

Sitka Tribe of Alaska

Administration Policy and Procedures

Procurement Policy and Procedure

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1.01 Purpose

The purpose of this policy is to establish fair and open competition in the acquisition of goods and services by STA. This policy establishes a consistent process for conducting and documenting procurement of goods and services in order to obtain the best possible goods and services at a reasonable price, provide proper and timely delivery of services, and provide adequate documentation of the process.

1.02 Scope

This procedure applies to all procurements (purchases) conducted by STA. Depending on fund source, application varies:

- (a) ISDEAA Compact funds, federal grants, or cooperative agreements: strict compliance.
- (b) Federal contracts and other grants and contracts: follow applicable terms and conditions of the award.
- (c) Tribal enterprise funds/ unrestricted revenue: substantial compliance. Substantial compliance means:

(c) Tribal enterprise funds/ unrestricted revenue: substantial compliance. Substantial compliance means:

- (1) Strict compliance with Sections 2.01 (a) and (b) and 2.02 (a) (c), and (d);
- (2) When practicable, staff will comply with Sections 2.01(c), 2.02(b) and (e), 2.03, and 3.01 and at all times will ensure that costs are reasonable; and
- (3) Section 3.02 does not apply.

Subawards made by STA under federal grants or cooperative agreements will be administered according to the terms and conditions of the grant or agreement. Although strict compliance with this policy is not required for subawards made by STA, this policy will be considered as guidance for subaward procurement processes in the absence of or as a supplement to applicable terms and conditions.

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

1.03 Authority

This procedure is created pursuant to the authority of the Tribal Council contained in the Constitution of the Sitka Tribe of Alaska, Article VII, Section 1(f) (to authorize or direct ...Tribal employees to administer the affairs of the Tribe and to carry out the directives of the Tribal Council) and (s) (to prescribe the rules and procedures necessary to give effect to any provision of this Constitution); and Budget Ordinance, Sitka Tribal Code, Title 4, Chapter 1, Section 4(c) which places a duty on the STA Finance Director to create and implement written procurement procedures.

1.04 Definitions

- (a) "Agent" means, for the purposes of this policy, any person or business acting on behalf of STA, including contractors, consultants, committee or commission members, or volunteers.
- (b) "Allowable, reasonable, and allocable" means costs or prices based on estimated costs for contracts are allowable under Subpart E- Cost Principles (2 CFR 200) and tribal policies, costs are reasonable for the items to be procured, and the item benefits the program which is funded.
- (c) "STA staff" includes a person authorized to purchase goods or services or a "Department Director" who is responsible for a department within the Tribe, including the General Manager and individuals whose responsibilities include overseeing a department.
- (d) "Goods" include supplies, materials, and equipment.
- (e) "Immediate family member" means an individual's spouse, parent, mother-in-law, father-in-law, brother, sister, brother-in-law, sister-in-law, and child (including adopted children and stepchildren).

- (f) "Micro-purchase Threshold" means the minimum federal micro-purchase threshold defined in 48 CFR 2.101. As of the publication of this Policy, the micro-purchase threshold is \$3,500 except for construction contracts subject to 40 U.S.C. §§ 3141-3148, where micro-purchases must be less than \$2,000, but that threshold is periodically adjusted for inflation.
- (g) "Sensitive property" means all property or equipment acquired that is subject to theft and pilferage. Sensitive property includes but is not limited to cell phones, laptop computers, cameras, firearms, and other items that have an acquisition cost of \$250 or more.
- (h) "Simplified Acquisition Threshold" is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. As of the publication of this Policy, the simplified acquisition threshold is \$150,000, but this threshold is periodically adjusted for inflation.
- (i) Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.

2.01 Requirements for All Procurement Transactions

(a) Conflicts of Interest

- (1) Standard. In addition to the provisions of STA's Code of Conduct, no employee, Tribal Council member or agent of STA shall participate in selection, or in the award or administration of a contract if a conflict of interest, real or apparent, would be involved.
 - (A) Procurement. A conflict of interest would arise when an individual is responsible for the selection, award or administration of purchasing goods or services and that individual has a financial or other interest in or a tangible personal benefit from the firm considered for the contract. A conflict of interest also arises if any of the following persons have a financial or other interest in or a tangible personal benefit from the firm considered for the contract:
 - (i) Any member of the individual's immediate family;
 - (ii) His or Her partner; or
 - (iii) An organization which employs, or is about to employ, any of the above, that has a financial or other interest in the firm selected for award.
 - (B) Gifts. A personal conflict of interest also arises where any STA Tribal Council member, committee or commission member, employee, or agent solicits or accepts gifts, gratuities, favors, or anything of monetary value from a contractor, potential contractor, or party to a sub-agreement. Acceptance of unsolicited gifts of nominal value is permitted under the conditions in STA's Code of Conduct.

