

THE MINNESOTA CHIPPEWA TRIBE

BUDGET, CONTRACTING AND PROCUREMENT ORDINANCE NO. 1

WHEREAS, The Constitution of the Minnesota Chippewa Tribe was adopted to promote the general welfare of the members of the constituent Bands of the Tribe (Article I, Section 3); and,

WHEREAS, The Constitution of the Minnesota Chippewa Tribe, gives the Tribal Executive Committee the power "to administer any funds within the control of the Tribe." (Article III, Section 1(d)); and,

WHEREAS, The Tribal Executive Committee is vested with the power to establish tribal budgets, execute contracts for the tribe, and delegate certain authorities related to such powers (Article V, Sections (d)(e) and (i)); and,

WHEREAS, Good and prudent government practices require explicit procedures and controls for the execution of such powers, and delegation thereof; and,

NOW THEREFORE BE IT RESOLVED, that the following Tribal Budget, Contracting and Procurement Ordinance is hereby adopted.

Section 1. Scope and Affect -

- A. This Ordinance governs all fiscal transactions of the Minnesota Chippewa Tribe and all Departments and Corporations thereof.
- B. The terms of this Ordinance are prospective. This Ordinance does not in any way affect the terms, validity or enforceability of any contract or agreement in effect on the effective date of this Ordinance.
- C. Additional terms and restrictions may be applied to contracts and agreements as may from time to time be required by funding agencies.
- D. Nothing in this Ordinance constitutes any waiver of sovereign immunity by the Tribe or any its six constituent Bands.

E.

Section 2. Definitions

Definitions are contained in Section 4.8

Section 3. Budget Process

A. Requirement - An annual budget for the Tribe must be approved by the Tribal Executive Committee. Any deviation from or modification of the annual budget must be consistent with the requirements of this Ordinance.

B.

Section 4. Procurement Code and Contracting

--Sections of the Contracting Procurement Code--

Part I: General Provisions, Purposes, Construction and Application

Part II: Procurement Organization

Part III: Source Selection and Contract Formation

Part IV: Specifications

Part V: Procurement of Construction Services

Part VI: Procurement of Services

Part VII: Cost Principles for Contracts of the Central Procurement System

Part VIII: Supply Management

Part IX: Resolution of Controversies

Part X: Solicitation or Awards in Violation of Law or Rules & Regulations

Part XI: Intergovernmental Relations

Part XII: Preference for Indian Business Enterprises

Part XIII: Risk Management in Procurement

Part XIV: Compliance with All Applicable Laws

PART I. GENERAL PROVISIONS, PURPOSES, CONSTRUCTION, AND APPLICATION

4.1. Authority. Pursuant to the authority granted by the MCT, the rules and regulations set forth herein have been promulgated and approved by the MCT Tribal Executive Committee.

4.2. Short Title. These rules and regulations shall be known and may be cited as the "Procurement Code of The Minnesota Chippewa Tribe".

4.3. Purposes, Rules of Construction.

a. Interpretation. This Code shall be construed and applied to promote its underlying purposes and policies.

b. Purposes and Policies. The underlying purposes of this Code are to provide The MCT with a unified purchasing system, with centralized responsibility allowing for processing of some work by delegation. This Code simplifies, clarifies and modernizes the rules and regulations governing procurement of the MCT while allowing the continued development of procurement policies and practices. This Code provides for increased economy in procurement activities and enables the MCT to maximize to the fullest extent practicable, the purchasing value of Tribal funds by fostering effective broad based competition within the free enterprise system, while ensuring fair and equitable treatment of all persons who deal with MCT Procurement. This Code provides safeguards for the maintenance of a procurement system of quality and integrity and also is intended to provide for increased confidence of MCT Tribal Members in the procedures followed by public procurement.

c. Singular-Plural and Gender Rules. In this Code, unless the context requires otherwise:

1. Words in the singular number include the plural, and those in the plural include the singular; and

2. Words of a particular gender include any gender and the neuter, and when the sense so indicates, words of the neuter may refer to any gender.

4.4. Supplementary General Principles of Law Applicable. The principles of law and equity, including the Uniform Commercial Code as promulgated by the National Conference of Commissioners of Uniform State Laws and the America Law Institute, and general laws concerning: the law relative to merchants, law relative to ethics, and law relative to contracts, agency, business entities, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy shall supplement the provisions of this Code. All contracts awarded by virtue of this Code, and all procurement of the MCT pursuant to this Code, shall be governed by and construed under the laws of the Minnesota Chippewa Tribe and applicable Federal Law.

4.5. Requirement of Good Faith. This Code requires all parties involved in the negotiation, development, performance, or administration of MCT contracts to act in good faith.

4.6. Application of this Code.

a. General Application. This Code applies only to contracts solicited or entered into after the effective date of this Code unless the parties agree to its application to a contract solicited or entered into prior to the effective date.

b. Application to Procurement. This Code shall apply to every Procurement of the MCT irrespective of the source of the funds, including federal assistance monies except as otherwise specified in Section 4.18; except that this Code shall not apply to either grants, agreements of any nature or contracts between the MCT and qualified, eligible nonprofit grantees under Section 501 of the Internal Revenue Code, or other governments. It shall also apply to the disposal of MCT supplies. Nothing in this Code or in regulations promulgated hereunder shall prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

c. Waiver of Code. The TEC may waive the provisions of this Procurement Code for good cause, prior to the solicitation of offers.

4.7. Determinations. Written determinations required by this Code shall be retained in the appropriate official contract file of the Executive Director.

4.8. Definitions.

a. The words defined in this Section shall have the meanings set forth below whenever they appear in this Code, unless:

1. Context Determines Definition. The context in which they are used clearly requires a different meaning; or

2. Definition Prescribed. A different definition is prescribed for a particular "Part" or provision.

b. Definitions.

1. Addenda means additional directions or modifications to the solicitations which are issued as separate documents after issuance of the solicitations.

2. Administrator means the Executive Director of the MCT.

3. Amendment is a method of changing the terms and conditions or requirements of a contract or agreement beyond what is specifically provided for in the contract. All amendments must be approved with equal dignity and formality as the original contract signed by the individuals holding the positions of the original signatories providing that any amendments which could cause a cumulative expenditure to exceed \$ _____ need to be approved by the TEC.

4. Award means the acceptance of a Bid, Offer, or Proposal by the MCT as provided herein. The TEC must award all contracts over the limits established in Section 4.9 with the exception of Emergency Procurement discussed in Section 4.39.

5. Board means the Tribal Executive Committee of the Minnesota Chippewa Tribe.

6. Business means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, limited liability company or any other private legal entity.
7. Competitive Selection and Negotiation is a method of procurement whereby qualified professional firms are invited to submit "Letters of Interest" and are "short listed" by an appropriately appointed evaluation committee. Discussions are held with at least the top three firms who are ranked by preference, and negotiations being initiated with the best rated firm. If negotiations are unsuccessful, they shall be terminated and negotiations shall proceed with the other firms in order of their ranking. Eventual selection is made of one firm with which negotiations take place.
8. Construction Change Order is a written order authorized by the proper authority, directing the contractor to make changes which the changes clause of the construction contract authorizes.
9. Change Order is a written order amending a Purchase Order to correct errors, omissions, or discrepancies in Purchase Orders to cover acceptable overruns and freight costs; incorporate requirements to expand or reduce the scope of goods or services ordered; or to direct other changes in contract execution to meet unforeseen field, emergency, climatic, regulatory or market conditions.
10. Contract means all types of binding agreements, regardless of what they may be called, for the procurement or disposal of supplies, services or construction.
11. Contractor means any person having a contract with the MCT.
12. Contract Administrator means the ranking managerial employee of the agency requesting items or services, or an employee expressly designated by the Executive Director. The contract administrator has the responsibility to insure that the provisions of each contract are complied with by both the MCT and the Contractor.
13. Contract Modification means any written alteration in specifications, delivery point, rate of delivery, period of performance, brand or model, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract. Such a modification if not provided for in the original contract must be effected by a formal Amendment to the Contract.
14. Construction means the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property owned or under the control of the MCT. It does not include the routine operation, repair, or maintenance of existing structures, buildings, or other real property.
15. Cooperative Purchasing means the procurement conducted by or on behalf of more than one procurement unit.

16. Cost-Reimbursement Contract means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this Code and a fee, if any.

17. Data means recorded information, regardless of form or characteristic.

18. Design/build means a single contract with a design/ build firm for the design and construction of a county construction project.

19. Design criteria package means concise, performance-oriented drawings or specifications of the project and shall include such performance-based criteria as the legal description of the site, survey information concerning the site, interior space requirements, material quality standards, schematic layouts and conceptual design criteria of the project, cost or budget estimates, design and construction schedules, site development requirements, provisions for utilities, storm water retention and disposal, and parking requirements, as may be applicable to the project.

20. Designee means a duly authorized representative of person holding a superior position.

21. Emergency means a threat to public health, welfare, safety, property or other substantial loss to the MCT.

22. Discount-from-List Contracts means those contracts whereby price is determined by applying a percentage discount from an established catalog price. This type of contract is only to be used when it is determined, by the Executive Director, that this contracting methodology is in the best interest of the MCT.

23. Employee for the purposes of this Code means an individual employed by the MCT drawing a salary or wages from the MCT, and any non-compensated individual performing personal services for the MCT.

24. Established Catalog Price means the price included in a catalog, price list, schedule, or other form that:

(a) Is regularly maintained by a manufacturer or contractor;

(b) Is either published or otherwise available for inspection by customers; and

(c) States prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

25. Excess Supplies means any supplies having a remaining useful life but which are no longer required by the using agency in possession of the supplies.

26. Expendable Supplies means all consumable supplies other than non-expendable supplies.

27. Firm Fixed-Price Contract means a contract whereby the price is fixed, not variable, for the entire life of the contract or until a set quantity of goods or services is delivered.
28. General Services means support services performed by an independent contractor requiring specialized knowledge, experience, or expertise. The service rendered does not consist primarily of acquisition of equipment or materials. Examples of general services are pest control, janitorial, laundry, catering, security, and maintenance of equipment. General Services are normally procured through Requests for Proposals or Invitations to Bid. Procurement of general services may include subjective evaluation factors of the submitting firms.
29. Governmental Agency means any agency of the Tribal, Federal, State or any local government.
30. Grant means the furnishing by the MCT or an authorized not-for-profit provider of assistance, whether financial or otherwise, to any person to support a program or activity, or the furnishing to the MCT of such assistance by another person. It does not include an award to a for-profit organization, the primary purpose of which is to procure an end product to be provided directly to the MCT, whether in the form of supplies, services, or construction. A contract resulting from such an award is not a grant but a procurement contract.
31. GSA Contracts means contracts entered into by the General Services Administration of the Federal Government (also known as GSA Schedules) and are multiple award contracts containing prices to be utilized by all Federal Government Agencies. GSA contracts also contain the most-preferred-customer clause, making the prices contained in GSA contracts equivalent with those that are given to the most preferred customer of the vendor.
32. Invitation for Bids means all documents, whether attached or incorporated by reference, utilized for soliciting formal bids.
33. Letter of Interest (Request for) is a method of selecting a vendor whereby all vendors are invited to submit a summary of their qualifications and state their interest in performing a specific job or service. From these Letters of Interest, the MCT determines which vendors shall be "shortlisted", interviewed and enter into final negotiation for a contract.
34. Lock-In means the improper construction of specifications so as to limit, unnecessarily, the number of vendors or brands that may compete on any particular procurement.
35. Mandatory Bid Amount means the dollar amount at which the formal Bid Process is required unless an exemption is provided in this Code. The Mandatory Bid Amounts are the amounts enumerated for the various categories of purchase in Section 4.9 for which approval of the Legislative Subcommittee or the TEC is required. Purchases below the Mandatory Bid Amount shall, whenever possible, be procured through informal quotations, but other informal methods may be used at the discretion of the Executive Director. The current known

requirement of any commodity or service shall not be divided to circumvent the requirement of the Mandatory Bid Amount; however, there is no requirement to aggregate all predicted amounts of any commodity or service for formal bidding. The Executive Director may deem it more beneficial or economical to purchase an annual or alternate quantity of a commodity or service at one time or to enter into an open-end contract for annual or alternate requirements, in which case if the aggregate total exceeds the mandatory bid amount, formal bid procedures shall be used.

