



LUMMI INDIAN BUSINESS COUNCIL

2665 KWINA ROAD • BELLINGHAM, WASHINGTON 98226 • (360) 312-2000

RESOLUTION #2016-093 OF THE LUMMI INDIAN BUSINESS COUNCIL

TITLE: Adoption of Amendments to the Procurement Policy

WHEREAS, the Lummi Indian Business Council (LIBC) is the duly constituted governing body of the Lummi Nation by the authority of the Constitution and Bylaws, as amended, of the Lummi Tribe of the Lummi Reservation, Washington; and

WHEREAS, the LIBC has the authority and responsibility to administer all Tribal property and assets, pursuant to Lummi Constitution, Art. VI, Sec. 1(a); and

WHEREAS, the LIBC has the authority and responsibility to provide for the well-being of the Lummi people, pursuant to Lummi Constitution, Art. VI, Sec (1); and

WHEREAS, it is the mission of the LIBC *"To Preserve, Promote and Protect our Sche Lang en"* (LIBC Resolution #2012-025); and

WHEREAS, the LIBC adopted Amendment to Procurement Policy by Resolution #2015-126 to match federal regulations, allow and clarify the ability to seek noncompetitive contracts with other LIBC created entities, and offer greater competitive advantage to Indian owned businesses; and

WHEREAS, the LIBC now finds it necessary to further amend the Procurement Policy to clarify the ability to seek noncompetitive proposals from LIBC created entities and other minor changes; and

WHEREAS, the Treasurer, Chief Financial Officer, and General Manager recommend that the amendments to Procurement Policy be adopted.

NOW, THEREFORE, BE IT RESOLVED that the LIBC hereby adopts the attached Procurement Policy as amended in substantial conformity to the attached document; and

BE IT FURTHER RESOLVED that the Chief Financial Officer and the General Manager are directed to ensure that all program and department staff are informed of the change to the Procurement Policy and comply with the Policy, until directed otherwise by the LIBC; and

BE IT FINALLY RESOLVED that the Chairman (or Vice Chair in his absence) is hereby authorized and directed to execute this resolution and any documents connected therewith, and the Secretary (or the Recording Secretary in his absence) is authorized and directed to execute the following certification.

LUMMI NATION


Timothy Ballew, Chairman
Lummi Indian Business Council

CERTIFICATION

As Secretary of the Lummi Indian Business Council, I hereby certify that the above Resolution #2016-093 was adopted at a **Regular/Special** Meeting of the Council held on the 18th day of May, 2016, at which time a quorum of 8 was present by a vote of 7 for, 0 against, and 0 abstention(s).


Shasta Cano-Martin, Secretary
Lummi Indian Business Council







Council Operations Action Form

Please turn in with resolution & attachments or with your agenda item, to Council Operations, the Wednesday prior to the Council meeting by 4:30 PM. **Late documents will not be accepted.** If you have questions contact TeresaB@lummi-nsn.gov or ext 2142

To be completed by Originator:

Clearances	Initial	Date	Comments	Resolution # 2016-093	Agenda Date: 5-18-16
Originator	rx	5/16/16		Title: Adoption of Amendments to the Procurement Policy	
Res. Attorney Mary Neil	[Signature]	5/12/16		Name of Presenter: Douglas Williams	
Department Director	rx	5/16/16		Financial impact (if yes please attach Executive Summary):	Budgeted item: Y N # of Pages Attached: 22
Cultural Department	CW	5/17/16		Distribution (departments or individuals who will need a copy of the certified resolution Circle all that apply):	
CBC Chairperson	CP	5/14/16		Planning	Economic Development
General Manager	[Signature]	5/16		Human Resources	Reservation Attorney's
Treasurer	[Signature]	5/16/16		General Manager	Other:
Chair or Vice Chair	CS	5/17/16			

Please give a brief narrative of your agenda item: _____

By signing below, I have completed the Action form assuring that there is approval from all listed parties before submitting it to Council Operations also; "Sign here" tabs have also been placed in all areas in need of signature.

Signature of Department: [Signature]

Date & Time 05-17-16 P04:12 IN

Signature Received by: Melina Marti

Date & Time 05-17-16 P04:12 IN

To be completed by Council Operations staff:

Council Follow Up	
Specifically:	
Timeline:	Delegate(s):

Resolution # 2016-093

Procurement Policy

**LUMMI INDIAN
BUSINESS COUNCIL**

**Attachment to LIBC
RESOLUTION 2016-093**

**LUMMI INDIAN BUSINESS COUNCIL
PROCUREMENT POLICY**

<i>Contents</i>

I. PURPOSE, APPLICATION AND POLICY	1
A. PURPOSE	1
B. APPLICATION	1
C. POLICY	1
II. PROCUREMENT AUTHORITY AND ADMINISTRATION	2
A. AUTHORITY	2
B. PROCUREMENT ADMINISTRATION.....	3
1. Procurement Manager	3
2. Procurement Manager Duties.....	3
III. PROCUREMENT PROCEDURES.....	4
A. PROCUREMENT METHODS.....	4
1. MICRO PURCHASE PROCEDURES.....	4
2. SMALL PURCHASE PROCEDURES	4
3. PURCHASES OVER \$150,000.....	5
B. COST AND PRICE ANALYSIS	11
C. CANCELLATION OF SOLICITATION	12
IV. VENDOR/CONTRACTOR QUALIFICATION AND DUTIES	12
A. VENDOR/CONTRACTOR RESPONSIBILITY	12
B. SUSPENSION, DEBARMENT AND OTHER PROHIBITED VENDOR/CONTRACTORS.....	13
C. QUALIFIED VENDOR/CONTRACTOR LISTS	13
D. INSURANCE.....	13
E. BONDS.....	14

