

Sitka Tribe of Alaska
Administration Policy and Procedures
Procurement Policy and Procedure

I. Purpose and Scope

The purpose of this procedure is to establish a consistent process for conducting and documenting procurement of goods and services in order to obtain the best possible goods and services at a reasonable price, provide proper and timely delivery of services, and provide adequate documentation of our process.

This procedure applies to all expenditures of tribal money under any type of contract, agreement or other arrangement for the procurement of goods and services. This procedure shall also apply to expenditures of federal or state money by the Tribe for the procurement of goods and/or services except to the extent the specific agreement, rules, regulations, or laws governing the expenditure of such federal or state monies require or allow different standards and procedures, in which case STA will follow the applicable agreement, rules, regulations or laws. Strict adherence to this entire policy is required for all expenditures of federal or state grant money. Strict adherence of the provisions of this policy, except for the provisions of V(e) is required for all expenditures of compact money. Substantial compliance with this policy is required for expenditures of all enterprise or unrestricted money.

Nothing in this procurement procedure shall be construed to waive Sitka Tribe of Alaska's sovereign immunity. This procurement procedure supersedes Sitka Community Association Tribal Council Ordinance 84-2: Procurement Policy.

II. Authority

This procedure is created pursuant to the authority contained in the Constitution of the Sitka Tribe of Alaska, pursuant to Article VII, Section 1(f) (to authorize or direct ...Tribal employees to administer the affairs of the Tribe and to carry out the directives of the Tribal Council) and (s) (to prescribe the rules and procedures necessary to give effect to any provision of this Constitution); Budget Ordinance, Sitka Tribal Code, Title 4, Chapter 1, Section 4(c) which places a duty on the STA Finance Director to create and implement written procurement procedures; and Section 12 (which requires expenditures, contracts or commitment of tribal resources valued at \$10,000 or more to be forwarded by the Finance Committee to the Tribal Council).

III. Definitions

- (a) "Department Director" is the individual who is responsible for a department within the Tribe, including the General Manager and individuals whose responsibilities include overseeing a department.
- (b) "Goods" include supplies, materials, and equipment.
- (c) "Immediate family member" means an individual's spouse, parent, mother-in-law, father-in-law, brother, sister, brother-in-law, sister-in-law, and child (including adopted children and stepchildren).

- (d) “Sensitive property” means all property or equipment acquired that is subject to theft and pilferage. Sensitive property includes but is not limited to cell phones, laptop computers, cameras, firearms, and other items that have an acquisition cost of \$250 or more.

IV. Requirements for all procurement transactions

(a) Conflict of Interest

(1) Personal Conflicts of Interest.

(A) Standard. In addition to the provisions of STA’s Code of Conduct, no employee, Tribal Council member or agent of STA shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when an individual who is responsible for the selection, award or administration of purchasing goods or services from:

- (i) The employee, officer or agent,
- (ii) Any member of his immediate family,
- (iii) His or Her partner,
- (iv) An organization which employs, or is about to employ, any of the above, that has a financial or other interest in the firm selected for award.

A personal conflict of interest also arises where any STA employee, Tribal Council member, or agent solicits or accepts gifts, gratuities, favors, or anything of monetary value from a contractor, potential contractor, or party to a sub-agreement. In addition, a personal conflict of interest arises where any such person uses his position, or non-public information gained during his work for the grantee, for personal gain, including gain inuring to an immediate family member, partner, or current or potential employer.

(B) Procedure. At the earliest point that a STA employee, Tribal Council member, or agent discovers that the individual may have a conflict of interest with a potential contractor, whether during the planning, procurement process, or administration of the contract or purchase, the individual shall disclose the conflict of interest to their supervisor, and the selection, award, or administration task shall be reassigned to another staff person who does not have a conflict of interest. Any violation of the above referenced personal conflicts of interest may be addressed via the process outlined in STA’s Code of Conduct.

(2) Organizational Conflicts of Interest

(A) Standard. STA will prevent and ensure that its procurement activities are conducted free of organizational conflicts of interest. An organizational conflict of interest arises when

- (i) Lack of Impartiality or Impaired Objectivity. When the contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to STA due to other activities,

relationships, contracts, or circumstances or when a contractor is placed in a situation where it may have an incentive to distort its advice or decisions.

