



STATE OF MAINE
 DEPARTMENT OF TRANSPORTATION
 16 STATE HOUSE STATION
 AUGUSTA, MAINE 04333-0016

Paul R. LePage
 GOVERNOR

David Bernhardt
 COMMISSIONER

March 22, 2011
 Subject: **Princeton**
 Federal Project No: AC-BH-1266(200)X
 State PIN: 0012662.00
Amendment No. 1

Dear Sir/Ms:

Make the following change to the Bid Document:

In the Bid Book (pages 4 thru 11) **REMOVE** the “SCHEDULE OF ITEMS” 8 pages dated 110307 and **REPLACE** with the attached new “SCHEDULE OF ITEMS” 8 pages dated 110322.

In the Bid Book after page 26 **ADD** the attached “TRIBAL EMPLOYMENT RIGHTS”, 37 pages.

In the Plans, SHEET NUMBER 2 of 33, Make the following **CHANGES** to the “ESTIMATED QUANTITIES” in pen and ink;

	Item No.	Description	Quantity	Unit
ADD ITEM	527.34	Work Zone Crash Cushions	3	Unit
ADD ITEM	503.17	Mechanical/Welded Splice	176	Each

CHANGE ITEM 502.249 – STRUC. CONC. PIERS (PLACED UNDER WATER) from “160 CY” to read “**1 LS**”

The following questions have been received:

Question: Is there any instream work window restriction on this project? In the permit section, page 4 of 10, Habitat Considerations, B. Princeton, Calais Road (Rt#1) bridge (Bridge #2688) there is a restriction for Route 26/100 Presumpscot River Bridge in Falmouth, but nothing for Princeton Bridge.

Response: There is no in-water work window for this project. Subparagraph B applies to this project.



PRINTED ON RECYCLED PAPER

Question: Who is responsible to remove the USGS Water Monitoring System located on the southeast corner of the existing bridge?

Response: The USGS is responsible for removal of the USGS Water Monitoring System. The contact person at the USGS is Gregory Stewart 207-622-8201 ext.118. The Contractor needs to provide the USGS with a minimum of 14 day advanced notice before removal is required

Question: It does not appear that there is enough area to protect the ends of the temporary concrete barriers without the use of work zone crash cushions. Will the State add a bid item 527.34 Work Zone Crash Cushions?

Response: Item 527.34 Work Zone Crash Cushions has been added to the schedule of items. Please refer to the attached new "SCHEDULE OF ITEMS".

Question: How will the mechanical splices shown on sheet 27 of 33 be paid?

Response: Item 503.17 Mechanical/Welded Splice has been added to the schedule of items. Please refer to the attached new "SCHEDULE OF ITEMS".

Consider this change and information prior to submitting your bid on March 30, 2011.

Sincerely,



Scott Bickford
Contracts & Specifications Engineer

For

SCHEDULE OF ITEMS

REVISED:

CONTRACT ID: 012662.00

PROJECT(S): AC-BH-1266(200)X

CONTRACTOR : _____

LINE NO	ITEM DESCRIPTION	APPROX. QUANTITY AND UNITS	UNIT PRICE		BID AMOUNT	
			DOLLARS	CTS	DOLLARS	CTS
SECTION 0001 PROJECT ITEMS						
0010	201.23 REMOVING SINGLE TREE TOP ONLY	2.000 EA				
0020	201.24 REMOVING STUMP	2.000 EA				
0030	202.19 REMOVING EXISTING BRIDGE	LUMP	LUMP			
0040	203.20 COMMON EXCAVATION	1100.000 CY				
0050	203.24 COMMON BORROW	10.000 CY				
0060	203.25 GRANULAR BORROW	120.000 CY				
0070	206.082 STRUCTURAL EARTH EXCAVATION - MAJOR STRUCTURES	630.000 CY				
0080	206.09 STRUCTURAL ROCK EXCAVATION - ABUTMENTS AND RETAINING WALLS	20.000 CY				
0090	206.10 STRUCTURAL EARTH EXCAVATION - PIERS	50.000 CY				
0100	206.11 STRUCTURAL ROCK EXCAVATION - PIERS	10.000 CY				

SCHEDULE OF ITEMS

REVISED:

CONTRACT ID: 012662.00

PROJECT(S): AC-BH-1266(200)X

CONTRACTOR : _____

LINE NO	ITEM DESCRIPTION	APPROX. QUANTITY AND UNITS	UNIT PRICE		BID AMOUNT	
			DOLLARS	CTS	DOLLARS	CTS
0110	304.13 DENSE GRADED CRUSHED AGGREGATE SUBBASE	1300.000 CY				
0120	403.207 HOT MIX ASPHALT 19.0 MM HMA	180.000 T				
0130	403.208 HOT MIX ASPHALT 12.5 MM HMA SURFACE	15.000 T				
0140	403.209 HOT MIX ASPHALT 9.5 MM (SIDEWALKS, DRIVES, INCIDENTALS)	50.000 T				
0150	403.210 HOT MIX ASPHALT 9.5 MM	360.000 T				
0160	403.213 HOT MIX ASPHALT 12.5 MM BASE	190.000 T				
0170	409.15 BITUMINOUS TACK COAT - APPLIED	170.000 G				
0180	502.219 STRUCTURAL CONCRETE, ABUTMENTS AND RETAINING WALLS	LUMP	LUMP			
0190	502.22 STRUCTURAL CONCRETE, ABUTMENTS AND RETAINING WALLS (PLACED UNDER WATER)	560.000 CY				
0200	502.239 STRUCTURAL CONCRETE PIERS	LUMP	LUMP			

SCHEDULE OF ITEMS

REVISED:

CONTRACT ID: 012662.00

PROJECT(S): AC-BH-1266(200)X

CONTRACTOR : _____

LINE NO	ITEM DESCRIPTION	APPROX. QUANTITY AND UNITS	UNIT PRICE		BID AMOUNT	
			DOLLARS	CTS	DOLLARS	CTS
0210	502.249 STRUCTURAL CONCRETE PIERS (PLACED UNDER WATER)	LUMP	LUMP			
0220	502.25 STRUCTURAL CONCRETE SUPERSTRUCTURE SLABS	LUMP	LUMP			
0230	502.31 STRUCTURAL CONCRETE APPROACH SLABS	LUMP	LUMP			
0240	502.49 STRUCTURAL CONCRETE CURBS AND SIDEWALKS	LUMP	LUMP			
0250	503.12 REINFORCING STEEL, FABRICATED AND DELIVERED	36600.000 LB				
0260	503.13 REINFORCING STEEL, PLACING	36600.000 LB				
0270	503.17 MECHANICAL WELDED SPLICE	176.000 EA				
0280	504.709 BRIDGE HARDWARE	LUMP	LUMP			
0290	507.0831 STEEL BRIDGE RAILING, 4 BAR	LUMP	LUMP			
0300	508.14 HIGH PERFORMANCE WATERPROOFING MEMBRANE	LUMP	LUMP			

SCHEDULE OF ITEMS

REVISED:

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CONTRACTOR : _____

LINE NO	ITEM DESCRIPTION	APPROX. QUANTITY AND UNITS	UNIT PRICE		BID AMOUNT	
			DOLLARS	CTS	DOLLARS	CTS
0310	510.12 SPECIAL DETOUR__FOOT ROADWAY WIDTH, VEHICULAR AND PEDESTRIAN TRAFFIC SEPARATED 14 FOOT	LUMP	LUMP			
0320	511.07 COFFERDAM: ABUTMENT NO. 1	LUMP	LUMP			
0330	511.07 COFFERDAM: ABUTMENT NO. 2	LUMP	LUMP			
0340	511.07 COFFERDAM: PIER NO. 1	LUMP	LUMP			
0350	512.081 FRENCH DRAINS	LUMP	LUMP			
0360	514.06 CURING BOX FOR CONCRETE CYLINDERS	EA 1.000				
0370	515.20 PROTECTIVE COATING FOR CONCRETE SURFACES	SY 420.000				
0380	520.232 EXPANSION DEVICE - ASPHALTIC PLUG JOINT	LF 90.000				
0390	526.301 TEMPORARY CONCRETE BARRIER TYPE I	LUMP	LUMP			
0400	526.34 PERMANENT CONCRETE TRANSITION BARRIER	EA 4.000				

