized agent, including email and phone number; and
 - 4. When applicable, the NBOA Priority Classification status of the Offeror.
- B. The Submission Notice shall be submitted in a manner the Procuring Party may easily review without opening or evaluating any portion of the Offer or Quote, such as through use of a cover letter, cover page transmitting a faxed Offer or Quote, or attached to or in the body of an email transmitting the Offer or Quote files.
- C. When submission of a sealed Quote is not required by the Solicitation, the Offeror may include the requirements of a Submission Notice as part of the Quote.

8.04 Submission Methods Limiting the Ability to Seal

- A. When An Offeror submits its Offer through a form affecting its ability to seal the Offer, such as email or facsimile, it shall separately include the Submission Notice and endeavor to seal

the Offer as best as possible. Use of password protected files is allowed when the password, or other access information, is included in the Submission Notice.

- For example, an Offer submitted as a PDF attached to an email would appropriately seal the Offer such that the file may remain unreviewed until the time of Offer Opening, and an example of the Submission Notice for such an Offer follows:

"To Whom it may Concern:

Attached is my company's Offer for Solicitation 123 seeking ongoing printer maintenance services. The attached files include my Offer and separate Cost Proposal.

The company's information for Offer Opening is:

Name: Printz 4 All, LLC

Authorized Agent: Beau Regard, Manager

Email: bregard@Xyzllc.com

Phone: 333-333-3333

NBOA Priority Classification: Priority 1

Sincerely,

Beau"

- B. When receiving an Offer through a form affecting its ability to be sealed, such as email or facsimile, the Procuring Party shall seal the Offer without any review immediately upon receipt according to the process for accidental opening of a sealed Offer in Section 9.03.
- For example, an Offeror faxes a copy of its Offer to the Procuring Party. The Offeror provides only its name, authorized agent, contact information, the Solicitation number to which it is responding, and NBOA Priority Classification on the first page of its fax transmission. Later that day, the procuring employee receives the fax and attaches the Offeror's first page to the exterior of an envelope before inserting the remaining pages, without review, in the envelope and sealing it. The employee then writes "Faxed Offer" and the date and time received on the page attached to the exterior of the envelope, prints and Signs their name and title and notes the date and time they sealed the envelope.
- C. The Procuring Party may print a copy of an emailed, or otherwise digitally transferred, Offer, so long as the employee printing it immediately seals the printed copy according to the process for accidental Offer Opening in Section 9.03 and includes the Submission Notice on the exterior.
- For example, an employee prints a copy of an email from an Offeror it knows to be NBOA Priority 2 certified. In the email, the Offeror did not provide all required details for a Submission Notice—it provided its name, contact information, and the solicitation number to which it is responding but did not include its NBOA priority status. The employee prints a copy of the Offer, without review, and seals it in an envelope. Despite knowing the Offeror is NBOA Priority certified, the employee takes no action other than to secure the printed email on the exterior of an envelope in which they sealed the printed Offer.

As required in Section 9.03, the employee then writes “printed copy of emailed Offer” along with the date and time it was received on the exterior of the envelope. Additionally, the employee prints and Signs their name and title, and notes the date and time they sealed the envelope.

8.05 Offers or Quotes Submitted by two Persons

- A. A joint team or partnership may submit a single Offer or Quote, but shall state in the Submission Notice, the details of the team or partnership including listing:
1. The name of both, or all, members;
 2. Each member’s ownership percentage and role within the team or partnership; and
 3. The NBOA Priority Classification of the majority owner and controlling Person.
- B. The NBOA Priority Classification of the Person owning and controlling the team or partnership shall be the NBOA Priority Classification under which the Procuring Party opens and evaluates the Offer or Quote. If the Procuring Party determines that the ownership and control of the team or partnership is not as provided in the Submission notice, the Offer shall be evaluated as one that has no NBOA Priority Classification.
- For example, Its My Business, a sole proprietorship, and Test Company, LLC, collaborate as partners to submit a single Offer. Its My Business is NBOA Priority 1, while Test Company, LLC has no priority status. Both businesses agree in writing that Its My Business will own and perform more than fifty-one percent (51%) of the partnership and its work.

When submitting their written Offer, the partnership writes on its exterior that it is a partnered submission from both Its My Business and Test Company, LLC and also notes that Its My Business owns fifty-one percent (51%) of the partnership, will perform fifty-one percent (51%) of the work, and is NBOA Priority 1 Business. The partnership includes a copy of the partnering agreement with the Offer. The Procuring Party opens the Offer as a NBOA Priority 1 submission.

Section 9. Acceptance and Safeguard of Offers or Quotes

9.01 Accepting and Logging all Offers or Quotes

- A. The Procuring Party shall accept all Offers or Quotes according to the procedures provided in the Solicitation.
- B. The Procuring Party shall log the date and time it receives an Offer or Quote, either on the actual Offer or Quote or as part of a document recording received Offers or Quotes for the Procurement.
- For example, an employee prints the email transmitting an Offer as an attachment. The printed email contains the required details for a Submission Notice and notes the date and time of receipt of the email as part of the document. The employee need not separately identify the date and time of receipt on the printed email.

9.02 Securing Received Offers or Quotes

- A. Offers or Quotes, including corrections or amendments thereof, received prior to the Offer

Submission Deadline shall be kept secure, and unopened if the Solicitation required sealed Offers or Quotes, until the Offer Opening, with the Procuring Party taking necessary precautions to ensure their security.

- B. If an Offeror submits an Offer or Quote sample, the sample shall be handled with sufficient care to prevent disclosure of any characteristics before the Offer Opening.
- C. Prior to completion of the Offer Opening, the Procuring Party shall ensure information regarding the identity of Offerors or the number of Offers or Quotes received shall be protected and made available only to itself, the Business Regulatory Department, the Office of the Controller, the Sponsoring Entity, and the Department of Justice.

9.03 Accidental Opening of a Sealed Offer

- A. If a sealed Offer is opened by mistake, or if the Procuring Party is responsible for sealing a printed Offer sent via an alternative written form, such as email or facsimile, the employee responsible shall immediately, on its exterior:
 - 1. Write an explanation for the opening on the exterior of the Offer;
 - 2. Print and Sign their name, including providing their job title;
 - 3. Immediately seal or re-seal the Offer; and
 - 4. Deliver the Offer to the employee or individual named to receive Offers for the Solicitation, whichever is appropriate.
- B. If the Procuring Party or employee named to receive Offers for the Solicitation accidentally opened the Offer, they shall complete the procedures in Section 9.03(A) and note that they are the individual named to receive the Offers.
- C. For physically delivered or mailed Offers, a Procuring Party may open the envelope in which an Offer is mailed to acquire the Submission Notice and independently sealed Offer; however, if it determines that there is no independently sealed envelope containing the Offer within the envelope, then it shall immediately reseal the envelope without review and treat the situation and as an accidental Offer Opening, closing it according to this Subsection. In such cases, the information provided on the exterior of the mailing envelope shall be treated as the Submission Notice.

Section 10. Offer or Quotes Correction; Amendment; Withdrawal

10.01 Correction or Amendment of Offers or Quotes

- A. Offerors may correct or amend their Offers or Quotes prior to the Offer Submission Deadline for any reason by submitting an updated Offer or Quote and Submission Notice via any method permitted by the Solicitation.
 - 1. For written submissions mailed or otherwise delivered to the Procuring Party, the Offeror shall submit a new Submission Notice to the Procuring Party with the corrected or amended Offer or Quote separately sealed, in the form, format, and quantity required by the Solicitation.
 - 2. For Offers or Quotes submitted in an alternative written form, the Offeror shall submit a new Submission Notice to the Procuring Party with the corrected or amended Offer or

Quote in the form, format, and quantity attached.

- For example, Printz 4 All, LLC did not include its NBOA Priority 1 certificate within its Offer file when it submitted its Offer via email, but did not state its NBOA Priority Classification in its Submission Notice. To correct its mistake, prior to the Offer Submission Deadline, Printz 4 All, LLC submits a second email to the Procuring Party notifying of its need to correct its Offer, reading:

"Hello Solicitation Representative:

Please be advised that I wish to correct my Offer to Solicitation 123 seeking ongoing printer maintenance services. I failed to include some required documentation in the original file. I have attached a complete replacement copy of the Offer to this email. Please use this offer.

The information for Offer Opening is:

Name: Printz 4 All, LLC

Authorized Agent: Beau Regard, Manager

Email: bregard@Xyzllc.com

Phone: 333-333-3333

NBOA Priority Classification: Priority 1

Sincerely,

Beau Regard"

- B. Offerors shall not correct or amend Offers or Quotes after the Offer Submission Deadline, except that if the Procuring Party determines during the Offer Opening that an Offer or Quote contains an error in calculation, an error in the provision of unit prices and quantities, or a minor error of a similar type, the Procuring Party may permit the Offeror to provide a correction within twenty-four (24) hours of the Offer Opening. The Procuring Party shall document in writing the reason for the correction and include such documentation, in addition to the Offeror's original Offer or Quote, in the Procurement File.
- C. If the Offer or Quote correction or amendment only concerns information on the Submission Notice, the Offeror may provide the correction or amendment by submitting a new Submission Notice without an attached Offer or Quote.
- For example, Printz 4 All, LLC included its NBOA Priority 1 certificate within its Offer file when it submitted the Offer via email, but realized it did not note its NBOA Priority Classification in the Submission Notice (email). To correct its mistake, prior to the Offer Submission Deadline, Printz 4 All, LLC, submits a second email to the Procuring Party notifying of its need to correct its Submission Notice, reading:

"Hello Solicitation Representative:

Please be advised that I wish to correct the email submitting my Offer to Solicitation 123 seeking ongoing printer maintenance services. I failed to include my company's NBOA Priority Classification in the body of the email. No copy of the Offer is attached because I do not need to amend my previously submitted offer. Please use the original copy submitted.

The information for Offer Opening is:

Name: Printz 4 All, LLC

*Authorized Agent: Beau Regard, Manager
Email: bregard@Xyzllc.com
Phone: 333-333-3333
NBOA Priority Classification: Priority 1*

*Sincerely,
Beau Regard."*

- D. The Procuring Party may authorize, so long as it does so through explicit statement in the Solicitation, an Offeror to submit corrected or amended Offers or Quotes via email or facsimile even when the original method of submission permitted is only hand-or mail-delivery.

10.02 Withdrawal of Offers or Quotes

- A. Offerors may withdraw their Offers or Quotes prior to the Procuring Party making a Contract Award for any reason, regardless of whether the Procuring Party has conducted the Offer Opening.
 - 1. To withdraw its Offer or Quote, the Offeror shall submit a written notification to the Procuring Party indicating its decisions to withdraw its Offer or Quote.
 - 2. The Offeror may submit its written request via email to the employee authorized to receive Offers or Quotes regardless of the Solicitation's requirements regarding the manner of Offer or Quote submission.
- B. The Procuring Party shall comply with a written request to withdraw an Offer or Quote and, if the Offeror requests, return the Offer or Quote, at the Offeror's expense, consistent with Section 7.02(C).
- C. An Offeror that withdraws its Offer or Quote prior to the Offer Submission Deadline may subsequently submit a different Offer or Quote for the same Solicitation so long as the Procuring Party appropriately receives the new Offer or Quote prior to the Offer Submission Deadline.

10.03 Withdrawal of Offers or Quotes After the Offer Submission Deadline

An Offer or Quote withdrawn prior to the Offer Opening shall not be opened or evaluated. If the Offer Opening is complete, the Procuring Party shall remove the Offer or Quote from consideration for Contract Award.

10.04 Withdrawal of Construction Offers Submitted with Offer Security

- A. If an Offeror withdraws its Offer or Quote for a Construction Procurement prior to the Procuring Party making a written Contract Award, then the Procuring Party shall take no action against the Offeror or the Offer Security.
- B. If an Offeror withdraws its Construction Offer or Quote after accepting a Contract Award, then the Offeror shall forfeit its Offer Security.

Section 11. Requirements for Offer Opening and Evaluation

11.01 Notice to Business Regulatory Department Prior to Offer Opening

- A. When procuring with the Sealed Bidding and Sealed Proposals Procurement Methods, the Procuring Party shall notify the Business Regulatory Department and the Sponsoring Entity of the following information no less than five (5) business days prior to the scheduled Offer Opening:
 - 1. A full copy of the Solicitation;
 - 2. A copy of all Public Notices published for the Solicitation; and
 - 3. A list of all Persons directly notified, including the dates, manner, and, if written, copies of such notices.

11.02 Open Offers and Sealed Quotes Consistent with the NBOA

- A. An Offer or sealed Quote shall not be opened or otherwise reviewed to determine the Offeror's NBOA Priority Classification if the exterior, such as the sealed envelope, or the Submission Notice, does not include the information.
- B. The Procuring Party shall open and evaluate all Offers or sealed Quotes consistent with the requirements of the NBOA and these Regulations.
 - 1. The Procuring Party shall first open and evaluate, pursuant to the Procurement Method requirements in Part 5, all Offers or sealed Quotes from NBPA Priority 1 Offerors. The Procuring Party shall make a Contract Award to the most Responsive and Responsible Offeror, pursuant to the Contract Award procedures of these Regulations and the Procurement Method used.
 - 2. If there are no NBOA Priority 1 Offers or sealed Quotes, or if the Procuring Party determines all NBOA Priority 1 Offers are Non-Responsive or Non-Responsible, the Procuring Party shall open and evaluate, pursuant to the requirements for the Procurement Method used in Part 5, all Offers or sealed Quotes from NBOA Priority 2 Offerors. The Procuring Party shall make a Contract Award to the Responsive and Responsible Offeror, pursuant to the Contract Award procedures of these Regulations and the Procurement Method used.
 - 3. If there are no Offers or sealed Quotes from NBOA Priority 1 or Priority 2 Offerors, or if the Procuring Party determines all NBOA Priority 1 and Priority 2 Offers or sealed Quotes are Non-Responsive or Non-Responsible, then it shall open and evaluate, pursuant to the Procurement Method requirements in Part 5, all remaining Offers or sealed Quotes not marked with a NBOA Priority 1 or Priority 2 Classification. The Procuring Party shall make a Contract Award, pursuant to the Contract Award procedures of these Regulations and the Procurement Method used.
- C. An Offer or sealed Quote from a Person the Procuring Party knows has or previously held an NBOA Priority Classification, but that does not provide this information in its Submission Notice and that otherwise meets all requirements to be accepted, shall be opened as an NBOA non-priority Offer or Quote.

11.03 Evaluating Sealed Bids and Sealed Proposals

- A. All Offer Openings and Evaluations for Procurements completed using the Sealed Bidding and Sealed Proposals Procurement Methods shall be conducted by a Procurement awarding team, which shall be comprised of pre-established decision makers and other Navajo Nation employees attending in an advisory capacity.
 - 1. The Procurement awarding team decision makers shall be:
 - a. The head of the Sponsoring Entity;
 - b. One (1) employee from the Procurement Department; and
 - c. One (1) employee randomly selected by the Procurement Department, who shall be from another Navajo Nation Division, Department, or Program from the Sponsoring Entity and the Office of the Controller. The Office of the Controller shall establish criteria for selection and term of such employee in the Internal Procurement Procedures.
 - 2. The Procurement awarding team advisory members shall be:
 - a. One (1) representative from the Business Regulatory Department to oversee the Offer Opening and ensure proper compliance with the Navajo Business Opportunity Act;
 - b. One (1) representative from the Department of Justice, or the Office of Legislative Counsel for Legislative Branch Procurements or the Judicial Branch Administration for Judicial Branch Procurements; and
 - c. In the case of Procurements using Public Funds from the United States or a state, one (1) employee from the Office of the Controller Contract Accounting Department to determine compliance with the Grant award and the allowability of anticipated expenditures of funds respective to the funding source.
 - 3. The identity of the randomly selected decision maker shall not be disclosed until completion of the Offer Evaluations. The Office of the Controller shall develop procedures and criteria to select and keep private the identity of the randomly selected employee in the Internal Procurement Procedures.
 - 4. The Procurement awarding team decision makers and advisors may delegate their authority to an authorized Designee or proxy representative by issuing such delegation in writing to the Procurement Department. In the case of the head of the Sponsoring Entity, the Designee shall be authorized to expend the allocated funds for the Procurement.
- B. In-Person attendance by the members of the Procurement awarding team, either as a decision maker or advisor, to the Offer Opening and other selection-related meetings is encouraged; however, remote meeting capability must also be provided to all members.
 - 1. If the Procurement Department employee is, for any reason, unable to attend the Offer Opening and no replacement is available, then the Offer Opening shall be postponed consistent with the requirements of the Procurement Method used and Section 11.04. The Procurement Department shall ensure best efforts are made to attend the Offer Opening.
 - 2. The Procurement Department is responsible for coordinating with the Sponsoring Entity to ensure an appropriately delegated Sponsoring Entity employee is able to attend the Offer Opening.