(ii) Unequal Access to Information. The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract

(iii) Biased Ground Rules. During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

(B) Procedure. STA will analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and avoid, neutralize, or mitigate potential conflicts before contract award. Examples of how organizational conflicts of interest may be addressed are: to fully disclose all information to all prospective offerors for a reasonable period of time prior to STA's receipt of proposals for the follow-on work; placing reasonable restrictions or even a prohibition on a contractor's involvement in a subsequent procurement; exercise care that specifications do not provide an unfair competitive advantage to any party; and being alert to affiliations among contractors that might give one contractor an unfair competitive advantage over others.

(b) The STA Department Director who seeks to purchase goods or services shall

(1) Ensure that the proposed procurement is allowable, reasonable and allocable according to applicable rules; and

(2) Ensure that proposed procurements avoid purchase of unnecessary or duplicative items. This shall include:

(A) giving consideration to consolidating or breaking out procurements to obtain a more economical purchase.

(B) Where appropriate, making an analysis of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(C) To foster greater economy and efficiency, considering entering into State and local intergovernmental agreements for procurement or use of common goods and services.

(D) Considering the use of federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(3) Ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Department Directors and/or designated administrative staff persons will not preclude potential bidders from qualifying during the solicitation period.

(4) Perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, department directors must make independent cost estimates before soliciting for goods or services.

(5) Ensure that STA does not discriminate on the basis of race, color, national origin, or sex in the award and performance of any contract. In addition,

(a) Unless expressly prohibited by applicable law, regulation or funding agreement, STA will provide Indian or Tribal preference in the solicitation and award of contracts and require all such contractors to comply with Indian or tribal preference in all aspects of employment and sub-contracting under the contract, according to the terms of STA's TERO ordinance (Sitka Tribal Code 05.01).

(b) STA will encourage small and women or minority-owned Disadvantaged Business Enterprises (DBEs) to respond to STA solicitations, will ensure non-discrimination in the award and administration of all contracts, will create a level playing field on which DBEs can compete fairly, and will help remove barriers to the participation of DBEs in our contracts. Firms are encouraged to afford all potential business partners an equal, non-discriminatory opportunity to compete for business as joint venture partners or subcontractors. STA will perform the following actions in support of this policy:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
- (5) Using the services and assistance of the Small Business Administration, the Minority Business Development Agency of the Department of Commerce, and other relevant state and federal agencies; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in this section.

V. Procurement Selection

(a) Competition. STA shall conduct all procurement selections for goods and services in a manner providing full and open competition by conducting procurement selections in the manner specified below.

(b) The department director who needs to procure goods and services shall develop a detailed description of the good or services to be procured. The detailed description may be (1) a complete, clear and accurate description of the design specification or technical requirements for the goods or services to be procured (which indicates that the procurement should be conducted according to sealed bid process), or (2) a detailed statement of work which lists the essential requirements to accomplish the contract, including background information about the project, an objective scope of work detailing broad parameters necessary to complete the task, a list of tasks and deliverables, a delivery schedule, acceptance and approval procedures, and other requirements of the work (e.g. references, licenses, professional certificates, packing and shipping). The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. The description shall identify all requirements which the potential contractors must fulfill and all other factors to be used in evaluating bids or proposals. If options are to be included in a procurement, they shall be detailed as such in the detailed description, and evaluated as part of the procurement selection method.

(c) In developing the detailed description of the good or service to be procured and throughout the solicitation process, STA staff shall ensure that the following restrictions are avoided:

- (1) Any specification or feature which unduly restricts competition,
- (2) unreasonable requirements on firms in order for them to qualify to do business,
- (3) Requiring unnecessary experience and excessive bonding,
- (4) Allowing for noncompetitive pricing practices between firms or between affiliated companies,
- (5) Allowing noncompetitive awards to consultants that are on retainer contracts,
- (6) Creating organizational conflicts of interest,
- (7) Allowing for any arbitrary action in the procurement process,
- (8) Allowing for the use of in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal laws expressly mandate geographic preference. Nothing in this section preempts State licensing laws. or
- (9) Specifying only a “brand name” product instead of allowing “an equal” product to be offered (when it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equal” description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by potential contractors shall be clearly stated).

