

## HOOPA VALLEY TRIBE PROCUREMENT POLICY

The Procurement Policy is for the Hoopa Valley Tribe("the Tribe") Entities and Programs. The intent of the policy is to enforce procurement standards of Title 2 CFR 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as well as 24 CFR 1003.510 for Indian Community Development Block Grant regulations, and the United States Housing and Urban Development (HUD) regulations.

### **I. GENERAL PROVISIONS**

- A. Purpose:** The purpose of this procurement statement is to provide for the fair and equitable treatment of all persons or firms involved in purchasing by Hoopa Valley Tribe; assure that supplies, services, and construction are procured efficiently, effectively, and at the most favorable prices available to the Hoopa Valley Tribe; promote competition in contracting; provide safeguards for maintaining a procurement system of quality and integrity; assures that Hoopa Valley Tribe purchasing actions are in full compliance with applicable Federal standards and regulations, and tribal laws, and assures compliance with the applicable Indian Preference requirements for procurement and contracting opportunities.
- B. Application:** This statement of procurement applies to all contracts for the procurement of supplies, services, and construction entered into by the Hoopa Valley Tribe after this Statement is approved by resolution of the Hoopa Valley Tribal Council ("Tribal Council"). It shall apply to expenditures of funds by the Hoopa Valley Tribe for public purchasing. Nothing in this statement shall prevent the Hoopa Valley Tribe from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with applicable law. The term "procurement," as used in this Statement, includes both contracts and modifications (including change orders) for construction or services, as well as purchase, lease, or rental of supplies and equipment.
- C. Public Access to Procurement Information:** Procurement information shall be a matter of public record to the extent provided in the Hoopa Tribal Record Disclosure Act and the Hoopa Tribal Records Policy (Title 67 of the Hoopa Valley Tribal Code) and shall be available to the public as provided in that Statute.
- D. Tribal Enterprises:** Those departments and entities classified as tribal enterprises of the Hoopa Valley Tribe are required to follow the procedures outlined in this policy generally, but with Council approval may also have a supplemental procurement policy that enhances this policy or creates an exception. 2 CFR 200.318(c)(2).

### **II. PROCUREMENT AUTHORITY, ADMINISTRATION, AND APPROVAL**

- A. Authority:** It is the intent of the Hoopa Valley Tribe to comply with all applicable provisions of 2 CFR 200 and 1003.510, as well as applicable Tribal procurement policies, for all procurement actions intended to be covered by this policy. Authority is given to the Contracting Officer, who shall be the Director of the Hoopa Valley Tribal department seeking procurement, to administer the provisions of this policy.

**B. Administration:** Administration of this policy is the responsibility of the Contracting Officer and administration shall be accomplished using sound business judgment with a goal to protect the interests of the Tribe and adhere to Federal and Tribal law. Administration principles to be followed include, but are not limited to:

1. All procurement transactions must have written procedures for conducting a procurement that ensure that all solicitations: 2 CFR 200.319(c).
  - a. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. 2 CFR 200.319(c)(1).
    - i. The description may include:
      - A statement of the qualitative nature of the material; 2 CFR 200.319(c)(1).
      - The product or service to be procured; and 2 CFR 200.319(c)(1).
      - When necessary, set forth the minimum essential characteristics and standards to which it must conform. 2 CFR 200.319(c)(1).
    - ii. In competitive procurements, the description must not contain features which unduly restrict competition. 2 CFR 200.319(c)(1).
    - iii. Detailed product specifications should be avoided if possible. 2 CFR 200.319(c)(1).
    - iv. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. 2 CFR 200.319(c)(1).
  - b. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals. 2 CFR 200.319(c)(2).
2. All contracts and modifications are in writing and clearly specify the desired supplies, services, or construction to be received.
3. All contracts and modifications must state the length of the contracts, the terms of payment, and remedy for nonperformance.
4. As a minimum, the method of procurement chosen, the contract type, and the basis of selection.
5. For procurement in excess of one hundred fifty thousand dollars (\$150,000.00) (i.e., not small purchases), public notice of the invitation for bids is given at least once a week for two consecutive weeks not less than seven days before, not more than 21 days prior to bid opening date for preparation and submission of bids or proposals; and notice of contract

awards is made available to the public.

6. An independent cost estimate is prepared before contract execution for each purchase above the small purchase limitation and a cost or price analysis is conducted of the responses received for all procurements.
7. Procurement requirements are subject to an annual planning process to assure efficient and economical purchasing.

**C. Approval:** Approval of contracts shall be accomplished through the following methodology, regardless of the procurement method. It is the Tribe's expressed intent to approve various budget items for expenditure within the broadly assigned duty to administer programs with fiscal responsibility. Approval of all procurement actions shall lie with the Contracting Officer as follows:

1. Department Directors/Managers shall be authorized to approve purchases and/or contracts of less than two thousand five hundred dollars (\$2,500.00) (either as a single contract or in aggregate) as is deemed in the best operating interests of the Hoopa Valley Tribe without Approval by the Tribal Chairman.
2. The Tribal Chairman shall be authorized to approve purchases and/or contracts of less than seven thousand four hundred and ninety-nine dollars and ninety-nine cents (\$7,499.99) (either as a single contract or in aggregate) as is deemed in the best operating interests of the Hoopa Valley Tribe without approval by the Tribal Council.
3. The Tribal Council must give prior approval to all purchases/contracts of between seven thousand five hundred dollars (\$7,500.00) and one hundred thousand dollars (\$100,000.00).
4. Expenditure of Tribal funds in excess of one hundred thousand dollars (\$100,000.00) that are outside of the approved annual budget must be approved by referendum of the Tribal membership.
5. The Director of an enterprise department or entity shall be authorized to approve purchases and/or contracts of less than twenty thousand dollars (\$20,000.00) (either as a single contract or in aggregate) as is deemed in the best operating interests of the Hoopa Valley Tribe without prior approval by the Tribal Council or Chairman, subject to the following constraints.
  - a. This spending authorization constitutes an emergency spending authority limited to the funds available in the department budgeted line items that pertain to repairs, maintenance and equipment rentals. Emergency spending shall be defined as spending necessary to protect the assets of the Hoopa Valley Tribe or to maintain the Tribe's ability to perform a project in a competitive business manner. Emergency spending for disaster response or equipment repair requires accelerated decision- making. Relief is provided from Section IV(B)(3) so as not to comprise tribal assets or enterprise activities if the explanatory memorandum from FEMA Section II (C)(4)(b) of describes

the efforts made to comply with the procurement policies as written.

