

## Chapter 1. Purchasing and Procurement Regulation

Regulation # R100-01:AC-01

### Section 1. Authority; Purpose

#### 1-1. *Authority.*

The Tribal Council hereby promulgates these rules for purchasing and procurement by the Little River Band of Ottawa Indians.

1-2. *Purpose.* This regulation is intended to provide a framework to ensure that Tribal purchase transactions are understood, and accompanying procedures are uniformly applied. Guidelines are intended to support purchasing activities of the Tribe, create a managed purchasing system, promote vendor compliance, and conform to the Constitutional requirements for ratification and approval by Tribal Council.

#### 1-3. Organization.

The Little River Band of Ottawa Indians is a Federally Recognized Indian Tribe headquartered in Manistee, Michigan.

1-3.a The Legislative Branch is our Tribal Council which is made up of 9 members – see Constitution for current positions. The people of the Tribe elect these governing officials who authorize the regulations of the Tribe and who are principally responsible for the fiscal year budgets.

1-3.b The Executive Branch is overseen by the Ogema.

The people of the Tribe elect the Ogema of the Little River Band of Ottawa Indians. This branch oversees all staff. Expectations of this branch include consulting, negotiating, and execution of contracts on behalf of the Little River Band of Ottawa Indians. See Constitution for additional details.

1-3.c The Judicial Branch is independent of the Legislative and Executive branches. This branch would be the preferred forum for hearing any contract disputes.

### Section 2. General Policies

2-1. *Applicability.* This policy shall be followed for all Tribal Government Purchases and Agreements. The policies covered in this regulation address (1) purchase of supplies and equipment for program and Tribal use; and (2) contracts for professional services and maintenance services.

These regulations do not apply to the processing of payments, such as purchased and referred care, extended health services, and pharmaceutical purchases provided to tribal members and other related payments for health care, and recurring bills (i.e. utilities, telephone, etc.) for normal operating expenses.

2-2. *Justification.* All purchase and contract actions must be justifiable and support legitimate Tribal objectives.

2-3. *Pricing.* Purchasing and contract actions will be based on competitive pricing to the greatest extent possible and exceptions shall be documented and approved. Competitive pricing as used in this policy means obtaining price quotes or bids from multiple vendors to ensure the lowest price on quality goods and services.

2-4. *Purchasing Authority.* All purchases are to be made by the Purchasing Office. Purchase variances must not exceed 10% above the suggested price, excluding shipping and handling. Purchase variances that exceed 10% must be approved by the individual as identified as having authority under section 3.2.

2-5. *Approval.* It is the intent of these policies to treat purchases as a logical group and to avoid unnecessary or duplicative items. Purchases shall not be separated into smaller amounts to avoid necessary levels of approval.

2-6. *Procurements.* All purchases shall be accompanied by a signed contract or purchase order which shall be filed with the Purchasing Office. Procurements shall not be awarded to contractors or vendors who have been debarred or suspended by the federal government.

2-7. *Legal Review.* All contracts and other forms of agreements shall require a written legal review by a Tribal Attorney. The legal review shall contain at a minimum: a substantial review of the risks to the tribe including but not limited to whether the Band is being asked to waive its sovereign immunity from suit, whether arbitration is required, the term including any renewals, the dollar amount of the contract, a discussion of the choice of law, choice of venue, damages, and any other provisions which should be brought to the attention of the Ogema and the Tribal Council; and for any agreements for which there is a request to review them in closed session a thorough review of whether the circumstances support the Tribal Council going into closed session in the reviewing attorney's opinion. The complete legal review shall be included with the agenda request sent over to the Tribal Council for ratification or approval.

2-8. *Contract Authorization and Ratification Required.* All contracts and agreements shall be required to have ratification by the Tribal Council, in accordance with Article IV, Section 7(b) and Article V, Section 5(a)(3) of the Constitution.

2-9. *Honorariums.* Tribal Law (Ordinance 14-800-17) governs payment of Honorariums, which are defined as the payment of money or anything else of value made to a person for services rendered for which fees cannot legally be or are not traditionally paid.

### **Section 3. Contract Authorization Levels**

3-1. *Monetary Authorization.* No employee is authorized to bind or commit the Tribe to the purchase of any goods or services, except with appropriate approval.

3-2. *Contracts and Purchase Requisition Approval.* All purchases shall be placed through the Purchasing and shall follow the constitutional requirements for contracts to be negotiated by the Ogema and ratified by Tribal Council.

3-3 *Ratification and Approval of all Agreements Required.* All Agreements between the Little River Band of Ottawa Indians and federal, state, and local governments, and other tribal governments, or with private persons, or organizations, , require Tribal Council ratification and approval in accordance with Article V, Section 5(a)(3) and Article IV, Section 7(b) of the Constitution and Resolution #09-0429-111.