(d) The General Manager may authorize the use of blanket purchase agreements so that a group of similar goods or services (e.g. computers, replacement parts or office supplies) to be purchased over a set period of time can be analyzed at once. When procuring goods under a blanket purchase agreement, the department director or designated administrative staff person must estimate the total amount of goods and the total amount of time for which the agreement will be in place. Blanket purchase agreements may not exceed a period of five years including options, without prior written approval of the funding agency. All goods that fit within the terms of the agreement must then be purchased during the set period of time under the agreement. Each Agreement should state the total dollar limit of the agreement and the maximum dollar limit per call as directed by the General Manager. All blanket purchase agreements must be procured using a procurement selection method as detailed in section (e) of this section.

(e) The department director or designated administrative staff person responsible for procurement of goods and services shall conduct procurement selection according to one of the following methods:

(1) *Minor Procurements.* Minor procurement procedures may be utilized for relatively simple and informal purchase of goods or services that cost less than \$2,500, provided that a proposed procurement is not split to avoid a more detailed method. Minor procurement procedures require the department director or designated administrative staff person to verbally obtain price or rate quotations including price, availability, and delivery costs and timing from at least three potential contractors. The designated administrative staff person will, after verifying that the contractor is responsible (see section f below), and conducting a cost analysis to compare with the cost estimate developed prior to receiving price or rate quotations to certify that the cost is fair and reasonable and that all costs are allowable according to applicable federal cost principles, determine the name of the contractor who can provide the good or service for the lowest price when all relevant factors are considered. The department director or designated administrative staff person shall create a procurement file and proceed with purchasing according to the procedure outlined in Section VI (a) and (b) below

(2) *Major Procurements.* Major procurement procedures may be utilized for relatively simple and informal purchase of goods or services that cost between \$2,500 and \$100,000. Major procurement procedures require the department director and/or designated administrative staff person to obtain price or rate quotations including price, availability, and delivery costs and timing in writing from at least three potential contractors. The designated administrative staff person will, after verifying that the contractor is responsible (see section f below), and conducting a cost analysis to compare with the cost estimate developed prior to receiving written price or rate quotations certify that the cost is fair and reasonable and that all costs are allowable according to applicable federal cost principles, and determine the name of the contractor who can provide the good or service for the lowest price when all relevant factors are considered. The department director or designated administrative staff person shall create a procurement file and proceed with purchasing according to the procedure outlined in Section VI (a) and (b) below.

(3) Procurement by *sealed bids* (formal advertising). Sealed bid procedures shall be used for procurements in excess of \$100,000 when feasible, and for procurements of less than \$100,000

when procuring construction services or other goods and services that can be described in sufficient detail, as explained in (A) below. Sealed bid procedures require that bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) will be awarded to the responsible bidder whose bid is responsive, by conforming with all the material terms and conditions of the invitation for bids, and is the lowest in price. The sealed bid method is the preferred method for procuring construction.

(A) In order for sealed bidding to be feasible, the following conditions should be present:

- (i) A complete, adequate, finite and realistic specification or purchase description is available, without any unknown or contingent circumstances;
- (ii) Two or more responsible bidders are willing and able to compete effectively for the contract; and
- (iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price without a need for further discussion or negotiations.

(B) If sealed bids are used, the department director or designated administrative staff person shall:

- (i) Publicly advertise an invitation to bid, and if possible solicit bids directly from at least three known potential contractors. The IFB must provide sufficient time to respond prior to the date set for opening the bids (thirty day minimum);
- (ii) Ensure that the invitation for bids includes a complete, adequate, and realistic specification or purchase description and incorporates, or references how to obtain, any additional information regarding the goods or services in order for the bidder to properly respond;
- (iii) Collect all responses and document the time and date received, and only consider those responses received by the time and date announced;
- (iv) Schedule and administer a time and location to publicly open all bids as prescribed in the invitation for bids;
- (v) Provide proper notice that any or all bids may be rejected if there is a sound documented reason. A sound documented reason may include, but is not limited to, (a) inadequate funding, (b) a finding that a bidder is either non-responsive or not responsible, and/or (c) if the bidder fails to submit an adequate Tribal preference plan;
- (vi) Identify the lowest responsive bidder, verify that the contractor is responsible (according to (f) of this section), and conduct a cost analysis to certify that the cost is fair and reasonable, and that all costs are allowable according to applicable

federal cost principles. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.

(vii) The department director or designated administrative staff person shall create a procurement file in accordance with Section VI (a) below, and proceed with contracting according to the procedure outlined in Section VI (b) below.