- b. Each use of the spending authority under FEMA Section II(C)(4) requires an explanatory memorandum to the Hoopa Valley Tribal Council within 30 days.
- c. Departments eligible to use this authority:
  - i. Hoopa Valley Roads Aggregate and Ready-mix
  - ii. Hoopa Forest Industries

### **III. INDIAN PREFERENCE REQUIREMENTS**

- A. Where 24 CFR 1003.510 is not applicable, the Hoopa Valley Tribe shall use the Indian preference requirements contained in the Tribe's TERO Ordinance (Title 13 of the Hoopa Valley Tribe Code).
- B. All Hoopa Valley Tribe funds that are subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450e(b)) shall be expended in accordance with the following Indian preference requirements.

Any contract, subcontract, or grant administered by the Hoopa Valley Tribe shall require that, to the greatest extent feasible:

- 1. Preference and opportunities for training and employment shall be given to Indians, and
  - 2. Preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452; 24 CFR 1003.510(a)(1)-(2). (25 U.S.C. 450e(b)).
- C. Where applicable, the Hoopa Valley Tribe shall follow the 24 CFR 1003.510 regulations to:
- 1. Certify to the awarding agency that the policies and procedures adopted by the Hoopa Valley Tribe will provide preference in procurement activities consistent with the requirements of Section 7(b) of the Indian Self-Determination and Education Assistance Act;
  - 2. Advertise for bids or proposals limited to qualified Indian organizations and Indian owned economic enterprises; (24 CFR 1003.510(d)(1)(ii)(B)).
  - 3. Use the Tribe's Indian Preference policy, contained in the Tribe's TERO Ordinance (Title 13 of the Hoopa Valley Tribe Code), or
  - 4. Use the two-stage preference solicitation procedure, detailed below.

#### **D. Definitions**

1. The Indian Self-Determination and Education Assistance Act defines "Indian" to mean a person who is a member of a federally-recognized Indian tribe and defines "Indian tribe" to mean any federally-recognized Indian tribe, band, nation, or other organized group or community including any Alaska Native village or regional or village corporation as defined or established pursuant to the Alaska Native Claims Settlement Act. (24 CFR 1003.510(b)(1)).
2. In Section 3 of the Indian Financing Act of 1974, "economic enterprise" is defined as any Indian owned commercial, industrial, or business activity established or organized for the purpose of profit, except that Indian ownership must constitute not less than 51% of the enterprise. This Act defines "Indian organization " to mean the governing body of any federally recognized Indian tribe or entity established or recognized by such governing body. (24 CFR 1003.510(b)(2)).

#### **E. Two Stage Procurement Procedure**

##### **1. Stage 1:**

- a. Invite or otherwise solicit Indian owned economic enterprises to submit a statement of intent to respond to bid advertisement or request for proposals limited to Indian owned firms. (24 CFR 1003.510(d)(1)(ii)(A)).

##### **2. Stage 2:**

- a. If statements of intent are received from more than one Indian enterprise found to be qualified, the Tribe will advertise for bids or proposals limited to Indian organizations or Indian-owned economic enterprises. (24 CFR 1003.510(d)(1)(ii)(B)).
- b. If fewer than two (2) qualified Indian owned economic enterprises or organizations submit responsive bids or proposals, all bids/proposals shall be rejected (unless the exception noted below for single bid approval applies) and the solicitation shall be re-advertised inviting responses from non-Indian owned firms and the qualified Indian-owned economic enterprise or organization.
- c. For sealed bid solicitations, the contract will be awarded to the lowest responsible and responsive bid from an Indian-owned economic enterprise or organization if it is within the budgeted amount for the project or activity and is no more than a given percentage ("the x-factor") higher than the lowest non-Indian responsive and responsible bid. Depending on the total amount of the contract, the x-factor will be between three and ten percent (3% and 10%), where the x-factor percentage is lower for contracts with a high dollar value (e.g., 3% for multimillion dollar contracts). Appropriate x-factor increments will be established, and adjusted periodically, in the Tribe's operational procedures.
- d. Requests for goods or service contract proposals will identify significant evaluative factors to be considered in selecting the responsible firm that is most advantageous to the program. One of the evaluation factors will be those firms that are Indian owned as

defined by the Indian Self-Determination and Education Assistance Act. This evaluation factor will be allocated five (5) points, or five percent (5%) of the total points available. Non-Indian firms that submit a plan for ensuring Indian preference in hiring for the project will also be evaluated under this criterion.

- F. If the Hoopa Valley Tribe selects a method of providing preference that results in fewer than two responsible qualified organizations or enterprises submitting a statement of intent, a bid or proposal to perform the contract at a reasonable rate, the Hoopa Valley Tribe shall: (24 CFR 1003.510(d)(2)).
1. Advertise the contract again to solicit bids or proposals from Indian owned economic enterprises or Indian organizations; or (24 CFR 1003.510(d)(2)(i)).
  2. Re-advertise the contract without limiting the advertisement for bids or proposals to Indian organizations or enterprises; or (24 CFR 1003.510(d)(2)(ii)).
  3. If one approvable bid or proposal is received that is subject to the awarding agency's regulations, the Hoopa Valley Tribe will request SWONAP review and approve of the proposed contract and related procurement documents, in accordance with 24 CFR 85.36, in order to award the contract to the single bidder or offeror. (24 CFR 1003.510(d)(2)(iii)).

**G. Additional Requirements**

1. All preferences shall be publicly announced in the advertisement and bidding or proposal solicitation documents. (24 CFR 1003.510(d)(4)).
2. The Hoopa Valley Tribe, at its discretion, may require information of prospective contractors seeking to qualify as Indian organizations or economic enterprises. Contractors may also be required to supply information relating to Indian preference, including evidence of capacity to train and retain Indian employees, before submitting a bid or at the time of bid/proposal submittal. (24 CFR 1003.510(d)(5)(i-iii)).