LUMMI INDIAN BUSINESS COUNCIL
PROCUREMENT POLICY

V. TYPES OF CONTRACTS, CLAUSES AND ADMINISTRATION	14
A. CONTRACT TYPES	14
B. OPTIONS	15
C. CONTRACT CLAUSES.....	15
D. CONTRACT APPROVAL	16
E. CONSTRUCTION MANAGEMENT/CONTRACT MONITORING	16
VI. SPECIFICATIONS	17
A. GENERAL	17
B. LIMITATIONS	17
VII. GENERAL PROVISIONS.....	17
A. INDIAN PREFERENCE REQUIREMENTS.....	18
B. SMALL AND OTHER BUSINESSES	19
C. PROCUREMENT ETHICS	19
1. CONFLICT OF INTEREST.....	19
2. GRATUITIES, KICKBACKS AND USE OF CONFIDENTIAL INFORMATION. ..	20
3. CONTINGENT FEES PROHIBITED.....	20
D. EFFECTIVE DATE AND AMENDMENTS	20
E. SOVEREIGN IMMUNITY	20
F. VIOLATIONS	21
G. PROTEST PROCEDURES	21
ATTACHMENT – UNRESTRICTED SOLICITATIONS	A

LUMMI INDIAN BUSINESS COUNCIL
PROCUREMENT POLICY

I. PURPOSE, APPLICATION AND POLICY

A. PURPOSE

The purpose of this Policy is to:

1. Provide for the fair and equitable treatment of all persons or entities involved in procurement by the Lummi Indian Business Council (LIBC);
2. Assure that supplies, services, and construction are procured efficiently and effectively, at the most favorable prices and highest quality available to the LIBC;
3. Promote the success and growth of Lummi-owned and Lummi Member-owned businesses through the application of preference as set forth in this Policy;
4. Promote competition;
5. Provide safeguards for maintaining a procurement system of quality and integrity; and
6. To assure that LIBC's procurement actions are in full compliance with applicable laws, including procurement laws, rules and regulations of outside funding sources where applicable.

B. APPLICATION

1. This Policy applies to:
 - a. All contracts for the procurement of supplies, services, equipment and materials entered into by the LIBC;
 - b. Every expenditure of funds by the LIBC for public purchasing, irrespective of the source of funds.
2. Nothing in this Policy shall prevent the LIBC from complying with the terms and conditions of any grant, contract, gift, or bequest that is otherwise consistent with applicable law.
3. When both Federal and non-Federal funds are used for a project, the work to be accomplished with the respective funds should be separately identified.
4. The term "procurement", as used in this Statement, includes contracts and modifications (including change orders) for construction services, professional and personal services contracts, as well as the purchase, lease, or rental of supplies and equipment.

C. POLICY

It is the policy of the LIBC:

1. Through application of preference in the procurement of goods and/or services to first promote the success and growth of:
 - a. LIBC-owned businesses, Lummi Members and Lummi Member-owned businesses; and

LUMMI INDIAN BUSINESS COUNCIL
PROCUREMENT POLICY

- b. Other Indians and Indian-owned business.
2. To conduct procurement activities competitively to the maximum extent possible.
3. To utilize a Purchase Order System as the primary method for procurement of all goods and/or services;
4. That no agreements may be reached, contracts executed, nor funds committed in the procurement of goods and/or services without the participation of the appropriate personnel, as outlined within this Policy;
5. To allow intergovernmental agreements to purchase or use common goods and services when economical or efficient, provided that the 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.
6. To encourages the use of Federal or State excess and surplus property instead of purchasing new equipment and property whenever such use is feasible and reduces project costs.
7. To resolve all contractual issues informally and without litigation, when possible.

II. PROCUREMENT AUTHORITY AND ADMINISTRATION

A. AUTHORITY

1. LIBC. Pursuant to the Constitution and Bylaws of the Lummi Indian Tribe of the Lummi Reservation, Washington, the LIBC has the authority to:
 - a. Administer tribal property and assets;
 - b. Direct the use of or expenditure of tribal funds;
 - c. Purchase and lease; and
 - d. Regulate the procedures of the LIBC.
2. Treasurer. Pursuant to the Constitution and Bylaws, the LIBC Treasurer has custody and responsibility for all funds in the custody of the LIBC and said funds shall not be paid out except when authorized to do so.
3. LIBC Office, Employee or a Agent. Responsibility for financial control and stewardship rests primarily with the Finance Department, but also rests with each employee, program, department, division and entity that authorizes the use of tribal funds to procure goods and/or services. All Executive Directors of each program, department, division or entity with authorization to use tribal funds to procure goods and/or services for the LIBC shall be responsible for:
 - a. Reviewing the nature and appropriateness of all authorized expenditures for such program, department, division, or entity;
 - b. Reviewing the accuracy of all procurement methods;

LUMMI INDIAN BUSINESS COUNCIL

PROCUREMENT POLICY

- c. Ensuring that each person assigned tasks that involve procurement is performing their duties with competence and integrity;
- d. Ensuring that any other applicable procurement laws, rules, prerequisites, regulations, or policies are complied with fully.

B. PROCUREMENT ADMINISTRATION

1. **Procurement Manager.** All procurement transactions shall be administered by the Procurement Manager, who shall be the Chief Financial Officer (CFO) or other individual designated in writing by the CFO. The Procurement Manager shall issue and maintain operational procedures, such as a procurement handbook or Standard Operating Procedures (SOP) to implement this Policy. The Procurement Manager shall have the final authority on all procurement matters.
2. **Procurement Manager Duties.** The Procurement Manager shall ensure that:
 - a. Procurement requirements are subject to an annual planning process to assure efficient and economical purchasing;
 - b. Purchase Orders, contracts and modifications (including change orders) are written and clearly specify the desired supplies, services, or construction.
 - c. All procurement activities are consistent with this Policy and are conducted in full compliance with applicable laws, regulations and standards.
 - d. All procurement activities are supported by sufficient documentation (contracting plan) that provides the history of the procurement, a needs assessment, the method of procurement chosen, the selection of the contract type, the rationale for selection or rejection of offers, and the basis for the contract price.
 - e. Public notice is given of the upcoming procurement at least 10 calendar days (or other time period as required by the funding source or applicable law) before solicitation is issued for procurements other than Micro Purchases and Small Purchases.
 - f. Responses to public notices are honored to the maximum extent practical and at least 15 calendar days but no more than 30 calendar days for construction contracts and 15 calendar days for other contracts is provided for preparation and submission of bids or proposals (unless other time periods are required by funding source or applicable law).
 - g. An independent cost estimate is prepared before solicitation and is appropriately safeguarded for each procurement above the Simple Purchase Threshold.
 - h. A cost or price analysis of the responses received for all procurement.
 - i. Contracts are awarded consistent with this Policy.
 - j. Notification is provided to unsuccessful person or entities after the contract is awarded.
 - k. Micro Purchases are only from Authorized Vendors and that Micro Purchases are equitably distributed among the Authorized Vendors.