- C. All Offer Opening attendees shall document their attendance by Signing an attendance sheet. If the attendee is joining the meeting using remote capabilities, the Procuring Party shall be responsible for writing their name on the attendance sheet.
- D. The Procurement awarding team shall evaluate all appropriately submitted Offers for Responsiveness and shall conduct the required Responsibility Review and Debarment and Suspension Review for all Responsive Offerors. Once complete, the Procurement awarding team may determine to whom to make the Contract Award, if at all.

11.04 Postponing a Public Offer Opening

If the Procuring Party determines, for any reason, that it is necessary to postpone an Offer Opening, in whole or in part, the details of which were provided in the Solicitation, the Procuring Party shall provide notice of the new Offer Opening date, time, and location:

- A. If it is prior to the Offer Submission Deadline, by issuing an amendment to the Solicitation, pursuant to Section 7.01; or
- B. If it is after the Offer Submission Deadline, provide written notification to each Offeror from which it receives an Offer or Quote, and the Procurement awarding team.

Section 12. Responsive Offers or Quotes and Responsible Offerors

12.01 Contract Awards to Responsive-Responsible Offerors

The Navajo Nation shall only make Contract Awards to Responsible Contractors that possess the ability to perform successfully under the terms and conditions of the proposed Contract according to the requirements of the Solicitation. When selecting an Offer or Quote, the Procuring Party must consider Contractor integrity, public policy compliance, proper employee classification, Past Performance, and financial and technical resources.

12.02 Offerors Eligible for Contract Award

- A. The Navajo Nation shall only make a Contract Award to Responsible Offerors that have submitted Responsive Offers or Quotes, eligibility for which is determined pursuant to Part 4 Mandatory Reviews Prior to Contract Award.
- B. The Offeror is required to submit an Offer or Quote that complies with the requirements of these Regulations and the Solicitation. A Procuring Party's failure to include a requirement of these Regulations in its Solicitation shall neither void the Procurement nor cure an Offeror's failure to include such requirements.

12.03 Responsive Offers or Quotes Required

- A. The Procuring Party or Procurement awarding team shall reject as Non-Responsive any Offer or Quote:
 - 1. That is incomplete;
 - 2. Lacking Offeror identification in its Submission Notice;
 - 3. Submitted after the Offer Submission Deadline;
 - 4. That does not conform to the Specification or Scope of Work contained or referenced in the Solicitation, unless the Solicitation explicitly authorized the submission of alternate

Offers or Quotes and the Goods or Services offered as alternates meet the basic requirements specified in the Solicitation;

5. That does not conform to the schedule or to other material requirements of the Solicitation; and
6. In which the Offeror attempts to impose conditions that would modify the requirements of the Solicitation or limit the Offeror's liability to the Navajo Nation. Examples of such include, but are not limited to, Offers or Quotes where the Offeror:
 - a. Attempts to protect itself against future changes in conditions, such as increased costs, if a total possible cost to the Navajo Nation cannot be determined at the time of submission;
 - b. That fails to state a price or states that the price shall be the "price in effect at time of delivery;"
 - c. States a price but qualifies it as being subject to "price in effect at time of delivery;"
 - d. Requires the Procuring Party to consider its Offer or Quote for Contract Award only after the outcome of a separate Procurement, when not authorized by the Solicitation;
 - e. Requires the Procuring Party to determine whether the Offeror's Goods or Services offered meets the required Specification or Scope of Work;
 - f. Limits the rights of the Navajo Nation under any Contract clause; or
 - g. That the Procuring Party determines to be Non-Responsive according to the requirements of these Regulations and its Solicitation.
- B. The Procuring Party or Procurement awarding team may waive minor inconsistencies of an Offer or Quote so long as doing so is equitably applied to all Offers or Quotes received and does not affect the rights of other Offerors.
- C. When an Offer or Quote is Non-Responsive, the Procuring Party or members of the Procurement awarding team shall document in its Offer Evaluation that the Offer or Quote is rejected, the reason for such determination, and then Sign and date the notation. Offers or Quotes rejected as Non-Responsive shall not be considered for Contract Award.
- D. Offerors may be requested to delete objectionable conditions from their Offer or Quote, at the discretion of the Procuring Party or Procurement awarding team, after consultation with the Procurement Department, provided that the deleted conditions do not address substantive, as distinguished from form related, details of the Offer or Quote and do not work an injustice on other Offerors.
- E. An Offer or Quote submitted prior to the Procuring Party issuing a Solicitation shall be rejected as Non-Responsive. Rejecting such Offer or Quote does not disqualify the Offeror from submitting an Offer or Quote for the same Solicitation after it is issued.
- F. Unless authorized in the Solicitation, an Offer or Quote is considered Non-Responsive if the Offeror specifies that it will only accept the Contract Award on all, or a specified group, of the Goods or Services offered.
- G. Offerors shall not be permitted to withdraw or amend an Offer or Quote with "all or none" qualifications after Offer Opening because such qualifications are substantive and affect the

rights of other Offerors.

12.04 Responsible Offerors Required

- A. Prior to making a Contract Award, the Procuring Party or Procurement awarding team shall determine the Responsibility of an Offeror pursuant to Part 4 Mandatory Reviews Prior to Contract Award.
- B. Only Responsive-Responsible Offerors may receive a Contract Award.

PART 4. MANDATORY REVIEWS PRIOR TO CONTRACT AWARD

Section 13. Reviews Required for High-Risk Procurements

13.01 High-Risk Procurements

High-Risk Procurements are those with a Maximum Feasible Price equal to or greater than five million dollars (\$5,000,000.00) or Non-Competitive Procurements for Emergency purposes with a Maximum Feasible Price equal to one million dollars (\$1,000,000.00).

13.02 High-Risk Procurement Reviews Required

- A. As part of its Document Review, High-Risk Procurements, including the Solicitation and intended Contract types, shall be reviewed and approved in writing by the following Navajo Nation Divisions, Departments, Offices, and Programs prior to the Procuring Party making a Contract Award:
 - 1. The Procurement Department for the Solicitation's compliance with these Regulations;
 - 2. The Department of Justice for legal compliance and to determine the appropriate Contract type;
 - 3. The Risk Management Program to determine appropriate insurance levels; and
 - 4. The Office of the Controller Contract Accounting Department for verification of funding source requirements.
- B. The written approvals shall be maintained in the Procurement File.

Section 14. Determining an Offeror's Responsibility

14.01 Procuring Party Decision Required

- A. Consistent with Section 12.02, the Navajo Nation shall only make Contract Awards to and enter into Contracts with Responsive-Responsible Offerors that are neither Debarred nor Suspended.
- B. To determine whether an Offeror having provided a Responsive Offer or Quote is Responsible, prior to making a Contract Award, the Procuring Party shall complete a Responsibility Review and a Debarment and Suspension Review (hereinafter "Mandatory Reviews").
 - 1. To be considered for a Contract Award, an Offeror shall be determined Responsible under the Responsibility Review and not Debarred or Suspended under the Debarment

and Suspension Review.

2. The Procuring Party shall complete the Mandatory Reviews in compliance with Part 4. Mandatory Reviews Prior to Contract Award and Part 8. Enforcement.

14.02 Outcome Limited to Current Procurement

The outcome of the Mandatory Reviews is specific only to the Procurement for which an Offeror has submitted an Offer or Quote.

- A. One Procuring Party may determine that an Offeror is Non-Responsible for one Procurement while it, the Procurement Department, or another Procuring Party may determine the Offeror to be Responsible for any other Procurement.
- B. When completing Mandatory Reviews, the Procuring Party shall not consider past outcomes of other Mandatory Reviews. This is to ensure each Offeror is fairly considered for every Procurement to which it submits an Offer or Quote; and to prevent a sequence of Non-Responsibility findings based solely on prior Non-Responsibility findings.

14.03 When to Complete Mandatory Reviews

The Procuring Party may complete these Mandatory Reviews, at its own discretion, either:

- A. Prior to the Offer Opening, for all Offerors having submitted an Offer or Quote; or
- B. After the Offer Opening, for all Offerors determined to have submitted Responsive Offers or Quotes.

Section 15. Responsibility Review

15.01 What to Evaluate for a Responsibility Review

- A. The Procuring Party shall evaluate the following in its Responsibility Review:
 1. Any Responsibility complaints on file with the Business Regulatory Department from Navajo Nation Divisions, Departments, Offices, or Programs where the Procuring Party shall consider the:
 - a. Content and severity of a complaint;
 - b. Total number of complaints;
 - c. Age of a complaint; and
 - d. The Offeror's response(s) to a complaint on file with the Business Regulatory Department; and
 2. Whether the Offeror:
 - a. Has a satisfactory history of Past Performance for the Navajo Nation, including any history of Navajo Nation Debarment or Suspension;
 - b. Has a satisfactory history of compliance with the NBPA, including whether it is legally qualified to Contract with the Navajo Nation;
 - c. Has reasonably supplied all necessary information in connection with the Procuring Party's inquiry of its Responsibility; and

- d. Has a history of habitually and without just cause neglecting payment of its bills or otherwise disregarded its obligations to Sub-Contractors, employees, or third parties.
- B. Prior to determining the Responsibility of an Offeror, the Procuring Party may request from the Offeror any information or Data concerning the Offeror's Responsibility.
 - 1. If the Offeror fails to supply the requested materials, the determination of Responsibility shall be made based upon only the information available.
 - 2. The unreasonable refusal or failure of an Offeror to promptly supply information regarding a Responsibility review may be grounds for finding it Non-Responsible.
- C. The Navajo Nation reserves the right to find an Offeror Non-Responsible at any time if the results of an inquiry, or any evidence submitted, fails to satisfy the Procuring Party that the Offeror is properly qualified to provide the solicited Goods or Services; or shows that the Offeror has provided false or misleading information.

15.02 Determination

- A. The Procuring Party shall determine an Offeror's Responsibility in consultation with the Business Regulatory Department.
 - 1. If the Procuring Party determines an Offeror is Responsible, it shall:
 - a. Include the Offer or Quote with those in consideration for Contract Award; and
 - b. Note its determination in writing as part of its Offer Evaluation.
 - 2. If the Procuring Party's determines that an Offeror is Non-Responsible, it shall:
 - a. Receive written concurrence from the Business Regulatory Department as to its determination;
 - i. If the Business Regulatory Department does not concur with the Procuring Party's decision, then the Procuring Party may provide Business Regulatory Department with additional reasoning as to its determination; should the Business Regulatory Department remain unwilling to concur, the Procuring Party shall act as if the Offeror is found to be Responsible pursuant to Section 14.02(C)(1); and
 - b. Issue a written notification to the Offeror, including:
 - i. Notifying that it has been found Non-Responsible, including describing the reason(s) for such finding; and
 - ii. Providing evidence of the Business Regulatory Department's written concurrence.
- B. All Non-Responsibility written determinations shall be included in the Procurement File, including evidence of the reasons for such finding.

Section 16. Debarment and Suspension Review

16.01 What to Evaluate for a Debarment and Suspension Review

The Procuring Party shall complete its Debarment and Suspension Review by reviewing an Offeror's name against available Debarments and Suspension lists, including those provided by the Navajo Nation and the federal government, currently at Sam.gov, and noting:

- A. Whether the named Debarred or Suspended Person is actually the Offeror; and
- B. The date on which a Debarment or Suspension is to be lifted.

16.02 Determination

- A. If the Procuring Party determines that an Offeror is or was not Debarred or Suspended on the date of the Offer Opening, it shall include the Offer or Quote with those in consideration for Contract Award.
 - 1. If an Offeror in consideration for Contract Award becomes actively Debarred or Suspended after the Offer Opening, then it is Non-Responsible and shall, either:
 - a. Not receive a Contract Award, or
 - b. If the Offeror has already received a Contract Award, the Procuring Party shall immediately terminate the Contract Award.
 - 2. If an Offeror is actively Debarred or Suspended on the date of the Offer Opening, then the Offeror is Non-Responsible, and the Offeror shall not be eligible to receive a Contract Award for the Procurement.
 - For example, Its My Business is Debarred on the Navajo Nation until the day before a Solicitation's Offer Opening. Its My Business properly submits an Offer for the Procurement noting in its Submission Notice that it will no longer be Debarred and will be eligible for consideration as of the date of the Offer Opening. The Procuring Party evaluates the Offer during the Offer Opening and determines it to be the only Responsive Offer.

Subsequently, the Procuring Party completes its Mandatory Reviews and determines that Its My Business's Debarment was, in fact, lifted as of the date of Offer Opening. The Procuring Party determines Its My Business to be Responsible and makes it a Contract Award, but additionally requests submission of an up-to-date certification of Debarment and Suspension to include with the Contract.
- B. When a Procuring Party determines that an Offeror is ineligible for Contract Award because it is Debarred or Suspended, it shall provide written notice of such to the Offeror and the Business Regulatory Department, including the details of the Debarment or Suspension at issue.
 - 1. The Offeror shall have five (5) business days from date of the notice to provide evidence establishing that it was not actively Debarred or Suspended on the date of Offer Opening.
 - a. The Offeror shall submit its evidence in writing to the Procuring Party and the Business Regulatory Department.
 - b. The Offeror shall only provide evidence regarding its status as Debarred or Suspended and shall not submit evidence challenging a finding for Debarment or

Suspension.

2. The Procuring Party shall review the Offeror's submitted evidence in consultation with the Business Regulatory Department prior to making the Procurement's Contract Award.
3. If the evidence provided shows that the Offeror was not, as of the date of the Offer Opening, Debarred or Suspended, then the Offeror shall be eligible to receive a determination of being Responsible pending outcome of all Mandatory Reviews.
 - For example, in its Debarment and Suspension review, the Procuring Party checks the public Debarment and Suspension lists of the Navajo Nation, federal government, Arizona, New Mexico, and Utah. The federal government list at Sam.gov includes the name of an Offeror, "Xyz, LLC", as actively Suspended for the next seven (7) months.

The Procuring Party writes a letter to Xyz, LLC, copying the Business Regulatory Department, notifying of its finding, and providing the details from Sam.gov. Xyz, LLC, reviews the information provided and determines that the Suspended Xyz, LLC on Sam.gov is a different organization established in Missouri, while it is an organization formed in Arizona.

Xyz, LLC emails the Procuring Party and the Business Regulatory Department within two (2) business days explaining the confusion and providing a copy of its certificate of formation in the state of Arizona. The Procuring Party consults with Business Regulatory Department on the submitted certificate and determines that it incorrectly found Xyz, LLC to be Non-Responsible. As a result, the Procuring Party reverses its decision and includes Xyz, LLC's Offer when considering to which to make the Contract Award.

PART 5. CONTRACT AWARDS

Section 17. Making a Contract Award

17.01 Notice of Contract Award

- A. Only Responsive-Responsible Offerors are eligible to receive a Contract Award.
- B. All Contract Awards shall be contingent on the execution of a written Contract that is acceptable to the Procuring Party and Offeror. Such document shall comply with Navajo Nation law and regulation.
 1. For Procurements of Goods, the Procuring Party will prepare a Purchase Order, or its equivalent if the Procuring Party is a Non-LGA governance certified chapter, and attach all documentation, including an explanation for selection of the awardee and Total Purchase Price. To receive the Goods, the Procuring Party will comply with Section 35. The Procuring Party shall maintain a copy of the Purchase Order and attachments in the Procurement File.
 2. For Procurements of Services, the Procuring Party shall utilize a Contract approved by the Department of Justice. The Procuring Party should seek assistance from Department of Justice as to which Contract form or terms to use prior to seeking final review and execution of the Contract.

- C. The Procuring Party shall provide written notice of Contract Award to the successful Responsive-Responsible Offeror.
1. The written notice of Contract Award shall be in the form of a letter or Purchase Order and provide the deadline by which the Responsive-Responsible Offeror shall accept the Contract Award.
 - a. The Procuring Party shall send the notice of Contract Award in a manner it deems appropriate, except that it shall not send such notice through Telephonic Communication.
 - b. If the Procuring Party mails a physical copy of the notice, it shall do so with tracking information available.
 2. The Offeror shall accept the Contract Award in writing within the deadline provided in the notice of Contract Award.
 - For example, the Procuring Party emails a Contract Award Letter to Xyz, LLC requesting that it confirm acceptance of the Contract Award by Signing the letter where indicated and emailing a return copy of the Co-Signed Contract Award letter. Xyz, LLC's authorized Contracting manager, its authorized agent, Signs the Contract Award letter and emails it to the Procuring Party.
 - For example, the Procurement Department issues a Purchase Order to Its My Business as notification of its selection for the Procurement. The Contract Award (Purchase Order) is accepted in writing when Its My Business confirms in writing receipt of the Purchase Order and that its shall comply with its requirements.