36. May denotes the permissive. Failure to comply with "may" generally will not be a matter of responsiveness.

37. Multiple-Award Contracts means contracts which provide awards to more than one vendor for the same item. These contracts may be used by Purchasing only when it is determined by the Executive Director that the use of more than one vendor is in the best interest of the MCT.

38. Must denotes the imperative. Failure to comply with a "must" directive will generally be a matter of responsiveness.

39. Negotiations for Professional Services means the act of determining terms, conditions, and prices for the performance of professional services. An appropriately appointed negotiation committee shall negotiate with the top ranked candidate from the competitive selection of professional services firms, in an attempt to reach agreement on a contract for the provision of services to the MCT.

40. Non-Expendable Supplies means all tangible supplies having a value of over \$750 or more per unit, and a normal life expectancy of one year or more and all other tangible supplies designated as subject to formal inventory control.

41. Open-End Contract (also designated price agreement) means a contract whereby an indefinite quantity of supplies, services, or construction are to be procured over an identified time span, as and when needed. This contract has a fixed price to be applied to releases from the governmental entity.

42. Open-End Purchase Order means a purchase order whereby a Vendor provides supplies, services, or construction on demand or on a prescribed schedule not to exceed a period of 12 months or the Mandatory Bid Amount. An open-end purchase order may be used as a release and encumbrance document to authorize an agency to order any predetermined amount from an open-end contract on an as-needed basis.

43. Person means any business, corporation, partnership, individual, union, committee, club, organization, or group of individuals.

44. Procurement means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection and

solicitation of sources, preparation and award of contracts and all phases of contract administration.

45. Procurement Officer or Purchasing Agent means any person duly authorized to enter into and make written determinations with respect thereto. The terms also include an authorized representative acting within the limits of authority.

46. Professional Services means any services where the MCT is obtaining advice, instruction, or specialized work from an individual specifically qualified in a particular area. Professional service may include a report, or written advice which may be lengthy; however, the main thrust of the service is not considered labor, but the exercise of intellectual ability. The procurement of professional services does not lend itself to normal competitive bidding and price competition alone. These services shall be procured by Letter of Interest and Competitive Selection and Negotiation.

47. Proposals (Request For) R.F.P. means a solicitation for offers to provide a solution to a problem. An RFP is characterized by description of the desired results and a scale of how the proposals to obtain these results will be evaluated. RFP's include a price proposal which is a part of the evaluations. Limited negotiation on any part of the RFP is permissible. The RFP includes all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

48. Purchase Description means the words used in a solicitation to describe the supplies, services, or construction to be purchased, and includes specifications attached to, or made a part of, the solicitation.

49. Purchase Order means a purchaser's document to formalize a purchase transaction with a vendor, conveying acceptance of a vendor's proposal. The purchase order should contain statements as to quantity, description, and price of the supplies, services, or construction ordered, and applicable terms as to payment, discounts, date of performance, transportation, and other factors or suitable references pertinent to the purchase and its execution by the vendor.

50. Purchasing Agency or Purchasing Division means any organization under the control of the MCT which is authorized by this Code or its implementing regulations, or by way of delegation from the Executive Director to enter into contracts.

51. Public Procurement Units means either a Tribal, Federal, State, or local governmental unit or agency (including, without limitation, a city, school district, or special district) purchasing goods, services or construction, an external public or not-for-profit procurement unit, or the MCT.

52. Quotation (Request For) R.F.Q. is an informal request for prices normally used for procurement below the mandatory bid amount. The Request for Quotations includes all documents whether attached or incorporated by reference included in a solicitation of quotations.

53. Regulation means a governmental body's statement, having general or particular

applicability and future effect, designed to implement, interpret, or prescribe law or policy, or describe organization, procedure, practice or requirements.

54. Responsible Bidder or Offeror means an offeror who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

55. Responsive Bidder means a person who has submitted a bid which conforms in all material respects to a solicitation. A bid or proposal of a Responsive Bidder must be submitted on the required forms, which contain all required information, signatures, notarizations, insurance, bonding, security, or other mandated requirements required by the bid documents to be submitted at the time of bid opening.

56. Selection and Negotiation Committee is a group of persons appointed as provided in this Code and regulations, to rank in preferential order those professional firms interested in providing services on a particular project and to negotiate a final contract with the highest ranked firm.

57. Services means the furnishing of labor, time, and effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements but shall include both professional and general services.

58. Shall denotes the imperative.

59. Should denotes the permissive.

60. Small Purchase means any purchase below the Mandatory Bid Amount.

61. Sole Brand means the only known brand or the only reasonable brand capable of fulfilling the needs of the MCT.

62. Sole Source means the only known vendor or the only reasonable vendor capable of providing a service or commodity to the MCT.

63. Specifications means any description of the physical or functional characteristics or of the nature of a supply, service or construction item. It may include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery. Specifications may also contain provisions for inclusion of factors which will lead to the ultimate calculation of lowest total cost. Specifications will, when practical, contain Life Cycle Costing (LCC), Total Cost Concept (TCC), Value Analysis (VA), or Value Engineering (VE). All specifications shall seek to promote overall economy for the purposes intended, and encourage competition in satisfying the MCT's needs and shall not be unduly restrictive.

64. Supplies means all property, including but not limited to, equipment, materials, printing, and insurance, excluding real property.

65. Surplus.

(a) Surplus Supplies means supplies no longer having any use to the MCT. This includes, but is not limited to, obsolete or scrap material and non-expendable supplies that have completed their useful life cycle.

(b) Surplus Property means surplus personal property as that term is defined by this Code, and applicable law.

66. Using Agency or Agency means any unit or division of the MCT which utilizes any supplies, services, or construction procured under this Code.

67. Vendor means an actual or potential supplier of an item, service, or construction.

68. MCT means the Minnesota Chippewa Tribe

69. TEC means the Tribal Executive Committee of the MCT.

4.9. Purchase Authority

Signature Authorities

i) Expenditures for:

<u>Type of Expenditure or Transaction</u>	<u>Authority Amount</u>	<u>by Position</u>
a. Major investments (capital and construction-in-progress; sale/leaseback arrangements; major modifications or betterment)	Any Amt.	T.E.C.
b. Capital asset purchase	\$250 - \$15,000	Executive Director
	\$15,000 +	Legislative Subcommittee
c. Leases and rental transactions (direct and indirect)	Up to \$25,000	Executive Director

	\$25,000 +	Legislative Subcommittee
d. Business meetings and business-related social activities	Up to \$500	Div. Dir.
	\$500 - \$5,000	Executive Director
	\$5,000 +	Legislative Subcommittee
e. Consultants and representatives	Any Amt.	Legislative Subcommittee
f. Legal fees and retainers	Any Amt.	T.E.C.
ii) Business Committees and Authorizations		
a. Proposals/grant applications	Any Amt.	T.E.C.
b. Contracts/grants	Any Amt.	T.E.C.
c. Authorization to incur costs, unfunded expenditure request.	Any Amt.	Executive Director as delegated by T.E.C.
d. Procurements (excluding Consultant contracts and Subgrants)	\$0 - \$25,000	Executive Director
	\$25,000 +	T.E.C.

4.10. through 4.13. RESERVED.

PART II. PROCUREMENT ORGANIZATION

4.14. Authority of the Executive Director.

a. Principal Contracting Officer of the MCT. The Executive Director shall serve as principal procurement officer of the MCT.

b. Operational Procedures. The Executive Director may adopt operational procedures covering the internal function of the Purchasing Division and delegate rights, powers, and authority vested in him to subordinate purchasing agents and other employees.

c. Duties. Except as otherwise specifically provided in this Code, the Executive Director shall, in accordance with the regulations promulgated:

1. Procure or supervise the procurement of all supplies, services and construction for the MCT.
2. Transfer or sell surplus supplies or property to other governmental agencies within the MCT, to the public by sealed bids, public auction, trade equipment on new purchases, or dispose of property in any other method consistent with the laws of MCT.
3. Establish and maintain programs for the inspection, testing and acceptance of supplies or services.
4. Operate a central location for the purchasing, in bulk, of items which may be more economically bought and distributed than purchased on an individual basis; to provide facilities for storage of critically needed supplies and to store and dispose of surplus property.
5. Approve all assignments or delegations of purchase orders and contracts.
6. Execute all contracts within the Executive Director's approval authority, amendments thereto, and agreements delegated by the MCT for the Executive Director's execution.

4.15. Delegation of Authority by the Executive Director.

- a. The Executive Director may delegate in accordance with procedures set forth in this Code to various departments the authority to purchase specific items or classes of items, below Mandatory Bid Amount, if the Executive Director deems it more advantageous to the MCT for such designated items to be purchased by an Agency rather than by the Central Purchasing Division. Delegated purchases will be processed under the same rules, regulations and Code provisions that govern the central procurement system. Delegation of purchasing authority will only be granted at the discretion of the Executive Director after individuals within the Agency have satisfied the Executive Director that they fully understand the existing rules, regulations and Code.
- b. The Executive Director may delegate to any Agency of MCT the authority to purchase from existing Tribal contracts in any amount.

4.16. Transfer of Authority to Purchasing. Except as otherwise provided in this Code, all rights, powers, duties and authorities relating to the procurement of supplies, services and construction and central warehousing, sale and disposal of supplies, services and construction now vested in or exercised by any governmental body of MCT are hereby transferred to the Executive Director.

4.17. Authority to Contract for Certain Services. Services of legal counsel shall be obtained in accordance with Section 4.9. A proper purchase order shall be issued for the acquisition of legal services.

4.18. Exemptions. The following supplies and services are exempted from this Code; however,

they may be purchased by the Executive Director, either competitively or noncompetitively up to the Executive Director's award authority provided in this Code, as is in the best interest of the MCT, as determined by the Executive Director. Any purchase of supplies and services exempted from the Procurement Code may be made only by the TEC or by individuals specifically authorized to act for the TEC in a specific acquisition. The exempted services and supplies are:

- a. Works of art for public places, and art design and conservation services.
- b. Printed copyright material including published books, maps, periodicals and technical pamphlets (not including software for computer systems) for library purchases only.
- c. Real property, real estate brokerage and appraising, options of title or abstracts of title for real property, title insurance for real property, and other related costs of acquisition or sale of real property.
- d. Subscriptions for library purchases only.
- e. Services provided directly to individual Tribal Members.
- f. Utilities including but not limited to electric, water and telephone.
- g. Licensed health professionals, e.g., Doctors, Nurses, Veterinarians who provide services directly to patients.
- h. Expert witnesses and attorneys at law having a unique, specialized skill or knowledge of an area of legal practice as defined by law.
- i. Corporate and media sponsorship agreements up to the mandatory bid amount.
- j. Training and educational courses, contracts between the MCT and governmental entities or nonprofit corporations, memberships, publications, meeting rooms, and hotels not covered by travel arrangements when any of the procurements listed above are below the mandatory bid amount.
- k. Lectures by individuals.
- l. Services provided by governmental agencies.
- m. Continuing education events or programs.
- n. Artistic services.

4.19. MCT Procurement Regulations.

- a. **Promulgation of Regulations.** Regulations shall be promulgated in accordance with Administrative procedure by the Executive Director.
- b. **Existing Contracts Not Changed.** Regulations shall not change existing contract rights. No regulations shall change any commitment, right or obligation of the MCT or of a contractor under a contract in existence on the effective date of such regulation.

4.20. **Collection of Data Concerning Public Procurement.** The Executive Director shall cooperate with applicable professionals in the preparation of statistical data concerning the procurement usage and disposition of all supplies, services and construction. All using agencies shall furnish such reports as the Executive Director may require concerning user needs and stock on hand.