(4) Procurement by *competitive proposals*. Competitive proposal procedures shall be used for procurements of services in excess of \$100,000 when the sealed bid process is not feasible or appropriate (when the good or service to be procured cannot be described in exact terms) and for procurements of services for less than \$100,000 when the services procured are best procured using evaluation criteria (where qualifications and quality of work are as important as price). The technique of competitive proposals will normally be conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type (time and materials) contract is negotiated and awarded. If this method is used, the department director and/or designated administrative staff person shall:

- (A) Develop a Request for Proposals (RFP) which includes a complete, adequate, and realistic description of work. Typically, a RFP will include the following items: letter of transmittal, a delivery schedule to be included in the contract, the statement of work (as described in (V)(b) above), required special and mandatory contract clauses, any special instructions, a listing of evaluation criteria to be used, and their relative weights, any other information that may be required to completely understand the contents and intent of the RFP, and a due date and time frame for receipt of proposals.
- (B) Publicly advertise notice of the RFP, and if possible solicit proposals directly from at least three known potential contractors. The RFP must provide sufficient time to respond prior to the date and time set for review of the proposals (thirty day minimum);
- (C) Establish a method for conducting technical evaluations of the proposals received with a maximum evaluation score of 100. Evaluation criteria may include evaluation of factors such as (a) qualifications and experience in projects of similar size, (b) cost, (c) contractor integrity and/or ability to meet project schedule, (d) financial and technical resources, and (e) whether contractor meets Indian preference. The RFP shall incorporate, or provide reference on how to obtain, any additional information regarding the services in order for the proposer to respond. Any response to publicized requests for proposals shall be honored to the maximum extent practical provided they are submitted by the date and time due;
- (D) Collect all proposals and document time and date received, and only consider proposals received by the time and date announced;
- (E) Select a multi-disciplinary team of at least three individuals, whom do not have a conflict of interest, to evaluate the proposals based on the published evaluation criteria, and provide each individual with a copy of all proposals and score sheets to evaluate the proposals;

- (F) Schedule and administer a time and location for the team to meet to assemble scores of each team member. Scores from each team member will be added together and the potential contractor with the highest aggregate score will be selected as the proposal most advantageous to the program;
- (G) Provide proper notice that any or all proposals may be rejected if there is a sound documented reason. A sound documented reason may include, but is not limited to, (a) inadequate funding, (b) a finding that a potential contractor is either non-responsive or non-responsible, and/or (c) STA is no longer pursuing the procurement.
- (H) Perform a cost analysis to ensure the proposed contract price is fair and reasonable, and all expenses are allowable according to applicable federal cost principles.
- (I) Identify the contractor with the highest score that is most advantageous to the program who is responsible (see section f below)
- (J) The department director or designated administrative staff person shall create a procurement file in accordance with Section VI (a) below, and proceed with contracting according to the procedure outlined in Section VI (b) below.

(5) *Procurement by Competitive Qualifications (Architectural and Engineering Services)*. The federal Brooks Act requires that competitive qualification procedures shall be used for procurement of architectural and engineering services when required by the granting agency, and may be used for procurement of architectural and engineering services in other circumstances. The technique of competitive qualifications will be used for procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services (i.e. construction management, feasibility studies, preliminary engineering, design, surveying, mapping, and services which require performance by a registered or licensed architect or engineer). It cannot be used to purchase other types of services through A/E firms when A/E firms are only one potential source to perform the proposed effort.

If this method is used, the department director and/or designated administrative staff person shall:

- (A) Develop a Request for Qualifications (RFQ) which includes a complete, adequate, and realistic description of work. Typically, a RFQ will include the following items: letter of transmittal, a delivery schedule to be included in the contract, the statement of work (as described in (V)(b) above), required special and mandatory contract clauses, any special instructions, a listing of evaluation criteria to be used, and their relative weights, any other information that may be required to completely understand the contents and intent of the RFP, and a due date and time frame for receipt of qualifications. Geographic location may be used as a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract, and adequate documentation is made to the procurement file
- (B) Publicly advertise a notice of the availability of request for qualifications (RFQ), and if possible solicit qualifications directly from at least three known potential