17.02 Extending the time to make a Contract Award

- A. The Procuring Party shall make a written Contract Award on or before the date announced at the Offer Opening, if public, unless the Procuring Party determines that a longer review time is necessary. In such cases, the Procuring Party shall give notice of the time extension to each Offeror by either announcing it at the public Offer Opening or by contacting each Offeror in writing.
- B. Should the Procuring Party encounter difficulties after the Offer Opening that delay its ability to make a Contract Award beyond an Offerors' acceptance period, the Procuring Party may, before the expiration of an Offer or Quote, request that Responsive-Responsible Offerors extend their Offer or Quote acceptance period (with consent of sureties, if any) to avoid the need to re-solicit.
- C. The Procuring Party shall include a copy of all written notices in the Procurement File.

17.03 All Offers Exceeding the Maximum Feasible Price

- A. In the event that all Responsive-Responsible Offerors exceed the Maximum Feasible Price, the Procuring Party shall document the reasons for such in writing. The Procuring Party may make a Contract Award to an Offeror submitting an Offer or Quote that exceeds the Maximum Feasible Price if it determines its Maximum Feasible Price to be insufficient and such Offer or Quote to be the most advantageous to the Navajo Nation in cost and vendor qualification.
- B. To lower overall Offer Cost Proposals, the Procuring Party may request, without disclosing

the Maximum Feasible Price, that all Responsive-Responsible Offerors submit a secondary adjusted Offer or Quote with a Cost Proposal at a lower price. The Procuring Party is not obligated to request submission of secondary Offers or Quotes, and the decision to do so shall be within its sole discretion.

1. Prior to requesting secondary Offers or Quotes, the Procuring Party shall adjust the Solicitation purchase description to enable Responsive-Responsible Offerors to submit Offers or Quotes with lower Cost Proposals.
2. The Procuring Party shall issue the adjusted Solicitation in writing to the Responsive-Responsible Offerors.
3. If the Procuring Party requests Responsive-Responsible Offerors to submit a lower-priced, secondary Offers or Quotes:
 - a. The Procuring Party shall first open and evaluate secondary Offers or Quotes from NBOA Priority 1 Responsive-Responsible Offerors against the factors and other criteria established in the adjusted Solicitation. The Procuring Party shall make a Contract Award to the NBOA Priority 1 Responsible Offeror with an Offer or Quote Responsive to the adjusted Solicitation.
 - b. If no NBOA Priority 1 Responsive-Responsible Offerors submit a secondary Offer or Quote, or if none are equal to or lower in price than the Maximum Feasible Price, then the Procuring Party shall next open and evaluate secondary Offers or Quotes from NBOA Priority 2 Responsive-Responsible Offerors against the factors and other criteria established in the adjusted Solicitation. The Procuring Party shall make a Contract Award to the NBOA Priority 2 Responsible Offeror with an Offer or Quote Responsive to the adjusted Solicitation.
 - c. If no NBOA Priority 2 Responsive-Responsible Offerors submits a secondary Offer or Quote or if none are equal to or lower in price than the Maximum Feasible Price, then the Procuring Party shall next open and evaluate secondary Offers or Quotes from Non-NBOA Priority Responsive-Responsible Offerors against the factors and other criteria established in the adjusted Solicitation. The Procuring Party shall make a Contract Award to the Non-NBOA Priority Responsible Offeror with an Offer or Quote Responsive to the adjusted Solicitation.
 - d. If the Procuring Party is unable or unwilling to make a Contract Award based on the secondary Offers or Quotes, then it shall cancel the Solicitation and complete the Procurement utilizing a Procurement Method for which it qualifies.

17.04 Tied Lowest Offers or Quotes

If the Procuring Party receives more than one Offer or Quote at the same, lowest price, it may break such tie by selecting one of the tied Offers or Quotes and making a Contract Award based on the best interest of the Navajo Nation.

- A. The Procuring Party shall consider, and document in writing, the following in order to break the tie:
 1. The quality of the Goods or Services offered, if such quality is ascertainable;
 2. The expected delivery time or project completion of the Goods or Services sought; and
 3. The nature of any complaints on record with the Business Regulatory Department for the

Responsibility Review.

- B. The Procuring Party may consult with the Procurement Department and the Business Regulatory Department when making its selection.

Section 18. Cancelling a Contract Award

18.01 Procuring Party Cancellation of a Contract Award

- A. The Procuring Party may cancel a Contract Award at any time, for any reason, prior to execution of the Contract, except that the Procuring Party shall not cancel a Contract Award to make a subsequent Contract Award to a preferred vendor.
- For example, the Procurement Department or the Department of Justice will deny completion of a Procurement if the Procuring Party cancels a Contract Award because it prefers, or the reason appears to be that it prefers, not to work with the one NBOA Priority 1 Responsive-Responsible Offeror and instead wishes to select a Non-Priority Offeror. Should the Procuring Party after canceling the Contract Award attempt to make a subsequent Contract Award to the next in line Responsive-Responsible Offeror, regardless of its NBOA Priority status, neither the Procurement Department nor the Department of Justice will approve such action.
2. The Procuring Party shall cancel a Contract Award by sending written notice of the cancellation to the awardee, including providing the reason for such.
- For Example, the Procuring Party determines it may no longer enter into a Procurement Contract due to internal staffing issues making it impossible to oversee the Procurement Contract. The procuring employee sends an email to the awardee stating that the Navajo Nation is cancelling the Contract Award as it is in the best interest of the Navajo Nation.
3. If the Procuring Party cancels a Contract Award, it may, at its own discretion:
- a. Make a Contract Award to the next in line Responsive-Responsible Offeror;
 - b. Cancel the Solicitation entirely; or
 - c. Cancel and re-issue the Solicitation.
4. If the Procuring Party chooses to cancel the Solicitation after cancelling a Contract Award, it is not required to notify any Offerors of the cancellation or reason for such.
- B. All notices for cancelling a Contract Award shall be maintained in the Procurement File.

18.02 Offeror Cancellation of a Contract Award

- A. The Offeror may reject a Contract Award by providing written notice to the Producing Party of its decision to reject the Contract Award or by its failure to respond in writing within the deadline noted in the Contract Award.
- B. The Offeror shall not cancel its acceptance of a Contract Award.
1. If an Offeror determines it is unable to fulfill the obligations established in the Solicitation, its Offer or Quote, these Regulations, or any terms of the Contract after accepting the Contract Award, it shall immediately notify the Procuring Party in writing and shall be subject to any and all remedies permitted to the Procuring Party.

2. If an Offeror cancels its acceptance of a Contract Award, the Procuring Party may, at its own discretion:
 - a. Make a Contract Award to the next in line Responsive-Responsible Offeror;
 - b. Cancel the Solicitation entirely; or
 - c. Cancel and re-issue the Solicitation.
3. If the Procuring Party chooses to cancel the Solicitation after the Offeror cancels its acceptance of the Contract Award, it is not required to notify any Offerors of the cancellation or reason for such.

18.03 Post-Contract Award: Contract Oversight & Procurement Implementation

- A. For Procurement utilizing the Sealed Bidding and Sealed Proposal Procurement Methods, the Procuring Party, after making the Contract Award, shall transfer to the Sponsoring Entity the responsibility to complete the Procurement Contract approval and execution process and maintain oversight of the Procurement to ensure that the Contractor performs in accordance with the terms, conditions, and Specifications or Scopes of Work of the Contract or Purchase Order.
- B. For Procurements utilizing Source Selection Methods other than Sealed Bidding and Sealed Proposals, the Procuring Party shall maintain the responsibility to complete the Procurement Contract approval and execution process and oversight to ensure that Contractor performs in accordance with the terms, conditions, and Specifications or Scopes of Work of their Contract or Purchase Order.

PART 6. PROCUREMENT METHODS

Section 19. Applicability

Unless explicitly noted as otherwise in this Part, the requirements herein are in addition to, or in the event of a conflict, in replacement of, the requirements of Parts 1-5 of these Regulations.

19.01 Available Methods of Procurement

- A. All Contract Awards shall be made utilizing the criteria and standards established in these Regulations. For every Procurement, the Procuring Party shall determine the appropriate Procurement Method to use from the allowable methods in the Procurement Act Section 340. These are:
 1. Sealed Bidding;
 2. Sealed Proposals;
 3. Simplified Acquisitions;
 4. Micro-Purchases;
 5. Non-Competitive Procurement; and
 6. Any other Procurement Method the Budget and Finance Committee shall deem appropriate for the Navajo Nation as provided for in the Procurement Regulations.
- B. Once a Procurement's Solicitation has been issued, the Procuring Party shall not change the

Procurement Method used without first cancelling the Solicitation. To change the Procurement Method a new Solicitation shall be issued.

- C. A Procuring Party may, at its own discretion, utilize a different Source Selection Method than that of the Simplified Acquisitions or Micro-Purchases Procurement even when the Maximum Feasible Price is less than the Simplified Acquisitions threshold, but shall follow the procedures in these Regulations for the alternative Procurement Method utilized.

Section 20. Sealed Bidding

20.01 Purpose; Use

- A. The Procuring Party shall utilize Sealed Bidding when it procures through an Invitation for Bids with intent to make a Contract Award to the Responsive-Responsible Offeror submitting the lowest price.
- B. Sealed Bidding is the preferred method for procuring Goods over the Simplified Acquisitions threshold.
- C. The Procurement Department shall be the only Procuring Party for the Sealed Bidding Procurement Method.
 - 1. Any Navajo Nation Divisions, Departments, Offices, or Programs, needing to complete a Procurement using the Sealed Bidding Methods shall be the Sponsoring Entity.
 - 2. The Procurement Department shall consult with and receive concurrence from the Sponsoring Entity while completing the Sealed Bidding Procurement on behalf of the Sponsoring Entity.
- D. The Sealed Bidding Procurement Method is subject to the Maximum Feasible Price.

20.02 Solicitation: Invitation for Bids

- A. The Procuring Party shall perform Sealed Bidding through issuance of an Invitation for Bids. An Offer responding to an Invitation for Bids is a Bid. "Bid" and "Invitation for Bids" are the terms used in this Section instead of "Offer" and "Solicitation," unless an otherwise defined term is appropriate.
- B. Invitation for Bids shall provide Offerors with the necessary information to prepare and submit Bids, which, in addition to Section 5.03, includes:
 - 1. A Solicitation unique identifier, such as a Bid number, issued by the Procurement Department;
 - 2. Instructions for Bid submission, such as the:
 - a. Supplier required qualifications;
 - b. Date, time, location, and manner of the Offer Opening;
 - c. Notification that the Offer Opening shall be open to the public;
 - d. Any other information necessary for the Procurement;
 - e. Notification that failure to provide required documentation as specified in Section 5.03(B)(14) shall result in the Proposal's automatic disqualification;

3. Any delivery or performance schedule not already provided in the Specification or Scope of Work;
4. Instructions to submit a Cost Proposal separate and sealed from Offer; and
5. The factors by which it will evaluate a Bid, including but not limited to:
 - a. The criteria for accepting the Goods or Services, such as inspection, testing, quality, workmanship, delivery, warranty, suitability for a particular purpose; and
 - b. Any measurable cost savings, such as discounts, transportation costs, or total- or life-cycle costs.
- C. The Procuring Party, with assistance of and approval from the Sponsoring Entity, shall prepare the Specification for the Invitation for Bids.

20.03 Sealed Bidding: Solicitation Certification Required

- A. Prior to issuing an Invitation for Bids, the Procuring Party shall certify in writing that:
 1. Funding is available and properly authorized for the Procurement;
 2. A Specification or Scope of Work is completed and included in the Solicitation;
 3. The Sponsoring Entity has identified an employee to oversee the Procurement Contract pursuant to Section 11.03(A)(1)(a) or Section 11.03(A)(4);
 4. All applicable environmental, cultural, or other regulatory reviews have been identified and completed; and
 5. That it has established the Procurement File.
- B. This written certification shall be maintained in the Procurement File.

20.04 Public Notice: Invitation for Bids

- A. The Procuring Party shall provide Public Notice of an Invitation for Bids pursuant to Section 6. An Invitation for Bids shall be issued in a manner designed to provide notice to the greatest number of Offerors able to prepare Bids in response to the Goods or Services sought.
- B. The Procuring Party shall establish the Maximum Feasible Price prior to issuing the Invitation for Bids.

20.05 Offer Opening: Bids

- A. All Bids shall be opened during a publicly held Offer Opening, the date, time, and location of which shall be designated in the Invitation for Bids.
- B. The Procurement awarding team shall open all appropriately submitted Bids received before the Offer Submission Deadline pursuant to Section 11 during the public Offer Opening and in the presence of at least one (1) witness. Members of the Procurement awarding team participating in the Offer Opening qualify as a witness, regardless of their reason for attendance.
- C. For each Bid opened, the Procuring Party shall read aloud the Offeror name, its provided NBOA Priority Classification, if provided, and the price offered. The Procuring Party shall not read aloud information marked as confidential or proprietary.

20.06 Offer Evaluation: Bids

- A. The Procurement awarding team shall evaluate Bids according to the requirements established in the Invitation for Bids and Section 11.
- B. The Procuring Party may seek secondary Bids from otherwise Responsive-Responsible Offerors consistent with the procedures provided Section 17.03(B).

20.07 Contract Award: Bids

- A. The Procurement awarding team shall complete the requirements of Part 4 Mandatory Reviews Prior to prior to making a Contract Award.
- B. The Procurement awarding team shall make a Contract Award to the Responsive-Responsible Offeror submitting the lowest price consistent with Part 5. Contract Awards.
- C. After the Procurement awarding team selects an Offeror, the Procuring Party shall make a written Contract Award consistent with the requirements of Part 5. The Procuring Party shall send notice of the Contract Award, at a minimum, via email.

Section 21. Sealed Proposals

21.01 Purpose; Use

- A. The Procuring Party shall utilize Sealed Proposals when it procures through a Request for Proposals with the intent to make a Contract Award to the Responsive-Responsible Offeror, which is the most qualified, subject to negotiation of fair and reasonable compensation.
- B. Sealed Proposals is the preferred method for procuring Services over the Simplified Acquisitions threshold.
- C. The Procurement Department shall be the only Procuring Party for the Sealed Proposals Procurement Method.
 - 1. Any Navajo Nation Divisions, Departments, Offices, or Programs, needing to complete a Procurement using the Sealed Proposals methods shall be the Sponsoring Entity.
 - 2. The Procurement Department shall consult with and receive concurrence from the Sponsoring Entity while completing the Sealed Proposals Procurement on behalf of the Sponsoring Entity.
- D. The Sealed Proposals Procurement Method is subject to the Maximum Feasible Price.

21.02 Solicitation: Request for Proposals

- A. The Procuring Party shall perform Sealed Proposals through issuance of a Request for Proposals. An Offer responding to Request for Proposals is a Proposal. "Proposal" and "Request for Proposals" are the terms used in this Section instead of "Offer" and "Solicitation," unless an otherwise defined term is appropriate.
- B. All Requests for Proposals shall provide Offerors with the necessary information to prepare and submit Proposals, which in addition to Section 5.03, includes:
 - 1. A Solicitation unique identifier, such as a Proposal number, issued by the Procurement Department;

2. Instructions for Proposal submission, such as the:
 - a. The Offeror's minimum required experience and qualifications, e.g., level of education, specific licensing, experience in a specific area, length of time in business, etc.;
 - b. The project performance standards and performance schedule;
 - c. All Proposal evaluation factors with attendant scores to be applied during the Offer Opening;
 - d. Whether the Offer Opening will be public, and if so, the date, time, and location;
 - e. Any other information necessary for the Procurement, such as unique Contract terms and conditions, warranty, or other project requirements; and
 - f. Notification that failure to provide required documentation as specified in Section 5.03(B)(14) shall result in the Proposal's automatic disqualification.
3. The criteria and factors by which it will evaluate a Proposal, including any scoring system if used, according to procedures for conducting technical evaluations and making Contract Awards written as part of the Internal Procurement Procedures.
4. Instructions to submit a separate, sealed Cost Proposal providing guaranteed prices to be held open for an established amount of time, such as labor rates, fees, hourly costs, or other charges; and
5. Any bonding, security, or insurance requirements applicable to the Procurement.
- C. The Procuring Party, with assistance of and approval from the Sponsoring Entity, shall prepare the Scope of Work for the Request for Proposals, which shall be incorporated into the Contract. The Specification, Scope of Work, scoring and evaluation criteria, and terms and conditions shall not be unduly restrictive.

21.03 Sealed Proposals: Solicitation Certification Required

- A. Prior to issuing a Request for Proposals, the Procuring Party shall certify in writing that:
 1. Funding is available and properly authorized for the Procurement;
 2. A Specification or Scope of Work is completed and included in the Solicitation;
 3. The Sponsoring Entity has identified an employee to oversee the Procurement Contract pursuant to Section 11.03(A)(1)(a) or Section 11.03(A)(4);
 4. All applicable environmental, cultural, or other regulatory reviews have been identified and completed; and
 5. That it has established the Procurement File.
- B. This written certification shall be maintained in the Procurement File.

21.04 Public Notice: Request for Proposals

- A. The Procuring Party shall provide Public Notice of a Request for Proposals pursuant to Section 6. A Request for Proposals shall be issued in a manner designed to provide the greatest number of Offerors the ability to prepare Proposals in response to the Goods or Services sought.