LUMMI INDIAN BUSINESS COUNCIL

PROCUREMENT POLICY

- l. The List of Authorized Vendors is developed, maintained and published.
- m. The threshold amounts are updated as adjusted for inflation.
- n. There are sufficient unencumbered funds available to cover the anticipated cost of each procurement with appropriate authorizations before contract award or modification (including change orders), work is inspected before payment, and payment is made promptly for contract work performed and accepted.
- o. A contract administration system is maintained to insure that contractors perform in accordance with their contracts, maintained and provide for proper inspection of supplies, services or construction as well as monitoring contractor performance, status reporting on construction contract and similar.
- p. The Office of the Reservation Attorney has reviewed the content of and approved as to form all written contracts or agreements.

III. PROCUREMENT PROCEDURES

A. PROCUREMENT METHODS

One of the following procurement methods shall be selected based on the nature and anticipated dollar value of the total requirement.

1. **MICRO PURCHASE PROCEDURES.** Micro Purchase is the acquisition of supplies and services when the aggregated dollar amount does not exceed the micro-purchase threshold as set by the Federal Acquisition Regulations at 48 CFR Subpart 2.1. The current micro-purchase threshold is \$3,000, but is subject to periodic adjustment for inflation. Acquisitions shall not be artificially divided to constitute a Micro Purchase.
 - a. A written contract is not required unless required by the funding sources.
 - b. Goods and services must only be procured from authorized vendors and shall be equally distributed among qualified vendors. See the Procurement Manager for the List of Authorized Vendors.
 - c. Solicitation procedures are not required for Micro Purchases, provided that the price is reasonable as determined by the Procurement Manager.
 - d. A Purchase Order is required prior to the commencement of the services or the placement of an order for goods and supplies.
2. **SMALL PURCHASE PROCEDURES.** Small Purchases are relatively simple and informal procurement method for securing services, supplies or other property that do not cost more than the Simplified Acquisition Threshold as set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1. The current Simplified Acquisition Threshold is set at \$150,000 and is subject to periodic adjustment for inflation. These procedures apply to all acquisitions in the amount greater than \$3,000 and not exceeding \$150,000. Acquisitions shall not be artificially divided to constitute a Small Purchase.
 - a. Small Purchases shall only be made by a written contract consistent with Section V.

LUMMI INDIAN BUSINESS COUNCIL

PROCUREMENT POLICY

- b. Price and rate quotes shall be obtained from at least two qualified sources. The Authorized Vendor List shall be consulted and invitation shall be extended to Lummi owned and Lummi Member-owned businesses. Written documentation signed by the project manager of the price or rate quotes is required. Price or rate quotes from one source is acceptable only under the conditions listed in Section IIIA32c, Noncompetitive Proposal.
 - c. When soliciting quotes, the goods and/or services shall be specified, the time by which quotes must be submitted and the information required to be submitted with each quote.
 - d. Contract Award.
 - i. Price and Fixed Specifications. Contracts shall be awarded based on the price and fixed specifications to the qualified source with the lowest responsive quote, except that a contract shall be awarded to a qualified Indian-owned economic enterprise or Indian organization with the lowest responsive quote, if it is reasonable and no more than 10% higher than the lowest responsive quote received.
 - ii. Factors other than Price. Contracts awarded based on factors other than price shall be awarded only after formal solicitation has occurred and to the best proposal or quote in accordance with the stated evaluation or rating system. The formal solicitation shall include all evaluation factors and/or rating system to be used to evaluate each proposal or quote and shall reserve 15% of the total evaluation points for providing Indian Preference.
3. **PURCHASES OVER \$150,000.** Sealed bids or competitive proposals shall be used for purchases over \$150,000. Noncompetitive proposals are acceptable only as specified in Section IIIA23c Non-competitive Proposal.
- a. **SEALED BIDS METHOD.** Sealed Bids Method is preferred for procuring construction and is otherwise appropriate to acquire goods or services through a firm fixed price contract (lump sum or unit price) when a complete, adequate and realistic specification or purchase description is available, two or more responsible bidders are willing and able to compete effectively for the contract, and the award can be made principally the basis of price. Sealed Bids Method shall not be used for architect or engineer services unless required by applicable law. Bids must be solicited from an adequate number of known vendors by way of Unrestricted or Restricted Invitation for Bids (IFB). Solicitation may only occur after a contracting plan has been prepared and approved by the Procurement Manager.
 - i. Invitation for Bids. An IFB may be restricted to qualified Indian-owned economic enterprises and Indian organizations, if it is reasonably expected that bids from at least two responsible bidders will be received. An IFB may be unrestricted to other entities, if the Project Manager decides not to restrict the solicitation or if less than two bids are received from responsible bidders or if a single bid is not accepted. All IFB must:

LUMMI INDIAN BUSINESS COUNCIL
PROCUREMENT POLICY

1. Be publically advertised for at least 10 calendar days;
 2. Provide at least 15 calendar days (or in the case of construction contracts no more than 30 calendar days) for preparation and submission of bids;
 3. Include any specification and pertinent attachments, and define the items or services in order for preparation of responsive bids; and
 4. Prescribe the time and place bids will be publically opened.
- ii. IFBs may be amended but must be amended in writing and if amended within seven calendar days of the bid opening the amendment must postpone bid opening until at least seven calendar days after the amendment is issued.
 - iii. Receipt of Bids. All bids shall be received sealed and remain sealed until bid opening. All sealed bids shall be date and time stamped when received and stored in a secure place until bid opening.
 - iv. Bid-Opening. All sealed bids shall be opened publicly and in the presence of at least one witness on the date specified in the IFB or seven 7calendar days after the issuance of an amended IFB.
 - v. Withdrawal or Correction to Bids.
 1. Before Bid Opening. Bids may be withdrawn or corrected at any time before the bid opening. Corrections or notice of withdrawal must be received in writing at the location designated in the IFB prior to bid opening.
 2. After Bid Opening. Corrections in bids after the bid opening shall be permitted only if the Procurement Manager finds that the bidder demonstrated by clear and convincing evidence that a mistake of a non-judgmental character was made and the bidder submits the bid price actually intended. All decisions to allow correction or withdrawal of bid mistakes shall be final. There shall be no changes to the bid prices or other provisions of the bids that are prejudicial to the interest of the LIBC or fair competition after bid opening.
 - vi. Re-solicit. If all bids received in response to an Unrestricted IFB are at unreasonable prices, the solicitation shall be ~~cancelled~~canceled and re-solicitation shall occur by Competitive Proposal or Noncompetitive Proposal, provided that the Procurement Manager determines in writing that such action is appropriate, that all bidders are informed of the LIBC's intent to re-solicit and that each responsible bidder is given a reasonable opportunity to re-solicit.
 - vii. Award. Contracts shall be awarded to the responsible bidder with the lowest price as provided in 1 and 2 below, provided that the bid conforms to all the material terms and conditions of the public solicitation. Written notice must be provided to the successful bidder.
 1. Restricted Solicitations. The contract shall be awarded to the qualified Indian-owned enterprise or Indian organization with the lowest responsive