4.21. Contract Administration.

- a. **Contract Administrator.** After the award of any contract, the Agency using the service will assume the role of Contract Administrator and will insure that both the MCT and the Vendor are in compliance with all terms and conditions of the contract including maintaining current insurance certificates. The Agency will maintain a written record of performance for each contract, including adherence to delivery requirements and specifications.
- b. **Agency Maintains Delivery Information.** In cases where the Vendor does not adhere to delivery and specifications or is in technical breach of a contract, the Agency must attempt to rectify the situation with the Vendor and maintain written record of these attempts.
- c. **Purchasing Responsibility to Remedy a Breach.** In cases where the Agency is unable to rectify a breach of contract with the Vendor, the matter shall be turned over to the Executive Director, along with all documents for resolution which may include, but not be limited to, cancellation of the contract; recommendation to the TEC that the Contract be canceled; suspension or debarment; or institution, through Legal Action.
- d. **Protests from Vendors.** Vendors who believe they have been unfairly treated during the contract administration process may file a complaint with the Executive Director after appealing to the Contract Administrator. Complaints shall be submitted in writing to the Executive Director, stating the basis and facts of the protest within seven (7) calendar days after the aggrieved vendor knows or should have known the facts giving rise thereto. The Executive Director shall investigate as far as resources allow and determine the validity of the complaint.
 1. If the complaint is not resolved by mutual agreement of the Executive Director, the contract administrator, and the vendor, the Executive Director shall promptly issue a decision in writing after consulting with legal counsel as necessary. The decision shall state the reasons for the action taken.

2. A copy of this decision shall be mailed or otherwise furnished immediately to the complainant, the contract administrator, and any other party involved. The decision of the Executive Director shall constitute a final non-appealable decision of the MCT.

e. Receiving and Inspection. The Executive Director may establish procedures for the receiving and inspection of deliveries of goods and services to determine their quality, quantity, and conformance to contract provisions.

f. Audit of Procedures By Purchasing Authorized. The Executive Director may verify or audit the receiving procedures of any MCT Agency and may also assure that all Purchasing Authority delegated by the Executive Director is being performed in accordance with the delegation instructions and the requirements of this Code.

4.22. Vendor Performance Rating. The Executive Director is authorized to establish a vendor performance rating system for use in eliminating those vendors who fail to perform or perform unsatisfactorily in accordance with Section 4.119. Such rating system may be used for Vendor evaluations and awarding of contracts where applicable.

4.23. through 4.28. RESERVED.

PART III. SOURCE SELECTION AND CONTRACT FORMATION

4.29. Methods of Source Selection. All contracts shall be solicited by formal competitive sealed bidding pursuant to this Part and result in a purchase order for a firm, fixed price, except as provided in:

- a. Section 4.32. (Competitive Sealed Proposals).
- b. Section 4.33. (Small Purchases)
- c. Section 4.34. (Sole-Source Procurement)
- d. Section 4.35. (Sole-Brand Procurement)
- e. Section 4.39. (Emergency Procurement)
- f. PART VI. (Competitive Selection Procedures for Professional Services)
- g. Section 4.42. (Contract Types Allowable)

4.30. Competitive Sealed Bidding.

a. **Conditions for Use.** Offers equal to or over the Mandatory Bid amount shall be solicited by formal competitive sealed bidding except as otherwise provided in section 4.29. (Methods of Source Selection).

b. **Invitation for Bids.** An Invitation for Bids shall be issued for each solicitation for offers equal to or exceeding the Mandatory Bid Amount and shall include a purchase description, and all terms and conditions applicable to the procurement.

c. **Public Notice.** Adequate public notice of the Invitation for Bids shall be given a reasonable time prior to the date set forth therein for the opening of bids. Such notice may include publication in a newspaper of general circulation, posting on the Internet, or any other means of making requirements known to a large number of potential vendors, a reasonable time prior to bid opening.

d. **Bid Opening.**

1. **Time of Receipt.** Bids must be received by the Purchasing Division no later than the time and date identified in the Invitation for Bids. Bids received after this time for any reason shall be returned to the bidder.

2. **All Bids Unopened.** If all bids are not opened at the appropriate time and date of the bid opening, for any reason other than failure of the vendors to present their bids or cause their bid to be presented at the appropriate time, the bid opening may occur at the next regularly scheduled bid opening date. This automatic extension of the bid opening time may occur without notice to bidders if there has been no other change in requirements or specifications other than the delay of opening of the bid. Any vendor submitting a bid after the delayed original time and date, but before the next regularly scheduled time and date for bid opening, shall have the bid accepted, opened, and fully considered for award.

3. **Bids Remain Unopened After Bid Opening Time.** If, after bids have been opened, it is ascertained that one or more bids remain unopened for any reason other than the failure of a vendor or vendors to present his bid or cause to have his bid presented at the appropriate time, the remaining unopened bids shall be opened and publicly read aloud at the next regularly scheduled bid opening date and time. No additional bids will be accepted after the original bid opening date and time.

4. **Public Bid Opening.** All bids received shall be publicly opened in the presence of one or more witnesses at the time and place designated in the Invitation for Bids.

e. **Bid Acceptance and Bid Evaluation.** Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Code. Bids shall be evaluated based on the requirements set forth in the Invitation for Bids, which may include criteria to determine suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award, excluding cash discounts, shall be objectively measurable, such as trade discounts, transportation costs, and total or life cycle costs. The Invitation for Bids shall set forth

the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the Invitation for Bids.

f. Correction, Cancellation, or Withdrawal of Bids.

1. Addition to Bids.

(a) **Exceptions to Bid Requirements.** After bid opening, an otherwise low bidder shall not be permitted to delete exceptions to bid conditions or specifications which affect price or substantive obligations. However, such bidder shall be permitted the opportunity to furnish other information called for by the Invitation for Bids and not supplied due to oversight, so long as it does not affect responsiveness.

(b) **Responsibility, Determination, with Additional Information.** Bidders may be asked to provide the Executive Director with any information required to determine the responsibility of the vendor.

(c) **Waiver of Technicality.** Information shall not be considered after the bid opening if it has been specifically requested to be provided with the bid and becomes a matter of responsiveness. The bid shall be considered responsive only if it substantially conforms to requirements of the Invitation for Bids as it relates to pricing, surety, insurance, specifications, and any other matter unequivocally stated in the Invitation for Bids as a determinant of responsiveness. A minor or nonsubstantive lack of conformity on these matters may be considered a technicality or irregularity, which may be waived by the authority empowered to make the award. A minor or technical irregularity is a variation from the bid or proposal which does not affect the price of the bid or give the bidder an advantage or benefit not enjoyed by others, or does not adversely affect the interests of the MCT.

2. Correction of Bids.

(a) **Mathematical Errors.** Errors in extension of unit prices or in mathematical calculations may be corrected by the Purchasing Division prior to award. In all cases of errors in mathematical computation, the unit prices shall not be changed except in accordance with Section 4.30.f.

(b) **Correction of Non-Judgmental Errors.** A bidder shall be permitted to correct clerical, non-judgmental mistakes of fact in his bid, including unit prices, when the intended bid is reasonably proven by submission of proof of evidentiary value or is ascertained from the bid document.

(c) **Voluntary Reduction of Price.** The MCT may accept a voluntary reduction from a low bidder after bid opening, if such reduction is not conditioned on, nor results in, the modification or deletion of any condition contained in the Invitation for Bids. A voluntary reduction may not be used to ascertain the lowest responsive bid.

(d) **Unsuccessful Bidders Not Permitted to Correct Bid Mistakes.** No bidder shall be permitted

to correct a bid mistake, with the exception of mathematical computation, which would cause such bidder to have the low bid and receive an award which otherwise would go to another vendor except in accordance with the provisions of Section 4.30.f.2.(b).

(e) **Corrections After Award.** Any corrections to the benefit of the vendor of a nonjudgmental, clerical and/or mathematical bid mistake after award shall only be permitted by the awarding authority; and any correction in prices may not permit the changed price to exceed the price of the next low bid.

3. Cancellation of Bids.

(a) **Cancellation or Postponement of Bid Opening.** Any time prior to the bid opening date and time, the Purchasing Division may cancel or postpone the bid opening or cancel the Invitation for Bid in its entirety.

(b) **Rejection After Bid Opening.** After bids are open, any or all bids may be rejected by the Executive Director.

4. Withdrawal of Bids.

(a) **Bid Amendments Prior to Opening.** Any bidder may voluntarily withdraw or amend their bid at any time prior to the bid opening by providing written notice to the Executive Director that their bid should not be considered or that their bid should be amended. Amendments should be forwarded to the Purchasing Division, in the same manner as the original bid.

(b) **Bid Amendments After Opening.** After bid opening, vendors shall not be allowed to withdraw a bid in less than ninety days, or a specific time period stated in the Invitation for Bid with the following exceptions:

(1) **Nonjudgmental Mistake.** The bidder is alleging a nonjudgmental mistake of fact which is reasonably proven by submission of backup documentation of evidentiary value clearly showing that the mistake is clerical and nonjudgmental but the evidence is not clear enough for correction of unit price as provided in Section 4.30.f.2.(b).

(2) **Prima Facie Evidence of Mistake.** The bid is so outrageous as to be prima facie evidence of a bid mistake, but a mistake that cannot be corrected by correction of mathematical computation.

(c) **Unilateral Withdrawal of a Bid.** Any bidder who unilaterally withdraws a bid without permission before ninety days have elapsed from the date of the Bid Opening or a time specified in the Invitation for Bids may be debarred in accordance with the applicable provisions of this Code. The Executive Director may waive this debarment for cause.

5. **Determination of Responsiveness and Responsibility.** The determination of a non-responsive or non-responsive bidder and the permitting of withdrawals or corrections of Bids, in accordance

with the directives of this Code, shall be the duty and responsibility of the Executive Director. The Executive Director shall only recommend award or cause award to be made to the responsive and responsible offeror of the best evaluated offer. All determinations of responsiveness, responsibility or allowance for a change in or withdrawal of a Bid shall be made in writing and contained in the purchase order file.

4.31. Award.

a. Award Authority.

1. A contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and award criteria set forth in the Invitation for Bids. If a specific basis of award is not established in the Invitation for Bid, the award shall be to the responsible bidder with the lowest responsive bid meeting the written specifications.

2. All awards for amounts per annum, under the specific categories of purchase, as enumerated in Section 4.9 for which approval of the Legislative Subcommittee or the TEC is required shall be awarded by, as provided, the Legislative Sub-Committee or the TEC, except as otherwise provided herein. All awards under the amounts per annum, under the specific categories of purchase, as enumerated in Section 4.9 for which approval of the Legislative Subcommittee or the TEC is required shall be made by the Executive Director or as provided in Section 4.9. Any contract, exceeding those amounts, under the specific categories of purchase, as enumerated in Section 4.9 for which approval of the Legislative Subcommittee or the TEC is required shall be awarded by, as provided, the Legislative Sub-committee or the TEC, on a multi-year basis with the same vendor, is to be awarded by the Legislative Subcommittee or the TEC, as provided. All awards made pursuant to Section 4.36, Procurement from Contracts of Other Governments and Published Catalogs; Section 4.54, Standardization; and Section 4.135, Cooperative Purchasing; shall be made by the Executive Director.

3. Sole source and emergency procurements shall be exempt from application of any MCT preferences.

b. Execution of Formal Two-Party Contracts.

1. All contracts awarded by the TEC shall be signed by the President, and Treasurer, or as otherwise provided.

2. The Executive Director shall have the ability to sign on behalf of the MCT any agreement or contract for any procurement as provided in Section 4.9.

c. Tie Bids. If two or more bidders are tied, the tie may be broken and the successful vendor selected by the following criteria presented in order of importance and consideration.