- B. The Procuring Party shall establish the Maximum Feasible Price prior to issuing the Request for Proposals.

21.05 Offer Opening: Proposals

- A. Proposals shall be opened publicly only if the Procuring Party indicates such in the Request for Proposals, including providing the date, time, and designated location. If the Offer Opening is public, the Procuring Party shall open Proposals in the presence of at least one (1) witness. Members of the Procurement awarding team participating in the Offer Opening qualify as a witness, regardless of their reason for attendance.
- B. At the Offer Opening, the Procurement awarding team shall open Proposals received prior to the Offer Submission Deadline pursuant to Section 11 of these Regulations.
- C. The Procurement awarding team shall not disclose any information marked as proprietary.
- D. The Procuring Party may schedule the Offer Opening to occur across multiple days to thoroughly evaluate all Proposals, including scheduling additional days during the initial Offer Opening if more time is needed. If the Offer Opening is public, then the Procuring Party shall announce the date, time, and location of any subsequent Offer Openings, which shall also be public, during the current Offer Opening.

21.06 Offer Evaluation: Proposals

- A. The Procurement awarding team shall evaluate Proposals according to the factors established in the Request for Proposals.
- B. The Procurement awarding team, after completing initial Offer Evaluations, may conduct interviews with Responsive-Responsible Offerors whom it believes are reasonably likely to be selected for Contract Award. This may be all or some of the Offerors.
 - 1. The purpose of the interview is to seek clarification of Proposal content and to assure full understanding of and Responsiveness to the Request for Proposals and the needs of the Navajo Nation.
 - 2. During these interviews, the Procurement awarding team shall not disclose any information related to or from Proposals submitted by competing Offerors.
- C. The information the Procurement awarding team learns in the interviews, at its own discretion, may affect an Offeror's evaluation results. The Procuring Party shall include written documentation of any changes, including details of the reason for the change, in the Procurement File.
- D. After the initial Offer Evaluation and any interviews, but prior to making a Contract Award, the Procurement awarding team may request Offerors submit revised Proposals, regardless of whether it interviewed the Offeror.
 - 1. The Procuring Party shall notify each Offeror in writing of the opportunity to submit revised Proposals, including notification of the revised Proposal's Offer Submission Deadline date; time; required form and format; and specific issues to be addressed in the revised Proposal.
 - 2. The Procuring Party shall maintain a copy of the written notices in the Procurement File.
- E. Once Responsive-Responsible Offerors are identified, the Procurement awarding team shall

review Cost Proposals from each to determine its price relative to the Maximum Feasible Price.

21.07 Contract Award: Proposals

- A. The Procurement awarding team shall complete the requirements of Part 4 Mandatory Reviews Prior to Contract Award prior to making a Contract Award.
- B. The Procurement awarding team shall make the Contract Award to the Responsive-Responsible Offeror, which is most advantageous to, and best serves the needs of the Sponsoring Entity, while considering the Cost Proposal.
- C. After the Procurement awarding team selects an Offeror, it shall make a written Contract Award consistent with the requirements of Part 5. The Procuring Party shall send notice of the Contract Award, at a minimum, via email.

Section 22. Procuring Professional Services

22.01 Professional Services

- A. The Procuring Party shall utilize Sealed Proposals when it seeks to procure qualification-based Professional Services or Construction Services above the Simplified Acquisition threshold whereby the Offeror's qualifications are evaluated, and the most qualified Offeror is selected, subject to negotiation of fair and reasonable compensation according to procedures established in the Internal Procurement Procedures.
 - 1. Professional Services include, but are not limited to, Services provided by a certified or other public accountant, actuary, banker, medical professional, attorney, architect, professional engineer, land surveyor, general contractor, electrician, plumber, or attorney.
- B. Only the Attorney General or the Chief Legislative Counsel may procure the Professional Services of attorneys or tribal advocates and shall procure such Services above the Simplified Acquisition threshold through the Procurement Department using the Sealed Proposals Procurement Method.
 - 1. Solicitations for attorneys are not subject to the Public Notice requirements of the Sealed Proposals Procurement Method so long as the Procuring Party provides proof that it solicited Proposals from at a minimum three (3) vendors.
 - 2. Any Navajo Nation Division, Department, Office, or Program seeking an outside attorney or tribal court advocate shall request the Attorney General procure on its behalf. The Attorney General shall review Proposals and make a Contract Award in consultation with the Procurement Department and the requesting Navajo Nation Division, Department, Office, or Program.
 - 3. Under oversight of the Attorney General, LGA governance certified Chapters shall follow their respective Procurement policy to procure an attorney or tribal advocate. The Attorney General shall review Proposals and make a Contract Award in consultation with the LGA governance certified Chapter. The LGA governance certified Chapter shall not select or Contract with an attorney or tribal advocate without the approval of the Attorney General.

- C. An Offeror responding to a Solicitation for Professional Services shall hold the license and may Sub-Contract to a Person who holds the license required for the Professional Service sought. The Offeror may supplement its own licensure through Sub-Contracts, but shall not supplant the licensure requirement by Sub-Contracting to obtain the license required. Where an Offeror with an NBOA Priority Classification submits an Offer or Quote for Professional Services, it shall be opened and reviewed as follows:
 - 1. If the Offeror or its employee holds the license required, the Offer or Quote shall be submitted as and opened according to the Offeror's NBOA Priority Classification.
 - 2. If the Offeror does not hold or employ, but Sub-Contracts to, a Person who holds the required license, the Offer or Quote shall be determined to be Non-Responsive.
- D. All Procurements for Construction Services shall comply with the requirements of Section 23.
- E. No Navajo Nation Division, Department, Office, or Program, except the Procurement Department, shall procure for Construction Services unless the Navajo Nation Council or appropriate governing committee first grants it such authority to implement, program manage, or otherwise oversee in any way, Construction and any planning, design, engineering, or other Services related to the Procurement.

22.02 Insurance Required for Professional Services

Contracts for Professional Services shall require the Contractor to carry insurance and list the Navajo Nation as an additional insured for the entire term of the Contract. The Risk Management Program shall establish the amount, coverages, form, and acceptable proof of insurance prior to Contract execution.

Section 23. Procuring Construction Services

23.01 Purpose; Use

When a Procurement includes Construction Services, regardless of cost, the requirements of this Section shall be followed.

- A. The Procuring Party shall utilize Sealed Proposals when procuring Construction Services over the Simplified Acquisitions threshold.
- B. The Procuring Party may utilize other available Procurement Methods when procuring Construction Services under the Simplified Acquisitions threshold or when it meets the requirements for Non-Competitive Procurement.

23.02 Construction Management; Project Delivery

- A. The Procuring Party shall consult with a department that is a subject-matter expert for the Procurement type, such as the Division of Economic Development Project Development Department or the Division of Community Development Capital Projects Management Department, to select the appropriate project delivery and management type for a Construction Procurement that best serves the interests of the Navajo Nation. If the Procuring Party is the Procurement Department it shall perform this consultation with the Sponsoring Entity.

- B. It is the Procuring Party's responsibility to seek Department of Justice determination of the appropriate Contract type based on the established Scope of Work and selected project delivery and management types as early as possible in the Procurement process.

23.03 Construction Solicitation Minimum Requirements

- A. Construction Solicitations, regardless of the Procurement Method used, shall meet the requirements of Section 5.03, and include the following:
 - 1. The Scope of Work;
 - 2. Project delivery and management expectations;
 - 3. If required, based on the established Maximum Feasible Price, details for Offer Security, Performance Bonds, and Payment Bonds, including the:
 - a. Minimum amounts;
 - b. Acceptable forms;
 - c. Requirement to provide proof of ability to provide bonds prior to Contract execution; and
 - d. Note required delivery of Payment and Performance Bonds within ten (10) business days of the Contract begin date;
 - 4. Notice of insurance required by the Contractor, which limits shall be established by the Risk Management Program; and
 - 5. The requirement that the Contractor meet any licensing related to the project type required by the state in which the project is located.
- B. The Procuring Party's omission of requirements and instructions for Offer Security, Performance Bonds, or Payment Bonds in the Solicitation shall not cure an Offeror's failure to provide the Offer Security or proof of ability to bond in its Offer.

23.04 Offer Security Amount and Form

- A. Offer Security, commonly referred to in the industry as a "bid bond," shall be required for all Construction Procurements when the Maximum Feasible Price is greater than one-hundred thousand dollars (\$100,000.00).
 - 1. Offer Security shall be in an amount equal to no less than 10 percent (10%) of the Offeror's Cost Proposal.
 - 2. It is within the Procuring Party's discretion to require Offer Security for a Construction Procurement when the Maximum Feasible Price is less than one-hundred thousand dollars (\$100,00.00).
- B. Acceptable forms of Offer Security include:
 - 1. An annual or one-time bond underwritten by a surety;
 - 2. A bank certified check; or
 - 3. Cashier's check that is payable to the Navajo Nation.

23.05 Rejection of Offer Security

If an Offer does not comply with the Offer Security requirements in the Solicitation or these Regulations, then the Offer shall be rejected as Non-Responsive unless any of the following are met:

- A. Only one (1) Offer is submitted and time to resolicit the Construction project is limited;
- B. The Offer Security submitted, while less than the amount required, is equal to or greater than the difference in price when its Offer total cost is subtracted from the next highest Offer total cost; or
- C. The Offer Security amount appears to be a mistake of the Offeror, and the Offeror provides a corrected Offer Security amount within twenty-four (24) hours of the Offer Opening.

23.06 Offer Security Delivery and Effective Date

If Offer Security is required, the Offer Security shall be delivered with the Offer and shall become binding upon delivery.

23.07 Performance and Payment Bonds Amount and Form

- A. Performance and Payment bonds shall be delivered to the Navajo Nation when an executed Construction Contract Total Purchase Price exceeds two hundred fifty-thousand dollars (\$250,000.00). These bonds shall become binding on the Parties upon execution of the Contract and delivered to the Navajo Nation within ten (10) business days of the Contract begin date.
- B. Proof of ability to bond at the offered price shall be included in the Offer.
- C. The bonds shall be:
 - 1. In an amount equal to one hundred percent (100%) of the Contract price, not including costs for design, Pre-Construction, or other Non-Construction Services; and
 - 2. In a form satisfactory to the Navajo Nation, which includes coverage of all Persons supplying labor and material to the Contractor or its Sub-Contractors performing any work under the Contract.
- D. The Procuring Party, with written concurrence from the Department of Justice, may reduce the amount of Performance and Payment bonds up to fifty percent (50%) of the Contract price for each bond so long as either (1) the Navajo Nation withholds, as retainage, a percentage of each invoiced amount equal to the unbonded amount; or, (2) the Contractor provides an irrevocable Letter of Credit in amount equal to the percentage of the unbonded amount of the Contract price. In no case shall a Performance Bond or Payment Bond be in an amount less than fifty percent (50%) of the contract price.
 - For example, the Procuring Party receives written concurrence from the Department of Justice to reduce the Performance and Payment bonds on a Construction Contract to 75% of the Original Contract Amount. As such, the Procuring Party increases the Retainage on the Contract from 5% to 25%.
- E. The acceptable form of bonds shall be in an annual or one-time bond underwritten by a surety.

23.08 Construction Procurement Insurance

Construction Contracts shall require the Contractor to carry insurance and list the Navajo Nation as an additional insured for the entire term of the Contract consistent with Section 31. The Risk Management Program shall establish the amount, coverages, form, and acceptable proof of insurance prior to Contract execution.

23.09 Indemnification

All Construction Contractors by accepting a Contract Award 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 Contract, by the use of any improper materials, or by any act or omission of the Contractor or its Sub-Contractors, agents, servants, or employees.

23.10 Construction Contract Modifications, Change Orders, and Change Directives

- A. All Construction Contracts shall give the Navajo Nation the right to require changes in quantities, additions, or deletions of work or other changes within the original intent of the Contract. Contractors may request Change Orders, in accordance with Contract Modification provisions, for such things as unforeseen field, regulatory, or market conditions and other emergencies, acts of God, or justifiable delays.
- B. Only the Contract's designated Navajo Nation Authorized Representative shall have authority to make decisions related to the Construction Contract on behalf of the Navajo Nation. All decisions shall be confirmed in writing.
- C. All changes to Construction Contracts, including Change Orders and Construction Change Directives, which alter the terms and conditions, extend the duration, or increase the price of the Contract shall be made through a formal Modification to the Contract.

23.11 Payments and Retainage

- A. Unless otherwise agreed to in writing by the Parties to the Contract, the Navajo Nation shall pay all invoice(s) of the Contractor directly to the Contractor.
- B. The Navajo Nation standard Retainage on Construction Contracts is five percent (5%) as assurance of the Contractor's proper performance; however, the Procuring Party may include up to twenty percent (20%) Retainage of each payment under a Construction Contract.
 - 1. The Procuring Party may deviate from the standard Retainage amount at its own discretion, and shall maintain written notation of the reason for such in the Procurement File.
 - 2. If the Contractor is not required to provide Offer Security or other bonding as assurance of performance and payment of Sub-Contractors, the Procuring Party should consider whether retaining payment at a greater percentage than the standard amount would benefit the Navajo Nation in providing assurance of quality and proper performance.

Section 24. Simplified Acquisitions

24.01 Purpose; Use

- A. The Procuring Party shall utilize the Simplified Acquisitions Procurement Method for Procurements with a Maximum Feasible Price equal to one hundred thousand dollars (\$100,000.00) or less, but more than the threshold set of Micro-Purchases Procurements.
- B. Any Navajo Nation Division, Department, Office, or Program authorized to procure under the Procurement Act shall be a Procuring Party eligible to utilize this Procurement Method.
- C. To the extent practicable, the Navajo Nation should distribute Simplified Acquisitions equitably among qualified vendors and give preference to Navajo-owned Businesses on the Navajo Nation Source List.
- D. The Procuring Party shall not Piecemeal or limit a Procurement in any manner to keep the expenditure(s) within the limitations for Simplified Acquisitions.
- E. The Simplified Acquisitions Procurement Method is subject to the Maximum Feasible Price.
- F. Changing the Simplified Acquisitions Threshold:
 - 1. The Navajo Nation Office of the Controller is responsible for recommending, as part of its annual review pursuant to Section 41 of these Regulations, to the Budget and Finance Committee of the Navajo Nation Council changes to the Simplified Acquisitions threshold based on an evaluation of risk, these Regulations, and its Internal Procurement Procedures, which recommendation may be lower than, but must not exceed, the threshold established for Simplified Acquisitions in the Federal Acquisition Regulations, as amended from time to time.
 - 2. The Budget and Finance Committee may change the Simplified Acquisitions threshold based on the Office of the Controller's recommendation when it deems it to be in the best interest of the Navajo Nation.
- G. When a Non-LGA governance certified Chapter procures using the Simplified Acquisitions Procurement Method and wishes to contract through the Chapter's own Purchase Order or similar equivalent, it shall do so according to procedures consistent with the requirements of these Regulations, but is not required to obtain a Purchase Order from the Office of the Controller.

24.02 Solicitation: Simplified Acquisitions

- A. Simplified Acquisitions shall be solicited by requesting a Quotation from a Vendor. "Quote" and "request for Quotation" are the terms used in this Section, unless an otherwise defined term is appropriate.
- B. Written price, cost, or rate Quotations must be sought from at least three (3) sources, unless a different amount is specified by a federal agency or other funding source Grant or agreement. A written Quote, which may include an email, is a Quote that contains:
 - 1. A date stamp;
 - 2. The name and contact information of the Offeror;
 - 3. Includes a statement that the email sender is authorized to give the Quote; and

4. A Signature.
- C. Documents to be submitted by the Procuring Party to the Procurement Department before making the Contract Award or obtaining a Purchase Order under this Procurement Method shall include, at a minimum:
1. Copies of the three (3) required Solicitation requests issued by the Procuring Party;
 2. Documentation deemed necessary to comply with applicable insurance requirements as determined by the Risk Management Program; and
 3. The required documentation as specified in Section 5.03(B)(14);
- D. The Procuring Party shall issue a request for Quotation which includes the following:
1. The date, time, and manner of the Offer Submission Deadline;
 2. The name and title of the employee to whom the Offeror shall submit its Quote;
 3. The address, physical or electronic, to which the Offeror shall deliver its Quote;
 4. A fully developed purchase description;
 5. The evaluation criteria and factors according to which the Procuring Party will assess all Quotes received;
 6. The requirement to mark the Quote with the NBOA Priority Classification status of the Offeror, when applicable; and
 7. The requirement to include a Cost Proposal or Budget as part of the Quote;
- E. Simplified Acquisitions seeking Goods or Services shall be solicited by requesting a Quotation from a vendor where the Quotation includes the requirements listed in this Section and Section 5.03, as applicable.