**IV. PROCUREMENT**

- A. Selection of Method:** When it has been decided that the Hoopa Valley Tribe will directly purchase the required items, all procurement transaction must be conducted in a manner providing full and open competition consistent with Federal and Tribal law. One of the following procurement methods shall be chosen, based on the nature and anticipated dollar value of the total requirement. 2 CFR 200.320.
- B.** All solicitations pursuant to this policy must acknowledge use of Federal funding for the project. Title 2 CFR 200 allows for the awarding agency (i.e. FEMA, HUD, etc.) to require additional provisions.
- C.** Procurement by Micro-Purchases

1. Procurement by micro-purchases is the acquisition of supplies or services, including construction, the aggregate dollar amount of which does not exceed micro-purchase threshold, which is currently ten thousand dollars (\$10,000.00) (or two thousand five hundred dollars (\$2,500.00) in the case of acquisitions for construction subject to the Davis-Bacon Act). 2 CFR 200.320(a); PDAT Supplement at II-6.
  - a. If practicable, micro-purchases must be distributed equitably among qualified suppliers. 2 CFR 200.320(a).
  - b. Micro-purchases do not require a solicitation for competitive quotations if the Tribe considers the price to be reasonable. 2 CFR 200.320(a).
2. Contract requirements shall not be artificially divided so as to constitute a micro purchase under this section to avoid competitive bidding requirements (except as may be reasonably necessary to comply with Section III of this Statement). 2 CFR 200.67; 2 CFR 200.320(a).

**D. Procurement by Small Purchase:**

1. **Definition:** Any relatively simple and informal procurement methods for securing services (including construction), supplies, or other property that do not exceed the Simplified Acquisition Threshold. The Simplified Acquisition Threshold is currently two hundred fifty thousand dollars (\$250,000.00). 2 CFR 200.320(b); PDAT Supplement at II-6.
2. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section (except as may be reasonably necessary to comply with Section III of this Statement). 2 CFR 200.88; 2 CFR 200.320(b); PDAT Supplement at II-6, V-8.
3. Price or rate quotations must be obtained from an adequate number of qualified sources. 2 CFR 200.320(b).
4. Process: The Tribe must obtain price or rate quotes from at least two (2) qualified sources. However, for emergencies that fall under FEMA the Tribe must obtain price of rate quotes from at least three (3) qualified sources (PDAT Supplement at V-8).
5. Standard of Award: The contract shall be awarded to the lowest cost responsible bidder. 2 CFR 200.88; 2 CFR 200.320(b); PDAT Supplement at II-6, V-8.

**E. Procurement by Sealed Bids:**

1. **Definition:** A sealed bid is a bid that is publicly solicited (formal advertising) and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. 2 CFR 200.320(c).
2. **Preferred Form of Solicitation for Construction Contracts:** The sealed bid method is the preferred method for procuring construction contracts so long as section IV.D.1 is satisfied. 2 CFR 200.320(c).

3. **Conditions for Use:** Contracts shall be awarded based on competitive sealed bidding if the following conditions are present:
- a. The purchase and service contracts cost more than the simplified acquisition threshold (currently two hundred and fifty thousand dollars (\$250,000.00)).
  - b. A complete, adequate, and realistic specification or purchase description is available; 2 CFR 200.320(c)(1)(i).
  - c. Two or more responsible bidders are willing and able to compete effectively for the business; 2 CFR 200.320(c)(1)(ii).
  - d. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price (2 CFR 200.320(c)(1)(iii)), unless there is a sound, documented reason. 2 CFR 200.320(c)(v).
  - e. The Hoopa Valley Tribe may reject any bid based on that contractor's documented past performance (i.e., contract performance and/or quality of work, or other factors that would lead a reasonable person to decline to do business with the contractor). A bid may be rejected for any other sound, documented reason, particularly if the bid is non-responsive or otherwise found to be not in the Tribe's best interest.
  - f. Sealed bidding is the preferred method for construction procurement. For professional service contracts, sealed bidding should not be used.
4. **Standards for the Solicitation and Receipt of Bids:** An invitation for bids for a sealed bid contract must include the following:
- a. Be publicly advertised. 2 CFR 200.320(c)(2)(i).
  - b. Be solicited from an adequate number of known suppliers. 2 CFR 200.320(c)(1)(ii).
  - c. Provide potential suppliers sufficient response time prior to the date set for opening the sealed bids. 2 CFR 200.320(c)(1)(ii).
  - d. Include specifications and pertinent attachments (2 CFR 200.320(c)(1)(ii)),
  - e. Define the items or services in order for the bidder to properly respond. 2 CFR 200.320(c)(1)(ii).
  - f. Provide the time and place for both the receipt of bids and the public opening of the sealed bids. 2 CFR 200.320(c)(1)(iii).
  - g. Be time-stamped but not opened and shall be stored in a secure place until bid opening.
  - h. A reference to the Tribe's Indian preference policy and 24 CFR 1003.510.



- i. That a bidder may withdraw its bid at any time prior to the sealed bid opening.
- j. All contractual terms and conditions applicable to the procurement.
- k. A statement indicating that the firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder whose bid meets the requirements of the invitation for bids. 2 CFR 200.320(c)(1)(iv).
  - i. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest.
  - ii. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.
- l. The solicitation must acknowledge the source of the federal funds (i.e. FEMA, etc.) for the contract. The Uniform Rules allow for the funding Federal agency to require additional provisions. PDAT Contract Provisions Template 13(a).

#### **5. Bid Opening and Award:**

- a. Bids shall be opened publicly (2 CFR 200.320(c)(2)(iii)) and in the presence of at least one witness.
- b. An abstract of bids shall be recorded.
- c. The award shall be made as provided in the invitation for bids.
- d. Awards shall be made by written notice to the successful bidder.
- e. A cost analysis shall be made to verify the reasonableness of each bid's price.
- f. If equal low bids are received from responsible bidders, awards shall be made first based on the Indian preference policies described in Section III above, and then by drawing lots or similar random method, unless otherwise provided in the invitation for bids.
- g. If only one responsive bid is received from a responsible bidder, award shall not be made unless the Tribe first obtains approval from the awarding agency. (24 CFR 1003.510(d)(2)(iii)).

