TRIBAL CODE

CHAPTER 13

# PROCUREMENT AND PROPERTY MANAGEMENT

CONTENTS:


13.101 Definitions.

13.102 Compliance.

13.103 Financial Reporting and Recordkeeping.

13.104 Maintenance of Property.

13.105 Disposition of BIA Property.

13.106 Disposition of Other Federal Property.

13.107 Indian Preference.


HISTORY NOTE:

Adopted by motion of the Tribal Council, June 25, 1984.
Adopted Section 13.107, April 9, 1984, Resolution No. 136(84).
Resolution No. 194(16), June 27, 2016 amends Sections 13.101 Definitions and 13.102 Compliance.

13.101 Definitions.

As used in this chapter:

(1) "Property" means an asset that has an expected useful life of more than one year and a value of $100 or more.

(2) "Real Property" means land, including land improvements, and structures, excluding movable machinery and equipment.

(3) "Personal Property" means personal property of any kind except real property. It may be tangible - having a physical existence, or intangible having no physical existence, such as patents, inventions, and copyrights.

(4) "Non-Expendable Personal Property" means tangible personal property having a useful life of more than one ear and an acquisition cost of $5,000 or more per unit.

(5) "Expendable Personal Property" means to all tangible property other than non-expendable personal property.

(6) "Damage" means a sudden act of destruction not caused by normal wear and tear.

13.102 Compliance.

(1) The purpose of this manual is to document a Procurement and Property Management system for the Lac du Flambeau Band of Lake Superior Chippewa Indians. By the passage of the Tribal Council this manual will be official policy of the Tribe. This manual will provide a system which will provide accountability and control over Tribal assets in accordance with Tribal policy, Title 25, Chapter 1, 276.12 of the Federal Register, Attachment O of Circular No. A-102, and other regulations of funding agencies.

(2) All procurement of personal property or Contracts for Services shall be made with appropriate approvals based upon the following table:

| Amount of Purchase | Required Approvals | Required Solicitation | Required Documentation |
|---|---|---|---|
| < $3,000 | · Dept. Director | Evidence of solicitation not required but purchases should be distributed among qualified vendors | • Receipt approved by Dept. Director |
| $3,000 ≤ $20,000 | • Dept. Director<br>• Chief Financial Officer | 3 written bids (catalogue, Internet, written)<br><br>(Request for Bids or Request for Proposals may be used) | • 3 Bid Memo with supporting documentation of requirements for purchase, the bids received, and justification for selection |
| $20,001 ≤ $100,000 | • Dept. Director<br>• Chief Financial Officer<br>• Tribal Administrator | 3 written bids (Request for Bids or Request for Proposals) | • Copy of RFB or RFP<br>• 3 Bid Memo<br>• Proposal and contract of winning bid |
| > $100,000 | • Dept. Director<br>• Chief Financial Officer<br>• Tribal Administrator<br>• Tribal Council | 3 written bids (Request for Bids or Request for Proposals)<br><br>Sealed bids are required and must be processed through the Tribal Secretary's office | • Copy of RFB or RFP<br>• Proposal scoring grids including who participated in the scoring<br>• 3 Bid Memo<br>• Proposal and contract of winning bidder<br>• Tribal Council Resolution |

(3) These additional standards shall apply:

(a) All procurement of non-expendable personal property shall be made through the purchase order system.

(b) Tribal officers, employees, and/or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors.

(c) All procurement transactions, regardless of whether negotiated or advertised and without regard as to dollar amount, shall be conducted in a manner so as to provide maximum open and free competition.

(d) All procurement of non-expendable property or contracts in excess of $10,000 shall abide by the specifics of Title 25, Chapter 1, 276.12 of the Federal Register.

(e) Indian Preference. Indian organizations or economic enterprises will be given preference in the award of any subgrant, contract, or subcontract. Preferences and opportunities for training and employment in connection with administration of grants shall be given to Indians. In addition, the guidelines of Section 13.107 shall apply to all Tribal purchases.