24.03 Public Notice: Simplified Acquisitions

- A. After developing the request for Quotation, the Procuring Party shall provide direct notice to all NBOA Priority Classified Persons identified on the Source List that are indicated to provide the Goods or Services sought. The Procuring Party may satisfy such notice requirement by either:
1. Sending a written request for a Quotation to, at a minimum, all NBOA Priority 1 and 2 Persons identified on the current NBOA Source List that are noted to provide the Goods or Services indicated in the Quotation and to any other non-certified Vendors from whom the Procuring Party wishes to receive a Quote; or
 2. Adhering to the Public Notice requirements of these Regulations pursuant to Section 6.
- B. The Procuring Party shall establish the Maximum Feasible Price prior to issuing any requests for Quotations.
- C. All request for Quotations, or other related notices, shall be in writing.
- D. The Procuring Party shall include copies of such requests and notices in the Procurement File.

24.04 Offer Evaluation: Simplified Acquisitions

- A. The Procuring Party shall open and evaluate all Quotes received prior to the Offer Submission Deadline according to the NBOA Priority Classification status noted in the Quote, or on its exterior if submission requires sealing the Quote.
 - 1. Starting with NBOA Priority 1 Offerors, the Procuring Party shall review the Quotes for Responsibility and Responsiveness to the request for Quotations.
 - 2. If no NBOA Priority 1 Offerors with Quotes are Responsible and Responsive, then the Procuring Party shall move on to NBOA Priority 2 Quotes.
 - 3. Only after determining there are no Responsive-Responsible NBOA Priority 1 or 2 Quotes, shall the Procuring Party then evaluate Quotes from Offerors without NBOA Priority Classification.
- B. The Procuring Party shall request, at a minimum, three (3) Quotations before it makes a Contract Award.

24.05 Contract Award: Simplified Acquisitions

- A. The Procuring Party shall complete the requirements of Part 4 Mandatory Reviews Prior to Contract Award before making a Contract Award.
- B. After the Procuring Party, when not a Non-LGA governance certified Chapter per Section 24.01(G), selects a Quote, it shall make a written Contract Award, which may be in the form of a Purchase Order, to the Offeror consistent with the requirements of Section 17.01. The Procuring Party shall send notice of the Contract Award, at a minimum, via email.

24.06 Procurement File: Simplified Acquisitions

The Procuring Party shall, in addition to documenting the Pre-Solicitation requirements in Section 5, document and maintain in the Procurement File the following:

- A. The Specification or Scope of Work provided to all Persons;
- B. The name and address of all Persons from whom price Quotations were sought;
- C. The names of the Persons submitting Quotations;
- D. The date and amount of each Quotation;
- E. A copy of any Purchase Order or other Contract, including attachments, for the Procurement; and
- F. Copies of all Records related to receipt of Goods or Services.

Section 25. Micro-Purchases Procurement Method

25.01 Purpose; Use

- A. The Procuring Party shall utilize the Micro-Purchases Procurement Method for Procurements with a Maximum Feasible Price equal to ten thousand dollars (\$10,000.00) or less.
- B. Any Navajo Nation Division, Department, Office, or Program authorized to procure under the Procurement Act shall be a Procuring Party eligible to utilize this Procurement Method.

- C. To the extent practicable, the Navajo Nation should distribute Micro-Purchases Procurements equitably among qualified vendors and give preference to Navajo-owned Businesses on the Navajo Nation Source List.
- D. The Procuring Party shall not Piecemeal or limit a Procurement in any manner to keep the expenditure(s) within the limitations for a Micro-Purchase.
- E. The Micro-Purchases Procurement Method is subject to the Maximum Feasible Price. The Procuring Party shall establish the Maximum Feasible Price prior to issuing any requests for Quotations.
- E. Changing the Micro-Purchases Threshold:
 - 1. The Navajo Nation Office of the Controller is responsible for recommending, as part of its annual review pursuant to Section 41 of these Regulations, to the Budget and Finance Committee of the Navajo Nation Council changes to the Micro-Purchases threshold based on an evaluation of risk, these Regulations, and its Internal Procurement Procedures, which recommendation may be lower than, but must not exceed, the threshold established for Micro-Purchases Procurement in the Federal Acquisition Regulations, as amended from time to time.
 - 2. The Budget and Finance Committee may change the Micro-Purchases threshold based on the Office of the Controller's recommendation when it deems it to be in the best interest of the Navajo Nation.
- F. When a Non-LGA governance certified Chapter procures using the Micro-Purchases Procurement Method and wishes to contract through the Chapter's own Purchase Order or similar equivalent, it shall do so according to procedures consistent with the requirements of these Regulations, but is not required to obtain a Purchase Order from the Office of the Controller.

25.02 Solicitation: Micro-Purchases

- A. Micro-Purchases Procurement shall be solicited by requesting a Quotation from a vendor or conducting a purchase with a Purchase Card. Purchase Cards shall not be used to complete any other Procurement Method. "Quote" and "request for Quotation" are the terms used in this Section, unless an otherwise defined term is appropriate.
- B. Solicitations for Micro-Purchases Procurements shall be deemed initiated when the Procuring Party establishes the Maximum Feasible Price in writing and develops a written purchase description that includes the Specification or Scope of Work for any Good or Services sought.
- C. The Specification or Scope of Work, documentation of research, and anything utilized to understand the pricing and purchase description of the Micro-Purchases Procurement shall be maintained in the Procurement File.

25.03 Public Notice: Micro-Purchases

Public Notice is not required for Micro-Purchases Procurements.

25.04 Offers: Micro-Purchases

- A. The Procuring Party may make Contract Awards for Micro-Purchases Procurements without

Competitive Selection if the Procuring Party:

1. Considers the price reasonable based on research, experience, purchase history, or other information; and
 2. Provides a written explanation of how the factors described above support a finding that use of the Procurement Method is reasonable.
- B. This written documentation may be independent or subsequently incorporated into the one provided for establishing the Maximum Feasible Price.

25.05 Contract Award: Micro-Purchases

- A. After completing the requirements of Part 4 Mandatory Reviews, the Procuring Party may make the Contract Award or directly purchase the Goods or Services from the vendor determined to be the most cost effective, Responsible, and Responsive.
- B. A Procuring Party may use Purchase Cards, Purchase Orders, or other Contract types to complete a Micro-Purchases Procurement, subject to the below:
1. When completing a Micro-Purchases Procurement with a Purchase Card, the Procuring Party shall complete the purchase consistent with all documented policies and procedures established by the Office of the Controller and approved by the Budget and Finance Committee governing the use of Purchase Cards, including but not limited to the handling of receipts, both paper and digital.
 - a. Purchase Cards are the preferred method of payment for Micro-Purchases Procurements for all Public Funds and shall only be used to complete a purchase for this Procurement Method.
 - b. The purchasing employee shall comply with the allowances provided under the Purchase Card Policy. If the price of the purchase exceeds the purchasing employee's Purchase Card allowance, then a Purchase Order shall be used; the Purchase Card cannot be charged multiple times to cover the price of the purchase.
 - c. The Procuring Party shall submit the documentation establishing the reasoning and explanation for the selected vendor and Total Purchase Price with the receipt and maintain all such Records in the Procurement File.
 - d. Use of Purchase Cards for travel purchases shall adhere to all documented Office of the Controller travel policies and procedures.
 - e. Under no circumstances shall a Procuring Party use a Purchase Card to expend Public Funds under a budget or Grant program of another Navajo Nation Division, Department, Office, or Program.
 2. When completing a Micro-Purchases Procurement with a Purchase Order, the Procuring Party, when not a Non-LGA governance certified Chapter per Section 24.01(G), shall submit all necessary documentation as required in Section 34 to the Procurement Department for it to prepare and approve of a Purchase Order. The Procuring Party shall maintain a copy of the Purchase Order and attachments in the Procurement File.
 3. When completing a Micro-Purchases Procurement with an executed Contract, the Procuring Party should seek guidance from the Department of Justice to assist with Contract selection and shall complete the Procurement as is required for Contracts in

these Regulations and for Document Review under 2 N.N.C §§ 222-23, as amended from time to time.

25.06 Procurement File: Micro-Purchases

The Procuring Party shall, in addition to documenting the Pre-Solicitation requirements in Section 5.01-5.04, document and maintain in the Procurement File the following:

- A. The Specification or Scope of Work;
- B. The name and address of all Persons from whom Quotations were sought;
- C. Copies of all Quotations received, including the date and amount of the Quote and the names and contact information of the Person submitting the Quotes;
- D. A copy of the contracting method used, which will be either the receipt, Purchase Order, or Contract, including attachments, consistent with Section 25.05 for the Procurement; and
- E. Copies of all Records related to receipt of Goods or Services.

Section 26. Non-Competitive Procurement

26.01 Purpose; Use: Non-Competitive Procurement

- A. The Procuring Party may only utilize Non-Competitive Procurement to procure Goods or Services when it receives written approval from the Procurement Department, or the Controller in place of the Procurement Department, that one of the following circumstances apply:
 - 1. The Procurement can only be fulfilled by a single vendor, and no reasonable alternative exists to fulfill the intended purpose of the Procurement;
 - 2. Prior attempts at Procurement through any other Procurement Method have yielded inadequate or no results, or otherwise resulted in no Contract Award or executed Contract;
 - 3. The Procurement is best fulfilled by a specific source because of the source's direct knowledge and past work on the Procurement and such selection is at a fair and reasonable price and in the best interest of the Navajo Nation; or
 - 4. An Emergency exists.
- B. Non-Competitive Procurement may be used to procure Goods or Services.
- C. Any Navajo Nation Division, Department, Office, or Program authorized to procure under the Procurement Act shall be a Procuring Party eligible to utilize this Procurement Method. The Procurement Department shall not be the Procuring Party on behalf of a Sponsoring Entity to complete a Non-Competitive Procurement.
- D. Persons with an NBOA Priority Classification shall receive preference in Non-Competitive Procurements to the extent practicable.
- E. Non-Competitive Procurement shall not be used as a matter of convenience. Poor or lack of planning does not justify the use of Non-Competitive Procurement.

26.02 Office of the Controller Approved Written Justification Required

- A. To obtain written concurrence from the Procurement Department, the Procuring Party shall compile and submit to the Procurement Department the following:
1. A purchase description of the Goods or Services sought;
 2. A written, Signed memo from the Procuring Party head attesting to the basis for the Non-Competitive Procurement request under Section 26.01(A); and
 3. Documentation supporting the Non-Competitive Procurement request under Section 26.01(A), such as:
 - a. When seeking to concurrence that only a single source exists under Section 26.01(A)(1), documentation indicating why no reasonable alternative source is sufficient to serve the needs of the Procurement;
 - For example, the Procuring Party explains in the memo that the vendor owns the patent to the machine the Navajo Nation uses and to obtain maintenance Services, it must execute a Contract with the single vendor able to supply the Services. The Procuring Party attaches evidence of the vendor's patents and its restrictions of use and maintenance.
 - b. When seeking concurrence that prior attempts at Procurement failed under Section 26.01(A)(2), documentation of previous Procurement efforts, including but not limited to issued Solicitations; proof of Public Notice, received Quotes, cancelled Contract Awards, or other evidence of attempting to complete a Procurement as required by these Regulations for the Procurement Method attempted;
 - i. The Procuring Party needs to only show one (1) previous attempt at procuring through any other Source Selection Method to qualify to use Non-Competitive Procurement;
 - ii. Should attempts at Procurement through Sealed Bidding or Sealed Proposals Procurement fail to end in a completed purchase, the Sponsoring Entity shall be responsible for completing the Non-Competitive Procurement; however, the Procurement Department shall assist by providing written approval and any necessary documentation needed to include with the memo;
 - c. When seeking concurrence to directly execute a Contract with a preferred vendor that has direct knowledge and previous work on a Procurement under Section 26.01(A)(3), documentation establishing how the preferred vendor obtained its direct knowledge or previously worked on the Procurement; or
 - d. When seeking concurrence that an Emergency exists under Section 26.01(A)(4), documentation of the factual basis for the Emergency.
 - i. Expiring or loss of funds is not an Emergency.
 - ii. A known, persistent condition affecting the public health, safety, or welfare of the Navajo Nation is not an Emergency, unless otherwise designated as an Emergency situation by the Navajo Nation Council or President.
- B. The Procurement Department shall respond in writing to the Procuring Party's submission within five (5) business days.

1. If the Procurement Department concurs with the Procuring Party's written memo, then it shall Sign the memo indicating its concurrence.
2. If the Procurement Department does not concur with the Procuring Party's written memo, then it shall issue, in writing, the reason for not concurring and explaining the Procurement Method(s) available to the Procuring Party to complete the Procurement.

26.03 Solicitation: Non-Competitive Procurement

Non-Competitive Procurements shall be solicited by requesting a Proposal or Quotation from a Vendor. "Quote" and "request for Quotation" are the terms used in this Section, unless an otherwise defined term is appropriate.

26.04 Public Notice: Non-Competitive Procurement

- A. Public Notice is not required for Non-Competitive Procurements.
- B. Non-Competitive Procurements do not require Competitive Selection so long as the Procuring Party considers the price reasonable and provides a written explanation documenting its conclusion of such in the Procurement File.

26.05 Procurements Eligible for Non-Competitive Procurement

- A. When determining whether to approve a Non-Competitive Procurement, the Procurement Department shall consider the economic and geographic circumstances of the Procurement and their advantage.
- B. Procurement that are eligible for Non-Competitive Procurement include but are not limited to:
 1. Procurements for utility, cell phone, landline communication Services;
 2. Procurements for the maintenance of, and related Goods or Services for, existing equipment, software, or other assets of the Navajo Nation that are solely available from one vendor;
 3. Procurements directly related to a declared public emergency;
 4. Procurements utilizing Federal agency or pass-through entity Public Funds where the Federal agency or providing entity have provided written approval; and
 5. Procurements for Emergency repair or maintenance of Navajo Nation capital assets.

PART 7. CONTRACTS

Section 27. Contracts: Generally

27.01 Contracts

The Department of Justice shall be the sole authority for Contracts and Contract provisions. The Department of Justice shall be the sole authority for Contracts and their provisions for the Executive Branch, and when determining Contract and Contract provisions for the Legislative and Judicial Branches, shall consult with the Office of Legislative Counsel and the Judicial Branch administration, respectively.

- A. All Contracts for the purchase of Goods or Services as a result of a successful Contract Award through use of a Procurement Method in these Regulations shall be generated and its use monitored by the Department of Justice.
- B. All Contracts shall include an itemized Budget and either a Specification or Scope of Work as is applicable to the Procurement.
- C. The Department of Justice shall develop, with consultation of the Legislative and Judicial Branches as appropriate, language that shall be included on all Purchase Orders generated by the Navajo Nation accounting system, including the enterprise resource planning software.

27.02 Business Regulatory Department Certification

Prior to execution of a Contract, Business Regulatory Department shall certify that the Procuring Party adhered to the NBOA requirements for the Procurement, including when issuing the Solicitation, Offer or Quote acceptance and evaluation, and when making the Contract Award.

27.03 Indemnification Required

- A. All Contracts, unless otherwise approved by the Department of Justice, shall require that a Contractor indemnify, defend, and hold harmless the Navajo Nation in its Contract.
- B. Contract terms addressing indemnification by the Contractor shall include the Contractor's agreement to defend, indemnify, and hold harmless:
 1. The Navajo Nation, the Navajo Nation's representative or agent, and the officers, directors, agents, employees, and assigns of each;
 2. From and against any and all claims, demands, suits, judgments, damages to any Persons or property, injuries, losses, or expenses of any nature whatsoever (including attorney's fees at trial and any appellate level);
 3. In connection with any action arising directly or indirectly from or out of any negligent act or omission of the Contractor, its Sub-Contractors or sub-consultants, and their officers, directors, agents, employees, and assigns;
 4. From any failure of the Contractor to perform its Services in accordance with industry or other generally accepted professional standards;
 5. From any material breach of the Contractor's representations set forth in its Offer or Quote; and
 6. From any other failure of the Contractor to comply with the obligations required under the Contract.

27.04 Standardized Contracts

The Department of Justice shall be responsible for providing standardized Contracts, as it deems appropriate, to all branches of the Navajo Nation, and shall have final authority to determine the appropriate Contract type for any Procurement.

- A. The Department of Justice shall review and update its standardized Contracts every fiscal year by the end of the first quarter.
- B. The Department of Justice shall provide a Procuring Party copies of and training on

standardized Contracts upon request. It is the Procuring Party's responsibility to timely request training or Contract forms ahead of completing a Procurement.

- C. Where necessary, the Department of Justice, in its sole discretion, may deviate from the standardized Contracts as it deems appropriate for a specific Procurement. The Office of Legislative Counsel and Judicial Branch Administration shall consult with the Department of Justice when it wishes to approve Contracts deviating from a standardized form.