1. Quality of the items or services bid if such quality is ascertainable.
2. Delivery time if provided in the bid by the bidders.
3. Location of the vendor.
4. Preference for purchase from a vendor other than a manufacturer.
5. If items #1.-4. are not applicable, the award will be decided by drawing of lots or flipping a coin.

d. **Authority to Reduce Scope of Construction Projects and Negotiate.** In the event all bids for a construction project exceed available funds, as determined by the Executive Director, and the low responsible bid does not exceed such funds by more than 5%, the Executive Director is authorized, where time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate, or to designate a person to negotiate for the MCT, an adjustment of the bid price, including changes in the bid requirements of the low, responsive and responsible bidder, in order to bring the bid within the amount of available funds.

e. **Authority to Award to Second Low Bidder After Cancellation of Contract.** If within 90 days after bids are opened, or any period bids are required to remain firm as prescribed in the Invitation for Bid, the Contract of the lowest responsible vendor is canceled, the Awarding Authority may elect to award the contract to the next low responsible bidder. After the 90 day period or alternate period prescribed in the Invitation to Bid, the Awarding Authority may award to the next low responsible bidder provided:

1. A determination is made that it is in the best interest of the MCT to award based on the present bids rather than rebid, and
2. The next low responsible bidder agrees, in writing, to the extension of the bid price for the additional period of time.

f. **Contract Extension.** All invitations for bids for Open-End contracts shall, when practical, provide for an extension of the contract for a time period up to the amount of the original time period, upon mutual consent of the buyer and seller and a written analysis by the Purchasing Division that renewal is in the best interest of the MCT.

g. **Price Adjustment.** Contract may be awarded with provisions for upward or downward price adjustments provided this allowance is part of the original bid solicitation and the adjustments are based on a nationally recognized or published index or other criteria acceptable to the Executive Director.

h. **Cancellation of Solicitation.** A request for solicitations may be canceled and/or any or all responses to solicitations may be rejected in whole or in part when it is in the best interests of the MCT. The reasons therefore shall be made part of the Purchasing file. After solicitations are

opened, such rejection shall be made by the Executive Director.

4.32. Competitive Sealed Proposals.

a. **Conditions for Use.** If it is not practical nor advantageous to procure any specific supplies, services or construction by competitive sealed bidding, the Executive Director may determine that the use of competitive, sealed proposals may be used.

b. **Request for Proposals.** Proposals shall be solicited through a request for proposals which should state as near as possible the functional or performance specifications for the end results being sought. Proposals shall be received, opened, and processed in the same manner as bids discussed in Section 4.30.d. Requests for proposals may be corrected, withdrawn, and canceled in the same manner as bids discussed in Section 4.30.f.

c. **Public Notice.** Adequate public notice of a Request for Proposal shall be given in the same manner as provided in Subsection 4.30.c., Competitive Sealed Bidding - Public Notice.

d. **Evaluation Factors.** The Request for Proposals shall state the relative importance of all evaluation factors, including price, in an exact numerical fashion, stating the number of points each evaluation factor may receive. In addition, certain items may be rated in accordance with their importance and classified as mandatory, desirable, or highly desirable. Only criteria disclosed on the solicitations may be used to evaluate the items or services proposed.

e. **Discussion with Responsible Offerors and Revisions to Proposals.** As provided in the Request for Proposal, discussions may be conducted with responsible offerors whose submitted proposal is determined to be reasonably susceptible of being accepted for award, for the purpose of clarification to assure full understanding of responsiveness to the solicitation requirement. Offerors shall be afforded fair and equal treatment with respect to any opportunity for discussion and revision of proposal and such revisions will be permitted after submissions and prior to award for the purpose of obtaining best and final offers.

f. **Award of Proposals.** Award shall be made to the responsive, responsible offeror whose proposal is determined, in writing, to be the most advantageous to the MCT, taking into consideration the evaluation factors set forth in the Request for Proposals. The contract file shall contain the reasons for the award, including the evaluations of all persons rating the proposals.

4.33. **Small Purchases.** Any procurement below the mandatory bid amount may be made by the Executive Director provided that procurement requirements shall not be artificially divided so as to constitute a small purchase under this section. Small purchases may be made by the Purchasing Division or delegated to any department or division qualifying for such delegation due to their understanding and ability to utilize the procurement system.

4.34. **Sole Source Procurement.** A contract within the award authority of the Executive Director may be awarded for supplies, services or construction without competition when the Executive

Director or his designee, determines in writing there is only one source or one reasonable source for the required supply, service or construction. A Sole Source Procurement above the award authority of the Executive Director must be approved and awarded by the TEC or the Legislative Subcommittee, as provided in Section 4.9, after solicitation of offers in any manner deemed to be in the best interest of the MCT by the Executive Director.

4.35. Sole Brand Procurement. A contract within the award authority of the Executive Director may be awarded for supplies, services or construction, limiting competition to a sole brand if the necessity for this brand is certified in writing by the Executive Director or his designee. A Sole Brand Procurement above the award authority of the Executive Director must be approved and awarded by the TEC or the Legislative Subcommittee, as provided in Section 4.9, after the Executive Director solicits quotes, bids, RFP's, RLI's or uses any other method of procurement that the Executive Director deems advantageous to the MCT.

4.36. Procurement from Contracts of Other Governments and Published Catalog Prices. The Executive Director may purchase directly, without bid or quotations, from GSA contracts, or from offers exactly equaling GSA contracts from vendors awarded such GSA contracts, or from Tribal, Federal, state or local contracts when the contract expressly permits or if the awarding jurisdiction and/or the vendor agree to allow the MCT to purchase therefrom.

4.37. Open-End Contracts. The Executive Director shall issue open-end contracts as necessary and reasonable, based on competitive bids. The estimated annual usage shall govern the proper authority for awards of these contracts; however, if the estimate should prove inaccurate, the awarded contract is valid and the awarding authority shall be changed to conform with the historical information available during the next bidding of the contract.

4.38. Open-End Purchase Orders.

a. The Executive Director may issue an open-end purchase order based, if possible, on competitive quotations to procure items on an as needed basis provided the aggregate amount is below the Mandatory Bid Amount and the order is not issued for over a twelve month period of time.

b. The Executive Director may issue a purchase order for any amount to encumber funds from which an agency may order items covered by an open-end contract.

4.39. Emergency Procurements.

a. The Executive Director or his designee may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, safety, property, or other substantial loss to the MCT. All emergency procurements shall be made with such competition as is practical under the circumstances. The department director of the division requesting the emergency shall provide, prior to the issuance of a purchase order, a written account of the emergency, detailing the complete circumstances of the emergency situation and the probable

consequences if an emergency procedure is not instituted. If other than a low vendor is selected, there shall be a written determination by the Executive Director or his designee in the contract file as to why the mathematically low vendor was not selected.

b. Any emergency procurement exceeding the award authority of the Executive Director shall be reported to the TEC along with a written account of the emergency circumstances from the Department Director of the using agency, to be noted for the record. Any increase over the original amount of an emergency procurement reported to the TEC, exceeding 10% (ten percent) must be reported to the TEC to be noted for the record.

c. The TEC shall declare a valid public emergency for any Professional service.

4.40. Direct Purchases from Open-End Contracts. The Executive Director may issue orders, including open-end purchase orders and open-end contracts, or authorize agencies to issue orders direct to vendors for items covered by open-end contracts awarded by Tribal Governments located within the State of Minnesota, The State of Minnesota or its cities, counties or other local units of government, GSA contracts, or other public procurement units.

4.41. Determination of Nonresponsibility.

a. The written determination of nonresponsibility of an offeror, including a bidder or proposer, must be made in writing by the Executive Director or the Director's designee. The unreasonable failure of an offeror to supply information in connection with an inquiry into responsibility may be grounds for a determination of nonresponsibility of such a bidder, offeror, proposer, or vendor. In awards made by the TEC, the Executive Director's determinations under this section shall be advisory, and the TEC's determinations shall be final.

b. The Executive Director or the Director's authorized designee may, within a reasonable time period after bid or proposal opening, request additional information of the offeror concerning his or her responsibility to perform and the offeror may voluntarily, after bid opening, provide additional or corrective information concerning his or her responsibility as a vendor. Notwithstanding the foregoing, the Executive Director or designee cannot consider additional or supplemental information provided by a bidder, offeror, proposer or vendor which amends, alters, explains, varies or contradicts unequivocal statements or false or misleading statements made by a bidder, offeror, proposer or vendor to render that bidder, proposer, offeror or vendor responsible. The Executive Director shall consider this and all other information gained prior to the time of the award or rejection in making his or her determinations of award and/or recommendations concerning award to the TEC.

c. The awarding authority may consider any unresolved concern regarding an offeror, including a bidder or proposer, prior to making an award. At any time prior to award, the awarding authority may find that an offeror is not responsible to receive a particular award. The awarding authority may consider the following factors, without limitation: debarment or removal from the authorized vendors list or a final decree, declaration or order by a court or administrative hearing

officer or tribunal of competent jurisdiction that the offeror has breached or failed to perform a contract, claims history of the offeror, performance history on a MCT contract(s), an unresolved concern, or any other cause under this Code and Tribal law for evaluating the responsibility of an offeror.

4.42. Types of Contracts.

a. Any type of contract or procurement method which will promote the best interest of the MCT may be used, including incentive fee contracts, provided that the use of a cost plus a percentage of cost contract is prohibited. Any type of procurement method may be utilized to obtain any professional service, general service, or commodity at the discretion of the Executive Director. A type of contract other than firm, fixed price may be used only when a determination is made by the Executive Director that such contract is likely to be less costly than the firm, fixed price contract or that it is impractical to obtain the supplies, services or construction required by the firm fixed price contracting method.

b. The use of rotating lists shall be authorized for the procurement of services which have sufficient variables in their pricing equation to preclude detailed specifications and firm lump-sum pricing or to those services provided by businesses which do not normally provide competitive quotations on professional, ethical, or other grounds.

c. The MCT should use, except in projects with undefined scope, a stipulated lump sum method of compensation in contracts for architectural/engineering services. This subsection shall not apply if there is a written determination made by the using agency director that a lump sum type of compensation is not viable for the specific project, or an element of a specific project.

4.43. Specific Period. Unless otherwise provided by law, a contract for supplies or services may be entered into for any time period deemed to be in the best interests of the MCT, provided the extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for future fiscal periods shall be subject to the availability of funds.

4.44. Approval of Contracts by Competent Legal Counsel. All formal multiple party contracts covered by this Code above \$5,000 shall be approved as to form by competent legal counsel, prior to award by the Executive Director, or his designee, or the recommendation of award. This requirement for approval as to form does not include any contract whereby an offer is made in response to a solicitation from the MCT and an acceptance is made pursuant to the terms and conditions contained in the solicitation. This requirement in no manner prohibits the Executive Director from requesting approval as to form and legal sufficiency from competent legal counsel for any transaction of the Purchasing Division.

4.45. Advance Payments.

a. The MCT may make advance payments not to exceed one (1) year to vendors for maintenance

or service contracts based upon the following schedule when it would be economically efficient to do so or when the vendor offers a discount for advance payments:

<u>Contract Amount</u>	<u>Payments</u>
\$0 to \$2,000	Total advance payment up to 1 year
\$2,001 to \$4,000	Semiannual payments
\$4,001 to \$8,000	Quarterly payments
\$8,001 and over	Monthly payments

b. The Executive Director shall approve advance payments in accordance with the above requirements and internal procedures.

c. If the Executive Director determines that it would be in the best interest of the MCT to exceed the prepayment list limits set forth above, the vendor shall be required to obtain a bond guaranteeing performance whenever the \$2,000.00 advance payment limit is exceeded.

d. The following commodities are specifically exempted from the Advance Payment prohibitions:

1. Insurance and Bonding.
2. Software licenses, software maintenance, and software support services.
3. Subscriptions.
4. Memberships.
5. Registrations.

4.46. Change Orders. Changes to contracts issued by the Executive Director may be made by issuance of a Change Order (and other related contractual documents, if any). Except as otherwise provided in this Code, the Executive Director may issue Change Orders to correct errors, omissions, or discrepancies in contract documents; cover acceptable overruns and freight costs; incorporate requirements to expand or reduce the scope of goods or services ordered; or to direct other changes in contract execution to meet unforeseen field, regulatory, or market conditions.

4.47. Amendments. Any changes to a contract that alter the terms and conditions of the contract or provide for a change in the scope of the contract must be contained in a formal amendment to

the contract.

4.48. Addenda. Any additional directions or modifications to the Invitation to Bid or Request for Proposal shall be issued as separate documents identified as changes to the Invitation to Bid or Request for Proposal. In order for a Bidder or Proposer to be considered responsive, all addenda must be signed and returned with the bid or Proposal unless the Addenda explicitly provides otherwise.

4.49. through 4.52. RESERVED.

PART IV. SPECIFICATIONS

4.53. Open Competition Required. The Executive Director shall strive to assure that all specifications issued by the MCT provide for free and open competition among all vendors and preclude a lock-in of any brand or vendor, unless items are purchased under sole source or sole brand provisions. Any specification may eliminate some vendors or brands if the vendor or brand does not meet the legitimate needs of the MCT.