- contractors. The RFQ must provide sufficient time to respond prior to the date and time set for review of the proposals (thirty day minimum);
- (C) Establish a method for conducting technical evaluations of the proposals received with a maximum evaluation score of 100. Evaluation criteria may include evaluation of factors such as (a) whether potential contractor has personnel qualifications necessary for satisfactory performance of the contract (b) Specialized and recent experience and technical competence related to the project, (c) Past performance in terms of cost control, quality of work, and compliance with performance schedules, and (4) whether contractor qualifies for Indian preference. The RFQ shall incorporate, or provide reference on how to obtain, any additional information regarding the services in order for the proposer to respond. Any response to publicized requests for proposals shall be honored to the maximum extent practical provided they are submitted by the date and time due;
 - (D) Collect all RFQ response and document time and date received, and only consider RFQ responses received by the time and date announced;
 - (E) Select a multi-disciplinary team of at least three individuals, whom do not have a conflict of interest, to evaluate the RFQ responses based on the published evaluation criteria, and provide each individual with a copy of all RFQ responses and score sheets to evaluate the responses;
 - (F) Schedule and administer a time and location for the team to meet to assemble scores of each team member. Scores from each team member will be added together and the potential contractor with the highest aggregate score will be selected as the firm that is most advantageous to the program;
 - (G) Provide proper notice that any or all RFQ responses may be rejected if there is a sound documented reason. A sound documented reason may include, but is not limited to, (a) inadequate funding, (b) a finding that a potential contractor is either non-responsive or non-responsible, and/or (c) STA is no longer pursuing the procurement.
 - (H) Perform a cost analysis to ensure the proposed contract price is fair and reasonable, and conduct a cost analysis to certify that the cost is fair and reasonable and that all costs are allowable according to applicable federal cost principles.
 - (I) Ensure the potential contractor with the highest score is responsible (see section f below).
 - (J) The department director or designated administrative staff person shall create a procurement file in accordance with Section VI (a) below, and proceed to negotiate a contract with the potential contractor with the highest score according to the procedure outlined in Section VI (b) below, provided that issues (or unforeseen requirements) raised during the negotiation phase by one respondent may be communicated to all remaining respondents, to allow all respondents opportunity to address the issue.
 - (K) Failing agreement on price with the potential contractor with the highest score, negotiations with the next most qualified contractor will be conducted until a contract award can be made to the most qualified contractor whose price is fair and reasonable to STA.

(6) *Procurement by noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Procurement by noncompetitive proposals is not the preferred method of procurement and may only be used in very limited circumstances as detailed below.

(A) Procurement by noncompetitive proposals may only be used when the department director and/or designated administrative staff person has documented that one of the following circumstances applies:

(i) The good or service is available only from a single source;

(ii) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(iii) After solicitation of at least three sources, only one response is received;

(iv) The federal funding agency has authorized in writing noncompetitive negotiations; or

(v) The item is an associated capital maintenance item as defined in 49 U.S.C. Section 5307(a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced. STA must first certify in writing to FTA: (i) that such manufacturer or supplier is the only source for such item; and (ii) that the price of such item is no higher than the price paid for such item by like customers.

(B) If the procurement by noncompetitive proposals process is used, the department director and/ or designated administrative staff person must conduct a cost analysis. A cost analysis requires verification of the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits to ensure that the proposed costs are fair and reasonable, and all costs are allowable according to applicable federal cost principles.

(C) The department director and/or designated administrative staff person is responsible to determine if the proposed procurement must be submitted to the awarding agency for pre-award review (generally this is only required for purchases of more than \$100,000).

(D) The department director or designated administrative staff person shall create a procurement file in accordance with Section VI (a) below, and proceed with contracting according to the procedure outlined in Section VI (b) below.

f. The designated administrative staff person, or department director, shall ensure and document verification that awards are made only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Department Directors and/or designated administrative staff person shall give consideration to such matters as organizational capacity, contractor integrity, compliance with public

policy, record of past performance, and financial and technical resources. Department Directors and/or designated administrative staff person shall ensure that STA does not enter into a contract with a party who is on the federal government's excluded party list system (which lists parties that are excluded from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits), which can be found at www.epls.gov.

VI. Process for Purchase and documentation of procurement selection process

(a) The designated administrative staff person or department director who completes the procurement selection process must utilize a file checklist in order to create and maintain a procurement file which contains records sufficient to detail all actions made during the procurement selection process, including but not limited to, cost estimate, the rationale for the method of procurement, documentation of the procurement selection method that was utilized, selection of contract type, contractor selection or rejection, cost analysis, the basis for the contract price, documentation that the selected contractor is a responsible party, the cost is fair and reasonable, all costs are allowable according to applicable federal cost principles, and if the noncompetitive method is used, any written authorization from the awarding agency.