#### **6. Mistakes in Bids:**

- a. Correction or withdrawal of inadvertently erroneous bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only if the bidder can show by clear and convincing evidence that a mistake of a non-judgmental character (i.e., a clerical error) was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging a non-judgmental mistake may be permitted to withdraw its bid if the mistake

is clearly evident on the face of the bid document but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made.

- b. All decisions to allow correction or withdrawal of bid mistakes shall be supported by a written determination signed by the Contracting Officer. The decision of the Contracting Officer shall be final. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the Hoopa Valley Tribe or fair competition shall be permitted.

- a.

#### **E. Procurement by Competitive Proposals**

1. **Definition:** When more than one source submits an offer, and either a fixed price or cost-reimbursement type contract is awarded. 2 CFR 200.320(d). Competitive bids are generally used when conditions are not appropriate for the use of sealed bids. 2 CFR 200.320(d).
2. **Conditions for Use:** Competitive proposals (including turn-key proposals for development) may be used if:
  - a. The contract costs more than the simplified acquisition threshold which is currently set at one hundred and fifty thousand dollars (\$150,000.00). PDAT Supplement at II-6.
  - b. There is an adequate, written method of conducting technical evaluations of the proposals received and for selecting recipients; 2 CFR 200.320(d)(3).
  - c. Where the Hoopa Valley Tribe determines that conditions are not appropriate for the use of sealed bids. 2 CFR 200.320(d)
  - d. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; 2 CFR 200.320(d)(4).
3. **Standards for the Request for and Receipt of Proposals:**
  - a. Requests for proposals must be publicized. 2 CFR 200.320(d)(1).
  - b. Requests for proposals must clearly identify all evaluation factors and their relative importance 2 CFR 200.320(d)(1), including the weight given to each technical factor. 2 (CFR 200.320(d).
  - c. An adequate number of qualified sources shall be solicited. 2 CFR 200.320(d)(2).
  - d. Proposals received shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals.

- e. The proposals shall be evaluated only on the criteria stated in the request for proposals.

**4. Negotiations with Top-Rated Offerors:**

- a. Unless there is no need for negotiations with any of the offerors, negotiations shall be conducted with offerors who submit proposals determined to have a reasonable chance of being selected for award, based on evaluation against the technical and price factors as specified in the RFP.
  - i. Negotiations may be conducted only with the top-rated offeror(s) if, in the opinion of the Tribal Chairman or designee, it is in the best interests of the Tribe to do so.
  - ii. Such offerors shall be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals.

The purpose of negotiations shall be to seek clarification with regard to advising offerors of the deficiencies in both the technical and price aspects of their proposals so as to assure full understanding of and conformance to the solicitation requirements.

- iii. No offeror shall be provided information about any other offeror's proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal. Offerors shall not be directed to reduce their proposed prices to a specific amount in order to be considered for award. A common deadline shall be established for receipt of proposal revisions based on negotiations.
- 5. **Award:** After evaluation of proposal or any revisions, if any, the contract shall be awarded to the most responsive and responsible firm whose qualifications, price and other factors considered, are the most advantageous to the Hoopa Valley Tribe.

**6. Architectural/Engineering Professional Services:**

- a. Request for Qualifications (RFQ): Competitive proposals may be used for a qualifications-based procurement of architectural/engineering (A/E) professional services. 2 CFR 200.320(d)(5).
- b. An RFQ is issued to solicit competitive proposals from adequate number of qualified firms.
- c. An RFQ must be publicly advertised.
- d. Any responses to the publicized RFQ must be considered to the maximum extent advertised.
- e. The Tribe must have a written method for conducting technical evaluation of the received proposals and selecting a contractor.

Evaluation criteria and relative importance must be identified in the RFQ; The method where price is not used as a selection factor, can only be used in procurement of A/E professional services. 2 CFR 200.320(d)(5). Furthermore, qualifications-based selection procedures should not be used to purchase other types of services (e.g., construction contracts), except as provided in this policy, even though an A/E firm that has submitted qualifications-based proposal is a potential source. 2 CFR 200.320(d)(5).

- f. The competitor's qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. 2 CFR 200.320(d)(5).
- g. The Tribe may use local geographic preferences for the procurement of A/E services, provided that this leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

#### **7. Planning or Consulting Services:**

- a. For some professional planning or consulting services, it may become advantageous to issue a RFQ where the services are of a nature that require professional or specialized services.
- b. This procurement approach shall be considered a competitive proposal in accordance with the provisions above; however, it shall be evaluated solely on the basis of qualifications to ensure that the specific needs of the agency are met.

8. **Indefinite Quantities Contract:** Where applicable or where the specific scope of a project cannot be defined at the time of solicitation, the Tribe may elect to issue an Indefinite Quantities Contract (IQC) for a period not to exceed three (3) years. This IQC shall state the general terms of the contract, the potential scope, and a not-to-exceed award amount for the contract term. Specific work will be authorized through the use of Task Orders, negotiated and approved by the Contracting Officer. If the Tribe elects to issue an IQC, the request document (either RFP or RFQ) shall clearly state this intent and provide instructions on the process for Task Order submission and approval.

#### **F. Procurement by Noncompetitive Proposals:**

- 1. **Definition:** Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source. 2 CFR 200.320 (f).
- 2. **Conditions for Use:** Procurements shall be conducted competitively to the maximum extent possible. Procurement by noncompetitive proposals may be used only when the award of a contract is not feasible using small purchase procedures, sealed bids, or competitive proposals, and one of the following applies: 2 CFR 200.320(f).
  - a. The item is available only from a single source, based on a good faith review of available sources; 2 CFR 200.321(f)(1).