### **Section 4. Responsibilities**

4-1. . *Within the Executive Branch.* Authorized representatives of the Tibe (including but not limited to Program Directors Managers and Coordinators). Program Directors are responsible for achieving program goals and at the same time conserving Tribal resources and maintaining accountability. Their responsibilities begin with the development of a sound program budget. As managers, their primary responsibilities in relation to purchasing are:

- a. Exercising control over expenditures, to ensure that they do not exceed amounts allotted in the budget and that they are consistent with purposes detailed in the budget.
- b. Ensuring that transactions are made with adequate planning and that emergency purchases are avoided.
- c. Ensuring that all requisitions are prepared properly.
- d. Coding expenditures properly.
- e. Determining that expenditures are completed within the performance period for the grant program which they support.
- f. Provisions of certain Tribal grants and contracts may apply policies or require practices in addition to those defined in this policy. Whenever funds under a specific federal grant or contract are used for purchasing or contracting purposes, it is the responsibility of the authorized representative to abide by the terms and conditions of the grant or contract requirements.
- g. Keeping record of all purchases made for reference and accountability.

4-2. *Purchasing Manager.* The Purchasing Manager is responsible for ensuring purchasing activities are carried out properly and in a manner that best serves the interests of the Tribe. The Purchasing Manager is the person with primary

responsibility for representing the Tribe as it enters into agreements with vendors. As such, the Purchasing Manager will be responsible for duties including, but not limited to:

- a. Promoting fairness, integrity, courtesy, and goodwill in vendor relationships.
- b. Promote full and open competition.
- c. Seeking competitive quotations, bids, and proposals whenever feasible, to ensure that the Tribe obtains quality goods or services at reasonable prices from responsive and responsible bidders.
- d. Obtaining or providing the appropriate written approval of all purchase actions.
- e. Routing invoices and purchase orders to the Accounting Department where necessary.
- f. Maintaining all forms and records necessary for the efficient operations of the purchasing office.
- g. Maintaining documents regarding contract activities. <sup>1</sup>
- h. Determining whether potential vendors are responsible, which means having the resources, personnel, integrity, and overall capability to meet the Tribe's needs successfully.
- i. Maintaining vendor files. <sup>2</sup>
- j. Keeping all vendors aware of Tribal Purchasing Policies and Procedures.
- k. Verifying that all purchasing requirements have been met before issuing a purchase order.

4-3. *Tribal Leads*. In addition to the general responsibilities, a Tribal Lead holds specific responsibility for approving purchase requests submitted which exceed \$5,000.01, but do not exceed \$15,000.00.

4-4 *Tribal Manager*. In addition to general responsibilities, the Tribal Manager holds specific responsibility for approving purchase requests submitted which exceed \$15,000.01, but do not exceed \$25,000.00.

4-5. *Ogema Review*. The Tribal Ogema is responsible for reviewing monthly purchasing activities. The Tribal Manager or a Lead may be delegated responsibility for this review by written memorandum signed by the Tribal Ogema, provided that disciplinary actions resulting from non-compliance with these regulations remain the responsibility of the Tribal Ogema.

4-6. *Ogema*. The Tribal Ogema, as the chief administrator for the Tribe, is responsible for overseeing the entire purchasing process. In addition to that general responsibility, the Tribal Ogema holds specific responsibility for:

- a. Reviewing a monthly purchasing activity report.
- b. Approving agenda requests for purchase requests and contracts, which require Resolution approval.
- c. Executing all contracts.

4-7. *Tribal Council*. The Tribal Council has final responsibility for management of the Tribe's financial resources. Its key responsibilities in regards to purchasing are:

- a. Approving program budgets.
- b. Approving all Contracts between the Tribe and outside parties.
- c. Tribal Council is responsible for reviewing monthly Legislative purchasing activities.

## **Section 5. Standards of Conduct**

5-1. *Ethical Conduct*. It is important that high standards of conduct be maintained at all times to assure confidence and integrity in the Tribe's purchasing process. All Tribal officers, employees, and agents who are involved in purchasing and contracting activities must follow the standard of conduct set forth below:

- a. Tribal employees, officers or agents will refrain from participating in a purchasing or contracting action in which a conflict of interest would be involved.
- b. Tribal employees, officers or agents will not accept gratuities, favors, or gifts which exceed the monetary value of \$25.00.
- c. No employee, officer, or agent may participate in the selection, award, or administration of a contract award if he or she has a real conflict of interest. A conflict of interest arises when an individual must