27.05 Limitation on Contract Term; Extensions

- A. Contract terms, including modifications to extend the term, shall be limited as follows:
 - 1. Contracts for Services shall not exceed three (3) years.
 - 2. Contracts, including Purchase Orders, for Goods shall not exceed one (1) year.
- B. This Section shall not apply to long-term capital and infrastructure Construction projects.
- C. The Procurement Department is authorized to approve Contracts lasting longer than the term set in this Section according to the Internal Procurement Procedures.

Section 28. Determining a Procurements as being for Goods or for Services

28.01 When a Procurement includes Goods and Services

- A. When a Procurement seeks both Goods and Services, the Procuring Party shall determine whether it is predominately a Procurement for one or the other to aid the Procuring Party in determining whether the Procurement shall be initiated or completed using Purchase Requisition Forms, order requisition forms, Purchase Orders, Blanket Purchase Agreements or other Contract types.
 - 1. Procurement for Services shall be completed using a Contract type that is not a Purchase Order, unless the Procurement used the Micro-Purchases Procurement Method. In such cases, the Scope of Work, and any included Specifications, for the Services shall be attached to the Purchase Order.
 - 2. Procurements for Goods may be completed using a Purchase Order or Blanket Purchase Agreements.
- B. The Procuring Party shall determine whether a Procurement is for Goods or Services by evaluating the relative price of the Goods and Services compared to the expected Total Purchase Price.
 - 1. If the Total Purchase Price for the Procurement includes cost of Services at less than twenty-five percent (25%) of the Total Purchase Price, then the Procuring Party shall consider the Procurement as one for Goods alone.
 - For example, a Procurement with a Total Purchase Price of one-hundred thousand dollars (\$100,000.00) includes the costs for Services, such as delivery, set-up or assembly, installation, or warranty, at twenty-four thousand dollars (\$24,000.00) and the remainder for Goods. Because the cost of Services is less than twenty-five percent (25%) of the Total Purchase Price, the Procuring Party shall complete the Procurement as if it were only soliciting for Goods.
 - 2. If the Total Purchase Price for the Procurement includes cost of Goods at less than

twenty-five percent (25%) of the Total Purchase Price, then the Procuring Party shall consider the Procurement as one for Services.

- For example, A Procurement with a Total Purchase Price of one-hundred thousand dollars (\$100,000.00) includes the costs for Goods, such as materials, software programs, equipment, or other supplies, at twenty-four thousand eight-hundred ninety-nine dollars (\$24,899.00) and the remainder for Services. The Procurement is one for Services because the cost of Goods is only 24.9% (less than twenty-five percent (25%)) of the Total Purchase Price.
- C. A Procuring Party may consult with the Procurement Department to seek a final determination of whether to classify a Procurement as one for Goods or for Services.

28.02 Procurements Exempt from Good or Services Determinations

All Construction Procurements are Procurement for Services and shall not be classified as a Procurement for Goods or subject to the requirements of this Section.

Section 29. Contract Requirements

29.01 Contract Required for all Procurements

- A. Every Procurement shall be completed utilizing a Contract. The Department of Justice has the final authority to determine the Procurement's required Contract type. The Department of Justice shall consult with the Office of Legislative Counsel as to the appropriate Contract type for Legislative Branch Contracts or with the Judicial Branch Administration as to the appropriate contract type for Judicial Branch Contracts.
- B. Unless otherwise excepted by Navajo Nation law, Contracts shall, where applicable, state in an appropriate form, terms related to the below:
1. Upon timely written notice, the Navajo Nation shall have the unilateral right to order changes in the work within the Contract Scope of Work. The Contract shall include procedures for calculating price adjustments for work changes;
 2. Upon timely written notice, 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 price adjustments for such stoppage or delay shall also be defined in the Contract;
 3. The financial liability of the Navajo Nation under the Contract is contingent upon the availability of appropriations by the Navajo Nation Council or other funding sources;
 4. That the Navajo Nation shall terminate the Contract when funds are not appropriated or otherwise made available to support continuing performance for a multi-term Contract in a current or subsequent fiscal period, and the Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred up to the date of termination;
 5. The Navajo Nation may terminate the Contract for cause or convenience;
 6. The Contractor shall maintain all Records related to the Contract for a minimum of five (5) years as established in Section 4.03 and such Records are subject to audit or inspection by the Navajo Nation;

7. Nothing in the Contract expressly or impliedly waives the Sovereign Immunity of the Navajo Nation;
 8. That the Contractor shall indemnify, defend, and hold harmless the Navajo Nation;
 9. The Contractor subjects itself to the jurisdiction of the Navajo Nation and shall comply with all applicable Navajo Nation laws and regulations; and
 10. Any litigation, arbitration, or other dispute resolution proceedings arising under or related to the Contract shall be resolved under Navajo Nation law. Any provisions requiring enforcement in any state are against the Navajo Nation's public policy and are void and unenforceable.
- C. When practical, Procuring Parties are encouraged to use value engineering clauses in Contracts for Construction Services over the Simplified Acquisitions threshold to offer reasonable opportunities for cost reductions. Value engineering involves analyzing each Contract item or task to ensure its essential function is provided at the lowest overall cost.

29.02 Contract Budget or Cost Proposal Required

No Navajo Nation Procurement Contract shall be executed without a complete Budget or Cost Proposal attached that details all costs on a by unit, by Service hour, or other line-item or detailed basis associated with the procured Goods or Services.

29.03 Contract Modifications and Change Orders

Pursuant to the NBOA, Contract Modifications that adjust the Contract price more than twenty percent (20%) of the original Total Purchase Price and/or include substantial changes to or broaden the original Specifications or Scope of work shall require a new Procurement. The new Procurement shall apply to the intended change to the contract and subject to the following.

- A. Modifications or Change Orders costing less than \$100,000.00 shall require a new Procurement adhering to the Simplified Acquisitions or Micro-Purchases Procurement requirements of these Regulations, respectively.
- B. Modifications of Change Orders where the amendment meets the criteria of Non-Competitive Procurement, regardless of cost, shall require a new Procurement adhering to the Section 26 of these Regulations.

29.04 Contract Termination

- A. The Navajo Nation shall have the right to terminate a Contract in whole or in part due to the Contractor's default, for the convenience of the Navajo Nation, or due to the unavailability of funds regardless of the funding source.
- B. A Contractor shall not complete the work under a Contract when the Contract is terminated due to the Contractor's default, except that:
 1. The Procuring Party may consult with the Department of Justice to determine if the particular circumstances warrant allowing the Contractor to finish the work despite its default: or
 2. If the Contract terminates for a reason other than the Contractor's default, the Contractor may be eligible to complete the work at the Procuring Party's discretion.

29.05 Temporary Stoppage and Continuation of Work

When a Procuring Party wishes to temporarily suspend work or working day charges under a Contract, the Procuring Party shall provide the Contractor with a written notice listing the reasons for the action and the effective date of the Suspension. If possible, the Procuring Party should provide an estimated timeline for the duration of the stoppage. The Procuring Party shall provide the Contractor with written notice of the effective date for continuing the work. The Contract may include terms to allow for price adjustment due to stoppage.

29.06 Expired Contracts

A Contract expires on the final date of its term. The Contract expiration marks the end of the contractual obligations of the Parties.

- A. At the time of expiration, all work should be satisfactorily completed and all appropriate paperwork filed. It is the priority of the Navajo Nation that all Contract work be completed before expiration, which may require entering into a Contract Modification, if allowed, to extend the term of the Contract.
- B. Notwithstanding Subsection (A) above, the Navajo Nation may pay any amounts owed on an expired Contract without resuming or extending the Contract term or entering into a new Contract. If a Contract expires or is terminated without the Contractor being fully paid for the work performed, including profit, then the Office of the Controller shall pay any amounts owed to the Contractor, subject to the submission of invoices consistent with the Contract requirements.

29.07 Resumption of Expired Contracts

- A. When a Contract expires through no fault of the Contractor and the Scope of Work is not complete, the Procuring Party and the Contractor may execute Modification for the resumption of the Contract that amends the term of the expired Contract. This Modification shall:
 - 1. Only extend the term of the Contract to allow the Contractor to complete the Scope of Work in the Contract;
 - 2. Not allow for any other changes to the Contract terms; and
 - 3. Be executed within nine (9) months of the original Contract's expiration.
- B. A Modification to resume the Procurement shall not be allowed for any Contracts, regardless of Source Selection Method used, beyond nine (9) months from the date of expiration. The Procuring Party shall reprocure for the remaining work.
- C. When a Contract expires with unpaid invoices, regardless of the reason for such, the Contract shall not require a Modification to resume the Contract or any term extension to fulfill such payment requirements.

29.08 Processing Contract Payments

- A. The Procuring Party shall follow all Office of the Controller payment procedures, including providing the appropriate, complete documentation to ensure Contractor payments are made in a timely manner.
- B. All Contractors shall submit invoices directly to the Office of the Controller's Accounts

Payable Department with a copy sent to the Procuring Party, or in the case of Sealed Bidding and Sealed Proposals Procurement Methods copy the Sponsoring Entity. A Contractor's failure to submit an invoice in such manner shall result in nonpayment by the Accounts Payable Department until such time as the Contractor appropriately submits the invoice.

- C. The Office of the Controller shall issue payments to the Contractor pursuant to the terms of the Contract.

29.09 Completed Contracts

- A. Except as noted in Subsection (B)-(C) below, a Contract is considered fully completed when the Contractor:
 - 1. Has completed all required deliveries and the Procuring Party has inspected and accepted the Goods; or
 - 2. Has performed all Services and the Procuring Party has accepted these Services; and
 - 3. All option provisions, if any, have expired.
- B. A Contract is considered completed as of the date of expiration when it expires under its own terms or as of the Effective Date of Termination when the Procuring Party issues a notice of contract termination to the Contractor.
- C. Rental, use, and storage agreements are considered physically completed when the Contract term has expired.

Section 30. Contracts: Allowable Types

30.01 Allowable Contract Types

- A. Subject to the approval of the Department of Justice , the Procuring Party may enter into any type of commercially reasonable Contract that promotes the best interest of the Navajo Nation, including, but not limited to, those listed in this Section. The Department of Justice shall consult with the Office of Legislative Counsel as to the appropriate Contract type for Legislative Branch Contracts or with the Judicial Branch Administration as to the appropriate contract type for Judicial Branch Contracts.
- B. Naming a Contract by one type, but then using terms and operating it under conditions of a different Contract type shall not be permitted. The title given to a Contract does not solely dictate its type, rather the terms, including their structure and subsequent implementation, shall be used to determine the Contract type.

30.02 Fixed Price Contracts

A Fixed Priced Contract requires a Contractor to complete delivery of the Goods or Services at an established price, which may only be adjusted according to the terms of the Contract. A Fixed Priced Contract is appropriate to use when the extent and type of work needed can be reasonably specified in the Specification or Scope of Work and the price can be reasonably estimated. This is generally the case for standard commercial Goods or Services Procurement and is the Navajo Nation's preferred Contract type. A Purchase Order is a form of a Fixed Price Contract.

30.03 Firm Fixed-Price Contracts

A Firm Fixed Price Contract provides a price that is not subject to adjustments under any circumstances, including circumstances where the Contractor's cost of performing the work changes.

30.04 Fixed Price Contract with Price Adjustment

- A. A Fixed Price Contract with Price Adjustment provides for variation in the Contract price only under specific conditions that are clearly defined in the Contract, which may include price adjustments due to Modifications of the Specification or Scope of Work. The formula or other basis by which the Contract price is adjusted shall be specified in the Solicitation and the resulting Contract.
- B. Price adjustments may be upward, downward or both. Examples of conditions under which adjustments may occur are:
 - 1. Changes in the Contractor's labor agreement rates as applied to the industry, local area, or the Navajo Nation;
 - 2. Changes due to rapid and substantial price fluctuations, which can relate to an accepted index (such as Contracts for gasoline, heating oils, etc.); or
 - 3. If the Contract allows the Contractor to unilaterally modify the conditions under which a price increase may occur, the Contract shall allow the Navajo Nation to reject the price increase and terminate the Contract without future performance costs. The Contract shall require the Contractor to give prior notice of any price change.

30.05 Time and Materials Contracts

- A. A Time-and-Materials Contract provides an established basis for payment of materials supplied and labor performed. A Time-and-Materials Contract is one whose cost to a Navajo Nation is the sum of:
 - 1. The actual cost of materials; and
 - 2. Direct labor hours are charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.
- B. Such Contracts are not preferred. The Navajo Nation may use a Time-and-Materials type Contract only after determining that no other Contract is suitable. The Navajo Nation must exercise a high degree of oversight when executing a Time-and-Materials Contract to ensure reasonable assurance that the Contractor is using efficient methods and adequate cost controls.
- C. A Time-and-Materials Contract shall contain a stated price ceiling that shall not be exceeded without prior Navajo Nation approval. If the Contractor exceeds the price ceiling, it does so at their own risk.

30.06 Labor Hour Contracts

Labor hour Contracts provide only for the payment of labor performed at an established rate.

30.07 Definite Quantity and Indefinite Quantity Contracts

- D. A Definite Quantity Contract is a Fixed-Price Contract that requires delivery of a specified quantity of Goods or Services by the Contractor at either specified times or when ordered. The Contract establishes fixed unit prices.
- E. An Indefinite Quantity Contract is a Contract for an indefinite amount of Goods or Services to be furnished by the Contractor at either specified times, or as ordered by the Navajo Nation and at establishes fixed unit prices. Generally, an approximate quantity or the best information available as to quantity is stated in the Solicitation. The Contract shall provide a minimum order amount the Procuring Party is obligated to order and the maximum Total Purchase Price for the Contract.
- F. A Requirements Contract is an Indefinite Quantity Contract for Goods or Services that obligates the Procuring Party to order all the actual requirements of a designated user entity during a specified period of time. As a general rule, Requirements Contracts are to be avoided.

30.08 Cost-Plus-A-Percentage-of-Cost Prohibited

Cost-Plus-a-Percentage-of-Cost Contracts are prohibited. Such Contracts base the Contract price on the cost of the material and labor plus a percentage of the cost of the material and labor.

30.09 Multi-Term Contracts

Unless otherwise prohibited by Navajo Nation law or regulation, multi-term Contracts are acceptable provided that the term of the Contract and the conditions of renewal or extensions are clearly detailed in the Contract and the Solicitation and funds are available for the first term of the Contract. Such Contracts shall condition payment and performance obligations for succeeding terms on the availability and appropriation of funds.

Section 31. Risk Management

31.01 Insurance Required

- A. It is the policy of the Navajo Nation to require Contractor's carry insurance at all times, by purchase or Self-Insurance, at limits established by the Risk Management Program that are proportionate to the hazards and risks the Contractor undertakes for a Contract.
- B. When the following conditions are met, Contractor's shall carry insurance at all times, by purchase or Self-Insurance, at limits established by the Risk Management Program that are proportionate to the hazards and risks the Contractor undertakes for a Contract:
 - 1. The Procuring Party, at its own discretion, chooses to require insurance;
 - 2. The Risk Management Program or Department of Justice determine insurance coverage is in the best interest of the Navajo Nation for any Procurement seeking particular Goods or Services provided either sends notice to the Procuring Party prior to the Contractor and the Navajo Nation executing the Contract Award;
 - 3. The Procurement is for Professional Services;
 - 4. The Procurement is a High-Risk Procurement pursuant to Section 13.02;
 - 5. The Procurement is for Construction or for Construction-related Goods and Services; or

6. Insurance is required by Federal, State, or Navajo Nation law or regulation, e.g., worker's compensation.
- C. All Contractors providing insurance shall name the Navajo Nation as an Additional Insured using the following or similar language: "The Navajo Nation, its Public officials, employees, agents, and volunteers are an Additional Insured with respect to any liability arising out of the activities performed by the Contractor pursuant to its Contract with the Navajo Nation."
- D. Should a Procuring Party issue a Solicitation without insurance requirements, this shall not prohibit the Navajo Nation from requiring the awardee, prior to Contract execution, to provide and maintain insurance coverage for the life of the Contract at limits established by the Risk Management Program that are proportionate to the hazards and risks the Contractor shall undertake.

31.02 Evaluating a Contractor's Insurance

- A. When a Procurement requires insurance coverage pursuant to Section 31.01, the Procuring Party shall determine the required minimum insurance limits through either Risk Management Program individual review of the Procurement or pursuant to insurance schedules established by the Risk Management Program and made available to Navajo Nation Divisions, Departments, Office, or Programs.
 1. The Procuring Party may submit a Procurement to the Risk Management Program for individual review to determine minimum insurance coverage specific to the Procurement, subject to the following:
 - a. The Procuring Party shall submit, in writing, to the Risk Management Program a detailed description of the Procurement, including a complete Specification or Scope of Work.
 - b. The Risk Management Program shall review the Procuring Party's submission within five (5) business days, and respond with the required minimum insurance coverage limits specific to the Procurement.
 - c. If the Procuring Party's submission includes an awardee's Certificate of Insurance, the Risk Management Program written response shall note whether the Contractor's insurance meets the minimum limits required, including whether the Certificate of Insurance includes appropriate language naming the Navajo Nation as an Additional Insured as required by Section 31.01(C).
 2. The Risk Management Program may establish, and make available to Navajo Nation Divisions, Departments, Offices, or Programs, insurance schedules noting the minimum insurance coverage requirements specific to a type of Procurement based on the Goods or Services, or combination thereof, sought. The Risk Management Program shall review such schedules annually to ensure appropriate coverage is required.
 - a. A Contractor's Certificate of Insurance that shows coverage equal to or above the established minimum requirements and includes appropriate language naming the Navajo Nation as an Additional Insured as required by Section 31.01(C) shall be deemed presumptively to comply with insurance requirements and shall not require the Risk Management Program individual review.
 - b. A Procuring Party shall not be obligated to use the limits within an established

insurance schedule, for whatever reason, so long as it instead directly submits its Procurement for individual review to the Risk Management Program to establish Procurement specific requirements.