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LINE NO	ITEM DESCRIPTION	APPROX. QUANTITY AND UNITS	UNIT PRICE		BID AMOUNT	
			DOLLARS	CTS	DOLLARS	CTS
0410	527.34 WORK ZONE CRASH CUSHIONS	3.000 UN				
0420	535.62 PRESTRESSED STRUCTURAL CONCRETE BOX BEAM	LUMP	LUMP			
0430	604.165 CATCH BASIN RESET TOP	1.000 EA				
0440	606.1721 BRIDGE TRANSITION - TYPE 1	4.000 EA				
0450	606.23 GUARDRAIL TYPE 3C - SINGLE RAIL	100.000 LF				
0460	606.231 GUARDRAIL TYPE 3C - 15 FOOT RADIUS AND LESS	25.000 LF				
0470	606.265 TERMINAL END - SINGLE RAIL - GALVANIZED STEEL	1.000 EA				
0480	606.353 REFLECTORIZED FLEXIBLE GUARDRAIL MARKER	6.000 EA				
0490	606.365 GUARDRAIL REMOVE, MODIFY, AND RESET TYPE 3B TO 3C	175.000 LF				
0500	606.79 GUARDRAIL 350 FLARED TERMINAL	2.000 EA				
0510	609.11 VERTICAL CURB TYPE 1	180.000 LF				

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CONTRACTOR : _____

LINE NO	ITEM DESCRIPTION	APPROX. QUANTITY AND UNITS	UNIT PRICE		BID AMOUNT	
			DOLLARS	CTS	DOLLARS	CTS
0520	609.13 VERTICAL BRIDGE CURB TYPE 1	276.000 LF				
0530	609.237 TERMINAL CURB TYPE 1 - 7 FOOT	6.000 EA				
0540	610.08 PLAIN RIPRAP	600.000 CY				
0550	613.319 EROSION CONTROL BLANKET	150.000 SY				
0560	615.07 LOAM	30.000 CY				
0570	618.1401 SEEDING METHOD NUMBER 2 - PLAN QUANTITY	5.000 UN				
0580	619.1201 MULCH - PLAN QUANTITY	5.000 UN				
0590	619.1401 EROSION CONTROL MIX	60.000 CY				
0600	620.58 EROSION CONTROL GEOTEXTILE	810.000 SY				
0610	620.6012 HDPE GEOMEMBRANE	40.000 SY				
0620	627.733 4" WHITE OR YELLOW PAINTED PAVEMENT MARKING LINE	1700.000 LF				

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LINE NO	ITEM DESCRIPTION	APPROX. QUANTITY AND UNITS	UNIT PRICE		BID AMOUNT	
			DOLLARS	CTS	DOLLARS	CTS
0630	627.75 WHITE OR YELLOW PAVEMENT & CURB MARKING	240.000 SF				
0640	629.05 HAND LABOR, STRAIGHT TIME	40.000 HR				
0650	631.12 ALL PURPOSE EXCAVATOR (INCLUDING OPERATOR)	20.000 HR				
0660	631.15 ROLLER, EARTH AND BASE COURSE (INCLUDING OPERATOR)	20.000 HR				
0670	631.172 TRUCK - LARGE (INCLUDING OPERATOR)	20.000 HR				
0680	639.19 FIELD OFFICE TYPE B	1.000 EA				
0690	643.72 TEMPORARY TRAFFIC SIGNAL	LUMP	LUMP			
0700	652.31 TYPE I BARRICADE	10.000 EA				
0710	652.312 TYPE III BARRICADE	4.000 EA				
0720	652.33 DRUM	10.000 EA				
0730	652.34 CONE	20.000 EA				

SCHEDULE OF ITEMS

REVISED:

CONTRACT ID: 012662.00

PROJECT(S): AC-BH-1266(200)X

CONTRACTOR : _____

LINE NO	ITEM DESCRIPTION	APPROX. QUANTITY AND UNITS	UNIT PRICE		BID AMOUNT	
			DOLLARS	CTS	DOLLARS	CTS
0740	652.35 CONSTRUCTION SIGNS	500.000 SF				
0750	652.361 MAINTENANCE OF TRAFFIC CONTROL DEVICES	LUMP	LUMP			
0760	652.38 FLAGGER	100.000 HR				
0770	653.22 2 INCH POLYSTYRENE PLASTIC INSULATION	40.000 SY				
0780	656.75 TEMPORARY SOIL EROSION AND WATER POLLUTION CONTROL	LUMP	LUMP			
0790	659.10 MOBILIZATION	LUMP	LUMP			
	SECTION 0001 TOTAL					
	TOTAL BID					

TRIBAL EMPLOYMENT RIGHTS

ORDINANCE NO.1 OF THE

Passamaquoddy Tribe

Indian Township Reservation

CHAPTER 1. STATEMENT OF PURPOSE - EMPLOYMENT AND TRAINING
POLICY

(1) The Passamaquoddy Tribal Council believes that it is important to create employment and training opportunities for Passamaquoddy Tribal members and other Indians and to eradicate discrimination against Indian people. An integral part of attaining this goal is by structuring employment and training opportunities on the Indian Township Reservation to provide for the hiring of Indians who are qualified, and through the training of Indians where there are no sufficiently qualified Indians to meet employment opportunities.

Indian preference in contracting and subcontracting will be adhered to so as to promote individual and tribal economic development in accordance to the guidelines, rules, and regulations established herein.

(2) Nothing contained in this ordinance shall violate or undermine federal requirements on equal employment opportunity, namely Title VII of the 1964 Civil Rights Act; and the Office of Federal Contract Compliance Programs (OFCCP) or Executive Order 11246. Title VII prohibits preferential employment on the basis of race, color, sex, national origin, and religion.

However, Title VII contains a special exception which makes Indian preference

permissible. Section 703 (i) states: " Nothing contained in this Title shall apply to any business or enterprise on or near an Indian reservation with regard to any publicly announced employment practice of such business or enterprise under which preferential treatment is given to any individual because he is an Indian ".

- (3) The Bureau of Indian Affairs (BIA), in it's regulations implementing the Indian Self-Determination Act, Public Law 93-638, *Sec. 7 (b)* provides for Indian preference in Employment and training, and contracting and subcontracting on all contracts negotiated or let on behalf of an Indian tribe pursuant to the Act. *Sec. 7 (c) permits tribal preference If funded with 638 funds.*
- (4) The U.S. Congress justifies tribes' powers to impose preferential requirements on the grounds that: " This exemption is consistent with the federal government's policy of encouraging Indian employment and with the special legal position of Indians".
- (5) In January 1977, the OFCCP issued regulations which states: " Work on or near Indian reservations". It shall not be a violation of equal opportunity clause for a construction or non-construction contractor to extend a publicly announced preference in employment to Indians living on or near a Indian reservation. The use of the word "near" would include all that area where a person seeking employment could reasonably be expected to commute to and from work in the course of a work day. Contractors or sub-contractors extending such a preference shall not, however, discriminate against Indians on the basis of religion, sex, or tribal affiliations, and the use of such preference shall not excuse a contractor from contractor from complying with the other requirements contained in this chapter.

CHAPTER 2. TITLE

This ordinance shall, be cited as Indian Township Tribal Employment Rights Ordinance.

CHAPTER 3. AUTHORITY

The authority for this is Resolution #1 By - Laws of the Passamaquoddy Tribe(s).

CHAPTER 4. DEFINITION OF THE TERMS AS USED IN THIS TITLE

- (1) The term "Commerce" includes all trades, traffic distribution, communications, transportation, provision of services, manufacturing, production, agricultural production.
- (2) The term "Employee" shall include any employee or applicant for employment, and shall not be limited to the employees of a particular employer unless a section explicitly states otherwise, and shall include any individual whose work is ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practices and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employment in the domestic services of any family or person at his home, or any individual employed by any other person who is not an employer as herein defined.
- (3) The term "Employee on the Indian Township Reservation" shall include any employee who, in a non-supervisory or non-managerial position, spends more than one-tenth of his working hours per month or per pay period, whichever is shorter, on the Indian Township Reservation and shall include any employee who is in a supervisory or managerial position and spends more than one-twentieth of his working hours per month or per pay period, whichever is shorter on the Indian Township Reservation.