- b. An emergency exists that seriously threatens the public health, welfare, safety, financial integrity or solvency, or that endangers property, or would otherwise cause serious injury to the Hoopa Valley Tribe. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any other procurement methods due to harm caused by the delay, and the emergency procurement shall be limited to those supplies, services or construction necessary to meet the emergency; 2 CFR 200.320 (f)(2).
  - c. The Tribe obtains prior express authorization from the funding source to use noncompetitive proposals; or 2 CFR 200.320 (f)(3).
  - d. After solicitation of a number of sources, competition is determined inadequate. 2 CFR 200.320 (f)(4).
- 3. **Justification:** Each procurement based on noncompetitive proposals shall be supported by a written justification for using such procedures. The justification shall be approved in writing by the Contracting Officer.
  - 4. **Price Reasonableness:** The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing a cost analysis, as described earlier in paragraph IV.G.
  - 5. **Submission of Cost or Pricing Information:** If the procurement is based on noncompetitive proposals, or when only one offer is received, or for other procurements as deemed necessary by the Hoopa Valley Tribe (e.g., when contracting for professional, consulting, or architect/engineer services) the offeror shall be required to submit:
    - a. A cost breakdown showing projected costs and profit;
    - b. Commercial pricing and sales information, sufficient to enable the Hoopa Valley Tribe to verify the reasonableness of the proposed price as a catalog or market price of a commercial product sold in substantial quantities to the general public; or
    - c. Documentation showing that the offered price is set by law or regulation.

#### G. Cost and Price Analysis:

##### 1. Generally:

- a. A cost or price analysis must be performed for all procurement actions, including contract modifications, in connection with every procurement in excess of the Simplified Acquisition Threshold (see IV.C.1 above) unless the Tribe enacts a more restrictive threshold. 2 CFR 200.323(a); PDAT Supplement at II-6.
- b. The method and degree of analysis shall depend on the facts surrounding each procurement, but at a minimum the contract administrator must make independent estimates before receiving bids or proposals. 2 CFR 200.323(a).

2. **Profits for Contractors:** Profits for contractors must be negotiated as a separate element of the price for each contract in which there is no price competition and in all cases where costs analysis is performed. 2 CFR 200.323(b).
  - a. Factors to be considered when negotiating the Contractor's profits: 2 CFR 200.323(b).
    - i. The complexity of the work; 2 CFR 200.323(b).
    - ii. The risk borne by the contractor; 2 CFR 200.323(b).
    - iii. The contractor's investment; 2 CFR 200.323(b).
    - iv. The amount of subcontracting; 2 CFR 200.323(b).
    - v. The quality of its record of past performance; and 2 CFR 200.323(b).
    - vi. Industry profit rates in the surrounding geographical area for similar work. 2 CFR 200.323(b).
  - b. Contractors can estimate their costs or prices for the contracts to the same extent the Tribe can during negotiations as provided in 2 CFR 200.400-475. 2 CFR 200.323(c).
  - c. The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used. 2 CFR 200.323(d).
3. **Local Purchasing:** Due the isolation of the Hoopa Valley Reservation and the cost of obtaining goods and services beyond the Reservation and its neighboring communities, the Tribe has adopted a local purchasing policy contained in Section 50.109 of the Hoopa Valley Tribal Code. In support of this policy, the cost analysis of all non-local procurement shall factor in additional transportation or shipping costs, delay, or other inefficiency.
4. **Cost Analysis:** Cost analysis shall be performed if an offeror/contractor is required to submit a cost breakdown as part of its proposal. When a cost breakdown is submitted a cost analysis shall be performed of the individual cost elements, the Hoopa Valley Tribe shall have a right to audit the contractor's books and records pertinent to such costs, and profit shall be analyzed separately.
 

Costs shall be allowable only to the extent that they are consistent with applicable federal cost principals (for commercial firms, Subpart 31.2 of the Federal Acquisition Regulation, 48 CFR Chapter 1) in 24 CFR 85.22. In establishing profit, the Hoopa Valley Tribe shall consider factors such as the complexity and risk of the work involved, the contractor's investment and productivity, the amount of sub-contracting, the quality of past performance, and industry profit rates in the area for similar work.
5. **Price Analysis:** A comparison of prices shall be used in all cases other than those described in Paragraph IV.F.4. above.

**H. Cancellation of Solicitations:**

1. An invitation for bids, request for proposals, or other solicitations may be cancelled before offers are due if: the Hoopa Valley Tribe no longer requires the supplies, services or construction; it can no longer reasonably expect to fund the procurement; proposed amendments to the solicitation would be of such magnitude that a new solicitation would be desirable; or if it is otherwise found to be in the Tribe's best interest.
2. A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if: the supplies, services, or construction are no longer required; ambiguous or otherwise inadequate specifications were part of the solicitation; the solicitation did not provide for consideration of all factors of significance to the Hoopa Valley Tribe; prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds; there is reason to believe that bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or there is another reasonable basis that is in the best interest of the Hoopa Valley Tribe.
3. The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request to any offeror solicited.
4. A notice of cancellation shall be sent to all offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any re-solicitation or future procurement of similar items.
5. If all otherwise acceptable bids received in response to an invitation for bids are at unreasonable prices, or only one bid is received and the price is unreasonable, the Hoopa Valley Tribe shall cancel the solicitation and either:
  - a. Re-solicit using a request for proposals; or
  - b. Complete the procurement by using the competitive proposals method following paragraphs IV.D.3. and IV.D.4. above (when more than one otherwise acceptable bid has been received), or by using the noncompetitive proposals method and following paragraph IV.E.2. above (when only one bid is received at an unreasonable price); provided that the Contracting Officer determines in writing that such action is appropriate, all bidders are informed of the Hoopa Valley Tribe's intent to negotiate, and each responsible bidder is given a reasonable opportunity to negotiate.

**I. Local and Cooperative Purchasing:**

1. **State and Local Government Contracts:** The Hoopa Valley Tribe may enter into joint or non-joint State and local intergovernmental agreements to purchase or use common goods and services. 2 CFR 200.318(e). However, the joint State or local intergovernmental agreement must satisfy the requirements of full and open competition applicable to tribal governments, even for state purchasing programs and piggybacking. (2 CFR 200.318-326) (PDAT Supplement at VI-10 to VI-11). Assignment of contract rights (also known as

“piggybacking”) is discouraged and subject to several restrictions (PDAT Supplement at VI-12 to VI-13). The decision to use an intergovernmental agreement or conduct a direct procurement shall be based on economy and efficiency. If used, the intergovernmental agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. Tribal agencies are encouraged to use excess and surplus property instead of purchasing new equipment and property whenever such use is feasible and reduces project costs. 2 CFR 200.318(f).