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<sup>1</sup> 2 CFR Part 200.318(i)

<sup>2</sup> 2 CFR Part 200.319(e)

balance a personal financial interest, other than interests held in common by all tribal members, against the interests of the tribe. (See Article XII of the Constitution.) Such a conflict of interest arises when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

- d. The officers, employees, and agents of the Tribe may neither solicit nor accept gratuities, favors, or anything of value from contractors or parties to subcontracts.
- e. The Tribe will remain impartial when conducting a procurement action involving a related organization.
- f. If required by federal awarding agencies or pass-through entity, Little River Band of Ottawa Indians will notify those agencies in writing of any potential conflict of interest.<sup>3</sup>

## Section 6. Purchasing Procedures

6-1. *Request for Purchase Order.* Any purchase of goods or services on behalf of the Little River Band of Ottawa Indians must be initiated by submitting a "Requisition", an internal document that conveys to the Purchasing Manager the request for supplies, equipment, or services. No purchase or contract action may be initiated without a requisition. 6-2. *Issuance of Purchase Order.* Requisition forms shall be sent to the Purchasing Office. Upon receiving all required authorizations, a purchase order shall be issued no later than one (1) week after receipt of all necessary information by the Purchasing manager.

6-3. *Encumbrance Standard Process.* The Purchasing Office shall place orders as follows:

- a. All approved requisitions shall be assigned a -purchase order number.
- b. The Purchase Order is then entered into the Accounting System.
- c. An original Purchase Order shall then be printed and routed to accounts payable. Copies shall be routed to the ordering office and receiving.
- d. Departments are responsible for maintaining copies of their own request(s). The purchase order number that is assigned to an order can also be used to look up an order that may require an item to be returned or used for future orders of a similar item.
- e. All purchase orders shall identify a shipping address and an invoicing address. When the invoice arrives with the goods, the invoice shall be routed to accounts payable.

6-4. *Procurement Thresholds/ Bidding Requirements.*

For procurement threshold approval amounts, see Contracts and Purchase Requisition Approval of this regulation.

When making a purchase transaction, the following methods of procurement shall be used:

- a. Micro procurement transactions shall be used when purchasing supplies and equipment under \$10,000.00 in value. Micro-purchases may be awarded without competitive quotations if the price is considered reasonable. In cases where it is determined to be more efficient, purchase orders can be issued for an amount not to exceed. For cases such as these, the amount shall never exceed \$1,000.00. The requisition shall list the requested items. The purchase order shall clearly indicate the amount not to exceed.
- b. Small procurement transactions shall be used when purchasing supplies, equipment, or securing services that are between \$10,000.00 and \$50,000.00 per purchase or request. Informal purchasing procedures are acceptable, but price or rate quotes are required from an adequate number of sources.
- c. Major Procurement. Competitive procurement transactions are used when purchasing supplies, securing services, or equipment that exceed the simplified acquisition threshold of \$50,000.00. Competitive procurement transactions require open solicitation (formal advertising). Quotes may be submitted by sealed bids or by competitive proposals.
- d. *Standing Purchase Orders.* When business with a vendor is on a regular basis and purchases or service dollar amounts vary, it may be more cost effective to establish a standing purchase order with the vendor. A standing purchase order shall be generated and maintained in the same fashion as the purchase order request, with the following information noted: the dollar amount not to exceed, a time limitation, and the person or persons approved to make charges against the standing purchase order.
- e. *Honorarium.* Honorarium payments shall be used to reward dedicated acts of goodwill that benefit the Tribe and its Members. When making a payment for an honorarium,<sup>3</sup> the following shall apply:

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<sup>3</sup> 2 CFR Part 200.112; 2 CFR Part 300.112

1. Funds shall be expensed from a department budget line dedicated to tribal activities.
  2. Total payments to any honorarium recipient including, but not limited to, mileage or per diem payments must not exceed \$500.00 for any one event. Honorarium payments shall not be granted to an employee, contractor, or vendor of the Tribe or any of its enterprises for an act performed in the regular course of employment or under any term of their contract or vending agreement. Honorarium payments shall not be made to an employee for an act or service performed during his or her regular employment shift unless the employee has filed a work variance request form. Individuals who provide regular ongoing services to the Tribe or its Members shall be required to enter into a contract with the Tribe.
- f. Where appropriate, a comparison of lease and purchasing alternatives shall be made to determine which is the more economical. <sup>4</sup>
  - g. To promote cost-effective use of shared services, program directors may choose to enter into state and local inter-governmental agreements or
  - h. Choose to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible.
  - i. Avoid unfair practices which include, but are not limited to:
    3. Placing unreasonable requirements to qualify to do business.
    4. Requiring unnecessary experience and excessive bonding.
    5. Noncompetitive pricing practices between affiliated companies.
    6. Noncompetitive contracts to consultants that are on retainer contracts.
    7. Specifying only a “brand name” product rather than allowing “an equal” product.
    8. Impose geographical preferences, except in those cases where a grant mandates or encourages the Tribe to do so. When contracting with an architectural and engineering (A/E) firm, geographic location may be a selection criterion, provided its application leaves an appropriate number of qualified firms to compete for the project and the geographic limit is relevant to the project.
    9. Contractors that develop or draft specifications of work are strictly prohibited from competing for such procurements.