4.54. Standardization.

a. The Executive Director is responsible for the standardizing of types of commodities used throughout the MCT by writing and promulgating standard specifications or incorporating standard specifications in contracts for use by all MCT agencies.

b. The Executive Director may recommend to the TEC for purchases equal to or over \$x00,000 that any brand or source of supplies or services be standardized as the only brand or source of service or commodity that will be purchased for a particular agency or open Competition among distributors of a standardized brand will be attained if possible. However, the Executive Director may purchase directly, without competition, from a standardized, sole source or obtain as much competition as possible, in any method determined by the Executive Director to be in the best interest of the MCT, any standardized sole brand commodity or service.

c. The Executive Director will promulgate procedures for annual review of all standardized items exceeding \$x00,000 per year.

4.55. Relationships with Using Agencies. The Executive Director shall obtain expert advice and assistance from personnel of using agencies in development of specifications and standardization of commodities. The Executive Director will review specifications written by Agencies to assure that the specifications allow for open and free competition, and that those specifications which eliminate some brands or vendors do so to reasonably meet the needs of the MCT.

4.56. Exceptions to Standardized Items. If any MCT Agency believes they would be better served by purchasing a brand or service different than contained in an existing MCT contract or items standardized by the Executive Director or the TEC, they may request that an exemption to

the standardization be granted by the Executive Director.

4.57. **Application of Requirements for Nonrestrictiveness of Specifications.** Requirements of this Part regarding the purpose and nonrestrictiveness of specifications shall apply to all specifications including but not limited to those prepared by architects, engineers, designers and draftsmen for public contracts.

4.58. through 4.62. RESERVED.

PART V. PROCUREMENT OF CONSTRUCTION SERVICES

4.63. **Authority to Contract for Construction Services.** The authority for contracting for construction services is vested in the TEC, and shall be exercised through the provisions of the Procurement Code.

4.64. **Responsibility for Selection of Methods of Construction Services.** The Executive Director shall use the best method available for obtaining and implementing construction contracting which may include:

a. General Contractor.

b. Construction Management.

c. Multiple prime contractors managed by:

1. A designated general contractor.

2. Construction manager.

d. Design Build.

e. Government furnished materials for Construction Contracting. Note that when this method of Construction Contracting is utilized, an automatic waiver of this Procurement Code for the purchase of the materials is granted by the TEC.

f. Any other commonly accepted construction method utilized by government or industry which may be used to the benefit of the MCT.

4.65. **Adoption of Construction Specifications Institute (CSI) Manual of Practice.** The CSI Manual of Practice is adopted by the MCT as a standard body of guidance for use in the development and administration of construction contracts to the degree that it does not contravene existing applicable law. It is not intended that the contents of the CSI Manual of Practice be a directive, but rather that its recommendations, suggestions, and other contents be used as a focal point for increasing the uniformity and quality of the practices and procedures of the MCT concerning its subject matter.

4.66. Bonds and Security Requirements.

a. Bid Security.

1. Requirement for Bid Security. Bid security shall be required on all competitive sealed bidding for construction contracts when the price of the project is estimated to exceed a specific amount to be determined by the TEC. The bid security shall be a bond provided by a surety company authorized to do business within the State of Minnesota, or the equivalent in cash, certified check, cashiers check, unconditional letter of credit issued by a domestic bank authorized to do business in the State of Minnesota, or an alternate form of security for the same purpose subject to the same conditions and in a form reviewed and recommended by the MCT Attorney as the bid security.

2. Amount of Bid Security. Bid security shall be in a percentage amount determined by the Executive Director of the total amount of the bid exclusive of alternates.

3. Rejection of Bids for Noncompliance with Bid Security Requirement. When the invitation for bids require bid security, noncompliance requires the bids be rejected unless it is determined that the bid fails to comply in a non-substantial manner with the security requirements. Failure to supply bid security with the bid at the time of the bid opening shall automatically disqualify the bidder as non-responsive to the requirements.

4. Withdrawal of Bids. After bids are opened, they shall be irrevocable for the periods specified in invitation for bids, except as provided in Section 4.30.f.4.(b) of this Code. If a bidder is permitted to withdraw its bid before award, no action shall be taken against the bidder or the bid security.

b. Contract Performance and Payment Bonds. When a construction contract is awarded in excess of an amount to be established by TEC, the following bond or security shall be delivered to the MCT and shall become binding on the parties upon the execution of the contract.

1. A performance and payment bond satisfactory to the MCT, executed by a surety company authorized to do business in the State of Minnesota or otherwise secured in a manner satisfactory to the MCT in an amount equal to 100% of the price specified in the contract shall be presented to the MCT prior to issuance of a contract document.

2. In lieu of a performance and payment bond the MCT may accept cash, money order, certified check, cashiers check, or irrevocable letter of credit in the amount of 100% of the contract price. Such alternate form of security shall be for the same purpose and shall be subject to the same conditions as a performance and payment bond.

3. Reduction of Bond Amount. The Executive Director may reduce or eliminate the amount of performance and payment bonds required on a specific contract valued up to \$x00,000. The

reasons for such reduction shall be contained in the permanent purchasing file. Disclosure of the reduction shall be present in the Invitation for Bids. In the event of Reduction of Bond Amount, adequate retainage will be required.

4. Authority to Require Additional Bonds. Nothing in this section shall be construed to limit the authority of the Executive Director to require a performance bond or other security in addition to those bonds or in circumstances other than those specified in this Code.

4.67. Insurance Requirements. All construction contracts shall contain requirements for the protection of the MCT through sufficient insurance as specified by staff specializing in Risk Management. The form of all such insurance certificates shall be approved by staff specializing in Risk Management, prior to the issuance of purchase orders confirming the award of a construction contract.

4.68. Indemnification. All contractors shall indemnify and save harmless the MCT, its officers, agents and employees from any injuries or damages received by any person during any operations connected with the construction project, by use of any improper materials, or by any act or omission of the Contractor or his subcontractor, agents, servants or employees.

4.69. Forfeiting of Bonds. All contracts for construction services shall contain a clause allowing termination on default of the contractor and providing that in such cases the surety company shall bear the responsibility for the completion of the contract, or if no surety company has provided a performance bond, the MCT may claim the alternate to the performance and payment bond and use such funds for the completion of the contract.

4.70. Termination for Convenience. All construction contracts for the TEC shall contain clauses allowing for the termination of the contract for convenience and prescribe methods in which the vendor may calculate cost of work already performed, and termination settlement costs.

4.71. Liquidated Damages. All construction contracts over an amount to be established by the TEC shall require liquidated damages provisions contained therein that provide for an amount reasonable to the project be deducted from payment to the contractor for failure to complete the project within the contract time frame.

4.72. Modification of Required Clauses. The Executive Director, with the recommendation of competent legal counsel, may add, delete or vary clauses in construction contracts as may be necessary to obtain the best proposal for the MCT.

4.73. Right of Construction Contract Change.

a. Field Orders. The Executive Director may approve and issue Field Orders setting forth written interpretations of the intent of contract documents and ordering minor changes in contract execution providing the field order involves no change in contract sum or contract time

and an architect or engineer co-signs the Field Order.

b. **Supplemental Instructions.** Architects and engineers either employed by or under contract with the MCT for construction contracts for which they have some level of supervisory or monetary responsibility may approve and issue supplemental instructions in writing orders, instructions, or interpretations, provided they make no major change in contract interpretations, contract execution, and involve no change in contract sum or contract time.

c. **Change Orders.** The MCT shall have the right, based on a clause contained in each construction contract, to require changes in quantities, additions or deletions of work or other changes within the original intent of the contract. Each construction contract shall have an initial amount budgeted for change orders equal to 5% of the total contract amount which can be administratively approved. Any larger percentage must be approved by the TEC. All changes to construction contracts must be approved in advance in accordance with the value of the change order or the calculated value of the time extension. All contract change orders of \$xx0,000.00 or more shall be approved, in advance, by the TEC.

d. **Amendments.** All changes to construction contracts that alter the terms and conditions of the contract or provide for a change in scope of the project beyond the original intent, must be contained in a formal amendment to the contract. Such an amendment must be approved with equal dignity and formality as the original contract and signed by the individuals holding the positions of the original signatories.

4.74. through 4.76. RESERVED.

4.77. Design/Build Contracts.

a. The design criteria package must be prepared and sealed by a reasonable and prudent design criteria professional. This design professional may be a MCT employee or may be selected utilizing the procedures outlined in the Code.

b. Requests for Proposals shall be sent to all interested firms requesting that their qualifications, proposed design (solution to a construction project) and price be submitted at a time certain to the Purchasing Division to be opened and treated as a normal response to a Request for Proposals. The Request for Proposal shall contain a design criteria package as defined by Subsection 4.8.b.21 of this Code and all other pertinent requirements for the job, including preference for Indian Businesses, insurance requirements, and the method of evaluation which shall state the factors, e.g., price, technical design, and the percent (weight) of each evaluation factor towards the final award. All proposed designs and price proposals shall be submitted in a separate sealed envelope, either simultaneously or as requested after short-listing, to be opened and considered by the Committee for shortlisted firms only.

c. The evaluation, selection and negotiating committee shall review all proposals and shall shortlist to no less than three (3) firms based on the qualifications, availability, and past work of

the firms, including the partners or members thereof. Once the Committee has shortlisted to three firms, the Committee shall open the separate envelopes containing the proposed design solutions and the price submitted by the shortlisted firms. The Committee shall then rank the shortlisted firms based upon the factors set forth within the Request for Proposal. The committee may, if necessary, require verbal presentations from all firms in order that the qualifications and/or proposals may be clarified.

d. After the Committee has ranked the three or more short listed firms based upon the award criteria set forth within the Request for Proposal, and advised the TEC of the results of the ranking, the Committee shall attempt to negotiate a contract within the parameters of the design criteria package and in accordance with Subsections 4.85.c.10. and 11. of this Code.

e. If an emergency situation is declared by the TEC, a negotiating committee may be formed by the TEC and authorized to negotiate with the best qualified design/build firm for the design and construction of a capital project. Such contract shall be handled as a Letter of Interest.

4.78. through 4.81. RESERVED.

PART VI. PROCUREMENT OF SERVICES

4.82. Policy. It is the policy of the MCT to publicly announce through the Purchasing Division all requirements for professional services and other selected goods or services, and to award contracts on the basis of demonstrated capability and qualifications at a fair and reasonable price with the ultimate selection based on the best interest of the MCT and maximum value received.

4.83. Selection and Negotiation Committee.

a. Each committee for competitive selection and negotiation for professional services in amounts as enumerated in Section 4.9 shall be recommended by the Executive Director and appointed by the TEC, with the TEC having the option to name at least one member of the TEC serving on the committee as a voting member, if one or more TEC members expresses an interest in serving.

b. Each committee for competitive selection and negotiation for professional services will be appointed by the Executive Director. Membership of committees constituted under this subsection shall consist of MCT staff.

c. The best interest of the MCT is served by as expedient a competitive selection, competitive negotiation, and contracting process as is practicable in the procurement of services. Each Selection and Negotiation Committee constituted under the provisions of this Code may proceed to conduct its scheduled and otherwise necessary business as soon as a quorum is present at such meeting.

4.84. Selection and Negotiation Committee Composition.

a. All Selection and Negotiation Committees shall be comprised of not less than three (3) members.

b. The voting members of the Committee may include:

1. One or more TEC Member(s) if the Committee is appointed by the MCT as required under Section 4.83.a.

2. The Executive Director, or his or her authorized designee.

3. Other voting members may have a significant financial concern, interest in the project, or special expertise and shall be selected as permitted by the parameters set forth below:

(a) No more than two voting members shall be from the same department.

(b) No manager shall serve on a Negotiation Committee with any individual from the same department who is under his direct supervision, without written permission from the Executive Director.

(c) No person from the private sector shall be a voting member of the committee, except when contractual arrangements require the participation of the private sector.