2. **General Services Administration (GSA) Contracts:** If the Hoopa Valley Tribe determines that no competitive Indian source is available, the Tribe may procure from GSA contracts pursuant to 48 CFR Chapter 5.

**J. Bonds:** For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold (currently one hundred fifty thousand dollars (\$150,000.00)), contractors shall, at a minimum, be required to submit the following: 2 CFR 200.325.

1. A bid guarantee for each bidder equivalent to five percent (5%) of the bid price; and 2 CFR 200.325(a).
2. A performance bond for one hundred percent (100%) of the contract price; and 2 CFR 200.325(b).
3. A payment bond for one hundred percent (100%) of the contract price. 2 CFR 200.325(c).

**K. Federal Award Agency or Pass-Through Entity Review:**

1. The Tribe must make available, upon request of the Federal awarding agency (Agency) or pass-through entity, technical specifications on proposed procurements where the Agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. 2 CFR 200.324(a).
  - a. Generally, this review takes place before the time the specification is incorporated into a solicitation document, but Agency review can occur after a solicitation has been developed but the review will be limited to the technical aspects of the proposed purchase. 2 CFR 200.324(a).
2. The Tribe must make available, upon request of the Agency or pass-through entity pre-procurement review, procurement documents (such as RFPs or Invitations for Bids), or independent costs estimates when: 2 CFR 200.324(b).
  - a. The Tribe’s procurement procedures or operation fails to comply with the procurement standards in this part; 2 CFR 200.324(b)(1).
  - b. The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a



solicitation; 2 CFR 200.324(b)(2).

- c. The procurement, which is expected to exceed the Simplified Acquisition Threshold specifies a "brand name" product; 2 CFR 200.324(b)(3).
  - d. The proposed contracts is more than the Simplified Acquisition Threshold and is to be awarded to a non-low bidder under a sealed bid procurement; or 2 CFR 200.324(b)(4).
  - e. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Threshold. 2 CFR 200.324(b)(5).
- 3. The Tribe may have its procurement system certified by the Agency or pass-through entity declaring the Tribe's system meets the required standards. 2 CFR 200.324(c)(1).
  - 4. The Tribe may self-certify its procurement system via written assurances to the Agency that the Tribe is complying with the Agency's standards. 2 CFR 200.324(c)(2).

## V. CONTRACTOR QUALIFICATIONS AND DUTIES

- A. **Contractor Responsibility:** Procurement shall be conducted only with responsible contractors, i.e., those who have the technical and financial competence to perform and who have a satisfactory record of integrity. 2 CFR 200.318(h). Before awarding a contract, the Hoopa Valley Tribe shall review the proposed contractor's ability to perform the contract successfully, considering factors such as the contractor's integrity (including a review of the List of Parties Excluded from Federal Procurement and Non-procurement Programs published by the U.S. General Services Administration), compliance with public policy, written record of past performance (including contacting previous clients of the contractor), and financial and technical resources. 2 CFR 200.318(h). If a prospective contractor is found to be non-responsible, a written determination of non-responsibility shall be prepared and included in the contract file, and prospective contractor shall be advised of the reasons for the determination.
- B. **Suspension and Debarment:** Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined ineligible by the Hoopa Valley Tribe, or the funding agency. Where applicable, the awarding agency may disqualify contractors in accordance with the awarding agency's regulations when necessary to protect the Hoopa Valley Tribe in its business dealings.
- C. **Qualified Bidder's List:** Interested businesses shall be given an opportunity to be included on qualified bidder's lists. 2 CFR 200.319(d). Any pre-qualified lists of persons, firms, or products which are used in the procurement of supplies and services shall be kept current and shall include enough qualified sources to ensure maximum competition. Firms shall not be precluded from qualifying during the solicitation period. 2 CFR 200.319(d). Solicitation mailing lists of potential contractors shall include, but not be limited to, such pre-qualified suppliers. 2 CFR 200.319(d).

## VI. TYPES OF CONTRACTS, CLAUSES, AND CONTRACT ADMINISTRATION

- A. Contract Types:** Any type of contract which is appropriate to the procurement and which will promote the best interests of the Hoopa Valley Tribe may be used, provided that the cost-plus-a-percentage-of-cost and percentage of construction cost methods are prohibited. All procurements shall include the clauses and provisions necessary to define the rights and responsibilities of the parties. A cost reimbursement contract shall not be used unless it is likely to be less costly or it is impracticable to satisfy the Hoopa Valley Tribe's needs otherwise, and the proposed contractor's accounting system is adequate to allocate costs in accordance with applicable cost principles (for commercial firms Subpart 31.2 of the Federal Acquisition Regulation (FAR), found in 48 CFR Chapter 1). A time and material contract may be used only if a written determination is made that no other contract type is suitable, and the contract includes a ceiling price that the contractor exceeds at its own risk. 2 CFR 200.319(j)(1).
- B. Options:** Options for additional quantities or performance periods may be included in contracts, provided that: (i) the option is contained in the solicitation; (ii) the option is a unilateral right of the Hoopa Valley Tribe; (iii) the contract states a limit on the additional quantities and the overall term of the contract; (iv) the options are evaluated as part of the initial competition; (v) the contract states the period within which the options may be exercised; (vi) the options may be exercised only at the price specified in or reasonably determinable from the contract; and (vii) the options may be exercised only if determined to be more advantageous to the Hoopa Valley Tribe than conducting a new procurement.
- C. Contract Clauses:** In addition to containing a clause identifying the contract type, all contracts shall include any clauses required by applicable Federal statutes, executive orders, and their implementing regulations, as provided in 24 CFR 85.36(i), such as the following:
1. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as may be appropriate. (only applies to contracts with value above the Simplified Acquisition Threshold).
  2. Termination for cause and for convenience by the grantee or sub-grantee including the manner by which it will be affected and the basis for settlement (for all contracts in excess of ten thousand dollars (\$10,000.00));
  3. Termination for default (for all contracts in excess of ten thousand dollars (\$10,000.00));
  4. Equal Employment Opportunity and its regulations at 41 CFR part 60 (for all construction contracts in excess of ten thousand dollars (\$10,000.00) by grantees and their contractors or subcontractors);
  5. The Copeland "Anti-Kickback" Act, 18 U.S.C. 874, and its regulations at 29 CFR Part 3 (for all contracts and subgrants for construction or repair);
  6. The Davis-Bacon Act, 40 U.S.C. 276a to 276a-7, and its regulations at 29 CFR part 5 (for construction contracts in excess of two thousand five hundred dollars (\$2,500.00) awarded by grantees and subgrantees; however, the Tribe may request a waiver from the awarding agency when permitted by the federal grant program legislation);