- (4) The term "Employer" includes, but is not limited to, any person who engages in commerce through paid agents or servants or who is hired on contracts for services within the exterior boundaries of the Indian Township Reservation. The term "Employer" includes any person acting as an agent, contractor, sub-contractor of an employer, directly or indirectly, but shall not include the United States or any wholly owned government corporation, or any state or political sub-division thereof: but shall include independent contractors and sub-contractors of the United States or of an wholly owned government corporation of any state or political sub-division thereof.
- (5) The term "Covered Employer: includes any employer who employs 1(one) or more employees on the Indian Township Reservation for an aggregate of 60 working days or more in any twelve-month period.
- (6) The term "Indian" means:
- (a) Any member of any *federally* recognized Indian tribe now under federal jurisdiction.
 - (b) Descendants of members who were on June 1, 1934, residing within the present boundaries of any Indian reservation.
 - (c) All others of one-quarter or more Indian blood or tribes indigenous to the U.S., Eskimos and other aboriginal people of Alaska.
 - (d) Descendants of , until January 17, 1982, at least one-fourth degree ancestry of a current federally recognized tribe whose rolls have been closed by an Act of Congress (*or which have been terminated*).
- (7) The term "Indian - Owned Firm or Entity" means any commercial, industrial, or other

business activity owner firm or entity, provide that such Indian ownership constitutes not less than 51% of the enterprise *and which is managed and controlled by such Indians.*

- (8) The term "Indian Preference" means that Indians are given preference over non-Indians in employment and training.
- (9) The term "Notice", as it is required to be given by the TERO Director, shall be sufficient if it is published and posted in a public place on the reservation, as to : unnamed parties in an action; all interested persons who are not parties to an action; and in all instances where a specific person is not addressed.
- (10) The term "Council" shall mean the tribal council of the Passamaquoddy Tribe.
- (11) The term "Commission" means the Passamaquoddy Tribal Employment Rights Commission appointed by the Council.
- (12) The term "Chairman" shall mean Chairman of the Commission.
- (13) The term "Commissioner" shall mean the Commissioner of the Tribal Employment Rights Commission.
- (14) The term "EEOC" shall mean the Equal Employment Opportunity Commission of the Department of Labor of the United States.
- (15) The term "OFCCP" shall mean the Office of Federal Contract Compliance Programs of the United States.
- (16) The term "Secretary" shall mean the Secretary of the Interior or his duly authorized representative.

(17) The term "Located near the reservation" shall mean any employer located within daily commuting distance of the reservation.

(18) The term "Person" shall include both natural and artificial persons including, but not limited to corporations, trusts, partnerships, unions, societies, sole proprietorships, *joint ventures* and estates if descendants.

(19) The term "Union" or "Labor Union" means an organization of any kind, or any agency or employee representation committee or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievance, labor disputes, wages, rate of pay hours of employment, or conditions of work.

(20) "Other definitions reserved"- all other words (definitions) shall be added in accordance to this ordinance.

CHAPTER 5: APPLICABILITY

This ordinance shall apply to any and all lands and areas within the exterior boundaries of the Indian Township Reservation and other lands subject to jurisdiction of the Passamaquoddy Tribe(s).

CHAPTER 6. FAIR LABOR STANDARDS POLICY - Reserved

CHAPTER 7. ESTABLISHMENT OF THE TRIBAL EMPLOYMENT RIGHTS BOARD

This Board shall consist of the Tribal Council and shall carry out the duties and responsibilities of said Polices.

TRIBAL COUNCIL RESOLUTION: #03- 0219

TRIBAL EMPLOYMENT RIGHTS

ORDINANCE NO. 2 OF THE

Indian Township Reservation

P.O. Box 301

Princeton, 04668

CHAPTER 1. STATEMENT OF PURPOSE - TERO TAX/FEE

(1) The Passamaquoddy Tribal Council agrees to establish a TERO TAX/FEE to raise Revenue for the operation of the TERO office. The Passamaquoddy Tribal Council authorizes the TERO TAX/FEE to be imposed by the TERO office as follows.

(1) Every covered ~~construction contractor with a contract of \$100,000 or more on the~~ Indian Township Reservation or with the Passamaquoddy Tribe, or any agency thereof shall pay a one time tax/fee not to exceed three percent (3%) of the total gross contract price of the contract, per each contract.

The tax/free may be paid in installments over the length of the contract. [*as defined in contract terms*]

(2) Such fees shall be distributed as follows:

Two percent (2%) to be given to the Passamaquoddy Tribe;

One percent (1%) to be given to the TERO Office to met the operating cost of the TERO Office.

(3) *The Contract Officer* shall be responsible for collecting said tax/fees and is authorized to establish such rules and regulations *and contract terms* as are necessary to ensure a fair and timely collection process. An employer or

contractor who fails to pay the required tax/fee shall be subject to the remedial actions as follows:

Any employer, contractor, or subcontractor who violates this ordinance or rules, regulations, or orders of the TERO Ordinance shall be subject to penalties for such violations including, but not limited to :

- (a) Denial of right to commence or continue business inside the reservation
- (b) Suspension of all operations inside the reservation.
- (c) Payment of back - pay and damages to compensate any injured party.
- (d) An order to summarily remove employees hired in violation of the ordinance, or rules, regulations, and order of TERO .
- (e) Imposition of monetary civil penalties.
- (f) Prohibition from engaging in any future operations.
- (g) An order requiring employment, promotions, and training of Indians injured by the violation
- (h) An order requiring changes in procedures and policies necessary to eliminate the violations.
- (i) *A determination of non-responsibility which shall be recorded and shall apply to future contract opportunities with the tribe and with other tribes.*

CHAPTER 8. TERO TAX/FEES

A Tribal Employment Rights tax/fee to raise revenue for the operation of the Office and Tribal Government will be imposed by the Tribal Administration with the approval of Tribal Councils.

C E R T I F I C A T I O N

The foregoing was duly enacted by the Indian Township Tribal Council on the 19th day of February by a vote of 7 for , 0 against, and 0 absent under authority contained in Resolution

Approved

Not Approved

Denise U. Felcker 2/24/03

Tribal Clerk

Date

PASSAMAQUODDY NATION AT INDIAN TOWNSHIP

Procurement Policy Table of Contents

- a. Definitions
 - 1. General Provisions
 - 2. Procurement Authority and Administration
 - 3. Procurement Methods
 - 4. Contractor Qualifications and Duties
 - 5. Type of Contracts , Clauses and Contract Administration
 - 6. Specifications
 - 7. Appeals and Remedies
 - 8. Assistance to Small and Other Businesses
 - 9. Ethics in Public Contracting
 - 10. TERO

Attachments

- A. Indian Preference “X Factor”, in the bidding process
- B. Council Resolution adopting the Procurement Policy

STATEMENT OF PROCUREMENT POLICY

Adopted by the Indian Township Tribal Council. The effective date of this statement is February 19, 2003 and replaces all previous versions.

This Statement of Procurement Policy complies with Tribal and Federal Law. Indian preference is in accordance with section 7(b) the Indian Self-Determination and Education Assistance Act. (638 Statue 25 USC) and is binding on all Tribal procurements and contracting actions.

Definitions

- (1) Architect-Engineer and Land Surveying Services. Those professional services within the scope of the practice of architecture, professional engineering, or land surveying, as defined by the laws of the State.
- (2) Blind Trust. An independently managed trust in which the employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.
- (3) Brand Name or Equal Specification. A specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet Passamaquoddy Tribe's requirements, and which provides for the submission of equivalent products.
- (4) Brand Name Specification. A specification limited to one or more items by manufacturers' names or catalogue numbers.
- (5) Business. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
- (6) Change Order. A written order signed and issued by the Contracting Officer, directing the contractor to make changes which the "Changes" clause of the contract authorizes the Contracting Officer to order unilaterally without the consent of the contractor.
- (7) Contract Modification (bilateral change). Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.
- (8) Confidential Information. Any information which is available to an employee only because of the employee's status as an employee of the Passamaquoddy Tribe and is not a matter of public knowledge or available to the public on request.