- c. If the limits in an established insurance schedule are too high for the Contractor to meet without increasing its Cost Proposal, the Procuring Party may instead submit the Procurement for individual review to obtain insurance limits specific to that Procurement, which the Contractor shall meet.
- B. If Contractor's insurance does not meet the requirements of this Section, the Navajo Nation shall not execute the Contract. Prior to any Contract execution, the Contractor shall provide an updated Certificate of Insurance meeting the requirements of this Section.

31.03 Insurance Provided When Not Required

Should a Contractor unilaterally choose to provide insurance coverage for a Procurement Contract when insurance is not required, the Procuring Party shall either submit the Contractor's Certificate of Insurance to the Risk Management Program for individual review pursuant to Section 31.02 or review the Contractor's Certificate of Insurance against established insurance schedules pursuant to Section 31.02.

- A. The Procuring Party shall not terminate a Contract Award if the Certificate of Insurance does not meet insurance requirements pursuant to this Section. However, the Procuring Party shall include the insurance in the Contract's documents review packet and issue a written determination to be included in the Procurement File and notify administrative reviewers that insurance was not required for the Procurement and the Certificate of Insurance provided does not meet the minimum required insurance limits.
- B. If the Contractor's unilaterally provided insurance for the Procurement lapses, it shall immediately notify the Procuring Party in writing of the lapse. The Procuring Party shall determine at that time whether to require the Contractor to rectify the lapse for the remainder of the Contract term at the limits originally provided by the Contractor or to allow the lapse to remain in effect. Such determination shall be made in writing, issued to the Contractor, and maintained in the Procurement File.

31.04 Insurance Shall Not Lapse; No Work

A Contractor that has entered into a Contract requiring insurance coverage shall not perform work without the proper insurance in effect at the appropriate limits.

- A. If the Contractor's insurance lapses during the term of the Contract, the Contractor shall immediately cease work and notify the Procuring Party of the lapse in writing. The Contractor shall immediately seek to obtain the appropriate coverage for the remainder of the Contract term and may resume work only when new insurance is in effect and it has provided a Certificate of Insurance to the Procuring Party.
- B. Failure to rectify the lapse of insurance shall be a substantial breach and cause for the Navajo Nation to terminate the Contract effective as of the date of the lapse.

Section 32. Blanket Purchase Agreements

32.01 Purpose, Authority

- A. Blanket Purchase Agreements are designed to reduce administrative costs of purchasing

repetitive, small quantities of Goods.

- B. The Procurement Method for Blanket Purchase Agreements is Competitive Sealed Bidding. Blanket Purchase Agreements shall not be used for Competitive Sealed Proposals.

32.02 Limited Duration

To encourage competition and provide continuing economic opportunity on the Navajo Nation, Blanket Purchase Agreements shall be term-limited. Blanket Purchase Agreement term shall not exceed the duration of the funding source, and no Blanket Purchase Agreement term shall exceed one (1) year.

32.03 Blanket Purchase Agreement Required Terms

- A. To the extent practicable, Blanket Purchase Agreements for Goods and Services of the same type should be placed with multiples Vendors who shall be given an equal opportunity to furnish the Goods and Services.
- B. The Procuring Party shall initiate a request to enter into a Blanket Purchase Agreement by submitting a Purchase Requisition Form to the Procurement Department.
- C. The Procurement Department shall give final approval of Blanket Purchase Agreements.
- D. At a minimum, Blanket Purchase Agreements shall contain the terms listed below.
 - 1. A statement that the Vendor shall furnish the Goods and Services described in the Contract in general terms, during the full term of the agreement or some other specified period and up to 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 statement that the Navajo Nation will order on an "as needed" basis and that it is not obligated to order.
 - 4. A detailed description of the required ordering, invoicing, and delivery procedures, including a complete Specification with pricing.
 - 5. A statement that the Procuring Party shall furnish notice, and the manner of the notice, of individuals authorized to place orders under the Blanket Purchase Agreement and the established dollar limitation for each order and for each authorized individual's total purchase limitation.

32.04 Orders Under Blanket Purchase Agreements

- A. The Procuring Party shall place orders against established Blanket Purchase Agreements only after the Vendor supplies current prices, if subject to change. When concurrent Blanket Purchase Agreements for similar Goods and Services are in effect, orders shall be equitably distributed, to the extent practicable. Where there is an insufficient number of Blanket Purchase Agreements for any given class of Goods and Services to assure adequate competition, the Procuring Party shall solicit the Goods and Services sought through the Sealed Bidding or Sealed Proposals Procurement Methods.
- B. Orders against Blanket Purchase Agreements shall be made only by authorized individuals

and shall be made in writing according to the procedure in the Blanket Purchase Agreement. Purchase Orders or other forms approved by the Department of Justice and the Procurement Department may be used.

- C. Purchase Orders may be used to establish delivery date and quantities of Blanket Purchase Agreement orders. These Purchase Orders shall be supplemental to the Blanket Purchase Agreement, and shall not require administrative Contract review.

32.05 Annual Blanket Purchase Agreement Review

The Office of the Controller shall review all active Blanket Purchase Agreement and attendant files at least annually to assure compliance with authorized procedures. If there is any concern about compliance, Office of the Controller shall consult with the Department of Justice.

Section 33. Purchase Requisition Forms

33.01 Purchase Requisition Form: Requirement

- A. When seeking Goods through a Blanket Purchase Agreement, the Procuring Party shall first complete a Purchase Requisition Form and then submit it to the Procurement Department for approval consistent with the requirements of the enterprise resource planning software.
- B. The Procuring Party shall use the Purchase Requisition Form approved by the Procurement Department.

33.02 Purchase Requisition Form: Availability of Stock or Surplus Items

- A. The Procuring Party is responsible for checking the availability of Goods in the Procuring Party's warehouse or other storage facilities before initiating the Procurement process.
- B. If the Goods sought are a commonly used supply or property for the Navajo Nation, after the Procuring Party submits the completed Purchase Requisition Form to the Procurement Department, it shall determine if the Navajo Nation has items that may satisfy the Procuring Party's needs. If the item satisfies the Procuring Party's need, the Procurement Department shall coordinate supply of the item to the Procuring Party.
- C. If the Navajo Nation has no items or the Procuring Party is not satisfied with the available items, the Procurement Department shall notify the Procuring Party and Sign the Purchase Requisition Form to signify that it has no stock or surplus items satisfying the Procurement.

33.03 Purchase Requisition Form: Allowable Costs and Encumbrance

- A. After clearance by the Procurement Department, the Procurement Department shall notify the appropriate encumbrance department of the Office of the Controller for verification of allowable costs, funds availability, and funds encumbrance within the enterprise resource planning software.
- B. If funds are available and all requirements of the Purchase Requisition Form are met, then the Office of the Controller shall approve the Purchase Requisition Form and notify the Procuring Party of the fund encumbrance.
- C. If funds are not available, or there are other apparent deficiencies in the Purchase Requisition Form, the Office of the Controller shall notify the Procuring Party of the deficiency and return the Purchase Requisition Form to the Procuring Party with appropriate comments

noting how to correct the deficiency.

- D. No Procurement shall occur before fund encumbrance.

Section 34. Purchase Orders

34.01 Applicability

- A. A Purchase Order authorizes a one-time purchase when the Procuring Party has completed a Solicitation and selected an Offeror. The enterprise resource planning system creates a Purchase Order for all Procurements, regardless of Contract form.
- B. Purchase Orders may, without another accompanying Contract, be used to complete a Procurement solicited through Sealed Bidding, Simplified Acquisitions Procurement, or Micro-Purchases Procurement.
- C. A Vendor shall accept a Purchase Order in full for the Contract to be valid. If a Vendor only has the capacity to partially fulfill a Purchase Order, a new Purchase Order shall be issued reflecting the partial order. The Procuring Party may also elect to cancel the Purchase Order in its entirety.

34.02 Purchase Order Review

A Purchase Order shall be issued to a vendor without administrative Contract review when the following requirements are met:

- A. The Purchase Order form utilized is approved by the Department of Justice for the Procurement Method used;
- B. The Procuring Party receives approval from the Business Regulatory Department that it followed applicable requirements for the Procurement Method used;
- C. The Procuring Party head has approved and Signed the Purchase Order; and
- D. The Procurement Department has reviewed the Procurement File and Purchase Order, which shall be completed within five (5) days of submittal.

34.03 Purchase Order Approval

- A. A Purchase Order approved by the Procurement Department before its issuance does not require the branch chief's Signature.
- B. Once fully reviewed and approved, the Procurement Department shall forward copies of the Purchase Order, via electronic mail or other means, to the selected Vendor, the Procuring Party, and the Accounts Payable Department of Office of the Controller.

Section 35. Receipt and Acceptance of Goods

35.01 Compliance with the Uniform Commercial Code

- A. The receipt and acceptance of Goods shall adhere to the Navajo Uniform Commercial Code, 5A N.N.C. §§ 1-101 *et seq.*, as amended from time to time, and applies to all Goods procured regardless of the Source Selection Method used.
- B. In general, receipt occurs when the Goods are physically delivered to the address specified

in the Contract or Purchase Order, or if it is a non-tangible Good, when the Procuring Party is able to utilize or receive the benefit of the Goods.

35.02 Goods Physically Delivered

For Goods physically delivered to the Navajo Nation:

- A. The employee receiving delivery, if not an employee of the Procuring Party, shall immediately deliver the Goods to the Procuring Party for inspection.
- B. The Procuring Party shall verify that the Goods described on the carrier's Bill of Lading or the Vendor's packing slip match the Goods delivered, are in an acceptable condition, and meet the Specifications, which includes accounting for the necessary quantities.
- C. The Procuring Party shall complete a Receiving Report, which shall, at a minimum, include the:
 - 1. Contract or Purchase Order number, or other authorization identifier, for the Goods delivered;
 - 2. Specification;
 - 3. Actual quantities of Goods received and accepted;
 - 4. Date of delivery; and
 - 5. Signature, printed name, title, email, and telephone number of receiving employee of the Procuring Party.
 - 6. Additionally, the Receiving Report shall note whether there were any defects or exceptions to the delivery, which may include damaged or defective items, wrong items received, or wrong quantities received as of the date of acceptance by the Procuring Party.
- D. The Procuring Party shall complete the Receiving Report by reporting exactly what was delivered.
 - 1. If the delivery included all quantities procured, then the original Receiving Report should be used to indicate that the delivery was complete and then forwarded to Accounts Payable for payment.
 - 2. If the delivery included a partial amount of the order, then a copy of the original Receiving Report should be used to indicate receipt of a partial order and forwarded to Accounts Payable for payment of the partial delivery. Once the remaining Goods are delivered, completing the order delivery, the original Receiving Report should be completed and forwarded to Accounts Payable for processing of final payment.
 - 3. If the Procuring Party notes exceptions on the Receiving Report or the Goods do not meet Specifications, the Procuring Party shall notify the Vendor and allow it a reasonable opportunity to cure the defects and exceptions or reject the full delivery for non-compliance.
- E. The Procuring Party shall forward a copy of the final Receiving Report noting defects, exceptions, non-compliance, and actions taken to the Procurement Department of Office of the Controller.

PART 8. ENFORCEMENT

Section 36. Reporting Non-Compliance

- A. When Navajo Nation Division, Departments, Offices, or Programs fail, or appear to fail, to comply with the Procurement Act, these Regulations, and their respective adopted policies and procedures they may be reported for non-compliance as follows:
 - 1. When the Office of the Controller identifies a Navajo Nation Division, Department, Office, or Program that has or appears to have failed to comply with the Procurement Act and these Regulations, it shall report such via a Notice of Non-Compliance to, at a minimum:
 - a. The Budget and Finance Committee;
 - b. The Office of the Speaker of the Navajo Nation Council;
 - c. The Office of the President and Vice President;
 - d. The Division Director of the affected Division;
 - e. The Auditor General; and
 - f. The Department of Justice.
 - 2. When a Navajo Nation Division, Department, Office, or Program believes that the Office of the Controller has or appears to have failed to comply with the Procurement Act, these Regulations, or the Internal Procurement Procedures, it shall report such via a Notice of Non-Compliance to:
 - a. The Budget and Finance Committee;
 - b. The Office of the Speaker of the Navajo Nation Council;
 - c. The Office of the President and Vice-President
 - d. The Navajo Nation Controller;
 - e. The Auditor General; and
 - f. The Department of Justice.
 - 3. The Department of Justice shall determine whether further reporting of or other action, if any, is necessary and take appropriate steps to initiate or complete such.
 - 4. Within the discretion of the Department of Justice, if it determines it to be necessary, the Department of Justice shall issue a legal interpretation of the matter in writing to all parties. Where the legal interpretation affects application or understanding of the Procurement Act or these Regulations, or any other affected Navajo Nation law, regulation, or policy, such written legal interpretation shall be made available to all Navajo Nation Divisions, Departments, Offices, or Programs.
- B. A Notice of Non-Compliance shall be issued in writing, addressed to the required parties, and include:
 - 1. The name of the non-complying Navajo Nation Division, Department, Office, or Program;
 - 2. The name of the employee responsible for, or overseeing, the Procurement, if known;
 - 3. Reasonable details to identify the Procurement at issue, which may include a description

- of the project or purchase or the Solicitation's unique identifier, if any;
 - 4. A detailed statement of the factual grounds for issuing the notice;
 - 5. Documentation or copies thereof showing or supporting the non-compliance;
 - 6. The name of the employee directly issuing the Notice of Non-Compliance; and
 - 7. The Signature of the head of the Navajo Nation Division, Department, Office, or Program issuing the Notice of Non-Compliance.
- C. A Notice of Non-Compliance may be issued individually upon identification of the event of non-compliance or issued as part of a quarterly report to all required parties by the identifying Navajo Nation Division, Department, Office, or Program. When part of a quarterly update, the identifying Navajo Nation Division, Department, Office, or Program should issue a Notice of Non-Compliance in the quarter in which the non-compliance was identified.

Section 37. Actions Affecting A Responsibility Review

37.01 Authority

- A. The Business Regulatory Department is authorized to receive, investigate, and maintain a database of written complaints regarding a Contractor's Past Performance and other actions likely to affect subsequent determinations of the Contractor as a Responsible Offeror during a Responsibility Review. These complaints shall be accessible only to Navajo Nation Divisions, Departments, Office, or Programs and shall not be publicly available.
- B. The Business Regulatory Department shall, within eight (8) months of the effective date of these Regulations, create and maintain a webpage for receiving written complaints regarding a Contractor's Past Performance and other actions, ensuring that every complaint received is immediately copied to the Department of Justice and the Contractor that is the subject of the complaint.

37.02 Reporting a Complaint of Past Performance or Other Actions

- A. Complaints shall be reported within thirty (30) days of when the reporting party knew of the facts giving rise to the reason for reporting. Only Divisions, Departments, Offices, or Programs of the Navajo Nation may report or view complaints to the Business Regulatory Department regarding a Contractor's Past Performance and other actions likely to affect a Responsibility Review.
- B. A reporting party shall provide timely, written notification of a complaint through the Business Regulatory Department webpage to the Department of Justice, Business Regulatory Department, and the Contractor about which it is reporting a complaint for:
 - 1. Inadequate or unsatisfactory Past Performance;
 - 2. Violation or default of the Contract;
 - 3. Non-compliance with these Regulations or the NBOA; or
 - 4. Other actions it believes would affect the outcome of a Responsibility Review.
- C. A written complaint shall include, at a minimum:
 - 1. The name of the Contractor;

2. The Contractor's authorized representative(s) and contact information;
3. The name of the Procuring Party and the employee submitting the complaint;
4. The procuring employee's contact information;
5. The identification number of the Contract for which the reporting party is filing its complaint;
6. A written, detailed description of the subject matter of the complaint; and
7. Any evidence establishing the validity of the reporting party's complaint and its attempts to resolve such.