LUMMI INDIAN BUSINESS COUNCIL

PROCUREMENT POLICY

bid provided that two or more qualified Indian-owned economic enterprises or Indian organizations submitted responsive bids. In the event that two or more equally priced bids are received, the contract shall be awarded by drawing lots or similar random method, unless another method is required by applicable law. If only one responsive bid from qualified Indian-owned economic enterprise or Indian organization is received, then all bids shall be rejected, the Restricted IFB shall be ~~cancelled~~ and an Unrestricted IFB shall be issued. A contract may be awarded when there a single bid received from a responsible bidder only if the Procurement Manager determines, based on an independent cost or price analysis, that the bid price is fair and reasonable, or that the delay of re-soliciting would subject the project to higher construction costs.

2. **Unrestricted Solicitations.** The contract shall be awarded to the qualified Indian-owned economic enterprise or Indian organization with the lowest responsive bid if the bid is within the maximum total contract price established for the specific project or activity being solicited and the bid is within the range specified in the Attachment to this Policy. In the event that two or more bids of equal amount are received from qualified Indian-owned economic enterprise or Indian organizations, the contract shall be awarded by drawing lots or similar random method, unless another method is required by applicable law. If no responsive bids by a qualified Indian-owned economic enterprise or Indian organization within the range specified in the Attachment to this Policy, then the contract shall be awarded to the responsible bidder with the lowest bid.
- b. **COMPETITIVE PROPOSALS.** Competitive Proposals Method is appropriate for a fixed price or cost reimbursement contract when there is an adequate method of evaluating technical proposal and the Procurement Manager determines that Sealed Bidding is not appropriate. Architect/Engineer services may be obtained by either the competitive proposals method or qualifications-based selection procedures unless otherwise required by applicable law. Competitive proposals method requires more than one source to submit a proposal and proposals are publically solicited by a Request for Proposals (RFP). RFP may only proceed after the Procurement Manager approves the RFP.
 - i. **Request for Proposals.** A RFP may be restricted to qualified Indian-owned economic enterprise and Indian organizations if there is a reasonable expectation of receiving offers from two or more responsible entities. An RFP may be unrestricted to solicit proposals from non-Indian as well as Indian-owned economic enterprises and Indian organizations, if the Procurement Manager determines that it is preferable not to restrict the RFP or if there is an insufficient number of satisfactory responses to a restricted RFP. All RFP must:
 1. Clearly and accurately describe the mechanism for fairly and thoroughly evaluating proposals. The relative importance of price and other

LUMMI INDIAN BUSINESS COUNCIL

PROCUREMENT POLICY

evaluation factors and sub factors, including the weight given to each technical factor and sub factor shall be clearly and accurately stated in the RFP and comply with Section VII.

2. Clearly and accurately describe the technical requirements for materials, products or services, consistent with Section VI.
3. Be publicly advertised for at least 10 calendar days [or other time period as required by the funding source or applicable law].
4. Provide at least 15 calendar days and no more than 30 calendar days in the case of construction contracts and at least 15 calendar days for all other contracts [or other time period as required by the funding source or applicable law] for preparation and submission of bids.

ii. Receipt and Evaluation of Proposals.

1. Proposals shall be handled so as to prevent disclosure of the number, source of, and contents of proposals.
2. Proposals shall be evaluated only on the criteria stated in the RFP.
3. Initial scoring shall be on Indian Preference and technical criteria first. Only after an acceptable technical rating may the cost aspects of the proposal be scored. The scores for Indian preference, technical, and cost aspects are then combined and only the top proposals may be considered for contract negotiations.
4. Best and Final Offers. Best and final offers may be requested from the person or entity that submitted the top proposals selected for contract negotiations.

iii. Negotiations. Negotiation is intended to provide an opportunity to seek clarification of proposal terms and to advise of any technical and price deficiencies in a proposal. When deemed necessary, negotiations shall be conducted with the person or entity that submitted a reasonable proposal 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. All persons and entities selected for negotiations shall be given a fair and equal opportunity to negotiation revision to their proposals. Information about other proposals shall not to be shared. No assistance shall be given to bring a proposal up to the level of any other proposal. No direction shall be given to reduce the prices in a proposal to a specific amount in order to be considered for the award. Common deadlines shall be established for receipt of all proposal revisions.

iv. Award.

1. Restricted RFP. After evaluation of proposals, any revisions, and negotiations, the contract shall be awarded to the responsible Indian-owned economic enterprise of Indian organization whose proposal is the most advantageous to the Lummi Nation, with qualifications, price, and

LUMMI INDIAN BUSINESS COUNCIL
PROCUREMENT POLICY

other factors considered, provided that the price is within the maximum total contract price established for the specific property or activity. In the event of two acceptable proposals from qualified Indian-owned economic enterprises and Indian organizations, the contract shall be awarded to the qualified Indian-owned economic enterprise or Indian organization with the best proposal, provided that the price is within the maximum total price established for the specific project or activity. If fewer than two Indian-owned economic enterprises or Indian organizations submit acceptable proposals, the LIBC shall reject all proposals and re-solicit through an Unrestricted RFP.