(C) Personal Interest. In addition, a personal conflict of interest arises where any such person uses his or her position, or non-public information gained during his or her work for STA for personal gain, including gain inuring to an immediate family member, partner, or current or potential employer.

(2) Procedure. At the earliest point that an STA employee or agent discovers that he or she may have a conflict of interest with a potential contractor, whether during the planning, procurement process, or administration of the contract or purchase, he or she shall disclose the conflict of interest to his or her supervisor, and the selection, award, or administration task shall be reassigned to another staff person who does not have a conflict of interest. If the potential conflict of interest relates to a federal grant, the General Manager or designee will disclose it in writing to the awarding agency. A member of the Tribal Council or a committee or commission must disclose a potential conflict of interest to the members of the Council, committee or commission and must not participate in the discussion or vote on that matter.

(3) Violations. Any violation of the above referenced personal conflicts of interest is considered an Ethics Violation and will be addressed according to STA's Code of Conduct.

(b) The STA staff who seeks to purchase goods or services shall ensure that:

(1) The proposed procurement is allowable, reasonable and allocable according to applicable rules, including tribal laws, policies, and regulations; federal laws and regulations; and any granting agency rules, terms, or conditions.

(2) A contractor that assists in developing specifications, requirements, statements of work, or invitations for bids or requests for proposals is excluded from competing for those procurements.

(3) Proposed procurements avoid purchase of unnecessary or duplicative items. This shall include:

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

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

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

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

- (4) All prequalified lists of persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. STA staff will not preclude potential bidders from qualifying during the solicitation period.
- (5) STA does not discriminate on the basis of race, color, national origin, or sex in the award and performance of any contract. In addition,
 - (A) Unless expressly prohibited by applicable law, regulation or funding agreement, STA will provide Indian or Tribal preference in the solicitation and award of contracts and require all such contractors to comply with Indian or tribal preference in all aspects of employment and sub-contracting under the contract, according to the terms of STA's TERO ordinance (Sitka Tribal Code 05.01).
 - (B) STA will encourage small and women or minority-owned Disadvantaged Business Enterprises (DBEs) and labor surplus area firms to respond to STA solicitations, will ensure non-discrimination in the award and administration of all contracts, will create a level playing field on which DBEs can compete fairly, and will help remove barriers to the participation of DBEs in our contracts. Firms are encouraged to afford all potential business partners an equal, non-discriminatory opportunity to compete for business as joint venture partners or subcontractors. STA will perform the following actions in support of this policy:
 - (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
 - (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
 - (v) Using the services and assistance of the Small Business Administration, the Minority Business Development Agency of the Department of Commerce, the STA TERO Office, and other relevant tribal, state and federal agencies; and
 - (vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in this section.
 - (c) Competition. STA shall conduct all procurement selections for goods and services in a manner providing full and open competition. The following restrictions to full and open competition are not permitted:

- (1) Unreasonable requirements in order for firms to qualify to do business;
 - (2) Requiring unnecessary experience and excessive bonding;
 - (3) Noncompetitive pricing practices between firms or between affiliated companies;
 - (4) Noncompetitive awards to consultants that are on retainer contracts;
 - (5) Any arbitrary action in the procurement process;
 - (6) Allowing for the use of in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal laws expressly mandate geographic preference. Nothing in this section preempts State licensing laws. . When contracting for architectural or engineering services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms to compete for the contract;
 - (7) Specifying only a “brand name” product instead of allowing “an equal” product to be offered. But when it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equal” description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by potential contractors shall be clearly stated.
- (c) For procurements which exceed the Simplified Acquisition Threshold:
- (1) A cost or price analysis is required, prior to purchase (i.e. an independent estimate before receiving bids or proposals). The method and degree of analysis is dependent on the facts surrounding the particular procurement situation.
 - (2) Cost or prices which are negotiated are consistent with federal cost principles, and that negotiated costs or prices are not solely based on estimated costs.

2.02 Procurement Selection

- (a) The STA staff who needs to procure goods and services shall develop a clear and accurate description of the technical requirements for the material, product, or service to be procured (for example: *a round trip plane ticket to Anchorage; 27 No. 2 lead pencils with erasers; an architect to design a 2,500 square foot office building*). The detailed description:
 - (1) May include a statement of the qualitative nature of the material, product or service to be procured;
 - (2) When necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use;
 - (3) Will avoid detailed product specifications if at all possible.