- (9) Construction. The process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.
- (10) Contract. All types of Passamaquoddy Tribal agreements, regardless of what they may be called, for the procurement of supplies, service, or construction.
- (11) Contractor. Any person having a contract with the Passamaquoddy Tribe or a wholly owned subsidiary.
- (12) Cost Analysis. The evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.
- (13) Cost Data. Factual information concerning the cost of labor, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.
- (14) Cost-Reimbursement Contract. A contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this Manual; and a fee or profit, if any.
- (15) Direct or Indirect Participation. Involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.
- (16) Disadvantaged Business. A small business which is owned, managed and controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.
- (17) Employee. An individual drawing a salary or wages from the Passamaquoddy Tribe, whether elected or not; any non-compensated (volunteer) individual performing personal services for the Passamaquoddy Tribe or any department, agency, commission, council, board, or any other entity established by the executive or legislative branch of the Passamaquoddy Tribe; and any non-compensated individual serving as an elected official of the Passamaquoddy Tribe.
- (18) Financial Interest.
- (a) Ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more than \$100.00 per year, or its equivalent;
- (b) Ownership of 5% of any property or business; or

- (c) Holding a position in a business such as officer, director, trustee, partner, employee or the like, or holding any position of management.
- (19) Gratuity. A payment, loan, subscription, advance, deposit of money, service, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- (20) Immediate Family. Husband-Wife, Mother-Father, Father -Mother-in-law, Son, Daughter, Daughter-in-Law, Brothers-Sisters, Son-in-Law, Uncle-Aunt, Brother-in-Law, Sister-in-Law, Niece-Nephew, Grandmother, and Grandfather.
- (21) Indian Owned Business. Any business owned, managed and controlled as defined in the Passamaquoddy Tribe's TERO Ordinance which is hereby incorporated by reference for purposes of determination of Indian status and eligibility.
- (22) Invitation for Bids. All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.
- (23) Passamaquoddy Tribe. A sovereign tribal government, federally recognized and eligible for the benefits given to Indians because of their status as Indians.
- (24) Person. Any business, individual, union, committee, club, other organization, or group of individuals, entity.
- (25) Price Analysis. The evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.
- (26) Pricing Data. Factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and subcontract prices.
- (27) Procurement. The buying, purchasing, renting, leasing, or otherwise acquiring of any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection, and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- (28) Qualified Products List. An approved list of supplies, service, or construction items described by model or catalogue numbers, which, prior to competitive solicitation, the Passamaquoddy Tribe has determined will meet the applicable specification requirements.
- (29) Request for Proposals. All documents, whether attached or incorporated by reference utilized for soliciting proposals.

(30) Responsible Bidder or Offeror. A person who has the capability in all respects to perform fully the contract requirements and the tenacity, perseverance, experience, integrity, reliability, capacity, record of past performance, facilities, equipment, and credit which will assure good faith, diligent performance.

(31) Responsive Bidder. A person who has submitted a bid which conforms in all material respects to the requirements set forth in the invitation for bids or requests for proposal.

(32) Services. The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include agreements or collective bargaining agreements.

(33) Small Business. A United States business which is independently owned and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation as defined by the Small Business Administration.

(34) Specification. Any description of the physical or functional characteristics or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

(35) Supplies. All property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

(36) Using Agency. Any department, commission, board, or entity of the Passamaquoddy Tribe requiring supplies, services, or construction procured pursuant to this Manual.

I. GENERAL PROVISIONS

A. PURPOSE

The purpose of this Statement of Procurement Policy is to: provide for the fair and equitable treatment of all persons or firms involved in purchasing and contracting with the ITTC; assure that supplies, equipment, professional services, and construction contracts are procured efficiently, effectively, and at the most favorable prices available to the ITTC; promote competition in contracting; provide safeguards for maintaining a procurement system of quality and integrity; and assures that ITTC purchasing actions are in full compliance with applicable Federal standards, and State, Tribal, and local laws.

B. APPLICATION

This Statement of Procurement Policy applies to all contracts for the procurement of supplies, services, and construction entered into by the ITTC and its departments after the effective date of this Statement. It shall apply to every expenditure of funds by the ITTC for public purchasing, irrespective of the source of funds, including contracts which do not involve an obligation of funds (such as concession contracts); however nothing in this Statement shall prevent the ITTC from complying with the terms and conditions of any grant, contract, gift, or bequest that is otherwise consistent with law. When both Tribal and Federal funds are used for a project, the work to be accomplished with these funds should be separately identified, and Indian preference regulations shall be applied to the total project. 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. All procurement transactions shall be done in a full and open competitive manner consistent with the standards of the "Common Rule", Section .36 and of 25 CFR Part 900, Subpart F.

II. PROCUREMENT AUTHORITY AND ADMINISTRATION

A. The Tribal Governor or other individual he or she has authorized will be the Contracting Officer and will administer all procurement transactions. A centralized Purchasing Director shall be delegated the authority to implement the Procurement Policy and shall function as the Contracting Officer's Representative in all relations to vendors.

1. Principal Purchasing Official. Except as otherwise provided herein, the Purchasing Officer shall serve as the principal purchasing official for the ITTC, and shall be responsible for the procurement of supplies, services, and construction in accordance with this Manual.

2. Duties. In accordance with this Manual, and subject to the general administrative direction of the Treasurer, the Purchasing Officer shall:

(a) procure or supervise the procurement of all supplies, services, and construction needed by the ITTC:

(b) establish and maintain programs for specifications developments contract administration and inspection and acceptance, in cooperation with the public agencies using the supplies, services, and construction.

3. Operational Procedures. Consistent with this Manual, and with the approval of the Governor and Council, the Purchasing Officer may adopt operational procedures relating to the execution of its duties.

B. The Tribal Governor or his/her designee shall ensure that:

1. Procurement requirements are subject to an annual planning and budget process to assure efficient and economical purchasing;
2. Contract and modifications are in writing clearly specifying the desired supplies, services, or construction.

3. For procurement other than small purchases, public notice is given of each upcoming procurement at least ten (10) days (or other time period if required by Tribal or local law) before a solicitation is issued; responses to such notices are honored to the maximum extent practical.

4. Solicitation procedures are conducted in full compliance with Federal standards stated in the Common Rule, section .36, the standards in 25 CFR Part 900, Subpart F and the Indian preference requirements of the '638 Statute, 25 USC § 450e.

5. Contract award is made to the responsive and responsible prime bidder offering the lowest price, consistent with Indian preference requirements (for sealed bid contracts) or contract award is made to the prime offeror whose proposal offers the greatest value to the ITTC, considering price, technical, and other factors specified in the solicitation, including Indian preference. For contracts awarded based on competitive proposals; unsuccessful firms are notified within 10 days or other specified time period by applicable Tribal or local law after contract award.

6. There are sufficient unencumbered funds available to cover the anticipated cost of each procurement before contract award or modification (including change orders), and work is inspected before payment is made for contract work performed and accepted.

7. Procedures for inventory control, storage and protection of goods and supplies, and issuance of, or other disposition of, supplies and equipment are established.

C. This statement and any later changes shall be submitted to the Tribal Council for approval. The Council appoints and delegates procurement authority to the Tribal Governor and is responsible for ensuring that any procurement policies adopted are appropriate for the ITTC and the Council will periodically review compliance with these procedures.

III. PROCUREMENT METHODS

Priority in Sources of Supply

To insure reasonableness of cost and effective and efficient utilization of federal funds, the tribal organization will use, where possible, established sources of supply for goods and services. The Purchasing Officer will determine if the established sources from the federal government can supply the needed item. The Purchasing Officer will maintain catalogs and listings from the established federal government supply sources. In selecting

the sources to acquire the goods from, the Purchasing Officers will use the following priority listing.

1. Excess property from federal agencies as listed in GSA bulletins or excess property listings from the federal agencies themselves. Purchasing Officer will obtain monthly or periodic excess listings from GSA Area Utilization Officers.
2. Schedule of products made in federal penal and correctional institutions. Purchasing Officer will obtain catalog.
3. Procurement list from the committee for purchases from the blind and other severely handicapped. Purchasing Officer will obtain catalog.
4. GSA supply catalog. Purchasing Officer will obtain catalog.
5. Federal supply schedules.

The Purchasing Officer will obtain a catalog from GSA for determining the items available from GSA and will obtain catalogs for the federal supply schedules for appropriate items.

A. SELECTION OF METHODS

When satisfying its needs by procurement, the Tribe shall choose one of the following procurement methods, based on the nature and anticipated dollar value of the total requirement.