(b) Purchasing and Contracting Procedures

(1) Purchasing Procedures for the Simple Purchase of Goods using the minor procurement method

After completing the procurement selection process and creating the procurement file, for the purchase of goods using the minor procurement method, the department director or designated administrative staff person must prepare a summary of the procurement process, and attach a copy of it to a purchase order request form in order to purchase the goods. The procurement file shall be forwarded or maintained to or by the designated administrative staff person for record keeping.

(2) Purchasing Procedures for goods using major, sealed bid or noncompetitive proposal methods

After completing the procurement selection process and creating the procurement file, for the purchase of goods using major, competitive bid or noncompetitive proposal methods, the department director or designated administrative staff person must prepare a summary of the procurement process to include in the file, which indicates the lowest responsive and responsible bidder, and forward the procurement file to the tribal attorney for review to ensure that the file contains adequate justifications, and the use of the method is in accordance with applicable federal regulations and written agency guidance, including any required written federal approvals or certifications, prior to proceeding with the purchase. If a contract is deemed necessary due to the complexity of the purchase (e.g. to ensure delivery, that the goods meet the necessary specifications, or other complexities), the tribal attorney will develop a contract according to the provisions of subsection (3) below. Otherwise, upon approval, the tribal attorney shall sign the summary, forward a copy of the summary to the department director who shall prepare a

purchase order for the purchase, and forward the procurement file back to the designated administrative staff person for record keeping.

(3) Contracting Procedures for the purchase of services or goods via blanket purchase agreements,

(i) After completing the procurement selection process and creating the procurement file, for the purchase of services or the purchase of goods via a blanket purchase agreement, the department director and/or designated administrative staff person must prepare a summary of the procurement process, prepare a draft contract and forward the procurement file, including the summary and draft contract, to the tribal attorney for review and approval, which identifies the responsible and responsive respondent that has been selected according to the appropriate process.

(ii) The tribal attorney will review the procurement file, summary and draft contract, and notify the department director or designated administrative staff person whether a contract award (if minor, major, blanket purchase agreement or sealed bid methods are used) or if negotiations may commence (if using competitive qualifications or competitive proposal methods are used). The department director or designated administrative staff person is responsible to communicate in writing with the successful potential contractor, or if applicable document the negotiations with the potential contractor. The department director shall then communicate with the tribal attorney regarding the outcome of the contact with the potential contractor, and the tribal attorney will draft or review a contract in accordance with the standards set forth in part (iv) of this section, and forward a summary of the procurement selection process and the contract to the appropriate entity for review and approval (contracts for less than \$10,000 will be forwarded to the General Manager; contracts for \$10,000 or more will be forwarded to the Finance Committee and the Tribal Council).

(iii) The tribal attorney shall maintain a list of mandatory federal clauses applicable to the various funding received by STA. A model contract template is available from the tribal attorney.

(iv) In reviewing or creating a contract, the tribal attorney shall certify that the contract has been written in accordance with applicable controlling authorities, and

(A) when determining the method of payment and overall cost of a contract:

(1) that profit has been negotiated as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

- (2) that cost or prices which are negotiated are consistent with federal cost principles, and that negotiated costs or prices are not solely based on estimated costs.
- (3) that the cost plus a percentage of cost or percentage of construction cost methods of payment are not utilized.
- (4) that the time and materials payment method is only used:
 - (i) After a determination that no other contract is suitable, and
 - (ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.
- (5) Advanced payments are not authorized under the contract, unless the prior written approval is received from the federal funding agency.
- (6) that progress payments are made based on the costs incurred to date, and that if progress payments are made for property, that title to the property is vested in STA once a progress payment is made.