- (b) In developing the detailed description of the good or service to be procured and throughout the solicitation process, STA staff shall ensure that the following restrictions are avoided:
- (1) Any specification or feature which unduly restricts competition;
 - (2) Unreasonable requirements on firms in order for them to qualify to do business;
 - (3) Requiring unnecessary experience and excessive bonding;
 - (4) Noncompetitive pricing practices between firms or between affiliated companies;
 - (5) Noncompetitive awards to consultants that are on retainer contracts;
 - (6) Creating organizational conflicts of interest;
 - (7) Allowing for any arbitrary action in the procurement process;
 - (8) Allowing for the use of in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal laws expressly mandate geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural or engineering services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms to compete for the contract;
 - (9) Specifying only a "brand name" product instead of allowing "an equal" product to be offered (when it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by potential contractors shall be clearly stated).
- (c) STA staff designated by the General Manager shall maintain files all procurements. These may include rationale for the method of procurement, selection of contract type, contractor selection or rejection and the basis for the contract price. A purchase order, check request, or charge card request may serve as a file of the procurement if it includes all of the information necessary to document compliance with this Policy.
- (d) STA staff shall ensure purchases are only from responsible parties according to the following criteria:
- (1) Responsible contractors possess the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, financial technical resources, and cultural competency.
 - (2) If any federal funds are used, STA may not enter into a contract with a party who is on the federal government's excluded party list system (which lists parties that are

excluded from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits), which can be found at the GSA System for Award Management at www.sam.gov.

(e) Procurement Selection. The STA staff responsible for procurement of goods and services shall conduct procurement selection according to one of the following methods:

(1) *Micro-purchases*. Micro-purchase procedures may be used for supplies or services for an aggregate dollar amount that does not exceed the federal Micro-purchase Threshold. Micro-purchases may be awarded without soliciting competitive quotations as long as all of the following conditions are met:

- A. STA staff considers the price reasonable;
- B. A proposed procurement may not be split to avoid a more detailed method; and
- C. STA staff must distribute micro-purchases equitably among qualified suppliers to the extent practicable.

(2) *Small Purchases*. Small purchase procedures may be used for relatively simple and informal purchases of services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. Small Purchase procedures:

- A. STA staff must obtain price or rate quotations from multiple qualified sources. Quotations will include price, availability, and delivery costs and timing.
 - i. For purchases between \$3,501 and \$10,000, staff must obtain oral or written price or rate quotations from multiple qualified sources.
 - ii. For purchases between \$10,000 and \$150,000, staff must publish a Request for Proposals and obtain proposals or bids in writing.
- B. Award may be based on (1) lowest price, (2) best qualified based on pre-established technical evaluation procedures, or (3) a combination of lowest price and best qualified based on pre-established technical evaluation factors.
- C. Small Purchases may also be made according to the procedures for Sealed Bids or Competitive Proposals.

(3) *Sealed Bids* (formal advertising). Sealed bid procedures should be used for procurements of construction services or other goods and services that can be described in detail if the procurement is in excess of the Simplified Acquisition Threshold. Bids are publicly solicited 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.

- A. Sealed bidding is feasible if the following conditions are present:
- i. A complete, adequate, and realistic specification or purchase description is available;
 - ii. Two or more responsible bidders are willing and able to compete effectively for the contract; and
 - iii. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
- B. If sealed bids are used, the STA staff shall:
- i. Publicly advertise an invitation to bid, and if possible solicit bids directly from at least three known potential contractors. The invitation must provide sufficient time to respond prior to the date set for opening the bids (typically thirty days);
 - ii. Ensure that the invitation for bids includes a complete, adequate, and realistic specification or purchase description and incorporates, or references how to obtain, any additional information regarding the goods or services in order for the bidder to properly respond;
 - iii. Schedule and administer a time and location to open all bids publicly at the time and place prescribed in the invitation for bids; and
 - iv. Collect all responses, document the time and date received, and only consider those responses received by the time and date announced.
- C. 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 costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of;
- D. Any and all bids may be rejected if there is a sound documented reason. A sound documented reason may include, but is not limited to, (a) inadequate funding, (b) a finding that a bidder is either non-responsive or not responsible, and/or (c) if the bidder fails to submit an adequate Tribal preference plan as expressed in STA's TERO ordinance (Sitka Tribal Code 05.01).