(d) The Committee Chair shall provide recording support to all Selection/Negotiation Committee meetings including making a tape recording and providing a summary of the minutes of the proceedings.

c. For Selection and Negotiation Committees on which at least one (1) member of the TEC serves, the number of members needed to establish a quorum shall be equal to the number of members of the particular Selection and Negotiation Committee who are not members of the TEC except in no event shall a quorum be less than three (3) members. In all other instances, a majority of the members of the committee shall constitute a quorum, except in no event shall a quorum be less than three (3) members. Once a quorum is established, a Selection and Negotiation Committee meeting may start without regard to the absence of any other Selection and Negotiation Committee members. Any TEC Member may attend the Selection and Negotiation Committee meeting by audio interactive telephone conference, including voting; however, no one attending the meeting by audio interactive telephone conference may be counted as establishing a quorum.

4.85. Procurement of Architectural, Engineering, Testing, Landscape Architectural, and Land Surveying Services.

a. File of qualifications for Firms. In the procurement of professional services the Executive Director shall encourage firms engaged in the lawful practice of their professions to submit at least annually a statement of qualifications, performance data and pricing structure. This

information shall be held in the Purchasing Division and shall become part of the basis for selection of professional firms to serve the MCT. This list of qualifications shall contain the types of services provided by each firm, the staff available, and their areas of specific expertise.

1. Letters of Interest; Solicitations. Each time a requirement or group of requirements is to be procured, a Request for Letters of Interest will be sent to all firms having filed qualifications with the Executive Director. Such Request for Letters of Interest will define the general insurance requirements. In addition, the Requests for Letters of Interest will request them to:

(a) Express their interest in obtaining the particular job.

(b) State the staff proposed for the particular project including, if applicable, joint ventures and Indian participation.

2. Advertisement. The Purchasing Division shall publicly announce to interested firms, the project and request Letters of Interest to be submitted.

3. Review of Qualifications. A duly appointed Selection Committee shall review all qualifications and submittals of those firms responding with a Letter of Interest.

4. Short List. The Selection Committee shall reduce the number of firms (short list) to at least three (3) for further discussions. In short listing the three (3) firms, the Committee shall attempt to select the best qualified firms for the particular project by using a method established by the Committee prior to the issuance of the Request for Letters of Interest.

5. Discussions. The Committee shall hold discussions with all short listed firms. Such discussion may encompass formal presentations by each firm. The requirements of presentations or discussion will be the same for each firm short listed.

6. Ranking of Firms. The voting members of the Selection and Negotiation Committee, after discussions and/or presentations by each short listed firm, will vote on the final ranking. The ranking of firms shall indicate the Committee's view of the firm that will best serve the interest of the MCT with factors considered such as the ability of professional personnel; whether a firm is a certified Indian business enterprise; past performance; willingness to meet time and budget requirements; location; recent, current, and a projected workload of the firm; and the volume of work previously awarded to each firm by the MCT.

7. Ranking Reported to the TEC. On completion of the selection process, the committee shall report the ranking of the firms to the Executive Director who shall immediately advise the members of the TEC in writing of the three or more firms selected and their ranking in order of preference.

8. Negotiations Proceed if No Concern Expressed by TEC. If no Member of the TEC indicates concern with the selection or ranking within five working days of the date of transmittal, the

Selection and Negotiation Committee will proceed with negotiations.

9. Procedure if a Concern is Expressed. If one or more Members of the TEC have concerns which cannot be resolved without impacting the selection or ranking, a motion shall be placed before the TEC to approve the selection and ranking and negotiation shall not proceed until the TEC has taken approving action.

10. Negotiations. The Committee may, after five (5) consecutive business days of notification of the ranking by the MCT TEC, attempt to negotiate with the highest ranked firm to perform services at a compensation which the Committee determines to be fair and reasonable. If the Committee is unable to negotiate a satisfactory contract with the firm obtaining the highest ranking, negotiations with that firm shall be formally terminated. The Committee then shall undertake negotiations with the second ranked firm. If these negotiations also prove unsatisfactory, negotiations shall again be terminated and the Committee will negotiate, in turn, with each firm in accordance with its ranking by the Committee, until an agreement is reached or the short list is exhausted. When a short list is exhausted, a new solicitation for Letters of Interest must be initiated.

11. Award of Contract. At the successful conclusion of negotiations, a contract, written by competent legal counsel, will be awarded and signed by the TEC based on the recommendations of the Selection and Negotiation Committee.

d. Emergencies. The TEC is empowered to declare the purchase of professional consulting services to be an emergency. After such declaration the TEC may direct that any part or all of the procedure mandated in this Code be eliminated in accordance with the necessity of the situation.

4.86. Professional Services Above Mandatory Bid Amount.

a. Professional services and other selected goods or services above Mandatory Bid Amount or which are listed and are below the dollar limits, or for which a procurement method is not specified, shall be procured by Letters of Interest whenever practicable under the same procedures as services as set forth in this Code. The Executive Director may select alternate methods of acquisition as necessary, including two-step requests for letters of interest or other solicitations for purchases or services whereby a separate price envelope is requested with the submission and is only opened after short-listing. The shortlisted firms will be ranked after their presentations, which may include discussion of their price proposals. In addition, the Selection/Negotiation committee may negotiate simultaneously with each firm and request best and final offers before giving rankings to the firms. The committee may proceed to negotiate the final contract with the best ranked firm if there are no objections from the TEC to the rankings.

b. All general services above Mandatory Bid Amount whereby a price and other criteria may be quantitatively evaluated may be acquired by Invitations for Bid or Request for Proposals, or Letters of Interest. The request for proposals shall indicate the evaluation criteria and how the

evaluation is to be made. The award of all general services shall be made by the appropriate awarding authority.

c. Award. All formal multi-party contracts above the award authority of the Executive Director shall be awarded by the TEC and signed by the President and Treasurer, or as otherwise provided by the TEC.

4.87. Requirements of Letters of Interest. Letters of Interest shall be obtained by the Purchasing Division in one of the following methods:

a. Procurement Equal to or Exceeding Mandatory Bid Amount. Unless otherwise provided by general law, procurements estimated to be equal to or to exceed the Mandatory Bid Amount shall be procured by formally advertising Requests for Letters of Interest and the responses received as a formal bid.

b. Procurement Less Than Mandatory Bid Amount. Procurements estimated to be less than the mandatory bid amount may be procured by requests for letters of interest in writing, but without advertising.

4.88. Purchases of Professional Service. The Executive Director is authorized to enter into multiple award, open-end, fixed, or any other legal contracts for professional services.

a. Multiple Award Contracts. If multiple award contracts are issued, the using Division Director may select the vendor most capable and advantageous to the MCT to perform the needed services and request the Purchasing Division to issue a purchase order covering the total amount of the contract.

b. Single Award Contracts. A single award contract for professional services may be obtained by:

1. The using Division Director his or her designee reviewing all qualifications presently on file with the Purchasing Division or requesting solicitation by Purchasing of Letters of Interest.

2. A selection and negotiation committee appointed by the using Division Director selecting a minimum of three firms which are qualified and willing to enter into a contract with the MCT.

3. The Committee shall rank the three firms in order of preference and so notify the Executive Director in writing for inclusion in the formal contract file. The ranking may be made from the written qualifications or the using Division Director or Selection and Negotiation Committee may request formal presentations. If presentations are required, at least three firms must be given the opportunity to make a presentation.

4. The Executive Director or the Committee shall enter into negotiations for a formal contract

with the highest ranked firm. If the Executive Director or the Committee is unable to conclude a contract with the highest ranked firm, they shall formally terminate negotiations and proceed to the second highest ranked firm and so forth until the list is exhausted. The Executive Director shall then review again the qualifications of firms on file with the Purchasing Division or the Negotiation Committee shall review the responses to the Letter of Interest solicited by the Purchasing Division or the Negotiation Committee shall review the responses to the Letter of Interest solicited by the Purchasing Division to determine if suitable firms are available for consideration. If no other firms can reasonably be considered, Purchasing shall be requested to proceed to issue a Request for Letters of Interest.

c. Award of Contract. Upon review of the Committee's recommendation, the Executive Director may issue a purchase order confirming a formal agreement written by competent legal counsel and signed by the vendor. The Executive Director is hereby empowered to sign such contracts on behalf of the TEC.

4.89. Emergency. The Executive Director is authorized to procure professional services in emergency situations under the same conditions and procedures as applied to other emergencies.

4.90. Sole Source Professional Services. The awarding authority shall be empowered to enter into a contract with a particular provider of professional services if no other firm or individual may reasonably perform said services for the MCT.

4.91. Testing Services. Professional Testing Services may be purchased by the establishment of a Rotating List for purchases above or below the Mandatory Bid Amount. The award must be made by the TEC and the contracts signed by the President and Treasurer or individual specifically indicated by the TEC.

4.92. Reimbursable Items. Each negotiation committee shall consider reimbursable items as necessary or desirable for each contract under consideration. If a contract is to contain reimbursable items, the contract shall have a limitation as to the types of reimbursables included and the monetary amount to be paid by the MCT. Consultants shall not be paid a markup for the payment of cost to sub-consultants where overhead has been applied as part of the contract. Specific guidelines and requirements for reimbursables shall be promulgated by the Executive Director.

4.93. Formality of Receipts of Letters of Interest and Requests for Proposals. All formally solicited Requests for Proposals or Requests for Letters of Interest shall be treated as formal invitation for bids. Any submission received after the date and hour of closing for receipts shall be rejected and returned to the submitter unopened, if possible, marked late receipt.

4.94. Changes to Negotiated Contracts.

a. Any changes, including, without limitation, any amendments to a contract negotiated under the provisions of this Code (which are not specifically allowed in the contract) shall be in the

form of a formal amendment approved by the appropriate awarding authority as indicated in Section 4.31. The amendment shall be prepared and executed with equal dignity and formality as the original contract.

b. MCT staff is authorized to negotiate amendments or changes to contracts in conformity with the requirements of this Code as set forth below. Any amendment or change by staff shall be subject to review and approval by the Selection/Negotiation Committee, if any, and the awarding authority.

c. In any case where the amendment is \$x0,000 or more, the amendment must be approved by the awarding authority, and the approval shall be based upon negotiation by the Selection/Negotiation Committee or the incumbents in the positions originally appointed to the Selection/Negotiation Committee or its authorized delegates from staff. When negotiation authority is not explicitly delegated to staff by the Selection/Negotiation Committee, the Executive Director shall report, in writing, its desire to negotiate with the firm, including the full scope of the proposed negotiations, to each member of the Selection/Negotiation Committee prior to any negotiation. Staff may proceed to negotiate an amendment only if there is an affirmative indication from the majority of the members of the Selection/Negotiation Committee.

d. In any case where the amendment is less than \$x0,000, negotiations may be conducted by the Executive Director or designee and the amendment shall not require approval of the Selection/Negotiation Committee; however, the amendment must be approved by the awarding authority.

e. In cases of architectural/engineering services contracts for capital construction projects, amendments may be negotiated by the Executive Director when the amount is less than \$x0,000. The Executive Director may negotiate amendments more than \$x0,000 but less than \$x0,000 only two (2) times in the life of any architectural/engineering services contract for capital construction. In any case, the amendments must be approved by the awarding authority.

f. The Executive Director may negotiate amendments to the scope of services and time of performance, as long as the monetary limits of Section 4.9., and other provisions of this Code, are adhered to.

g. All continuing engineering contracts providing for issuance of Work Authorizations for work of a specified nature on projects identified after creation of the continuing contract, shall establish limits on the value of Work Authorizations which may be negotiated by the Executive Director without the Selection/Negotiation Committee's approval before submission to the TEC. In no event shall the Executive Director negotiate a Work Authorization under such continuing contract for a project with a total estimated construction cost in excess of \$x million, or for professional fees in excess of \$x00,000 per Work Authorization. If the Executive Director determines that either limit must be exceeded for operational purposes, the Executive Director must bring the request to the Selection/Negotiation Committee, which will negotiate or approve such change as an amendment to the original contract, and submit the recommended negotiated

change in accordance with existing rules and procedures to the TEC for approval.

4.95. through 4.99. RESERVED.