(B) The contract:

- (1) Is in writing,
- (2) Is a sound and complete agreement,
- (3) Identifies interested parties, their authorities, the purpose of the contract, and the period of performance,
- (4) Clearly describes the work to be performed under the contract,
- (5) Clearly describes the process for making claims, payments to be made, and fixed terms of the contract,
- (6) Clearly describes how Indian preference will be implemented under the contract (if applicable)
- (7) Identifies the source of funding for the contract (i.e. Indian Self-Determination Act, name and number of grant and granting agency, or unrestricted enterprise funds)
- (8) Contains any terms or clauses required by the funding award document (e.g. grant agreement), or applicable federal statute or regulation.
- (9) Contains the following terms, when applicable:
 - (i) Notice of awarding agency requirements and regulations pertaining to reporting.
 - (ii) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
 - (iii) Awarding agency requirements and regulations pertaining to copyrights and rights in data.
 - (iv) Access by STA, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

- (v) Retention of all required records for three years after STA make final payments and all other pending matters are closed.
 - (vi) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. If STA reasonably expects to suffer damages from late completion of a contract and the extent or amount of such damage would be difficult or impossible to determine, STA may include a provision for liquidated damages. If a liquidated damages clause is included in a contract, the assessment for damages shall be at a specific rate per day for each day of overrun in contract time; and the rate must be specified in the contract. Any liquidated damages so recovered shall be credited to the specific department funding the contract, unless the funding agency has authorized otherwise.
- (10) when a contract is in excess of \$10,000, it contains a clause providing for termination for cause and for convenience by STA including the manner by which it will be effected and the basis for settlement.
- (11) When a contract is in excess of \$100,000, it contains the following terms:
- (i) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
 - (ii) Mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871).
- (12) when a contract is in excess of \$2,000 which is a construction contract or involves the employment of mechanics or laborers, contains the following term:
- Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5).
- (13) When a contract includes an option or options, the contract must include the terms and conditions for how the option or options are to be exercised and implemented, and the cost of the options, and a requirement that the department director at the time the option is exercised, must make a written determination that the option price is better than the prices available in the market or that the option is the more advantageous offer.

(v) Contract Administration

(A) After approval by the appropriate authority, the Tribal Attorney will forward the procurement file, along with documentation of the authorization for the purchase to the designated administrative staff person which includes a notice that a contract administration file has been created by the department director, and ensure that the department director receives a copy of the contract, in order to create the contract administration file. Upon signing of the contract by the potential contractor, the department director shall obtain a W-9 form for the contractor (unless the contractor is a corporation), and a worker's compensation certificate (unless the contractor is an individual or a sole proprietorship). The W-9 shall be forwarded to the Finance Department with the initial check request for payment. The worker's compensation certificate shall be forwarded to the tribal attorney, along with the original signed contract for the contract file.

(B) Once the contract is signed by both parties, the department director is responsible to ensure, and maintain records that demonstrate, that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders, and create a record of all official contract actions, by creating and maintaining a contract administration file. If a contractor is not complying with the terms of their contractor, the department director shall notify the tribal attorney for further action. If a contract must be modified or extended, the department director must provide notice to the tribal attorney prior to the need for modification or extension for the preparation of a contract addendum. At the completion of a contract, the contract administration file will be forwarded to the designated administrative staff person to include in the procurement file. The procurement file must be maintained for three years after the funding agreement which funded the procurement ends.

(C) If a contract contains an option, the department director at the time the option is exercised, must make a written determination that the option price is better than the prices available in the market or that the option is the more advantageous offer, and have this reviewed by the tribal attorney to ensure that all contractual obligations are met.

VII. Equipment, Supplies, and Property Acquisition, Use, Management and Disposition

(a) *Acquisition.* Upon receipt of any property or equipment which (1) has an acquisition value of greater than \$5,000 per item, (2) is defined in this policy as sensitive property, or (3) is real property, the designated administrative staff person shall enter onto the Property Management List. The designated administrative staff person shall record the date of receipt, the funding source of the purchase (including indication what percentage of the purchase was covered by federal dollars), the value of the property, mark the property with a serial number or other identification number, indicate the location where the property is to be used, and identify what individual position is responsible for the property on the Property Management List.

(b) *Title.* Title to equipment and property purchased by STA will vest upon acquisition in Sitka Tribe of Alaska. If equipment is purchased by a contractor or subgrantee of STA, title to the property will vest in the contractor or subgrantee.

(c) *Use.*

(1) Equipment and property purchased with federal funds shall be used by STA in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) STA shall also make equipment and property available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the same awarding agency. User fees may be considered if appropriate.

(3) STA must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, STA may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* STA will maintain a property management system which tracks all equipment and property listed in (a) of this section.