2. **Unrestricted RFP.** After evaluation of proposals, any revisions, and negotiations, the contract shall be awarded to the responsible Indian-owned economic enterprise or Indian organization whose proposal is the most advantageous to the Lummi Nation, with qualifications, price, and other factors considered, provided that the price is within the maximum total contract price established for the specific property or activity and within the range specified in Attachment to this Policy. In the event of two acceptable proposals from qualified Indian-owned economic enterprises and Indian organizations, the contract shall be awarded to the qualified Indian-owned economic enterprise or Indian organization with the best proposal, provided that the price is within the maximum total price established for the specific project or activity and the range specified in Attachment to this Policy. If no responsive proposals by a qualified Indian-owned economic enterprise or Indian organization are within the range specified in the Attachment to this Policy, then the contract shall be awarded to the responsible person or entity whose proposal is the most advantageous to the Lummi Nation, with qualifications, price, and other factors considered, provided that the price is within the maximum total contract price established for the specific property or activity.
3. Subject to approval of the applicable funding source and applicable law and a determination by the Procurement Manager of unusual circumstances, if only one proposal is received, then the contract may proceed under Section IIIA32c. An unusual circumstance includes, but is not limited to, when delays caused by re-soliciting would result in higher costs, or when the proposal has a fair and reasonable price.
- v. **Qualification-based Selection Procedures.** 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 be limited to architect/engineer services and shall not be used to purchase other types of services where architect-engineer firms are potential sources.
- c. **NONCOMPETITIVE PROPOSAL.** Noncompetitive Proposal is the solicitation of a proposal from only one source.

LUMMI INDIAN BUSINESS COUNCIL

PROCUREMENT POLICY

- i. Noncompetitive proposal method may only be used after a contracting plan has been approved by the Procurement Manager and the Procurement Manager determines that:
 1. The item is available only from a single source; or
 2. An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the LIBC, 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
 3. Express written authorization for noncompetitive proposals has been received from the funding agency or source in response to Lummi's written request; or
 4. After competitive solicitation, competition is determined inadequate.
- ii. Contracting Plans. The Project Manager shall prepare and submit to the Procurement Manager a contracting plan. Justification for Noncompetitive Proposal must be provided including, but not limited to supporting documentation that verifies the existence of one of the conditions in IIIA2C1-54. In all cases, a cost analysis shall be conducted on the proposal and the price must be reasonable.
- iii. A Noncompetitive Proposal from a LIBC entity may be approved by LIBC Resolution if:
 1. One of the requirements in Section IIIA23c1-43 above is satisfied and Sections VE, Construction Management Oversight, and VII A, Indian Preference, are complied with;
 2. Only ~~LIBC-unrestricted~~ Lummi tribal governmental -funds are used and it is economically in the best interests of the LIBC;
 3. The LIBC entity capacity to perform the scope of work in the time allowed has been assessed. Such an assessment must include at least: all necessary experience of the LIBC entity or its managers with the type of goods and/or services; concurrent contracts by the LIBC entity; the ability to complete the project by the deadline; and any written proposal by the LIBC entity to overcome insufficiencies in either of these areas.
 4. An independent evaluation of open market pricing has been performed, pursuant to Section III B – Cost and Price Analysis. The price shall not exceed 10% of the independent evaluation or \$150,000, whichever is less. If the independent evaluation is more than \$3 million, the price shall not exceed 5% or \$300,000, whichever is less. In the event the LIBC entity is

LUMMI INDIAN BUSINESS COUNCIL
PROCUREMENT POLICY

unable to meet the price criteria, the procurement shall proceed by Competitive Proposals.

5. Profit and Overhead must be clearly identified in the proposal. If funds obtained through Tribal Economic Development Bonds or other bonds are utilized and the bonding document so restrict the use of bond proceed, profit and overhead shall not be paid from the proceeds of such bonds. Funds not obtained through tax-exempt bonding, if available, shall be required to fund profit and overhead, if authorized and funds are available.

<i>B. COST AND PRICE ANALYSIS</i>
--

1. General. Unless denoted otherwise above, a cost or price analysis shall be performed for all procurement actions, including contract modifications. The degree of analysis shall depend on the facts surrounding each procurement.
2. Submission of Cost or Price Information. If the procurement is based on noncompetitive proposals, or when only one offer is received, the offer shall submit:
 - a. A cost breakdown showing projected costs and profits;
 - b. Commercial pricing and sale information sufficient to enable the Lummi Nation to verify the reasonableness of the price, such as catalog or market prices of a commercial product sold in substantial quantities to the general public; or
 - c. Documentation showing that law or regulation sets the offered price.
3. Price Analysis. A Price Analysis is the comparison of the offered price with of the marketplace prices or other information sufficient to enable the Lummi Nation to verify the reasonableness of the proposed price. Acceptable methods include, but not limited to comparing the offered price to the price:
 - a. listed in commercial catalogs;
 - b. in a recently submitted bid or proposal for similar goods and/or services;
 - c. information in available industry data;
 - d. obtain from contact with other organizations with similar goods and/or services; or
 - e. set by law or regulations, when applicable.
4. Cost Analysis. A Cost Analysis may be performed if the solicitation required submission of the breakdown of expected costs and will be necessary when adequate price competition is lacking, or for Noncompetitive Proposals. Cost analysis shall be completed for contract modifications (including change orders), unless it can be established by price analysis that the price is reasonable. The Cost Analysis shall consist of inquires and research of current market prices for labor, materials and overhead elements and may consider the complexity and risk of the work, the investment and productivity of the contractor, the amount of subcontracting and the contractor's past performance.

LUMMI INDIAN BUSINESS COUNCIL
PROCUREMENT POLICY

C. CANCELLATION OF SOLICITATION

1. A solicitation may be canceled at any time if it is determined that cancellation is in the best interest of the Lummi Nation.
2. A solicitation may be ~~canceled~~canceled before offers are due, if any of the following exist:
 - a. The goods and/or services are no longer required;
 - b. The LIBC no longer reasonably expects to fund the procurement;
 - c. Proposed amendments to the solicitation would be of such magnitude that a new solicitation would be desirable; or
 - d. For similar reasons.
3. A solicitation may be ~~canceled~~canceled and all bids or proposals that have already been received may be rejected if:
 - a. The goods and/or services are no longer required;
 - b. Ambiguous or otherwise inadequate specifications were part of the solicitation;
 - c. The solicitation did not provide for consideration of all factors of significance to the Lummi Nation;
 - d. Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
 - e. There is a 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;
 - f. A condition for cancelling a solicitation and re-soliciting, as specified in Section III-C-2, is met;
 - g. For good cause of a similar nature when it is in the best interest of the Lummi Nation.
4. 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 vendor solicited.