6-5. *Competition.* All procurement transactions must be conducted in a manner providing full and open competition. . . <sup>5</sup> Any and all bids may be rejected if there is a sound documented reason. <sup>6</sup> All bids shall be generated in the following manner:

- a. Small Purchases. When small purchase procedures are required, quotes must be obtained from an adequate number of qualified sources. Unless specified by the Federal agency, the recipient or subrecipient may exercise judgment in determining what number is adequate. <sup>7</sup> When using small Purchasing procedures, the following procedures shall apply:
  1. The Program Director will provide the Purchasing Office with a description of the equipment or service expectations/needs (scope of work). Descriptions shall be detailed and accurate. Descriptions shall not contain features which restrict competition.
  2. The Purchasing Office will contact the source(s) and notify them of the opportunity to bid.
  3. Bids shall be submitted in writing within a predetermined time frame.

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<sup>4</sup> 2 CFR Part 200.318(d)

<sup>5</sup> (2 CFR Part 200.319)

<sup>6</sup> 2CFR Part 200.318(c)

<sup>7</sup> 2CFR Part 200.320 (a.2.ii)

4. The following restrictions and requirements must be followed in order to obtain a fair and just bid:
  - a. Bids must be in writing.
  - b. All bids are confidential.
  - c. All copies of bids shall be attached to the purchase order.
  
- b. Sealed Bids. Procurement by sealed bids are publicly solicited. Transactions exceeding but not limited to \$250,000.00 require open solicitation. In cases where quotes are being sought by sealed bids, the following conditions shall be present:
  - a. A complete, adequate, and realistic specification or purchase description.
  - b. Two or more responsible bidders are willing and able to compete effectively for the business.
  - c. 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.
  - d. If sealed bids are used, the following requirements apply:
    - i. The invitation for bids will be publicly advertised and bids must be solicited from an adequate number of known suppliers, providing them with sufficient response time prior to the date set for opening the bids.
    - ii. The invitation for bids shall include all specifications and define the items or services in order for the bidder to properly respond.
    - iii. All bids will be publicly opened at the time and place prescribed in the invitation for bids.
    - iv. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle cost must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior expenses indicate discounts are usually applied.
  
- c. Procurement by Competitive Proposals. The use of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:
  1. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical.
  2. Proposals must be solicited from an adequate number of qualified sources.
  3. Must have a written method for conducting technical evaluations for the proposals received and for selecting recipients.
  4. Invitations shall include all specifications and define the items or services in order for the bidder to properly respond.
  5. Contracts must be awarded to the responsible firms whose proposal is most advantageous to the program, with price and other factors considered.
  6. The Tribe may use competitive proposals for qualification-based procurement of architectural/engineering professional services whereby competitor's qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. In such cases, the A/E cannot be used to purchase other types of services where A/E firms are a potential source to perform the proposal effort. Competitive proposals for (A/E) services may include geographic locations.

- d. Noncompetitive or *Sole Sourcing*. Noncompetitive bids, also known as Sole Source bids, require specific circumstances in which non-competitive procurement can be used. Non-competitive procurement can only be awarded if one or more of the following circumstances apply:
1. The acquisition dollar amount does not exceed the micro-purchase threshold.
  2. The item is available only from a single source.
  3. Where programs have an immediate need to meet program objectives or to protect the health and safety of employees and Tribal Members that will not permit a delay resulting from publicizing a competitive solicitation.
  4. The federal awarding agency expressly authorizes non-competitive procurement.
  5. After solicitation of a number of sources, competition is determined inadequate. In such cases, documentation and approval must be obtained from:
    - a. For the Executive Branch– The Ogema.
    - b. For Tribal Council – The Speaker or Recorder
    - c. For Tribal Court – The Chief Judge of the Tribal Court
- e. Little River Band of Ottawa Indians will maintain records sufficient to detail the history of procurement, including, but not limited to:<sup>8</sup>
1. Rationale for the method of procurement;
  2. Selection of contract type;
  3. Justification for lack of competition when competitive offers are not obtained;
  4. Contractor selection or rejection; and
  5. The basis for the contract price.
- f. Little River Band of Ottawa Indians will not utilize the cost-plus-a-percentage-of-costs or percentage of construction cost methods of contracting.<sup>9</sup>