B. SMALL PURCHASE PROCEDURES

1. General. Any procurement not exceeding \$100,000 may be conducted in accordance with small purchase procedures authorized in this section.
2. Indian preference. The ITTC shall to the greatest extent feasible provide preference to Indian-owned economic enterprises and Indian organizations and shall, to the extent feasible, maintain and/or refer to lists of qualified Indian-supply sources. The ITTC shall require a statement from all prime contractors agreeing to provide Indian preference in subcontracting, training, and employment, and shall specify the method to be used.
3. Petty cash purchases. Small purchases under \$200.00, which can be satisfied by local sources, may be processed through the use of a petty cash account. The Contracting Officer shall ensure that: that account is established in an amount sufficient to cover small purchases made during a reasonable period; security is maintained and only authorized individuals have access to the account; the account is periodically reconciled and replenished by submission of a by a voucher to the Tribal

Finance Officer; and, the account is periodically audited by the finance officer or designee to validate proper use and to verify that the account total equals cash on hand plus the total of accumulated vouchers.

C. SMALL PURCHASES OF \$5000 to \$100,000.

1. General. At the ITTC's option, the Tribe may elect to use small purchase procedures in accordance with Federal Acquisition Regulations.

2. Obtaining Quotes. The Contracting Officer shall solicit price quotations by phone, letter or other informal procedure that allows participation by a reasonable number of competitive sources. The Contracting Officer shall obtain written quotations; however, the written quotation may be a confirmation of a previous oral quote only if it is submitted within 10 days of the oral quote or by the due date for submitting quotations. The names, addresses and/or telephone numbers of the offerors and persons contacted and the date and amount of each quote shall be recorded and maintained as public record.

3. Competition. The Contracting Officer shall attempt to obtain quotations from a minimum of three qualified sources. Solicitations of fewer than three sources is acceptable if the Contracting Officer has attempted but has been unable to obtain a sufficient number of quotations. The sole quotation received may be accepted in unusual circumstances (such as an emergency threatening public health and safety).

D. AWARD

1. Award based on price. For small purchases awarded based on price and fixed specifications (i.e., not subject to negotiations) the ITTC shall make award to the qualified Indian-owned economic enterprise or organization with the lowest responsive quotation if it is reasonable and not more than 10% higher than the lowest responsive Non-Indian quotation received. If no responsive quotation from a qualified Indian-owned economic enterprise or organization is within 10% of the lowest responsive Non-Indian quotation from any qualified source, then the award shall be made to the source with the lowest quotation.

2. Award based on factors other than price. For small purchases to be awarded based on factors other than price, a formal solicitation (request for proposals or request for quotations) shall be issued, including evaluation factors and a rating system to evaluate each proposal or quotation. The solicitation shall reserve 15% of the total evaluation points for providing Indian preference.

E. SMALL PURCHASE OF \$5,000 or LESS.

1. General. The ITTC may elect to use the procurement method below for small purchases of \$5,000 or less.

2. Procedures. The Contracting Officer shall follow the procedures specified in paragraph C above; however, oral quotations are acceptable (provided that the Contracting Officer documents the quotes received), and the Contracting Officer may develop alternative methods of providing Indian preference, which promote maximum participation by Indian organizations and Indian-owned economic enterprises (provided that such methods are in writing and approved by ITTC).

F. SEALED BIDS

1. General. The ITTC shall use the procurement method of sealed bids in accordance with Federal Acquisition Regulations.

2. Conditions for Use. Contracts shall be awarded based on competitive sealed bidding if the following conditions are present: a complete, adequate, and realistic specification or purchase description is available; two or more responsible bidders are willing and able to compete at the contract price; and the selection of the successful bidder can be made principally on the basis of price. Sealed bidding is the preferred method for construction procurement. For procurement on the Housing Improvement Program (HIP) sealed bidding shall be used for all construction and equipment contracts exceeding the small purchase limitation. For professional services contracts, sealed bidding should not be used.

G. SOLICITATIONS & RECEIPTS OF BIDS.

1. Issuance and amendment. An invitation for bids shall be issued including specifications and all contractual terms and conditions applicable to the procurement. Any amendments to the invitation shall be in writing, and if it is necessary to issue an amendment within seven days of the bid opening, the bid opening shall be postponed until at least seven days after the issuance of the amendment. The invitation for bids shall state the time and place for both the receipt of bids and the public bid opening. All bids received shall be time-stamped but not opened and shall be stored in a secure place until bid opening. A bidder may withdraw its bid any time prior to the bid opening.

2. Restricting solicitations. The invitation may be restricted to qualified Indian-owned economic enterprises and Indian organizations if the Contracting Officer has a reasonable expectation of receiving the required minimum number of bids from them (see H1 below). The ITTC shall solicit bids from non-Indian as well as Indian-owned economic enterprises and Indian organizations if: the Contracting Officer decides not to restrict the solicitation; the Contracting Officer has a reasonable expectation of not receiving the required minimum number of bids from Indian firms or, an insufficient number of qualified Indian-owned economic enterprises or organizations submit responsive bids in response to a solicitation; or, a single bid is not accepted.

3. Bid opening. Bids shall be opened publicly and in the presence of at least one witness. An abstract of bids shall be recorded and the bids shall be available for public inspection.

H. AWARD.

Awarding shall be made as provided in the invitation for bids by written notice to the successful bidder, as follows:

1. Restricted solicitations. If the solicitation is restricted to Indian-owned economic enterprises and organizations, and two or more (or a greater number determined by the ITTC and stated in the invitation) qualified Indian-owned economic enterprises or organizations submit responsive bids. Award shall be made to the qualified enterprise or organization with the lowest responsive, responsible bid. If equal low responsible bids are received, award shall be made by drawing lots or a similar random method, unless otherwise provided in Tribal, or local law. If fewer than the minimum number qualified Indian-owned economic enterprises or organizations submit responsive responsible bids, all bids shall be rejected, and the ITTC shall cancel the solicitation and re-solicit, inviting bids from non-Indian as well as Indian-owned economic enterprises and organizations. The Contracting Officer may accept a single bid received from responsible bidder, if the Contracting Officer determines that the single bidder reasonably expected competition and that the bid price is fair and reasonable.

2. Unrestricted solicitations. If the solicitation is not restricted to Indian-owned economic enterprises and organizations, the prime contract award shall be made to the qualified Indian-owned enterprise or organization with the lowest responsive bid, if that bid is within the maximum total contract price established for the specific project or activity being solicited, and the bid is within the "X Factor" range and shown in the Attachment to this Statement. If equal low bids are received from qualified Indian-owned economic enterprise or organizations, awarding shall be made by drawing lots or a similar random method, unless otherwise provided in Tribal, or local law. If no responsive bid by a qualified Indian-owned economic enterprise or organization is within this range, award shall be made to the lowest responsive, responsible bidder.

I. MISTAKES IN BIDS.

1. 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 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 mistake was made as determined by the contracting officer.

2. All decisions to allow correction or withdrawal of bid mistakes shall be supported by a written determination signed by the Contracting Officer. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the ITTC of fair competition shall be permitted.

J. COMPETITIVE PROPOSALS

1. General. The ITTC shall use the procurement method of competitive proposals in accordance with Federal Acquisition Regulations.

2. Conditions of Use. Competitive proposals, including turnkey proposals for development may be used if there is an adequate method of evaluating technical proposals and where the ITTC determines that conditions are not appropriate for the use of sealed bidding. An adequate number of qualified sources shall be solicited.

3. Solicitation. The Requests For Proposals (RFP) may be restricted to qualified Indian-owned economic enterprises and Indian Organizations if the Contracting Officer has a reasonable expectation of receiving offers from two (or a greater number stated in the RFP) such entities. The Contracting Officer shall solicit proposals from non-Indian as well as Indian-owned economic enterprises and Indian Organizations if: the ITTC prefers not to restrict the RFP; the Contracting Officer has a reasonable expectation of not receiving offers from two (or a greater number stated in the RFP) such entities; or, an insufficient number of qualified Indian-owned economic enterprises or Indian Organizations satisfactorily respond to a restricted RFP; or a single proposal is received but not accepted. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals.

4. Evaluation Factors. The RFP shall clearly identify the relative importance of price and other evaluation factors and sub factors, including the weight given to each technical factor and sub factor. The ITTC shall reserve 15% of the total number of available rating points in unrestricted solicitations for the provision of Indian preference in the award of contracts and subcontracts, and up to an additional 10% for evaluation of the offeror's statement regarding training and employment of Indians. The proposals shall be evaluated only on the criteria stated in the request for proposals.