(1) At least annually, the designated administrative staff person shall conduct a physical inventory of all property listed on the Property Management List. During this inventory, the designated administrative staff person shall account for all property listed, note its condition, its location, and the name and position title in possession of the property, as well as its current use, and further indicate if any property cannot be located, has been lost or stolen.

(2) In addition to the annual inventory, any individual position who has been assigned a piece of equipment or personal property listed in (a) of this section will be held personally responsible for the equipment or property signed out to them. This means that if the equipment or property is lost, damaged, or stolen, the individual to whom the property was assigned will be responsible to compensate STA for the current fair market value of the property or equipment unless the damage occurred while the individual was using the equipment or property during the scope of the individual's employment, or the individual has filed a police report and provided a copy to their supervisor for the theft of the equipment or property. If at any time a piece of equipment or property which has been purchased by STA is discovered to be missing, the individual who discovers this

shall make a report to the department director in charge of the program who acquired the property. Additionally, the designated administrative staff person is responsible to investigate any reported loss, damage, or theft of property or equipment purchased by STA.

(3) The General Manager in coordination with department directors shall establish adequate maintenance procedures, checklists and schedules to keep all equipment and property in good condition.

(e) *Disposition.* When original or replacement equipment acquired is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of \$5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other Federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

(4) If STA is authorized or required to sell equipment or property, STA will ensure the highest possible return is received by the sale by comparing sale prices of similar equipment or property being offered, and offering the equipment or property for sale at no less than the fair market price of the equipment or supplies.

(5) If property or equipment is sold, STA will keep a record of the date of disposal and sale price, if any, and note this on the property management list.

VIII. Special Considerations for Construction Contracts

(a). **Bonding Requirements.** For construction or facility improvement contracts exceeding \$100,000, STA requires the following bonding:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The “bid guarantee” shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract.*

(3) *A payment bond on the part of the contractor for 50% of the contract price for contracts under \$1 million, 40% of the contract price for contracts between \$1 million and \$5 million, and \$2.5 million if the contract price is over \$5 million. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.*

(b) STA is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(c) For all Construction contracts, the tribal attorney will ensure the contract contains the following provisions:

(1) Compliance with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000)

(2) Compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair)

(3) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation)

IX. Protest Procedures

STA is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all administrative issues arising out of procurements. Federal agencies will not substitute their judgment for that of STA unless the matter is primarily a Federal concern. STA will refer violations of law by contractors to the awarding agency, and the local, State, or Federal authority having proper jurisdiction.

Any individual may protest a decision arising out of a procurement. Any protest asserting that STA has not followed these written procedures, applicable federal law or regulations when procuring goods or services shall be made in writing to the General Manager within seven days of the date of discovery of the issue. The protest shall be signed, and indicate the exact matter which is being protested. The General Manager will review the protest and respond to the

protester within fourteen days, and if necessary halt the procurement process while the protest is being resolved. If a protest of a procurement is received, the General Manager shall disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with STA before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

- (i) Violations of Federal law or regulations and
- (ii) Violations of STA's protest procedures for failure to review a complaint or protest.

Protests received by the Federal agency other than those specified above will be referred back to STA or our subgrantee.

X. Awarding Agency Review

(1) STA must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) STA will on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

- (i) The procurement is expected to exceed \$100,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or
- (ii) The procurement, which is expected to exceed \$100,000 specifies a "brand name" product; or
- (iii) The proposed procurement is more than \$100,000 and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- (v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than \$100,000.

(3) The STA General Manager may authorize a staff person to request that STA's procurement system be reviewed by an awarding agency to determine whether its system meets these standards in order for its system to be certified. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(4) STA may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from STA that it is complying with these standards. STA will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

CERTIFICATION

The foregoing Policy and Procedure was approved via motion at a duly convened meeting of the Sitka Tribe of Alaska Tribal Council held on January 5, 2011 at which a quorum was present with a vote of **7 FOR, 0, AGAINST, 0 ABSTAIN** and **2 ABSENT**, with amendments to Section V(e)(5) approved via motion at a duly convened meeting of the Sitka Tribe of Alaska Tribal Council held on June 27, 2012 at which a quorum was present with a vote of **7 FOR, 0, AGAINST, 0 ABSTAIN** and **0 ABSENT**.

Tribal Council Chairman

ATTEST:

Tribal Council Secretary