*6-6 Affirmative Consideration of Minority, Small Business, Women-Owned, Veteran-owned, and Labor Surplus Area Firms.* Positive efforts will be made by Little River Band of Ottawa Indians to utilize small businesses, minority-owned firms, women's business enterprises, veteran-owned businesses, and labor surplus area firms whenever possible. Therefore, the following steps will be taken regarding purchasing and procurement actions, when appropriate for the procurement action: <sup>10</sup>

- a. Ensure these businesses/ firms are used to the fullest extent practicable.
- b. Little River Band of Ottawa Indians will directly solicit bids or proposals from these businesses/ firms whenever they are a potential source. Little River Band of Ottawa Indians will ensure these businesses/ firms are included in solicitations, when practicable.
- c. Little River Band of Ottawa Indians will evaluate procurements to determine if it is practical to separate purchases or projects into smaller components in order to encourage solicitation responses from these businesses/ firms.
- d. Little River Band of Ottawa Indians will establish delivery schedules, where the requirement permits, which encourage participation by these businesses/ firms by making information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by these businesses/ firms.

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<sup>8</sup> 2 CFR Part 200.318(i)

<sup>9</sup> 2 CFR Part 200.324(d)

<sup>10</sup> 2 CFR Part 200.321

- e. Utilize entities such as the Small Business Administration and the Department of Commerce's Minority Business Development Agency to determine validity of, assistance with, or location of the businesses addressed in this section, as appropriate.

Consider in the contract process whether firms competing for larger contracts should subcontract with these businesses/ firms.

The tribe's appeal procedures will also be made available to prospective contractors upon request. Grievances are limited to violations of federal laws or regulations, or failure of the tribe to follow its own procurement policies.

6-. *Sources.* The Purchasing Manager will compile and maintain a list of sources for the various goods and services which the Tribe purchases regularly. The source lists will include the following:

- a. Name of vendor.
- b. Telephone number of vendor.
- c. Name of the Tribe's sales representative.
- d. Type of goods or services the vendor provides.
- e. If business is a small, minority, or women-owned business.
- f. If business is a Little River Band of Ottawa Indians certified Indian owned business.

6-7-. *Documenting Quotes.* All quotes must be documented. A record is necessary to show that competition was obtained when feasible and to be utilized for future purchases. All soliciting documents shall be attached and remain with the purchase order.

6-8. *Evaluating Quotes and Selection of Vendor.* Indian preference must always be a factor when evaluating quotes and in the vendor selection process. Indian preference will be given only to bidders who provide proof of current certification to the Little River Band of Ottawa Indians Purchasing Office. The Purchasing Manager shall evaluate the quotes received and determine which quote is most economical. The price should be the determining factor, but in cases where the Purchasing Manager determines that the bidding vendor is not responsible and cannot fulfill the requirement properly and on time, these requirements must be considered over price. The Tribe shall make procurement awards only to responsible entities that have the ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to integrity, compliance with public policy, record of past performance, and financial and technical resources. In making this judgment, awards shall be based on evaluation criteria. When factoring Indian Preference, awards shall not exceed the lowest bid amount by the following:

- a. For purchases with the value of \$00.01 to \$2,500.00, not exceed 10%
- b. For purchases with the value of \$2,501.01 to \$12,000.00, not to exceed 7%
- c. For purchases with the value that exceed \$12,000.01, not to exceed 5%

6-9. *Disputes.* Any claim or grievance by a vendor/contractor regarding a procurement shall be submitted in writing to the Purchasing Manager. Disputes must be received in writing within ten (10) calendar days after the award. Disputes received after (10) ten calendar days will not be considered. The Purchasing Manager, at his or her discretion, can suspend the procurement pending resolution of the protest, if warranted by the facts presented. The claim shall be subject to a written decision by the Purchasing Manager, the vendor/contractor may appeal the decision of the Purchasing Manager by filing an appeal within ten (10) calendar days of receipt of the Purchasing Manager's decision. Appeals shall be submitted in writing to the Ogema.

6-10. *Receiving.* Shipments shall be delivered to the Receiving Office unless otherwise specified by the Purchasing Office. The procedure for receiving goods is as follows:

- a. Packing slips must be matched to the purchase order.
- b. The Receiving Office shall inspect all shipments to ensure they have been received in good condition and in the proper quantity.
- c. As shipments are received, a check mark shall be entered on the packing slip beside the item to demonstrate the item was received.