IV. VENDOR/CONTRACTOR QUALIFICATION AND DUTIES

A. VENDOR/CONTRACTOR RESPONSIBILITY

1. Procurements shall be conducted only with responsible vendor/contractors, i.e., those who have the technical and financial competence to perform and who have a satisfactory record of integrity.
2. Determination of Responsible Vendor/Contractor. Before awarding a contract above the Simplified Acquisition Threshold, the Procurement Manager shall review the proposed vendor's/contractor's ability to perform the contract successfully, considering factors such as:

LUMMI INDIAN BUSINESS COUNCIL
PROCUREMENT POLICY

- a. the vendor's/contractor's integrity (including a review of the List of Parties Excluded from Federal Procurement and Non-Procurement Programs published by the U.S. General Services Administration);
 - b. compliance with public policy;
 - c. record of past performance (including contacting previous clients of the contractor, such as other Indian Tribal Governments);
 - d. financial, administrative, and technical capability to perform contract work of the size and type involved and within the time provided under the contract; and
 - e. compliance with tribal law.
3. Notification of Determination. If a non-responsible determination is made, the Procurement Manager shall maintain the written determination on file and notify the prospective contractor in writing of the reasons for the determination.

B. SUSPENSION, DEBARMENT AND OTHER PROHIBITED VENDOR/CONTRACTORS

1. Contracts shall not be awarded to, nor purchase orders entered into, with debarred, suspended, or ineligible contractors. Vendors may be suspended or debarred when necessary to protect the Lummi Nation in its business dealings. The Lummi Nation may suspend or debar a contractor under applicable law.
2. Contracts shall not be awarded to any persons or entities involved in the development or drafting of specifications, requirements, Statements of Work, IFB, or RFP.
3. Contracts shall not be awarded until the person or entity obtains the appropriate Lummi Nation Business License in accordance with Lummi Code of Laws.

C. QUALIFIED VENDOR/CONTRACTOR LISTS

The Qualified Vendors/Contractors List shall contain the name and contract information for all interested persons or businesses used to procure goods and services. Any prequalified list of persons, firms or products which are used in the procurement of supplies and services shall be kept current and shall include enough qualified sources to ensure competition. The Qualified Vendors/Contractors List shall identify qualified Indians, Indian-owned enterprises or Indian organizations. Qualification is not prohibited during solicitation periods.

D. INSURANCE

1. In order to conduct business with the Lummi Nation, all vendors must carry and provide evidence of Standard Insurance Coverage applicable to that vendor.
2. The Standard Insurance Coverage is the insurance requirements and limits as defined by the Office of the Treasurer.
3. The Procurement Manager, in consultation with the Treasurer and the Reservation Attorney, may waive or accept less than the Standard Insurance Coverage.

LUMMI INDIAN BUSINESS COUNCIL
PROCUREMENT POLICY

E. BONDS

1. For service and construction contracts in excess of \$150,000, a bid bond equal to 10% of their bid may be required to ensure only serious bids.
2. For all construction activities, the successful bidders may be required to submit one of the following forms of assurance within 10 calendar days after the prescribed contract forms are presented for signature:
 - a. A performance and/or payment bond for at least 100% of the total contract price; or
 - b. A cash escrow deposited with the LIBC of not less than 20% of the total contract price, subject to reduction, during the warranty period commensurate with potential risk; or
 - c. An irrevocable letter of credit for 25% of the total contract price, unconditionally payable on demand of the LIBC, during the warranty period, commensurate with potential risk.
3. The requirement of this section may be waived by LIBC resolution provided that LIBC determines that its interest is adequately protected, and provided further that applicable law does not require bonding.
4. The requirements of this section do not apply to contracts awarded to an LIBC entity, unless assurance is required by law.

V. TYPES OF CONTRACTS, CLAUSES AND ADMINISTRATION

A. CONTRACT TYPES

All procurements shall include the clauses and provisions necessary to define the rights and responsibilities of the parties and shall include all clauses required by the pertinent regulations, e.g. written contracts are required for all construction type activities funded by federal funds. The LIBC standardized contracts (Attachment AB to this policy) shall be used unless an agency requires another form of contract or extensive or specialized form of contract are negotiated. Any type of contract (pricing arrangement) which is appropriate to the procurement and which will promote the best interests of the Lummi Nation may be used, provided that:

1. The cost-plus-a-percentage-of cost and percentage of construction costs contracts are prohibited, unless a measurable cost savings has been demonstrated and the use of a cost-plus-a-percentage-of-cost contract is approved by LIBC Resolution.
2. Time and material contract may be used only if it is documented in writtening that no other contract type is suitable and the contract includes a ceiling price that the contractor exceeds at its own risk.
3. A cost reimbursement contract shall not be used, unless it is likely to be less costly or it is impracticable to satisfy the LIBC's needs with other contract types, 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).

LUMMI INDIAN BUSINESS COUNCIL
PROCUREMENT POLICY

4. For agreements involving an extensive or specialized Scope of Work, individual contracts should be negotiated with the Contractor. Any such negotiated contracts are required to comply with all provisions of this policy.

<i>B. OPTIONS</i>

Options for additional quantities or performance periods may be included in contracts, provided that:

1. The option is contained in the solicitation;
2. The option is a unilateral right of the LIBC;
3. The contract states a limit on the additional quantities and the overall term of the contract;
4. The options are evaluated as part of the initial competition;
5. The contract states the period within which the options may be exercised;
6. The options may be exercised only at the price specified in the contract or reasonably determinable therein; and
7. The options may be exercised only if determined to be more advantageous to the LIBC than conducting a new procurement.

<i>C. CONTRACT CLAUSES</i>

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 the following:

1. Administrative, contracted, or legal remedies in instances where contractor violates or breaches terms and provides for such sanction and penalties as may be appropriate.
2. Termination for cause, and for convenience.
3. Termination for default.
4. Equal Employment Opportunity.
5. Anti-Kickback Act.
6. Davis-Bacon Act, unless clear Federal statutory basis or express approval of the agency to allow wages to be less than prevailing wages under the Davis-Bacon Act. When consistent with applicable law, tribal prevailing wages shall be used.
7. Contract Work Hours and Safety Standards Act.
8. Reporting requirements.
9. Patent rights.
10. Rights in data and copyrights.
11. Examination of records by Comptroller General.