7. Sections 103 and 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 327-330), and the regulations at 29 CFR Part 5 (for construction contracts awarded by grantees and subgrantees in excess of \$2,000.00, and in excess of \$2,500.00 for other contracts which involve the employment of mechanics or laborers);
8. Notice of awarding agency requirements and regulations pertaining to reporting;
9. Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract;
10. Notice of awarding agency requirements and regulations pertaining to copyrights and rights in data;
11. Examination of records by grantee, subgrantee, awarding agency, or Comptroller General, of the contractor's books, documents, papers, and records which are directly pertinent to that specific contract for the purpose of audit, examination, excerpt and transcription purposes;
12. Retention of records for three years after final payment and all other pending matters are closed;
13. Compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act, 42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738 and the regulations at 40 CFR Part 15 (for contracts, subcontracts, and subgrants of amounts in excess of one hundred thousand dollars (\$100,000.00));
14. Compliance with all applicable standards, orders, or requirements issued under the Byrd Anti-Lobbying Amendment.
15. Procurement of Recovered Materials: Applies to procurement of prime contracts and subcontracts.
16. Access to Records: Applies to all contracts.
17. All contracts must be formed and operated in compliance with Federal law, regulations, and Executive Orders.
18. The Federal government is not under any obligation to perform under any contract between the Tribe and a contractor/sub-contractor, etc.
19. Any party to the contract or project shall not commit program fraud or issues false or fraudulent statements or related acts in any relevant contract or project.

20. Energy efficiency standards issued in compliance with the Energy Policy and Conservation Act, Pub. L. 94-163, 89 Stat. 871;
21. Bid protests and contract claims; 2 CFR 200.319(k).
22. Value engineering of each contract item or task to ensure that project's essential function is provided at the overall lower cost; and 2 CFR 200.318(g).
23. Payment of funds to influence certain federal transactions.

The operational procedures addressed in Paragraph II.A. of this Statement shall contain the text of all clauses and required certifications used by the Hoopa Valley Tribe.

**D. Contract Administration:** A contract administration system designed to ensure that contractors perform in accordance with their contracts shall be maintained.

1.  
The operational procedures addressed in Paragraph II.A. above shall contain guidelines for inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on construction contracts and similar matters.
2. The contract administrator must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. 2 CFR 200.318(i).

## **VII. SPECIFICATIONS**

**A. Generally:**

1. All specifications shall be drafted so as to promote overall economy for the purposes intended and to encourage full and open competition in satisfying the Hoopa Valley Tribe's needs. Specifications shall be reviewed prior to solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items. 2 CFR 200.318(d). Functional or performance specifications are preferred.
2.  
Unreasonably detailed product specifications shall be avoided. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase (but see Section IX below). 2 CFR 200.318(d). For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement. 2 CFR 200.318(d).

**B. Contract Limitations:** The following contract specifications limitations shall be avoided:

1. Geographic restrictions not mandated or encouraged by applicable Federal law (except for architect-engineer contracts, which may include geographic location as a selection factor if adequate competition is available); 2 CFR 200.319(b).

2. Placing unreasonable requirements on firms in order for them to qualify to do business; 2 CFR 200.319(a)(1).
3. Unnecessary experience requirements; 2 CFR 200.319(a)(2).
4. Excessive bonding requirements; 2 CFR 200.319(a)(2).
5. Noncompetitive pricing practices between firms or between affiliated companies; 2 CFR 200.319(a)(3).
6. Noncompetitive contracts to consultants that are on retainer contracts; 2 CFR 200.319(a)(4).
7. Organizational conflicts of interest; 2 CFR 200.319(a)(5).
8. Brand name specifications (unless a written determination is made that only the identified item will satisfy the Hoopa Valley Tribe's needs); 2 CFR 200.319(a)(6).
9. Describing the performance or other relevant requirements of the procurement; and 2 CFR 200.319(a)(6).
10. Any arbitrary action in the procurement process. 2 CFR 200.319(a)(7).

Nothing in this procurement policy shall preempt any Tribal licensing laws. Specifications shall be scrutinized to ensure that organizational conflicts of interest do not occur (for example, having a consultant perform a study of the Hoopa Valley Tribe's computer needs and then allowing that consultant to compete for the subsequent contract for the computers).

#### **VIII. APPEALS AND REMEDIES**

- A. General:** It is the Hoopa Valley Tribe's policy to resolve all contractual issues informally at the Hoopa Valley Tribe level, without litigation. Disputes shall not be referred to the funding agency until all administrative remedies have been exhausted at the Contracting Officer's level. When appropriate, the Hoopa Valley Tribe may consider the use of informal discussions between the parties by individuals who did not participate substantially in the matter in dispute, to help resolve the differences. The funding agency will only review protests in cases of violations of Federal law or regulations and failure of the Hoopa Valley Tribe to review a complaint or protest. 2 CFR 200.318(k).
- B. Protests:** Any actual or prospective contractor may protest a contract award, solicitation, pre-award status, or any other decision, finding, or action made or taken by the Hoopa Valley Tribe regarding a contract, bid, solicitation, pre-award status, or project, for serious violations of the principles of this Procurement Policy ("Protests"). All protests shall be signed and submitted in writing, to the Contracting Officer or designee, within ten (10) calendar days of being notified in writing of the Hoopa Valley Tribe's decision, finding, or action. Failure to comply with the terms and procedures herein shall result in an automatic denial of the Protest. The Contracting Officer shall issue a written decision of the Protest within thirty (30) calendar days after receipt

of the Protest. Pending the Hoopa Valley Tribe's written decision on the Protest, the Contracting Officer or designee may, at his or her discretion, suspend the bid process, solicitation, pre-award status, procurement, or, if warranted by the facts and circumstances, take other action needed on the matter.