- d. Every received order must be stamped as “received” and initialed by the receiving personnel.
- e. Once the order has been received, receipt of the order is entered into the accounting system.
- f. The packing slip or invoice shall be forwarded to Accounts Payable for payment and closeout.
- g. Purchases will be delivered by the Receiving Office.

6-11. *Back Orders.* Upon receiving notice of a back order, the Receiving Office shall notify the requesting program that the order has been placed on back order.

Section 7. *Contracts.* When satisfying the Tribe’s requirement for services, rather than for supplies or equipment, contract procedures shall be followed. In cases where provisions for grants require practices in addition to those defined in this policy, it shall be the responsibility of the Program Director to abide by the terms and conditions of the grant.

7-1. *Contracts.*

To ensure contractors perform in accordance with the terms, conditions, and specifications of their contracts the following shall be strictly adhered to:<sup>11</sup>

- a. Contract administration documents will be maintained in the Purchasing Office.
- b. Contract administration documents will contain:
  - 1. The required documentation specified in the original scope of work and for all contract amendments.
  - 2. Where the contract work is identified in the award or budget, the identification and scope of the work contained in the award or budget, and all approved changes.
- c. Authorization of work:
  - 1. No work will be authorized until the contract for the work has been approved and fully executed.
  - 2. No change in the scope of work will be authorized until an amendment to the contract for the work has been approved and fully executed.
- d. Conformance of work:
  - 1. For each award, based on applicable laws, regulations, and award provisions, the Tribal Representative authorized to oversee the contract will establish and maintain a system to reasonably assure that the contractor:
    - i. Is in conformance with the terms, conditions, and specifications of the contract, and
    - ii. Provides timely follow-up of all purchases to assure such conformance and adequate documentation.
- e. The Tribal Representative authorized to oversee the contract will authorize payment of invoices to contracts after final approval of work products.

7.1.

7.2. *Construction Management.* All contracts for construction should be overseen the by the Tribe’s Task Force.

- a. *Progress Payments.* Upon receiving an invoice from a contractor for a payment under an approved contract, payments shall be made by check request. Check request shall note the purchase order number in connection with the contract. Upon verification and approval of the program overseeing the contract or in cases of construction contracts, *the Tribe’s Task Force*, the check request will be signed by:
  - 1. For the Executive Branch Operations – The Ogema.
  - 2. For Tribal Council – The Speaker or Recorder
  - 3. For Tribal Court – The Chief Judge of the Tribal Court

7.3. *Contracting for Construction.* The following are required in contracting for construction:

- a. *Contract cost and price.*
  - 1. *Cost Analysis.* A cost or price analysis must be performed in connection with actions in excess of the simplified acquisition threshold of \$250,000.00

<sup>11</sup> 2 CFR Part 200.318(b)

including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the tribe must make an independent estimate before receiving bids or proposals. <sup>12</sup>

2. Negotiate profit as a separate element of the price for each contract with which there is no price competition and, in all cases, where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of the subcontracting, the quality of its record of past performance, and the industry profit rates in the surrounding geographical area for similar work.
  3. The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.
- b. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. The Tribe must take all necessary steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include:
1. Placing qualified small and minority businesses and women's business enterprises on solicitations lists.
  2. Solicited whenever there are potential sources.
  3. Dividing total requirements, when economically feasible, into smaller tasks to quantities to permit maximum participation.
  4. Establish delivery schedules, where the requirement permits, which encourage participation.
  5. Using the services and assistance, as appropriate.
  6. Requiring the prime contractors, if subcontractors are to be let, to take the affirmative steps in paragraphs (b) (1) through (5).
- c. Value Engineering. The Tribe is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.
- d. Time and Material Contracts. The Tribe may use a time-and-materials type of contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to the Tribe is the sum of:
1. The actual cost of materials; and
  2. Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.
  3. Since this formula generates an open-ended contract price, a time-and-material contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the Tribe awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using effective methods and effective cost controls.

7.4. Bonding Requirements. For construction or facility improvements or subcontracts exceeding the simplified acquisition for construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows: <sup>13</sup>

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<sup>12</sup> 2 CFR Part 200.324

<sup>13</sup> 2 CFR Part 200.326

- a. A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

### **Section 8. Adoption; Amendment; Repeal**

8-1. *Adoption.* This Chapter was adopted by the Tribal Council on March 6, 2002 by Resolution 02- 0306-07 and amended by Resolution 03-0618-177, Resolution 04-0515-205, Resolution 04-1201-481, Resolution 04-1218-526, Resolution 07-0131-64, Resolution 08-0709-235, Resolution 09-0429-111; Resolution 10-0303-66, Resolution 10-0714-248, Resolution 11-0615-222, Resolution 11-1130-400; Resolution 12-1205-311; Resolution 14-0716-198: Resolution 15-1112340; Resolution 17-0628-213, Resolution 17-0328-231; 18-0221-067, Resolution 20-0930-276, Resolution 24-0424-075, and Resolution 26-XXXX-XXX.