LUMMI INDIAN BUSINESS COUNCIL
PROCUREMENT POLICY

12. Retention of records for three years after closeout.
13. Clear Air Act and Federal Water Pollution Control Act.
14. Debarment and Suspension.
15. Energy, air and water Energy efficient standards.
16. Bid protests and contract claims.
17. Value engineering.
18. Byrd Anti-Lobbying Amendments.
19. Insurance and indemnification responsibilities.
20. Applicable warranties.
21. Compliance with Lummi Nation Laws.
22. Submission to the jurisdiction of the Lummi Nation Courts.
23. Express retention of the sovereign immunity of the Lummi Nation.
24. Indian Preference, termination, penalties for improper subcontracting/false certification regarding Indian Preference.

<i>D. CONTRACT APPROVAL</i>

1. All contracts shall be reviewed and approved as to form by the Reservation Attorney or designee.
2. All expenditures in proposed contracts shall be reviewed by the CFO or designee to ensure sufficient funds have been budgeted to satisfy the obligations under the contract.
3. It shall be the responsibility of the program, department or entity seeking the contract to obtain the appropriate reviews and approvals, to prepare appropriate Resolution and to place for approval on the LIBC agenda.
4. Any contract containing a waiver of sovereign immunity, agreement to arbitration or submission to a jurisdiction other than the Tribal Court shall require specific approval by LIBC Resolution.

<i>E. CONSTRUCTION MANAGEMENT/CONTRACT MONITORING</i>
--

1. All LIBC construction contracts shall be administered through the Public Works Department.
2. The Public Works Director shall provide progress reports detailing the reasons for construction project delays and cost overages of all construction projects to the LIBC, as requested by the LIBC.
3. Throughout the contract period, the LIBC Project Manager will monitor the contractor's performance as provided in the contract documents, comparing it to the standards specified in the contract. Reporting requirements range from a one-time submission on the date of delivery under a sealed bid procurement for a simple commercially available

LUMMI INDIAN BUSINESS COUNCIL
PROCUREMENT POLICY

item, to regular, frequent submissions tracking a complex set of production schedules. The scope and complexity of the project will determine the most appropriate level of tracking necessary.

VI. SPECIFICATIONS

A. GENERAL

1. Specifications must be reviewed and approved by the Procurement Manager prior to solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items. Specifications shall be scrutinized to ensure that organizational conflicts of interest do not occur (for example, having a consultant perform a study of the LIBC's computer needs and then allowing that consultant to compete for the subsequent contract for the computers).
2. Specifications must be included in the solicitation. Consideration shall be given to consolidating procurements to obtain a more economical purchase. For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.
3. All specifications shall be drafted so as to promote overall economy or the purposes intended and to encourage competition in satisfying the LIBC's needs. Functional or performance specifications are preferred. Detailed product specifications shall be used whenever possible and may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.

B. LIMITATIONS

Specification shall not contain features that unduly restrict competition. Descriptions shall avoid:

1. Geographic restrictions not mandated or encouraged by applicable Federal law (except for architect-engineer contracts, which may include geographic location as a selection factor if adequate competition is available);
2. Unnecessary bonding or experience requirements; and
3. Detailed product specifications. 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 procurement. The specific features of the named brand that must be met shall be clearly stated.

VII. GENERAL PROVISIONS

LUMMI INDIAN BUSINESS COUNCIL
PROCUREMENT POLICY

A. INDIAN PREFERENCE REQUIREMENTS
--

1. Preference shall be given in the award of all contracts, regardless of location, in the following order:
 - a. Preference shall be first given to any Lummi owned entities created to perform the type of work being procured. The noncompetitive proposal method may be used to award the contract to the LIBC entity.
 - b. Preference shall be given to the greatest extent feasible to Indian-owned economic enterprises and Indian organizations, provided that it is in accordance with applicable law, regulation or contractual requirements, including but not limited to, Lummi Nation Code of Laws, Title 25, Tribal Employment Rights Ordinance (TERO).
2. Preference shall apply to all procurement actions unless otherwise prohibited by applicable law, regulation or contractual funding requirement. When Indian preference is prohibited or not feasible, the Procurement Manager shall document the basis in the procurement file.
3. The Procurement Manager shall identify authorized Vendors/Contractors that are Indian-owned economic enterprise or Indian organizations.
4. Eligibility.
 - a. To qualify as an Indian, one must be an enrolled member of a Federally Recognized Indian Tribe.
 - b. To qualify as an Indian-owned enterprise or Indian organization, an Indian or Indians must own or control Fifty-One Percent (51%) of the entity.
 - c. When determined ineligible for Indian Preference, written notification before the contract award will be given.
5. Vendors/Contractors shall provide a description of how they will meet Indian Preference in subcontracting, training and employment, including the number or percentage of Indians to be employed, trained or contracted. List of core crew must be submitted. Failure to submit appropriate documentation regarding Indian Preference and core crew list shall result in rejection of the offer.
6. Certification by the vendor/contractor and supporting evidence shall be submitted when Indian preference in subcontracting is not feasible.
7. All solicitations shall contain a clear statement of this Policy and its application to the award of the contract and in the procurement of goods and/or services.
8. Evaluation of Indian Preference. In the case of unrestricted RFP, 15% of the total number of available rating points shall be reserved for Indian Preference, and up to an additional ten percent (10%) rating points for proposals that include training and employment of Indians. A maximum of five percent (5%) of the lowest bid shall be calculated and applied as an allowance for bids from a Lummi-owned entity. In the absence of a Lummi-owned entity, the allowance shall comply with Attachment-Unrestricted Solicitations.

LUMMI INDIAN BUSINESS COUNCIL
PROCUREMENT POLICY

9. Monitoring and Remedies.

- a. The Lummi Nation TERO shall monitor the implementation of Indian Preference in all procurement activities and take appropriate remedial action consistent with applicable law to ensure compliance.
- b. LIBC expressly reserves the right to terminate any contract for failure to comply with this Policy and/or for falsifying any required certification regarding Indian Preference.