PART VII. COST PRINCIPLES FOR CONTRACTS OF THE CENTRAL PROCUREMENT SYSTEM

4.100. Applicability.

- a. Except as otherwise provided for herein or in explicit provisions of particular contracts of concern, the principles herein shall govern the allowability of costs incurred by the contractor in all contracts of the MCT which explicitly provide for payment based on incurred costs such as cost-plus and cost-reimbursable contracts and contracts of other types which provide for cost reimbursement for selected portions of the contract.
- b. To the degree practicable, these principles shall also govern the determination of the allowability of estimated costs in the settlement of canceled or terminated contracts of the MCT.
- c. These principles are not applicable to costs for which fixed unit or lump sum prices are explicitly stated in contracts or for which prices are fixed by law or regulation.

4.101. Allowable Costs.

- a. The total costs allowable for reimbursement on a contract at any given time are the sum of the allowable direct costs actually incurred in the performance of the contract in accordance with its terms; plus indirect costs, administrative overhead, and profit only to the degree and in the manner explicitly specified in the particular contract of concern; and less all applicable credits to the MCT.
- b. Direct costs shall be allowable for reimbursement to the extent that they are reasonable, allocable, accounted for in accordance with generally accepted accounting principles, accounted for in a manner consistent with the contractor's usual accounting practices in charging costs to its other activities, not unlawful under any applicable statute and not precluded from allowability by any other provision herein or of the particular contract of concern. Travel expenses shall be reimbursed in accordance MCT travel policies.
 1. Reasonableness of Direct Cost. A direct cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by an ordinary prudent person in the conduct of competitive business. In determining the reasonableness of a given cost, consideration shall be given to:
 - (a) Whether the cost is of the type generally recognized as ordinary and necessary for the conduct of the contractor's business or the performance of the contract.

(b) Whether the cost is one that a prudent businessperson would incur under the circumstances, considering his responsibilities to the owners of the business, employees, customers, the MCT, and the general public.

(c) The restraints inherent in and requirements imposed by such factors as generally accepted sound business practices; arm's length bargaining; Tribal, federal, state, and local laws and regulations; and the contract terms and conditions.

(d) Significant deviations from the contractor's established practices which may unjustifiably increase the contract costs.

(e) Any other relevant circumstances.

2. Allocability of Direct Costs. A direct cost is allocable if it is incurred in the course of performance of the contract in accordance with its terms; is assignable or creditable in accordance with the relative benefits received to one or more cost objectives or other work units used solely to accumulate and measure direct costs for the particular contract; and is not otherwise charged to the contract.

3. Direct Material Costs. Direct material costs (costs of all supplies, including raw materials, parts, and components, whether acquired by outside purchase, or acquired by transfer from within the firm(s) under the control of the contractor) which are acquired in order to perform the contract are allowable, subject to the following:

(a) Material costs shall include adjustments for all available discounts, refunds, rebates, and allowances which the contractor reasonably should take under the circumstances, and for credits for proceeds the contractor received or reasonably should receive for salvage and material returned to a supplier.

(b) Allowances for all material transferred from within the firm(s) under the control of the contractor shall be on the basis of costs incurred by the transferor except when:

(1) The contractor's established practice is to price such material at the transferor's current sales price to its most favored customer for a like quantity under similar payment and delivery conditions; and

(2) The price is established by either an established catalog price or by the lowest price offer obtained as a result of competitive sealed bidding or competitive negotiations conducted with other businesses which normally produce the items in similar quantities.

4.102. Cost Not Allowable. The following costs are not allowable unless explicitly provided for in the particular contract of concern:

a. Indirect costs.

- b. Overhead costs.
- c. All mileage for ground transportation in excess of the rate prescribed by the MCT for reimbursement of its own employees.
- d. All advertisement costs except those solely for recruitment of personnel, the procurement of scarce items, and the disposal of scrap and surplus materials.
- e. All bad debts including losses arising from uncollectible accounts and other claims, such as dishonored checks, employee advances, and related collection and legal costs.
- f. Unsupported general contingency costs.
- g. Entertainment costs to include amusements, social activities, and incidental activities relating thereto, such as meals, beverages, lodging, transportation, and gratuities.
- h. All interest, fines, and penalties paid on delinquent taxes.
- i. All other fines and penalties except those incurred as a direct result of compliance with a specific provision of the contract.
- j. All gifts, contributions, and donations.
- k. Losses incurred under other contracts.
- l. All federal income taxes and federal excess profit taxes.
- m. All taxes from which the contractor could have obtained an exemption, but failed to do so (except where the administrative costs of obtaining the exemption would have exceeded the tax savings realized).
- n. Litigation costs (filing fees, legal fees, expert witness fees, and all other costs involved in litigating claims in court or before an administrative board), except when incurred to protect the interest of the MCT and approved in advance by the MCT.
- o. Pre-contract costs incurred prior to the effective date of the contract directly pursuant to and in anticipation of the award of the contract.
- p. Costs incurred in preparing, submitting, and supporting bids and proposals.
- q. Actual losses which could have been covered by permissible insurance or were expressly covered by self-insurance.

4.103. Cost Data Certification and Supporting Documentation. Cost data provided in any cost proposals must be certified by the contractor to be accurate, complete, and current to the best of

his knowledge and belief. Invoices for incurred costs must be documented by paid receipts, copies of checks, or other evidence that the costs were actually incurred.

4.104. MCT's Right to Audit Books and Records. The MCT has the right to audit the books and records of any contractor under any contract, except when they are totally based on a firm, fixed price. Such books and records must be maintained by the contractor for a period of three years from the date of final payment under the prime contract.

4.105. Compliance with Federal Requirements. In contracts which are financed in whole or in part by Federal grant funds, all requirements set forth in the grant documents or in the law, rules, and regulations governing the grant, including federal cost principles, shall be satisfied. To the extent that they differ from those of the MCT, the cost principles of the grantor shall be used.

4.106. through 4.111. RESERVED.

PART VIII. SUPPLY MANAGEMENT

4.112. Relocation of Excess Supplies Within the MCT. The Purchasing Division shall have the authority to authorize relocation of excess supplies within the MCT and set reasonable price for reimbursement to the accounts of the relinquishing division from the accounts of the acquiring division.

4.113. Disposal of Surplus.

a. The Executive Director shall have power to sell or dispose of surplus supplies by public auction, competitive sealed bidding, trade-in, or other appropriate methods in conformance applicable law. All sealed bidding shall be processed under the requirements of this Code as applicable. No employee directly participating in the disposition of the supplies shall be entitled to purchase any such supplies.

b. An alternative procedure for the disposition of surplus personal property owned by the MCT, is hereby adopted as part of the Code and deemed as being incorporated by reference herein. All items of surplus personal property shall have been declared surplus by the MCT TEC or its designee, the Executive Director in the manner provided by law. In implementing this provision, the following essential concepts shall be followed in the disposition of surplus personalty:

1. Except as provided in subsection 5 herein, all surplus personal property which is proposed for donation to a 501 (c)(3) nonprofit civic, charitable, educational, scientific, or cultural association or entity which primarily serves the public health and welfare shall, regardless of market value, be subject to the express approval of the TEC by enabling motion or resolution.

2. Surplus personal property, regardless of fair market value, may be disposed of without bids to the Constituent Bands of the MCT as approved by the TEC.

3. Surplus property shall be sold to the public and private business entities, for value, to the

highest and best bidder following an auction or the submission of sealed bids.

4. Surplus personal property without commercial or market value may be destroyed in a manner approved by the Executive Director and in conformity with applicable laws.

5. Surplus property with a current value of less than \$5,000.00 may be sold directly, without bid or auction, for fair market value, or donated as approved by the Executive Director, to a 501(c)(3) nonprofit, civic, charitable, educational, scientific, cultural association or entity which primarily serves the public health and welfare, school or governmental agency. Under this subsection the Executive Director may not, in any fiscal year, donate surplus property with a cumulative fair market value of \$x,000.00 or more to any one association or entity without MCT TEC approval. The Executive Director shall report donations and sales under this subsection from time to time to the MCT TEC.

6. After lost and found articles of clothing become MCT property in accordance with applicable law, they will be donated to nonprofit organizations.

7. All donation requests or requests for a direct nonauction, nonbid sale must be on official letterhead stationery of a 501 (c)(3) nonprofit organization which primarily serves the public health and welfare, or governmental unit, as applicable, and be addressed to the Executive Director. The donation request will include an explanatory statement as to how the surplus personal property will be used for the promotion of the health, welfare and public interest of the community. The statement must include a signed affidavit stating that all nonprofit or governmental organizations agree not to resell or auction or dispose of donated personal property for one (1) fiscal year after its receipt, excluding, however, articles of clothing.

4.115. through 4.117. RESERVED.

PART IX. RESOLUTION OF CONTROVERSIES

4.118. Authority To Resolve Protested Solicitations and Proposed Awards.

a. Right to Protest. Any actual or prospective bidder or offeror who has a substantial interest in and is aggrieved in connection with the solicitation or proposed award of a contract which is in excess of the award authority of the Executive Director may protest to the Executive Director. Protests arising from the decisions and votes of Selection/Negotiation Committees shall be limited to protests based upon alleged deviation(s) from established Selection/Negotiation Committee procedures set forth in this Code existing written Selection/Negotiation Guidelines.

1. Any protest concerning the bid specifications or requirements must be made within seventy-two (72) hours from the time the facts become known and, in any case, at least twenty-four (24) hours prior to the bid opening. Such protest must be made in writing to the Executive Director. Failure to timely protest bid specifications or requirements is a waiver of the ability to protest the specifications or requirements.

2. Any protest, after the bid opening, shall be submitted in writing within seven (7) calendar days after such aggrieved person having a substantial interest knows or should have known the facts giving rise thereto.

b. Any actual or prospective bidder or offeror who is aggrieved in connection with the solicitation or proposed award of a contract which does not exceed the amount of the award authority of the Executive Director, may protest to the Executive Director. The protest shall be submitted in writing within three working days from the time the recommendation for award is made by the Executive Director.

c. Any actual or prospective bidder or offeror who is aggrieved in connection with the solicitation or proposed award of a purchase order based on verbal quotation may protest to the Executive Director anytime during the procurement process, up to the time of the award of the purchase order, but not after such time.

d. Authority to Resolve Protests. The Executive Director shall have the authority to settle and resolve a protest of an aggrieved offeror, actual or prospective, concerning the solicitation or award of a contract.

e. Decision. If the protest is not resolved by mutual agreement, the Executive Director shall promptly issue a decision in writing, after consulting with competent legal counsel. The decision shall:

1. State the reasons for the action taken.

2. Inform the protestant that the decision of the Executive Director constitutes a final non-appealable decision of the MCT.

f. Distribution. A copy of this decision shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.

g. Decision Final. Any Decision rendered hereunder by the Executive Director shall be considered a conclusive and final act of the MCT with no right of appeal.

4.119. Authority To Debar or Suspend.

a. Authority. After reasonable notice to the person or company involved and reasonable opportunity for that person or company to be heard, the Executive Director, after consultation with competent legal counsel, shall have authority to debar or suspend a person or company for cause from consideration for award of future contracts. The debarment shall be for a period commensurate with the seriousness of the cause(s), and shall continue for the entire time set by the Executive Director. Where the offense is willful or egregious, an indefinite term of debarment may be imposed. The Executive Director shall also have the authority to suspend a person or company from consideration for award of contracts if there is probable cause for

debarment. If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period. The Executive Director may suspend the person or company for a period of not more than three (3) months. During the period of debarment or suspension, the person or company and its affiliates, or other companies with any of the Officers or principals the same as the suspended company, may not bid on any MCT contracts, regardless of dollar amount, nor be approved as a subcontractor on any MCT contract. A decision to suspend by the Executive Director shall be considered a conclusive and final act with no right of appeal.

b. Cause for Debarment. The causes for debarment include the following:

1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
2. Conviction under Tribal, state or federal statutes of 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 contractor.
3. Conviction under Tribal, state or Federal antitrust statutes arising out of the submission of bids or proposals.
4. Violation of contract provisions, as set forth below, of a character which is regarded by the Executive Director to be so serious as to justify debarment 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 performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
5. Refutation of an offer by failure to provide bonds, insurance or other required certificates within a reasonable time period.
6. Refusal to accept a purchase order, agreement, or contract, or to perform thereon provided such order was issued timely and in conformance with the offer received.
7. Presence of principals or corporate officers in the business of concern, who were principals within another business at the time when the other business was suspended or debarred within the last three years under the provisions of this section.
8. Violation of the ethical standards set forth in applicable law.