8-2. *Amendment.* This regulation may be amended by the Tribal Council or by submission of amendments by the Tribal Ogeema approved by the Tribal Council, in accordance with the Constitution and any rules set forth governing amendment of regulations of the Little River Band of Ottawa Indians.

8-3. *Severability Clause.* Any provision of this Regulation which is determined to be illegal by a court of competent jurisdiction or an administrative body having jurisdiction over this Regulation, or which is otherwise determined to be unenforceable, shall be ineffective to the extent necessary without invalidating the remaining provisions of this Regulation. This Regulation will be deemed modified to the extent necessary to render enforceable the remaining provisions of this Regulation.

8-4. *Compliance.* Strict compliance with this regulation is expected. Deviation from the requirements of this regulation must be noted and corrected. Failure to follow the requirements of this regulation may result in disciplinary action, up to and including termination from employment and action to recover expenditures resulting from unauthorized actions.

8-5. *Repeal.* This regulation may be repealed in accordance with the Administrative Procedures Act.

## **Section 9. Grants**

### *9-1 Criteria for Allowability of Costs.*

In accordance with federal grant regulations<sup>14</sup> and terms and conditions of the grant award, Little River Band of Ottawa Indians’ written procedures to determine allowability of costs will include the criteria below.

All costs must meet the following and comply with federal grant regulations<sup>15</sup>, in order to be treated as allowable direct or indirect costs under a grant award:

- a. The cost must be “reasonable” and necessary for the performance of the award, considering the following factors:
  1. Whether the cost is of a type that is generally considered as being necessary for the operation of the tribe or the performance of the award.

<sup>14</sup> 2 CFR 200.302(b)(7) and 2 CFR 200.403(c)

<sup>15</sup> 2 CFR Part 200.402 – 406, Basic Considerations

2. Restraints imposed by such factors are generally accepted sound business practices, arm's length bargaining, federal and state laws and regulations, and the terms and conditions of the award.
  3. Whether the individuals concerned acted with prudence in the circumstances.
  4. Consistency with established policies and procedures of the tribe, deviations from which could unjustifiably increase the costs of the award.
- b. The cost must be "allocable" to an award by meeting one of the following criteria:
    1. The cost is incurred specifically for a grant award,
    2. The cost benefits both the grant award and other work and can be distributed in reasonable proportion to the benefits received, or
    3. The cost is necessary to the overall operation of the tribe, except where a direct relationship to any particular program or group of programs cannot be demonstrated.
  - c. The cost must conform to any limitations or exclusions of Uniform Guidance<sup>16</sup>, or the grant award itself.
  - d. Treatment of costs must be consistent with policies and procedures that apply to both federally financed activities and other activities of the tribe.
  - e. Costs must be consistently treated over time.
  - f. The cost must be determined in accordance with generally accepted accounting principles (GAAP).
  - g. Total costs may not be included as a cost of any other federally financed program in the current periods.
  - h. Be net of all applicable credits.
  - i. The cost must be adequately documented, including prior written approval from the awarding agency when applicable.
  - j. Cost must be incurred during the approved budget period.

*9-2 Contract Provisions specific to Federal Funds.*

Little River Band of Ottawa Indians includes provisions for the following items, as applicable, in all contracts charged to federal awards, at the amounts indicated and as determined by the regulation of Little River Band of Ottawa Indians, with contractors:<sup>17</sup>

- a. Contracts for more than the simplified acquisition threshold set by the Federal Acquisition Regulation<sup>18</sup>, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- b. All contracts in excess of \$10,000 must address termination for cause and for convenience by Little River Band of Ottawa Indians, including the manner by which it will be affected and the basis for settlement.
- c. Equal Employment Opportunity
- d. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148)
- e. Copeland "Anti-Kickback" Act (40 U.S.C. 3145)
- f. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)
- g. Rights to Inventions Made Under a Contract or Agreement
- h. Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended
- i. Debarment and Suspension (E.O.s 12549 and 12689, 2 CFR 180)
- j. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)
- k. Domestic preferences for procurement<sup>19</sup>
- l. Bonding requirements: See **Error! Reference source not found.** section of this manual.
- m. Nondiscrimination Policy: See **Error! Reference source not found.** section of this manual.
- n. Right to Audit Clause. See **Error! Reference source not found.** section of this manual.
- o. Workers' Compensation.