(4) Competitive Proposals.

- A. Competitive proposal procedures shall be used for:
- i. Acquisitions in excess of the Simplified Acquisition Threshold when the sealed bid process is not feasible or appropriate (e.g. when the good or service to be procured cannot be described in exact terms); and
 - ii. Acquisitions for less than the Simplified Acquisition Threshold when the services procured are best procured using evaluation criteria (where qualifications and quality of work are as important as price).
- B. The technique of competitive proposals will normally be conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type (time and materials) contract is negotiated and awarded.
- C. To conduct procurement by competitive proposals, the following requirements must be met:
- i. Requests for proposals must be publicized (typically 30 days or more) and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
 - ii. Proposals must be solicited from an adequate number of qualified sources (typically at least three);
 - iii. The RFP must include the relevant evaluation criteria and scoring method (a written method for conducting technical evaluations of the proposals received and for selecting recipients);
 - iv. Contracts must be awarded to the responsible firm whose proposal is most advantageous to STA, with price and other factors considered; and
 - v. STA may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(5) Noncompetitive Proposals is procurement through solicitation of a proposal from only one source. It is not the preferred method of procurement and may only be used in very limited circumstances:

- A. The good or service is available only from a single source;
- B. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- C. After solicitation of at least three sources, only one response is received;
- D. The federal funding agency has authorized in writing noncompetitive proposals in response to a written request from STA; or
- E. The item is an associated capital maintenance item as defined in 49 U.S.C. Section 5307(a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced. STA must first certify in writing to FTA: (i) that such manufacturer or supplier is the only source for such item; and (ii) that the price of such item is no higher than the price paid for such item by like customers.

2.03 Special Considerations for Construction Contracts

- (a) When establishing a contract price, the cost plus a percentage of construction cost method of payment may not be utilized.
- (b) Sealed bid is the preferred method for all construction procurements when procuring facility improvement or construction services.
- (c) Bonding Requirements. For construction or facility improvement contracts exceeding the Simplified Acquisition Threshold, STA requires the following bonding:
 - (1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The “bid guarantee” shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
 - (2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
 - (3) *A payment bond on the part of the contractor for 100 percent of the contract.* 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.
- (d) STA is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering

is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

3.01 Protest Procedures

An unsuccessful bidder or vendor may protest a decision arising out of a procurement. Any protest asserting that STA has not followed these written procedures, applicable federal law or regulations when procuring goods or services shall be made in writing to the General Manager within seven days of the date of discovery of the issue. The protest shall be signed, and indicate the exact matter which is being protested. The General Manager will review the protest and respond to the protester within fourteen days, and if necessary halt the procurement process while the protest is being resolved. If a protest of a procurement is received, the General Manager shall disclose information regarding the protest to the awarding agency.

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

A protestor must exhaust all administrative remedies with STA before pursuing a protest with the Federal agency. Federal agency review of protests will be limited to:

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

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

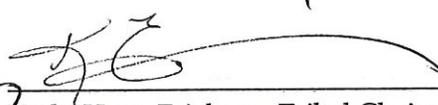
3.02 Awarding Agency Review

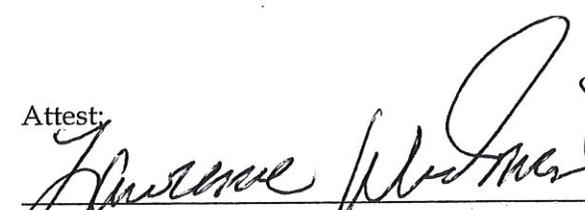
- (a) STA will make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
- (b) STA will on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:
 - (1) 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; or

- (2) The procurement, which is expected to exceed the Simplified Acquisition Threshold specifies a “brand name” product; or
 - (3) The proposed procurement 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
 - (4) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.
- (c) The STA General Manager may authorize a staff person to request that STA’s procurement system be reviewed by an awarding agency to determine whether its system meets these standards in order for its system to be certified.
- (d) STA may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may rely on written assurances from STA that it is complying with these standards. STA will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

CERTIFICATION

The foregoing resolution was adopted at a duly convened meeting of the Tribal Council of Sitka Tribe of Alaska, held on June 20, 2018, and at which a quorum was present, by a vote of 7 IN FAVOR, 0 AGAINST, 0 ABSTAIN, and 2 ABSENT.


Kathy Hope Erickson, Tribal Chairman

for 
Nancy Douglas, Tribal Secretary