5. Negotiations. In those situations where negotiations are deemed necessary, 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. 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 and advise offerors of the deficiencies in both the technical and price aspect of their proposals as to assure full understanding of and conformance to the solicitation requirements. 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. Once best and final offers have been received, the Contracting Officer shall reevaluate using the same criteria as originally issued in the RFP.

6. Award. After evaluation of proposal revisions, if any, the contract shall be awarded to the responsible firm whose qualifications, price and other factors considered, are the most advantageous to the ITTC, provided the price is within the maximum total contract price established for the specific project or activity. For solicitations restricted to qualified Indian-owned economic enterprises and Indian organizations, such entities shall submit acceptable proposals; award shall be made to the qualified Indian-owned economic enterprise of Indian organization with the most advantageous proposal, provided that the price is within the maximum total price established for the specific project or activity. If fewer than two Indian-owned enterprises of Indian organizations submit acceptable proposals, the Contracting Officer may reject all proposals and re-solicit without restricting the RFP to qualified Indian-owned enterprises and Indian organizations. The Contracting Officer may accept a sole proposal received, subject to ITTC approval when the ITTC determines that the delays caused by re-soliciting would cause higher costs, or where the ITTC determines that the proposal has fair and reasonable price.

7. Architect/Engineer Services. Architect/Engineer services in excess of the small purchase limitation or less if required by other applicable law, may be obtained by either the competitive proposals method or qualifications-based selection procedures unless other applicable law mandates a specific procedure. Sealed bidding shall not be used to obtain architect/engineer services. Under qualifications-based selection procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to the negotiation of fair and reasonable compensation. These procedures shall not be used to purchase other types of services even though architect engineer firms are potential sources.

K. NONCOMPETITIVE PROPOSALS

1. Conditions for Use. Procurement 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:

(a.) An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the ITTC, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. 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, and the emergency procurement shall be limited to those supplies, services, or construction necessary to meet the emergency; or

(b.) Only one source of supply is available, and the contracting officer so certifies in writing; or

(c.) After solicitation of a number of sources, competition is determined inadequate; or

(d.) The funding agency specifically authorizes the use of noncompetitive proposals.

2. Justification. Each procurement based on noncompetitive proposals shall be supported by a written justification for using such procedures. The Contracting Officer shall approve the justification in writing.

3. Price reasonableness. The reasonableness of price for all procurement based on noncompetitive proposals shall be determined by performing a cost analysis, as described in paragraph L below.

L. COST AND PRICE ANALYSIS

1. General. A cost or price analysis shall be performed for all procurement actions, including contract modifications. The method of analysis shall be determined as follows: The degree of analysis shall depend on the facts surrounding each procurement.

2. Submission of Cost or Pricing Information. If the procurement is based on competitive proposals for professional, consulting, or architect/engineer services, noncompetitive proposals, or when only one offer is received or for contract modifications the offeror, shall submit the following:

(a.) A cost breakdown showing projected direct costs, overhead and profits;

(b.) Commercial pricing and sales information, sufficient to enable the Contracting Officer 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;

(c.) Documentation showing that law or regulation sets the offered price.

3. Cost Analysis. Cost analysis shall be performed when the offeror/contractor is required by the ITTC 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, including overhead; the ITTC shall have the 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 principles (for commercial firms, Subpart 31.2 of the Federal Acquisition Regulation, 48 CFR Chapter 1). In establishing profit, the ITTC shall consider factors such as the complexity and risk of the work involved, the contractor's investment and productivity, the amount of subcontracting, the quality of past performance, and industry profit rates in the area for similar work.

4. Price Analysis. A comparison of prices shall be used in all cases to the greatest extent possible, to enable the ITTC to determine to its satisfaction offeror/contractor proposal/bid's reasonableness and comparability of other similar type projects with the similar scope of offered services, supplies or construction.

M. CANCELLATION OF SOLICITATIONS

1. An invitation for bids, RFP, or other solicitations may be canceled before offers are due if; the ITTC no longer requires the supplies, services or construction; or, the ITTC can no longer reasonably expect to fund the procurement; or, proposed amendments to the solicitation would be of such magnitude that a new solicitation would be desirable; or similar reasons.

2. A solicitation may be canceled and all bids or proposals that have already been received may be rejected if: the supplies, services, or construction are no longer required; or, ambiguous or otherwise inadequate specifications were part of the solicitation; or, the solicitation did not provide for consideration of all factors of significance to the ITTC; or, prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds; or; 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, a condition for canceling a solicitation and re-soliciting, as specified in paragraphs IIIH1 or IIIJ6 above, is met; or, for good cause of a similar nature when it is in the best interest of the ITTC.

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 resolicitation or future procurement of similar items.

5. For solicitations that are not restricted to Indian-owned economic enterprises or Indian organizations, 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 ITTC 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 IIIJ3, 4, and 5 above (when more than one otherwise acceptable bids have been received), or, by using the noncompetitive proposals method and following paragraph IIIK2 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 ITTC's intent to negotiate, and each responsible bidder is given a reasonable opportunity to negotiate.

N. COOPERATIVE PURCHASING

The ITTC may enter into State and local intergovernmental agreements to purchase or use common goods and services. 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. The ITTC may use Federal or State excess and surplus property instead of purchasing new equipment and property whenever such use is feasible and reduces project costs.

IV. CONTRACTOR QUALIFICATIONS AND DUTIES

A. CONTRACTOR RESPONSIBILITY

Procurement shall be conducted only with responsible contractors. Before awarding a contract, the ITTC shall review the proposed contractor's ability to perform the contract successfully, considering factors such as the contractor's integrity, compliance with public policy, record of past performance (including contacting previous clients of said contractor/offeror), and financial, administrative, and technical capability to perform contract work of the size and type involved and within the time provided under the contract, and adequate insurance. 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 the 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 on list of parties excluded from Federal procurement and non-procurement policies. Contractors may be suspended, debarred, or determined ineligible by The Federal Government in accordance with federal regulations when necessary to protect the ITTC in its business dealings. The ITTC may suspend or debar a contractor under Tribal laws, as applicable.

C. QUALIFIED BIDDER'S LISTS

Interested businesses shall be given an opportunity to be included on qualified bidder's lists. Any pre-qualified lists of persons, firms, or products that are used in the procurement of supplies and services shall be kept current and shall include enough qualified sources to ensure competition.

Lists of pre-qualified Indians, Indian enterprises, or Indian organizations may be maintained by the ITTC. The prospective business shall document to the Contracting Officer 51% Native American ownership, management and control of the day-to-day operation of the business. Documents shall include organization documents, deeds, equipment titles, business plans, financial records, (e.g. Checks, bank statements, tax returns, payroll records, etc) The Contracting Officer will provide the list of recommended Native American Owned and operated business and economic enterprises to the ITTC for approval. The Contracting Officer shall review the list of qualified Indian businesses and remove or add to the list with the approval of the ITTC.

Firms shall not be precluded from qualifying during the solicitation period. Solicitation mailing lists of potential contractors shall include, but not be limited to, such qualified suppliers.

D. BONDS

Construction Contracts. In the case of construction contracts for any contract over \$100,000, the contractor shall be required to submit the following, unless otherwise required by Federal or Tribal laws or regulations:

1. A bid guarantee from each bidder equivalent to 5% of the bid price and a performance and payment bond for 100% of the contract price. The Contracting Officer may elect to require bonding on projects less than 100,000 if it is the best interest of the ITTC to have the project bonded.

2. The Contracting Officer may at their discretion, for non-federally funded projects, with the approval of ITTC, reduce bid bond requirements for an Indian-owned economic enterprise or Indian organization or other non-Indian offerors provided that lowering such bond requirement would not pose a threat or prove detrimental to a ITTC project and at least one of the following:

- (a.) the financial added betterment of the ITTC.

(b.) lowering such requirement would reduce a hardship of an Indian-owned enterprise or Indian organization that otherwise could not compete in the procurement process, unless the bonding requirements were lowered.

(c.) The amount does not conflict with applicable law.

A 100% performance bond and a 100% payment bond is required for all federally funded projects. The following are acceptable substitutes to a 100% performance and payment bond for non-federally funded projects provided the requirements are in the solicitation to bid:

(a.) Separate performance and payment bonds, each for 50% of the total contract price; or

(b.) A cash escrow deposited with the ITTC of not less than 20% of the total contract price, during the warranty period commensurate with potential risks; or

(c.) An irrevocable letter of credit for 25% of the total contract price, unconditionally payable upon demand of the ITTC, during the warranty period commensurate with potential risk.