<sup>16</sup> 2 CFR Part 200 Subpart E-Cost Principles

<sup>17</sup> 2 CFR Part 200 Appendix II and other regulations, as indicated in this section

<sup>18</sup> 48 CFR Subpart 2.1

<sup>19</sup> 2 CFR Part 200.322

### 9-3 Lobbying.

*9-3.1 Definition of Lobbying Activities.* Lobbying activities conducted by the tribe may be either direct or indirect. Direct lobbying activities consist of attempts to influence legislation through communication with any member or employee of a legislative body (federal, state, or local levels) or, if the principal purpose of the communication is lobbying, with any government official or employee who may participate in the formulation of the legislation. Direct lobbying occurs when employees of the tribe or paid lobbyists communicate directly in attempts to influence legislation. Lobbying is distinguishable from advocacy activities, which involve efforts to advocate certain positions which may have legislative implications, as long as a nonpartisan analysis of the relevant facts is performed.

Lobbying occurs only when there is a specific piece of legislation or legislative proposal pending that the tribe is attempting to influence. Therefore, lobbying is considered to have taken place only if both of the following elements are present:

- a. The communication refers to specific legislation (legislation that has been introduced or a specific legislative proposal that the tribe supports or opposes), and
- b. The communication reflects a view on the legislation (supporting or opposing it).

Indirect lobbying involves communications with the general public (rather than directly with legislators, etc.) where the communication includes the same two preceding characteristics, plus it encourages the recipient of the communication to take action with respect to the specific legislation (by contacting legislators, etc.).

*9-3.2 Segregation of Lobbying Expenditures.* Lobbying expenditures are allowable for charities under the Internal Revenue Code. However, lobbying may not represent a substantial portion of the tribe's overall activities. The tribe's tax exemption would be at risk if lobbying becomes a substantial portion of the tribe's activities.

Accordingly, Little River Band of Ottawa Indians segregates all direct and indirect lobbying expenditures in a separate section of the chart of accounts in the general ledger [identified within a separate project code, function code]. Where appropriate, lobbying expenditures will also be allocated their fair and reasonable share of employee benefits and other allocated costs in accordance with **Error! Reference source not found.**

*9-3.3 Lobbying Election.* As a public charity, the tribe has two options with respect to the Internal Revenue Code's restriction against lobbying being a "substantial" portion of its activities.

- a. One option is to make a formal lobbying election, which results in the tribe following a specific mathematical formula to determine its lobbying limitations. Exceeding the limitation would result in an excise tax assessed to the tribe. Exceeding the limitation by 50 percent-(50%) or more over a four-year period would result in loss of the tribe's overall tax exemption.
- b. The other option is to not make the election, resulting in an entirely judgmental assessment of its lobbying activities by the IRS. If it is deemed by the IRS to have engaged in substantial lobbying for any period, the tribe would lose its overall tax exemption under this option.

If Little River Band of Ottawa Indians incurs lobbying expense, it will complete Schedule C of the Form 990. Additional forms may need to be completed depending on the tribe's election to be subject to the lobbying expenditure limitations of Internal Revenue Code section 501(h).

### 9-4 Availability of Procurement Records.

Little River Band of Ottawa Indians will, on request, make available to the federal awarding agency, pre-award review and procurement documents, such as requests for proposals, upon their request when any of the following conditions apply:<sup>20</sup>

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<sup>20</sup> 2 CFR Part 200.325(b)

- a. The procurement process does not comply with the procurement standards in Uniform Guidance.
- b. The procurement is expected to exceed the federally-defined simplified acquisition threshold and is to be awarded without competition or only one bid or proposal is received.
- c. The procurement exceeds the simplified acquisition threshold and specifies a “name brand” product.
- d. The proposed award exceeds the federally-defined simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed-bid procurement.
- e. A proposed contract modification changes the scope of a contract or increases the total contract amount to equal or exceed the amount of the federally-defined simplified acquisition threshold.

9-5 *Federal awarding agency or pass-through entity review.*

- a. Technical specifications on proposed procurements where the Federal awarding agency believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the Tribe desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
  - 1. Must make available upon request, for the Federal awarding agency pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:
    - a. Procurement procedures or operation fails to comply with the procurement standards in this part.
    - 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.
    - c. The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a “brand name” product.
    - d. The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
    - e. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.
    - f. The Tribe is exempt from the pre-procurement review in paragraph (1) of this section if the pass-through entity determines that its procurement systems comply with the standards of this part.
- b. The Tribe may request that its procurement system be reviewed by the Federal awarding agency entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis.
- c. The Tribe may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.