9. Any other cause the Executive Director determines to be so serious and compelling as to affect responsibility as a MCT contractor including debarment by another governmental entity for any cause listed in this Code.

c. Decision. The Executive Director shall issue a written decision to debar or suspend. The decision shall:

1. State the reasons for the action taken.
2. Inform the protestant that the decision of the Executive Director constitutes a final non-appealable decision of the MCT.

d. Distribution. A copy of this decision shall be mailed or otherwise furnished immediately to the debarred person and any other party intervening.

E. Decision Final. Any Decision rendered hereunder by the Executive Director shall be considered a conclusive and final act of the MCT with no right of appeal.

4.121. Reinstatement.

a. Application. A debarred person may only be reinstated upon submission of an application to the Executive Director. Each application for reinstatement (after the term of debarment has been completed) shall include the following information:

1. The name, address and telephone number of the party making the request or the party's representative.
2. A statement of the financial responsibility of the company.
3. A statement of facts indicating how the circumstances which led to the debarment have been cured.
4. A list of jobs completed during the two years prior to the reinstatement application.
5. A list of all departments of the MCT for which the person has performed work.

b. Grounds. Request for reinstatement during the period of debarment shall be made in writing based upon the following.

1. Discovery of new and material evidence not previously available.
2. Dismissal of the indictment or reversal of the conviction.
3. Bona fide change in ownership or management sufficient to justify a finding of present

responsibility.

c. Procedures. The determination whether to reinstate shall be based on the written submission of evidence, without further hearing. Upon consideration of the written submission, the Executive Director shall make a determination whether or not reinstatement is warranted.

1.122. Termination of Contract. Rescission of Award. Termination of any contract or rescission of award must be made by the awarding authority; and, in all cases where the TEC takes this action, it must be based upon the Executive Director's recommendation. The Executive Director will examine the circumstances and reasons behind the breach of contract, or other reasons for rescission or termination, and determine if there is a solution possible in the situation. If a breach of contract occurs, or rescission of award or termination of contract is necessary, the Executive Director may suspend or debar the subject vendor for failure to perform under the terms of the Procurement Code.

4.123. through 4.125. RESERVED.

PART X. SOLICITATION OR AWARDS IN VIOLATION OF LAW OR RULES AND REGULATIONS

4.126. Applicability of this Part. The provisions of this Part apply where it is determined administratively or upon administrative or judicial review that a solicitation, proposed award, or award of a contract is in violation of law or rules and regulations.

4.127. Remedies Prior to an Award. If prior to award it is determined that a solicitation or proposed award of a contract is in violation of this Procurement Code or rules or regulations, the solicitation or proposed award shall be:

- a. Canceled; or
- b. Revised to comply with the rules or regulations.

4.128. Remedies After an Award. If after an award it is determined that a solicitation of award of a contract was in violation of this Code or rules and regulations, then:

a. Good Faith of Vendor. If the person awarded the contract has not acted fraudulently or in bad faith:

1. The contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the MCT, or
2. The contract may be terminated in a manner designed to eliminate any damages to the contractor.

b. Bad Faith of Vendor. If the person awarded the contract has acted fraudulently or in bad faith:

1. The contract may be declared null and void, or
2. The contract may be ratified and affirmed if such action is in the best interest of the MCT. Such action does not prejudice the MCT's rights to such damages as may be appropriate.

4.129. Disclaiming Responsibility for Improper Purchasing. The TEC may disclaim responsibility and liability for any expenditure or agreement for expenditure arising from a procurement made in its name, or the name of any governmental body under its authority by an unauthorized person or any person acting outside this Code or their authorization or delegation as provided for by this Code. The expense of any such disclaimed transaction will become the personal liability of the individual who acted improperly.

4.130. through 4.134. RESERVED.

PART XI. INTERGOVERNMENTAL RELATIONS

4.135. Cooperative Purchasing.

a. Cooperative Purchasing Authorized.

1. Scope.

(a) The MCT may either participate in, sponsor, conduct, or administer cooperative purchasing agreements for the procurement of any supplies, services or construction with one or more local public procurement units or external procurement units, in accordance with an agreement entered into between the participants. Such cooperative purchasing may include but is not limited to joint or multiple party contracts between public procurement units and open-end contracts which are made available to local public procurement units. The actual award shall be made by the appropriate awarding authority of the MCT. The awarding authority is hereby authorized to award purchases or contracts that are the result of cooperative purchasing agreements or that have been awarded by a local public procurement unit or external procurement unit as long as generally acceptable standards of public procurement have been followed.

(b) The awarding authority is authorized to enter into any cooperative purchasing agreement with a local procurement unit or any public procurement unit for the purpose of joint procurement of goods or services. Such purchases will be made using the terms and conditions of the Co-op lead agency or the Co-op accepted terms and conditions which may not follow all requirements of the Procurement Code, but follow generally accepted public procurement principles.

2. The Purchasing Division is expressly authorized to directly purchase from contracts generated by the constituent Bands of the MCT, the State of Minnesota, and the General Services

Administration of the Federal Government, as well as other units of the Federal Government . Such purchases are to be in accordance with the terms and conditions of the contract held by the Tribal, State or Federal entity.

b. Sale, Acquisition or Use of Supplies by a Public Procurement Unit. The MCT may sell to, acquire from or use any supplies or services belonging to a local public procurement unit or external procurement activity, independent of the requirements of this Code, with the award made by the appropriate awarding authority.

c. Public Procurement Units in Compliance with Code Requirements. Where a local public procurement unit or external procurement activity administer a cooperative purchase activity complying with the generally accepted public procurement principles, the MCT division participating in such a purchase shall be deemed to have complied with the Code.

d. Contract Controversies. Any controversies concerning the award or processing of a contract which has been entered into on a cooperative basis shall be remedied under the rules and regulations of the entity advertising the contract.

e. Authority to Enter into Contract awarded by Other Governmental Units. The Executive Director shall have the authority to enter into a contract awarded by a public procurement unit if the public procurement unit and/or the vendor agree to such an award of their contract and the procurement was accomplished under generally accepted public procurement principles. The actual award of such a contract shall be made by the applicable awarding authority.

4.136. through 4.140. RESERVED.

PART XII. Indian Preference

4.141. Policy. The MCT has determined that the MCT shall take affirmative action to increase the participation of Indian business enterprises in all MCT procurements administered through the Code, to include, as appropriate, the use of annual goals for the procurement of all classes of goods and services, goals on individual contracts and set-asides.

4.142. through 4.146. RESERVED.

PART XIII. RISK MANAGEMENT IN PROCUREMENT

4.147. Bid or Proposal Security.

a. Bid Security Allowed on any Solicitations. The Executive Director may require a Bid Security for any Bid Invitation or Request for Quotation issued by the MCT. The security shall be a bond provided by a surety company authorized to do business in the state of Minnesota or the equivalent in cash, certified check, cashiers check, irrevocable letter of credit or an alternate form of security for the same purpose, subject to the same conditions and in a form

recommended by competent legal counsel as a bid security.

b. Amount of Bid Security. Bid security shall be a percentage amount determined by the Executive Director of the total amount of the bid.

c. Rejection of Bids for Noncompliance with Bid Security Requirements. When the solicitation requires security, noncompliance mandates the bids be rejected, unless it is determined that the bid fails to comply in a non-substantial manner with the security requirements. Failure to supply bid security with the bid at the time of the bid opening shall automatically disqualify the bidder as non-responsive to the requirements.

d. Withdrawal of Bids. After bids are opened, they shall be irrevocable for 90 days or a period specified in the invitation for bids, except as provided in Section 4.30.f.4(b) of this Code. If a bidder is permitted to withdraw its bid before award, no action shall be taken against the bidder or the bid security.

4.148. Performance and Payment Bonds.

a. Bonds Required When Deemed Necessary by Purchasing. Performance and payment bonds or equivalent acceptable security shall be required at the discretion of the Executive Director.

b. Bonds Must be Delivered Prior to Issuing Contract Document. If required, a performance and payment bond satisfactory to the MCT, executed by a surety company authorized to do business in the state of Minnesota or otherwise secured in a manner satisfactory to the MCT shall be presented to the MCT prior to issuance of a contract document.

c. Substitutes for Bonds Acceptable. In lieu of a performance and payment bond, the MCT may accept cash, money order, certified check, cashier's check, or irrevocable letter of credit. Such alternate form of security shall be for the same purpose and shall be subject to the same conditions as a performance and payment bond.

d. Reduction of Bond Amount. The Executive Director may reduce the amount of performance and payment bonds required on a specific contract. Disclosure of the reduction shall be present in the Invitation for Bids.

e. Authority to Require Additional Bonds. Nothing in this section shall be construed to limit the authority of the Executive Director to require a performance bond or other security in addition to those bonds, or in circumstances other than those specified in this Code.

4.149. Indemnification. All contracts for services shall provide that the contractor shall indemnify and save harmless the MCT, its officers, agents and employees from any injuries or damages received by any person during any operations connected with the contract, or by use of any improper materials or by any act or omission of the contractor or his subcontractor, agents,

servants or employees.

4.150. Insurance Requirement.

a. The Risk Management Division or an individual specializing in risk management will review, as requested, special conditions and instructions to bidders for the solicitation of bids or quotations for supplies, services, or construction. Staff with special knowledge in Risk Management will complete a sample certification reflecting the insurance requirements which shall be contained in the solicitation documents.

b. Upon awarding of a bid or quotation, a specialist in risk management will review insurance certifications, approving those which comply with the requirements of the solicitation. Non-approved certifications will be returned to the Purchasing Division with the reasons for non-approval and instructions as to how the certification may be corrected. The Risk Management Division or individual specializing in risk management will advise the Purchasing Division of cancellation or failure to maintain insurance upon receipt of notification. The Purchasing Division shall not allow any contract to continue without proper insurance in effect after they have been so notified of the lapse of the requisite insurance.

4.151. Solicitation for Insurance. All solicitations for insurance will contain a section that requires the proposers to divulge to the MCT the commission they are receiving for the insurance being proposed.

4.152. through. 4.155. RESERVED.

PART XIV. COMPLIANCE WITH ALL APPLICABLE LAWS

4.156. Law and Grant Requirement. If any situation where compliance with this Code will place the MCT in conflict with federal law or the terms of any grant, the MCT shall comply with such Federal law, grant requirements, or authorized regulations which are mandatorily applicable and which are either not reflected in this Code or are contrary to provisions of this Code.

RESOLUTION 60-02

WHEREAS, the Minnesota Chippewa Tribal Executive Committee is the duly elected governing body of the Minnesota Chippewa Tribe, comprised of six member reservations (Bois Forte, Fond du Lac, Grand Portage, Leech Lake, Mille Lacs, and White Earth); and

WHEREAS, the Minnesota Chippewa Tribe is a sovereign government possessing all inherent powers and authorities of a government; and,


WHEREAS, in the exercise of its sovereign governmental authorities, the Minnesota Chippewa Tribe must, from time to time and on a regular basis, purchase and procure goods and services; and

WHEREAS, in order to assure consistent, fair and scrupulous procurement of necessary good and services, the Tribal Executive Committee has determined that an Ordinance governing Tribal procurement would be a prudent means of defining policies and procedures attendant to procurement.

NOW THEREFORE BE IT RESOLVED, the Tribal Executive Committee hereby approves and adopts "The Minnesota Chippewa Tribe Procurement Ordinance Number 1."

BE IT FURTHER RESOLVED, that nothing in this Resolution shall be construed to extend the provisions of this Procurement Ordinance Number 1 to the governments or affairs of any of the six constituent Bands of the Minnesota Chippewa Tribe.

We do hereby certify that the foregoing Resolution was duly presented and acted upon by a vote of 11 For, 0 Against, 0 Silent, at a Regular Meeting of the Minnesota Chippewa Tribal Executive Committee, a quorum present, held on October 25, 2001 at Vermilion, Minnesota.



Peter J. DeFoe, President
THE MINNESOTA CHIPPEWA TRIBE



Eli O. Hunt, Secretary
THE MINNESOTA CHIPPEWA TRIBE