37.03 Contractor Responsibility Inquiry

- A. The Business Regulatory Department shall inquire into a written complaint within fifteen (15) business days of its receipt, which shall include providing the Contractor an opportunity to provide a written response to the complaint.
- B. The Business Regulatory Department's inquiry shall only determine if the Procuring Party's complaint is more likely than not to have bearing on a Responsibility Review. The Business Regulatory Department is not responsible for making a determination as to the accuracy or outcome of the reason for the complaint.
 1. If the Business Regulatory Department determines that a complaint is likely to affect a Responsibility Review, it shall include the complaint and any Offeror response in the database of written complaints.
 2. If the Business Regulatory Department determines that a complaint is unsubstantiated or not likely to affect a Responsibility Review, the complaint shall immediately be destroyed and not logged or provided for any Responsibility Review.

37.04 No Protest for Responsibility Complaint Inquiry

- A. The Contractor shall not protest the final decision of the Business Regulatory Department; however, it may, at any point the complaint is within the log of written complaints, provide additional written supplemental information related to the complaint or even provide evidence of the complaint having been inaccurate or resolved.
- B. The Business Regulatory Department shall receive and make available as part of the database of all written complaints to all Navajo Nation Division, Departments, Offices, or Programs all written responses provided by the Contractor for Responsibility Reviews.

37.05 Developing a Record of Contractor Non-Responsibility

A complaint found likely to affect a Responsibility Review shall be maintained for one (1) year, at which time all Records related to the complaint shall be destroyed consistent with the requirements of Section 4.05.

Section 38. Debarment or Suspension

38.01 Authority

- A. The Office of the Controller, with Department of Justice concurrence, is authorized to Debar

or Suspend a Person from entering into a Contract with or otherwise receiving a business opportunity from the Navajo Nation when that Person has committed, or there is reasonable belief that the Person has committed, acts constituting a cause for Debarment or Suspension.

- B. The Office of the Controller shall create and maintain a public webpage that allows a Division, Department, Office, or Program of the Navajo Nation or Person to report any Person for investigation of Debarment or Suspension within eight (8) months of the effective date of these Regulations.

38.02 Causes for Debarment or Suspension

- A. The causes for Debarment or Suspension shall include the following:
 - 1. Conviction in any jurisdiction for commission of a criminal offense incident to obtaining, or attempting to obtain, a public or private Contract or Sub-Contract, or in the performance of such Contract or Sub-Contract;
 - 2. Conviction in any jurisdiction for embezzlement, theft, forgery, bribery, falsification, or destruction of Records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects Responsibility as a Navajo Nation Contractor;
 - 3. Conviction under any antitrust statute arising out of the submission of Offers or Quotes;
 - 4. Violation of Contract provisions, as set forth below, of a character which is determined by the Office of the Controller with concurrence of the Department of Justice (or Office of Legislative Counsel, in the case of Procurement by the Legislative Branch) to be to be so serious as to justify Debarment or a Suspension action:
 - a. Deliberate failure without good cause to perform in accordance with the Specifications or within the time limit provided in the Contract; or
 - b. A recent Record of failure to perform or of unsatisfactory Past Performance in accordance with the terms of one or more Contracts, provided that failure to perform or unsatisfactory performance were caused by acts beyond the control of the Contractor shall not be considered to be a basis for Debarment or Suspension;
 - 5. Ineligibility to conduct business with the Navajo Nation under the NBPA or the NBOA;
 - 6. Submission of bad Offers or Quotes in which it is determined by the Office of the Controller in consultation with the Department of Justice (or Office of Legislative Counsel, in the case of Procurement by the Legislative Branch), that the Offeror submits Offers or Quotes lower than the expected price, or overstates its qualifications, by which it intends to conduct the Services or provide the Goods; and
 - 7. Any other cause which the Office of the Controller, with the approval of the Department of Justice, determines to be so serious and compelling as to affect Responsibility as a Navajo Nation Contractor, including but not limited to Anti-Competitive or Collusion practices; attempts to force, influence, or persuade a Navajo Nation Division, Department, Office, or Program into not complying with the Procurement Act and these Regulations; or Debarment or Suspension by another government.
- B. Any cause for Debarment or Suspension shall apply to a Person in its current form or any other identifiable capacity as a Person or other entity pursuant to the definitions of the

Procurement Act, these Regulations, and the NBPA.

38.03 Suspension

- A. The Office of the Controller, with Department of Justice concurrence, may Suspend a Person from entering into a Contract with or receiving a business opportunity from the Navajo Nation when there is a reasonable belief by a preponderance of the evidence that:
 - 1. At least one cause for Suspension may exist;
 - 2. Suspension is necessary to conduct an appropriate investigation; and
 - 3. Suspension is necessary to protect the interests of the Navajo Nation.
- B. A Suspension shall be issued for the time necessary to complete an investigation and shall last no longer than one (1) calendar year.

38.04 Debarment

- A. The Office of the Controller, with Department of Justice concurrence, may Debar a Person from entering into a Contract with or receiving a business opportunity from the Navajo Nation when, after completing an investigation, it determines by a Preponderance of the Evidence that:
 - 1. At least one cause for Debarment exists; and
 - 2. Debarment is necessary to protect the interests of the Navajo Nation.
- B. Debarment shall last no more than three (3) calendar years.

38.05 Reporting a Person for Debarment or Suspension

- A. Any Person may report suspected Debarment or Suspension activity to the Office of the Controller.
- B. A report of Debarment or Suspension related activity shall be submitted through the Office of the Controller webpage, which shall notify the Office of the Controller and the Department of Justice. All written reports regarding Debarments and Suspension activity shall include, at a minimum:
 - 1. The name and contact information of the Person making the report;
 - 2. The name of the Person who is the subject of the report;
 - 3. The reported Person's authorized representative(s) and contact information, if known;
 - 4. The written, detailed description of the cause for Debarment or Suspension; and
 - 5. Any evidence of the cause for Debarment or Suspension.
- C. The Office of the Controller shall initiate an investigation into a report within ten (10) business days.

38.06 Investigating Reports of Debarment or Suspension

- A. The Office of the Controller shall provide written notice of the investigation to the Person under investigation within twenty (20) business days of receiving a report. The notice provided shall be based on whether the Person is to be Suspended during the course of the

investigation.

1. If Office of the Controller determines Suspension of the Person is necessary at any time during the investigation pursuant to Section 38.02, then it shall:
 - a. Determine the appropriate length for Suspension;
 - b. Draft written notice of Suspension pursuant to Section 38.07; and
 - c. Seek written concurrence from the Department of Justice.
 - d. After receiving Department of Justice concurrence, Office of the Controller may issue the notice of Suspension.
 2. If Office of the Controller determines Suspension of the Person is not necessary during the investigation, then it shall issue a notice of investigation for Debarment to the Person noting:
 - a. The cause for proposed Debarment, including a description of the facts related to the cause;
 - b. A statement that an investigation will occur; and
 - c. An estimated completion date for such investigation.
 3. The Office of the Controller may determine that Suspension is necessary and Suspend a Person at any point during the investigation, even after having issued a written notice of investigation without Suspension.
- B. A Person under investigation for Debarment that is not Suspended shall not be disqualified from entering into a Contract with or otherwise receiving business opportunities from the Navajo Nation.
- C. The Office of the Controller shall conduct its investigations in coordination with the Department of Justice. As part of its investigation, Office of the Controller may gather and consider the following information related to the relevant to the facts and circumstances of the cause for Debarment or Suspension:
1. Interviews with any Person;
 2. Written statements of any Person;
 3. Any Records; and
 4. Any information or arguments submitted by the Person under investigation.
- D. Once complete, Office of the Controller shall issue a written determination to the Person under investigation noting the conclusion of the investigation.
1. If Office of the Controller determines cause for Debarment exists by a Preponderance of the Evidence, then the written determination shall also include the requirements of Section 38.08.
 2. If Office of the Controller determines cause for Debarment does not exist, then the written determination to the Person shall state that the Person is no longer under investigation for Debarment and that the Person is not Suspended or Debarred based on the facts and circumstances described in the notice of their Suspension or notice of investigation for Debarment.

38.07 Notice of Suspension

- A. When issuing a notice of Suspension, the Office of the Controller shall provide written notification to the Person being Suspended including the following:
1. The cause for Suspension, including a description of the facts necessitating the Suspension and the relevant cause as provided in these Regulations;
 2. The length of the Suspension, which shall be commensurate with the facts and estimated time needed to complete the investigation;
 3. A statement that an investigation will occur, which shall not exceed the length of Suspension;
 4. A statement that the result of the investigation may either lift the Suspension or Debar the Person from entering into a Contract with or otherwise receive business opportunities from the Navajo Nation pursuant to the Procurement Act and the NBPA for a period not to exceed three (3) years;
 5. A statement that the Person shall be disqualified from entering into a Contract with or receiving other business opportunities from the Navajo Nation for the duration of the Suspension, which includes submitting Offers or Quotes or receiving Contract Awards;
 6. A statement that the Person shall be included on a publicly available list of Debarred and Suspended Persons maintained by Office of the Controller for the term of the Suspension;
 7. A statement that the Person has the right to submit information or arguments relating to the reasons for Suspension and for the investigation into Debarment, that such information and arguments will be considered as part of the investigation, and the details and deadline for submitting such information; and
 8. The reasons and requirements for removal of the Suspension under Section 38.10.
- B. The written determination of Debarment shall be sent such that Office of the Controller may verify the date of receipt. If emailed, the date of receipt shall be the date of transmission for the email.

38.08 Written Determination of Debarment

- A. When issuing a written determination of Debarment, the Office of the Controller shall provide the following:
1. A statement that the Person under investigation is Debarred from the Navajo Nation;
 2. A statement that the Person shall be excluded from entering into a Contract with or receiving other business opportunities from the Navajo Nation for the duration of the Debarment pursuant to the Procurement Act and the NBPA, which includes submitting Offers or Quotes or receiving Contract Awards;
 3. The length of the Debarment, which shall be commensurate with the facts causing the Debarment;
 4. A statement that the Person shall be included on a publicly available list of Debarred and Suspended Persons maintained by the Office of the Controller for the term of the Debarment;

5. Notice of the Person's right to object or appeal the Debarment decision in accordance with Sections 38.11 or 36.12; and
 6. The reasons and requirements for removal of the Debarment under Section 38.10.
- B. The written determination of Debarment shall be sent such that Office of the Controller may verify the date of receipt. If emailed, the date of receipt shall be the date of transmission for the email.

38.09 Debarment or Suspension List

- A. The Office of the Controller shall publish and maintain within eight (8) months of the effective date of these Regulations a publicly available website that lists all Debarred and Suspended Persons including the date on which the action expires.
- B. The Office of the Controller shall update this list monthly, except that, at the time the Office of the Controller issues a written notice of Suspension or determination of Debarment, it shall add the Debarred or Suspended Person to the list.

38.10 Removal of Debarment or Suspension

- A. A Person may lift a Debarment or Suspension before the end of a Debarment or Suspension period only if one of the one below circumstances occurs:
1. The Person submits information to Office of the Controller demonstrating that their conviction under Section 38.02 of these Regulations, pursuant to Section 382(3) of the Procurement Act, or Section 1505(D) of the NBPA has been vacated or expunged from their record; or
 2. If it is a Business, the Person submits proof of new ownership that is not connected to the former ownership in any other identifiable capacity.
- B. If a Person submits evidence sufficient to lift a Debarment or Suspension, Office of the Controller shall remove the Person from the Debarment or Suspension list for only the cause lifted. Removal from the Debarment or Suspension other than expiration of the period is not permitted in any other circumstance.

38.11 Right to Protest Debarment or Suspension

- A. A Person may protest a Debarment or Suspension decision by submitting a written objection to the Business Regulatory Department within thirty (30) days of receiving a written notice of Suspension under Section 38.07 or a written determination of Debarment under Section 38.08.
- B. The written protest shall state the reason for the protest, including:
1. A statement of facts and arguments as to why the Suspension or Debarment should not have occurred; and
 2. Any Records supporting the Person's statement of facts or arguments.
- C. The Business Regulatory Department shall, in consultation with the Department of Justice, review a protest according to the following standards of review:
1. For Suspensions, whether Office of the Controller had a reasonable basis for Suspending the Person.

2. For Debarments, whether Office of the Controller made the determination for Debarment based on a Preponderance of the Evidence.
- D. When reviewing a protest, the Business Regulatory Department shall only consider written information submitted by the Office of the Controller and the Person that is Debarred or Suspended.
- E. After reviewing the written information, the Business Regulatory Department shall issue a written decision stating whether the Office of the Controller's Debarment or Suspension decision met the appropriate standard of review.
 1. If Office of the Controller's Debarment or Suspension decision meets the appropriate standard of review, then such decision shall remain in effect.
 2. If Office of the Controller's Debarment or Suspension decision does not meet the appropriate standard of review, then Debarment or Suspension shall be lifted and Business Regulatory Department written decision shall include a directive to the Office of the Controller to remove the Person from the Debarment or Suspension list within 15 days of the date of the written decision.

38.12 Right to Appeal Debarment or Suspension

- A. The Office of the Controller or a Debarred or Suspended Person shall have the right to appeal the Business Regulatory Department's decision as an Aggrieved Person to the Office of Hearings and Appeals subject to the following requirements.
 1. The appeal shall be filed within twenty (20) days of the date the Business Regulatory Department issued its written decision under Section 38.11.
 2. The Office of Hearings and Appeals shall review the appeal according to the standards of review in Section 40.
 3. No new information or arguments shall be raised on appeal.

Section 39. Protest: Procurement Activities

39.01 Applicability

Any Aggrieved Person wishing to protest a Solicitation or Contract Award may do so in accordance with this Section.

39.02 Deadline to Submit Protests

- A. An Aggrieved Person shall submit a protest to the Procuring Party within fourteen calendar (14) days of when it knew, or should have known, of the facts giving rise to the protest.
- B. Protests based upon alleged improprieties of a Solicitation that are apparent prior to the Offer Submission Deadline or the Offer Opening shall be filed no later than the Offer Opening date.
- C. Untimely protests may be dismissed.

39.03 Form of Protest

Protests shall be in writing and addressed to the head of the Procuring Party to which the Aggrieved

Person is protesting and:

- A. Include the name, street address, electronic mail address, and telephone number of the Aggrieved Person;
- B. Be Signed by the Aggrieved Person or its authorized representative;
- C. Set forth a detailed statement of the legal and factual grounds for the protest, including copies of relevant documents;
- D. Be concise, logically arranged, and complete;
- E. Set forth all information establishing the timeliness of the protest; and
- F. State the form of relief requested.

39.04 Procuring Party Protest Decision

The Procuring Party shall, within thirty (30) calendar days of receipt of a timely protest, review a submitted protest pursuant to Sections 39.02-03 and issue the Aggrieved Person a written determination regarding the protest and describe the relief granted, if any.

39.05 Right to Appeal Procuring Party Decision

If the Procuring Party issues a decision that is averse to the Aggrieved Person, the Aggrieved Person may appeal the decision to the Office of Hearings and Appeals in accordance with Section 383 of the Procurement Act.

Section 40. Administrative review

40.01 Authority

The Office of Hearings and Appeals shall have the jurisdiction to hear and decide appeals of protest decisions under the Procurement Act and these Regulations.

40.02 Scope of administrative review

The Office of Hearings and Appeals shall have jurisdiction to review and determine de novo:

- A. Any protest of a Solicitation or Contract Award of by an Aggrieved Person;
- B. Any protest of a Debarment or Suspension by the Aggrieved Person; and
- C. Any appeal of a protest decision filed by an Aggrieved Person related to Procurement Activities or a decision by the Office of the Controller or Business Regulatory Department related to actions in 12 N.N.C. § 382.

40.03 Deadline to File an Appeal

An Aggrieved Person shall file an appeal within twenty (20) calendar days of receipt of a written protest decision.

40.04 Standard of Review

- A. The Office of Hearing and Appeals shall make a determination based on the preponderance of the evidence on the issue of whether the actions of the Procuring Party, Office of the Controller, or Business Regulatory Department were consistent with the provisions of the

Procurement Act and these Regulations.

- B. The Solicitation, Contract Award, or decision to Debar a Person shall be upheld unless it is shown by a preponderance of the evidence that the actions of the Procuring Party, Office of the Controller, or Business Regulatory Department violated a specific provision of the Procurement Act or these Regulations.
- C. The decision to Suspend a Person shall be upheld unless it is shown that Office of the Controller or Business Regulatory Department did not have a reasonable basis for Suspending the Person.

40.05 Presumed finality of decisions

Determinations by the Office of Hearings and Appeals shall be final and conclusive.

PART 9. REVIEW & AMENDMENTS

Section 41. Review & Amendments

41.01 Annual Review Required

The Office of the Controller shall review these Regulations annually, no later than the end of the first fiscal quarter and, after required consultation, recommend amendments accordingly.

41.02 How to Amend

The Budget and Finance Committee of the Navajo Nation Council may amend these Regulations at any time; or upon recommendation of Office of the Controller after consultation with the Business Regulatory Department, Department of Justice, and Office of Legislative Counsel.

Shural L. Notah, *Legislative Advisor*
Office of Legislative Services