E. EMPLOYEE STATUS VERSUS INDEPENDENT CONTRACTOR STATUS

Each person working for the ITTC shall be required to complete the "Employee versus Independent Contractor Questionnaire to determine status and relationship. Questionnaire is shown below. Contractors shall also complete the Independent Contractor Exemption Affidavit. Employees shall be referred to Personnel Department.

Employee versus Independent Contractor Questionnaire

If the answers to the following questions are YES, then the worker shall be considered to be an employee. If the majority of the answers are NO, then the worker is an independent contractor.

1. *Instructions.* Does a Tribal employee require the worker to comply with the Tribal employee's instructions?

2. *Training.* Does a Tribal employee work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, to indicate how the services are to be performed in a particular method or manner?

3. *Integration.* Does a Tribal employee require the worker's services to be integrated into the Tribal operations where the worker is subject to direction and control by a Tribal Employee?

4. *Services Rendered Personally.* Does the worker render the services personally,

where a Tribal employee for whom the services are performed is interested in the methods used to accomplish the work as well as in the results?

5. *Hiring, Supervising, and Paying Assistants.* Does a Tribal employee for whom the services are performed hire, supervise, and pay assistants for the worker thereby showing control over the worker on the job?
6. *Continuing Relationship.* Does a continuing relationship between the worker and the Tribe exist which frequently recurs although perhaps at irregular intervals?
7. *Set Hours of Work.* Does the Tribe (or Tribal employee) establish set hours of work for the worker?
8. *Full Time Required.* Does the worker devote substantially full time to the required activities wherein a Tribal Employee has control over the amount of time the worker spends and impliedly restricts the worker from doing other gainful work?
9. *Doing Work on Employer's Premises.* Does the worker perform the work on the tribal premises or work at specific places as required where the tribe has control over the worker and the place of work, especially if the work could be done elsewhere.
10. *Order or Sequence Set.* Does the worker perform services in the order or sequence or work at specific places or follow the established routines and schedules set by a Tribal employee?
11. *Oral or Written Reports.* Is the worker required to submit regular or written reports to a Tribal employee?
12. *Payment by Hour, Week, Month.* Is the worker paid by the hour, week, or month within the time period worked rather than paying a lump sum agreed upon as the cost of a job?
13. *Payment of Business and/or Traveling Expenses.* Does the Tribe ordinarily pay the worker's business and/ or traveling expenses?
14. *Furnishing of Tools and Materials.* Does the Tribe furnish significant tools, materials, and other equipment for the worker?
15. *Significant Investment.* Is the worker dependent on the Tribe to provide the work facilities?
16. *Realization of Profit or Loss.* Is the worker not able to have the opportunity to realize a profit or suffer a loss as a result of the worker's services to the Tribe ?
17. *Working for More Than One Firm at a Time.* Is the worker unable to perform

services in an independent contractor status for other unrelated persons or firms at the same time?

18. *Making Service Available to General Public.* Is the worker unavailable for work to the general public on a regular and consistent basis?

19. *Right to Discharge.* Does the Tribe have the right to discharge the worker on an at-will basis without incurring liability for the work performed up to the discharge?

20. *Right to Terminate.* Does the worker have the right to end his or her relationship with the Tribe prior to completion of the work without incurring liability to complete the activities agreed to?

V. TYPES OF CONTRACTS, CLAUSES, AND CONTRACT ADMINISTRATION

A. CONTRACT TYPES

Any type of contract (pricing arrangement) which is appropriate to the procurement and which will promote the best interests of the ITTC may be used. All procurement shall include the clauses and provisions necessary to define the rights and responsibilities of the parties and shall be in the ITTC approved form of contract. A cost reimbursement contract shall not be used unless it is likely to be less costly or it is impracticable to satisfy the ITTC'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 contracts may be used only if a determination is made that no other contract type is suitable the contract includes a provision that materials costs will not include profit and the contract includes a ceiling price that the contractor exceeds at its own risk.

B. OPTIONS

Options for additional quantities or performance periods may be included in contracts, provided that: the options may be exercised only at the price specified, or at a price and time reasonably determinable from the terms defined in the solicitation; and the options may be exercised only if determined to be more advantageous to the ITTC 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 Federal statutes, executive orders, and their implementing regulations, including 25 CFR Part 900 and the "Common Rule", section .36. If all required clauses are not included on contract forms, then the ITTC shall attach any

additional clauses to the forms used in contract documents. The operational procedures required by section IIA of this statement shall contain the text of all clauses and required certifications (such as required non-collusive affidavits) used in the ITTC. The ITTC shall include the contract clauses and solicitation notices for Indian preference described in Section VIII.3. The ITTC shall also provide administrative, contractual and legal remedy through such additional clauses as are appropriate. Such clauses shall be tailored to the type of commodity and to the type of contract instrument. Such clauses shall be based on the federal clauses found in 48 CFR Part 52.

D. CONTRACT ADMINISTRATION

A contract administration/project management system designed to insure that contractors perform in accordance with their contracts shall be maintained.

VI. SPECIFICATIONS

A. GENERAL

All specifications shall be drafted so as to promote overall economy for the purposes intended and to encourage competition in satisfying the ITTC's needs. Specifications shall be reviewed prior to solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items. Functional or performance specifications are preferred. Detailed product specifications shall be avoided whenever possible. Consideration shall be given to consolidating or breaking out procurement to obtain a more economical purchase (but see VIII below). For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.

B. LIMITATIONS

The following specification limitations shall be avoided: geographic restrictions not mandated or encouraged by applicable Federal law, unnecessary bonding or experience requirements; brand name specifications (unless a written determination is made that only the identified item will satisfy the ITTC needs and then only if the phrase "or equal and the salient characteristics are stated"); brand name or equal specifications (unless they list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use and state the phrase "or equal"). Nothing in this procurement policy shall preempt any State, Tribal or local 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 ITTC's computer needs and then allowing that consultant to compete for subsequent contract for the computers).

VII. APPEALS AND REMEDIES

A. GENERAL

It is a ITTC policy to resolve all contractual issues informally at the ITTC level, without litigation. Disputes shall not be referred to Tribal Court until all administrative remedies have been exhausted at the ITTC level. When appropriate, the ITTC 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 Tribal Court will only review protests in cases of allegations of violations of Tribal or Federal law or regulations and failure of the ITTC's to review a complaint or protest.

B. BID PROTESTS

Any actual or prospective contractor may protest the solicitation or award of contract for serious violations of the principles of this statement. Any protest against a solicitation must be received before the due date for receipt of bids or proposals, and any protest against the award of a contract must be received within 10 calendar days after contract award, or the protest will not be considered. All bid protests shall be in writing, submitted to the Contracting Officer or designee, who shall issue a written decision on the matter. The Contracting Officer may, at his or her discretion, suspend the procurement pending resolution of the protest, if warranted by the facts presented.

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, such as the Tribal Governor or a designated Council Member, or the Tribal Council who will serve as the Procurement Appeals Board. Claims for monetary costs incurred by the contractor shall be accompanied by a detailed cost proposal and shall be subject to Cost and Price Analysis.

D. PROTESTS INVOLVING INDIAN PREFERENCE

Complaints arising out of any of the methods of providing for Indian Preference shall be handled in accordance with the Indian Civil Rights Act.

VIII. ASSISTANCE TO SMALL AND OTHER BUSINESSES

A. REQUIRED EFFORTS

The ITTC shall make efforts to ensure that small business and individuals of firms located in or owned in substantial part by persons residing in the area of the ITTC project are used when possible. 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; and

Requiring prime contractors, when subcontracting is anticipated, to make the above effort.

Goals may be established by the ITTC periodically for participation by small businesses and business concerns, which are located in, or owned in substantial part by persons residing in the area of the ITTC, project, in the ITTC's prime contracts and subcontracting opportunities.

B. INDIAN PREFERENCE REQUIREMENTS

1. General. Projects developed and operated by the Passamaquoddy Tribe are subject to Section 7(b) and 7(c) of the Indian Self-determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) provides that to the greatest extent feasible, preference shall be given to Indian organizations and Indian-owned economic enterprises in the award of all contracts and subcontracts. Where Indian preference is determined not to be feasible, the Contracting Officer shall document the procurement file with the basis for its findings. Indian preference applies not only on-site, on the reservation, or within the ITTC's jurisdiction, but also to contracts with firms that operate outside these areas. Indian preference in the solicitation, evaluation, and award process shall be as described in Section III above. In no case shall the ITTC authorize or provide a preference for Indians, Indian-owned economic enterprises, or Indian organizations, based on particular tribal affiliation or membership.