- C. **Contract Claims:** All claims by a contractor relating to performance of a contract shall be submitted in writing to the Contracting Officer or designee for a written decision. The contractor may request a conference on the claim. The Contracting Officer's decision shall inform the contractor of its appeal rights to a higher level in the Hoopa Valley Tribe.

## IX. ASSISTANCE TO SMALL AND OTHER BUSINESSES

- A. **Required Efforts:** Consistent with 24 CFR 85.36(e), the Hoopa Valley Tribe shall take affirmative steps to ensure that small and minority-owned businesses, women's business enterprises, labor surplus area businesses, and individuals or firms located in or owned in substantial part by persons residing in the area of the Hoopa Valley Reservation are used when possible. Such affirmative steps shall include, but shall not be limited to:
1. Including such firms, when qualified, on solicitation lists;
  2. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
  3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
  4. Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
  5. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;
  6. Including in contracts a clause requiring contractors, to the greatest extent feasible, to provide opportunities for training and employment for lower income residents of the project area and to award subcontracts for work in connection with the project to business concerns which are located in, or owned in substantial part by persons residing in the area of the project, as described in 24 CFR 135; 9-1 requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed above in this section (1-5).
  7. When not inconsistent with the Indian Preference policy and procedures, goals may be established by the Hoopa Valley Tribe periodically for participation by small businesses, minority owned businesses, women's business enterprises, labor surplus area businesses, and business concerns which are located in, or owned in substantial part by persons residing in the area of the project in the Hoopa Valley Tribe's prime contracts and subcontracting opportunities.

**B. Definitions:**

1. **Small Business:** A small business is defined as a business which is: independently owned; not dominant in its field of operation; and not an affiliate or subsidiary of a business dominant in its field of operation. The size standards in 13 CFR 121 shall be used, unless the Hoopa Valley Tribe reasonably determines that their use is inappropriate.
2. **Minority-Owned Business:** A minority-owned business is defined as a business which is at least 51% owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals (49 CFR 26.5). Minority group members include, but are not limited to, Native Americans, Black Americans, Hispanic Americans, Asian Pacific Americans, and Subcontinent Asian Americans. (49 CFR 26.5).
3. **Women's Business Enterprise:** Women's business enterprise is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who also control or operate the business. (49 CFR 26.5).
4. **Labor Surplus Area Business:** A labor surplus area business is defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or under-employment, as defined by the U.S. Department of Labor in 20 CFR 654, Subpart A, and in lists of labor surplus areas published by the Employment and Training Administration.
5. **Business Concern Located in the Area of the Project:** A business concern located in the area of the project is defined as an individual or firm located within the relevant Section 3 covered project area, as determined pursuant to 24 CFR 135.15, listed on the U.S. Department of Housing and Urban Development's (HUD) registry of eligible business concerns, and meeting the definition of small business above. A business concern owned in substantial part by persons residing in the area of the project is defined as a business concern which is 51% or more owned by persons residing within the Section 3 covered project, owned by persons considered by the U.S. Small Business Administration to be socially or economically disadvantaged, listed on HUD's registry of eligible business concerns, and meeting the definition of small business above.

**X. ETHICS IN PUBLIC CONTRACTING**

- A. **General:** The Hoopa Valley Tribe shall adhere to the following code of conduct, consistent with Title 8 of the Hoopa Valley Tribal Code (Conflict of Interest and Nepotism) and 24 CFR 85.36(b)(3).
- B. **Conflict of Interest:** No employee, officer or agent of this Hoopa Valley Tribe or its subgrantees shall participate directly or indirectly in the selection or in the award or administration of any contract supported by federal funds if a conflict, real or apparent, would be involved. Such conflict would arise when a financial or other interest in a firm selected for

award is held by:

1. An employee, officer or agent;
2. His/her relative (including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, brother-in-law, sister-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, step-sister, half-brother, or half-sister);
3. His/her partner; or
4. An organization which employs, is negotiating to employ, or has an arrangement concerning prospective employment of any of the above. 2 CFR 200.318(c)(1)

**C. Gratuities, Kickbacks, and Use of Confidential Information:** Hoopa Valley Tribe officers, employees or agents shall not solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subcontracts, and shall not knowingly use confidential information for actual or anticipated personal gain. 2 CFR 200.318(c)(1)

**D. Prohibition Against Contingent Fees:** Contractors shall not retain a person to solicit or secure a Hoopa Valley Tribe contract or a commission, percentage, brokerage, or contingent fee, except for bona fide employees or bona fide established commercial selling agencies.



Appendix A to the Hoopa Valley Tribal Council Procure Policy

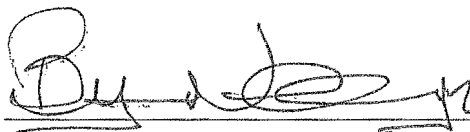
Enterprise	Emergency response or equipment breakdown
Roads Enterprise	Emergency response or equipment breakdown
Aggregate Enterprise	Emergency response or equipment breakdown
Readymix Enterprise	Emergency response or equipment breakdown
Hoopa Forest Industries	
Hoopa Fire Department	E

Conditions/Restrictions (General)

CERTIFICATION

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council do hereby certify that the Hoopa Valley Tribal Council is composed of eight members; of which eight (8) were present constituting a quorum at a Regular Meeting thereof; duly and regularly called, noticed, convened, and held this 1<sup>st</sup> day of October 2020; and that this Policy was duly adopted by a vote of six (6) in favor with one (1) opposed and zero (0) abstaining, and that said Policy has not been rescinded or amended in any way.

DATED THIS FIRST DAY OF OCTOBER 2020.



BYRON NELSON, JR, CHAIRMAN  
HOOPA VALLEY TRIBAL COUNCIL

ATTEST:   
AMBER TURNER, EXECUTIVE SECRETARY  
HOOPA VALLEY TRIBAL COUNCIL