<i>B. SMALL AND OTHER BUSINESSES</i>

1. All affirmative steps shall be made to ensure that small and minority businesses, women's business enterprise and labor surplus area firms and individuals or firms located in or owned in substantial part by persons residing in the area of a tribal project/activity, are used when possible. Such steps shall include, but shall not be limited to:
 - a. Including such businesses, when qualified, on solicitation mailing lists;
 - b. Assuring that such businesses are solicited whenever they are potential sources;
 - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such business;
 - d. Establishing delivery schedules, where the requirement permits, which encourage participation by such businesses;
 - e. Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - f. Requiring prime contractors, if subcontracts are allowed, to take affirmative steps a-e.
2. A small business is defined as a business, which is independently owned, not dominant in its field of operation and not an affiliate or subsidiary of a business dominant in its field of operation. The size standards in 13 CFR 121 shall be used until the Lummi Nation adopts standards of its own.

<i>C. PROCUREMENT ETHICS</i>

The LIBC shall adhere to the following code of conduct, consistent with applicable law.

1. **CONFLICT OF INTEREST.**

- a. No LIBC officer, employee or agent shall participate directly or indirectly in the selection or award or administration of any contract if a conflict, real or apparent, would be involved. Such conflict would arise when a financial or other interest in an entity selected for award is held by:
 - i. an employee, officer or agent involved in making the award;
 - ii. a relative (including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, grandfather, grandmother,

LUMMI INDIAN BUSINESS COUNCIL

PROCUREMENT POLICY

grandson and granddaughter) of the employee, officer or agent involved in making the award;

iii. a partner of the employee, officer or agent involved in making the award; or

iv. a person, entity or organization that employs or contracts with, is negotiating to employ or contract with or has arrangements concerning prospective employment or contracting with any of the above.

b. No contractor, vendor or provider shall participate in any conflict of interest or violation or assist in violating this Section in any way.

2. GRATUITIES, KICKBACKS AND USE OF CONFIDENTIAL INFORMATION.

a. LIBC officers, employees or agents shall not solicit or accept gratuities, favors, or anything with a monetary value from contractors, potential contractor, or parties to subcontracts.

b. No LIBC officers, employees or agents shall knowingly use confidential information for actual or anticipated personal or family gain.

c. Where the procurement is supported by federal or state funds, LIBC officers, employees or agents shall abide by any and all additional restrictions imposed by the funding agency.

d. No contractor, vendor or provider shall participate in any gratuities, kickbacks or misuse of confidential information or violate or assist in violating this Section in any way.

3. CONTINGENT FEES PROHIBITED.

Contractors shall not retain a person to solicit or secure a Lummi Nation contract for commission, percentage, brokerage or contingent fee.

D. EFFECTIVE DATE AND AMENDMENTS

This Policy and any amendments, revisions or changes hereto shall be effective when approved by LIBC Resolution, unless otherwise specified in the Resolution.

E. SOVEREIGN IMMUNITY

The sovereign immunity of the Lummi Nation, the LIBC and its officers, employees and agents shall remain in full force. Members of the LIBC shall remain immune from suit for actions taken during the course of and within the scope of their duties as members of the LIBC, and nothing contained in this Policy shall be construed otherwise. Nothing contained in this Agreement Policy shall be construed as a waiver of the Lummi Nation's sovereign immunity from suit in any court. No award or other judgment imposing money damages, punitive or exemplary damages or attorney fees, shall be applied against the Lummi Nation, its officers, employees or agents in any action or claim for injuries under this Policy. Nothing contained in this Policy shall be construed as a submission to or admission of jurisdiction to any agency. Nothing in this Policy shall be construed to preempt the application of any law of the Lummi Nation, including, but not limited to, any tribal licensing laws.

LUMMI INDIAN BUSINESS COUNCIL
PROCUREMENT POLICY

F. VIOLATIONS

1. Violation of any part of this Policy may subject a LIBC officer, employee or agent to administrative, disciplinary or civil penalties. All discipline of LIBC employees shall be carried out pursuant to the Human Resources Personnel Policy Manual for the LIBC.
2. Violation of any part of this Policy may subject a Bidder or Contractor to cancellation of an existing contract or contracts, prohibition from being eligible for future contracts, and exposure to administrative and/or civil penalties.

G. PROTEST PROCEDURES

Any bidder or contractor who is aggrieved in connection with the solicitation or award of a bid or contracted products and services may file an appeal in accordance with the following procedures:

1. Bidder or contractor shall submit an appeal no later than five (5) business days after notification of the bid award. The appeals must be received by the Project Manager, with a copy to the Office of the Reservation Attorney, no later than 4:30 p.m. within five (5) business days of notice of award postmark date.
2. All appeals must be in writing and signed by the bidder or an authorized agent of the bidder.
3. The appeal shall include the name and address of the bidder or contractor.
4. The appeal shall include a detailed description of the facts and disagreement that form the basis of the bidder's or contractor's appeal, supporting documentation and the specific decision requested. The bidder or contractor shall also promptly provide any additional documentation related to the appeal upon request from the Project Manager.
5. The Project Manager or authorized representative of the LIBC will provide the aggrieved bidder or contractor with a written decision within five (5) business days after receipt of the appeal. The decision by the Project Manager of the LIBC is final. If additional time is mutually agreed on, the Program Manager shall notify the bidder or contractor of any delay.
6. Failure to comply with the appeal procedure shall render an appeal untimely or inadequate and result in rejection by the LIBC.

LUMMI INDIAN BUSINESS COUNCIL
PROCUREMENT POLICY

ATTACHMENT – UNRESTRICTED SOLICITATIONS

In accordance with the Procurement Policy, award shall be made under unrestricted solicitations to the lowest responsible and responsive bid from a qualified Indian-owned economic enterprise or Indian 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.

When the lowest responsive bid is:	X = Lesser of:
less than \$100,000.00	10% of that bid, or \$9,000
\$100,000.00-\$200,000.00	9% of that bid, or \$16,000
\$200,000.00-\$300,000.00	8% of that bid, or \$21,000
\$300,000-\$400,000.00	7% of that bid, or \$24,000
\$400,000.00-\$500,000.00	6% of that bid, or \$25,000
\$500,000.00-\$1 million	5% of that bid, or \$40,000
\$1 million-\$2 million	4% of that bid, or \$60,000
\$2 million-\$4million	3% of that bid, or \$80,000
\$4 million -\$7million	2% of that bid, or \$105,000
Over \$ 7 million	1% of that bid, no dollar limit