2. Eligibility. Eligibility for Indian preference shall be established in accordance with the above procedures. If an ITTC or its prime contractor determines an applicant ineligible for Indian preference, the Contracting Officer or prime contractor shall notify the applicant in writing before contract award, or filling the position or providing the desired training.

3. Contract clauses and solicitation notices. Solicitations shall include the following information:

(a.) A statement of the applicability of Indian preference to the solicitation and a time before the due date for offers by which offerors must submit evidence of eligibility for Indian preference;

(b.) The contract provision listed in 25 USC § 450e.

(c.) Any applicable locally imposed preference requirements properly enacted by the tribal governing body and adopted by the ITTC (or advise offerors to contact the tribal governing body to determine any applicable preference requirements);

(d.) Information as to whether the ITTC maintains lists of Indian-owned economic

enterprises and Indian organizations by trade specialty that are available to contractors and subcontractors for use in meeting Indian preference responsibilities;

(e.) A requirement that offerors (and their subcontractors, if required by the ITTC) provide a statement describing how they will provide Indian preference in subcontracting, training, and employment, including the number or percentage of Indians to be employed and trained;

(f.) The ITTC's description of the information to be submitted on Indian preference;

(g.) The factors that the ITTC will use in judging the adequacy of the Indian preference information submitted;

(h.) A statement that failure to submit the required Indian preference statements on subcontracting, training, and employment shall be grounds for rejection of the offer as non-responsible;

(i.) A requirement that each contractor and subcontractor submit a certification and supporting evidence to the ITTC whenever it is not feasible to provide Indian preferences in subcontracting;

(j.) For requests for proposals that are not restricted to Indian-owned economic enterprises or Indian organizations, the percentage or number of points set aside for Indian preference and the method for allocating these points;

(k.) A requirement in unrestricted RFP's that subcontractors using requests for proposals solicit subcontractors by reserving 15% of the available rating points for Indian preference in subcontracting and the criteria to be used in evaluating subcontractor proposals; and

(l.) A requirement that offerors submit a list of core crew employees with their offers, and that contractors and subcontractors are required to provide preference to greatest extent feasible by hiring qualified Indians in all positions other than core crew positions.

4 Solicitations, contracts, and subcontracts shall include the following:

(a.) The clause prescribed in implementing Section 7 (b) of the Indian Self-Determination and Education Assistance Act in connection with the development or operation of ITTC projects;

(b.) The grounds for termination of a contract or the imposition of penalties for improper subcontracting or false certification as to subcontracting with Indian enterprises or organizations; and

IX. ETHICS IN PUBLIC CONTRACTING

A. GENERAL

The ITTC shall adhere to the following code of conduct, consistent with applicable Federal, or Tribal law.

B. CONFLICT OF INTEREST

No employee, officer or agent of the ITTC shall participate directly or indirectly in the section or in the award of any contract if a conflict, real or apparent, would be involved. Such conflict would arise when a financial or other interest in a firm selected for the award is held by:

1. The employee, officer or agent.
2. Any member of his immediate family (including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, step father, step mother, step son, step daughter, step brother, step sister, half brother, and half sister).
3. His/her partner or significant other,
4. An organization that employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantees or sub grantees officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub agreements. Grantee and sub grantee may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by Tribal law or regulations, such conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and sub grantees' officers, employees, or agents, or by contractors or their agents. The awarding agency may provide additional prohibitions relative to real, apparent or potential conflicts of interest.

C. GRATUITIES, KICKBACKS, AND USE OF CONFIDENTIAL INFORMATION

The ITTC officers, employees or agents shall not solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subcontractors, and shall not knowingly use confidential information for actual or anticipated personal gain.

D. PROHIBITION AGAINST CONTINGENT FEES

Contractors shall not retain a person to solicit or secure a PPPTC contract for a commission, percentage, brokerage, or contingent fee, except for bona fide employees.

X. TERO (Tribal Employment and Rights Ordinance)

A. The Passamaquoddy Tribal Council authorizes the TERO tax/fee to be collected on all contracts of \$100,000.00 or more on the Indian Township Passamaquoddy Reservation with the Indian Township Passamaquoddy Tribe.

B. The Tribe will collect 3% of the total gross contract price for each contract. The tax/fee may be paid in installments over the length of the contract and payment shall be made directly to the Passamaquoddy Tribe at Indian Township.

C. It is the contracting officers responsibility to ensure that TERO tax/fee is collected. Final payment will not be made to the contractor who is delinquent on the TERO tax/fee. Non-payment of the TERO tax/fee by a contractor will render a contractor non responsible and will not be considered in award of any future contracts and will not be permitted to conduct business on Indian Township Passamaquoddy Tribal territory.

D. The proceeds from the TERO tax/fee will be used by the Tribal Administration to promote local Tribal Employment/training and Equal Employment Opportunities.

E. The TERO office will be within the local Tribal Government Structure and the Governor will appoint a TERO officer.

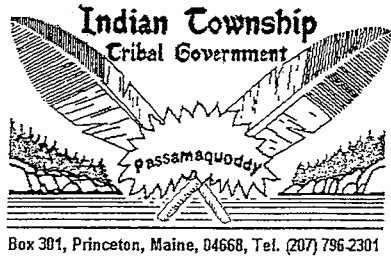
ATTACHMENT

In accordance with paragraph III.H.2 of this Statement, award shall be made under unrestricted solicitations to the lowest responsive bid from a qualified Indian-owned economic enterprise or organization within the maximum total contract price established for the specific project or activity being solicited, if the bid is no more than "X" higher than the total bid price of the lowest responsive bid from any qualified bidder. The factor "X" is determined as follows:

	X=lesser of:
When the lowest responsive bid is Less than \$100,000	10% of that bid, or \$9,000
When the lowest responsive bid is: At least \$100,000 But less than \$200,000	9% of that bid, or \$16,000
At least \$200,000 But less than \$300,000	8% of that bid, or \$21,000

At least \$300,000 But less than \$400,000	7% of that bid, or \$24,000
At least \$400,000 But less than \$500,000	6% of that bid, or \$25,000
At least \$500,000 But less than 1 million	5% of that bid, or \$40,000
At least 1 million But less than 2 million	4% of that bid, or \$60,000
At least 2 million But less than 4 million	3% of that bid, or \$80,000
At least 4 million But less than 7 million	2% of that bid, or \$105,000
\$7 million or more	1% of the lowest Responsive bid, with No dollar limit.

Tribal Governor
Robert L. Newell.
Lt. Governor
Joseph Socobasin
Legislative Rep.
Fred Moore III



Tribal Council:
Jeanette Parker
John W. Stevens
Richard Sabattus
Dennis Tomah, Sr.
William Nicholas
Dana Newell

TRIBAL COUNCIL RESOLUTION

Resolution # 04-0310 #1

Whereas, the Indian Township Passamaquoddy Governor, Lt. Governor and Tribal Council is the duly recognized governing body of the Indian Township Reservation;

Whereas, the Indian Township Passamaquoddy Tribal Government reaffirms its authorization for Tribal Council Resolution #03-0219-Tribal Employment Rights Ordinance (TERO) No. 1 & 2 and Statement of Procurement Policy

CERTIFICATION

I, the undersigned Tribal Clerk of the Indian Township Passamaquoddy Tribal Council do hereby certify that the Indian Township Passamaquoddy Tribal Council is composed of six (6) Council Members and one (1) Lt. Governor of whom 5 constituting a quorum were present at a meeting held the 10 day of March, 2004 and the forgoing Resolution was duly adopted at such meeting by a vote of

5 FOR, 0 AGAINST, AND 0 ABSTAINED, 2 ABSENT

Robert Newell
Robert Newell-Governor

Joseph Socobasin-Lt. Gov.

Dana Newell
Council Member

Jeanette Parker
Council Member

John W. Stevens
Council Member

Richard Sabattus
Council Member

William Nicholas
Council Member

Council Member

Dated: March 10, 2004

Attest: *Denise C. Patches*
Tribal Clerk