(f) Conflicts of Interest. No employee, officer or agent of the grantee shall participate in selection, award, or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent;

(ii) Any member of his immediate family;

(iii) His or her partner; or

(iv) An organization which employs, or is about to employ, any of the above;

has a financial or other interest in the firm selected for award.

(g) The cost plus a percentage of cost and a percentage of construction cost method of contracting shall not be used.

(4) These standards shall be applied to property management:

(a) All real property shall be managed by the Tribe in accordance with Title 25, Chapter 1, 276.11, Paragraph (9-C) of the Federal Register.

(b) As to non-expendable personal property, property records shall be maintained accurately and provide for a description of the property; manufacturer's serial number or identification number; acquisition date and cost; funding source of the property; percentage of Federal funds used in the purchase of the property; location, use, and condition of the property; and ultimate disposition data including sales price or the method used to determine current fair market value if the grantee reimburses the Federal

Agency for its share.

(c) To gather the above documentation the purchase order system will be used as follows:

(i) For the procurement of all non-expendable property the Property Manager will approve all purchase orders and insure all applicable procurement standards are followed. The Property Manager will retain a copy of all open purchase orders, copies of all invoices and related receiving reports, and copies of the check will be forwarded to the Property Manager who will match them with open purchase orders and subsequently file them by item number.

(ii) All non-expendable personal property in excess of $100 shall be subject to the property management system. However, only non-expendable property in excess of $300 will be recorded in the financial statements.

(iii) For the purpose of record-keeping, a standard code number shall be used as follows:

<u>Program   Location   Item Number</u>
| 0 | 0 |  0  0  | 0 0 0 0  |

The first two digits will signify the program.
The next two digits will signify the location within that program.
The last four digits will identify the item number.

(d) A physical inventory shall be taken annually. This inventory will be reconciled to the property records to verify the existence, current use, condition, and continued need for the property. In addition, the dollar values of these inventories will be reconciled to the financial statements of the programs and related adjustments reflected.

(e) The Property Manager will be responsible for providing the Program Manager with an inventory listing of non-expendable personal property per the property records and the Program Managers are responsible for verification of the inventory.

(f) All Program Managers will be responsible for the non-expendable personal property assigned to that program. The Program Managers are expected to prevent loss, damage, or theft to the property. Any loss, damage, or theft of non-expendable property shall be investigated fully and documented and appropriate copies filed in the person's file who was directly responsible for the property.

(g) A form is to be developed by the Property Manager for the transfer of any non-expendable personal property. All transfers of property shall have prior approval of the Property Manager who should make sure all required funding agency approvals have been attained prior to approval of the transfer at the Tribal level. A copy of this transfer form should be forwarded to the accounting department for recording in the program financial records and the Property Manager is responsible for changing the I.D. tag and related property records.

13.103 Financial Reporting and Record keeping.

(1) All purchases of non-expendable personal property in excess of $300 shall be recorded in the financial records of the applicable program or tribal enterprise. The entry should consist of a debit to one of the following fixed asset accounts:

(a) Land

(b) Building

(c) Non-Expendable Equipment

and a credit to contributed capital - description of funding source. These entries should be made in the month of purchase.

(2) In the property records the following information should be available:

(a) Description of Property/Equipment

(b) Date Purchased

(c) Vendor

(d) Cost

(e) Serial Number or I.D. Number of Manufacturer

(f) Property Record Number

(g) Funding Source

(h) Title Information

(i) Location

(j) Maintenance Data

(k) Condition of Last Inventory

(3) The procurement records shall maintain sufficient detail to document the history of procurement. These records shall include, but are not necessarily limited to information pertinent to the following:

(a) rationalization for the method of procurement;

(b) notification of verbal price quotations obtained;

(c) copies of request for bids or proposals;
(d) copies of bids received;

(e) rationalization for the selection of contract type; and

(f) contractor selection and/or rejection.

13.104 Maintenance of Property.

(1) The property records should identify required maintenance procedures for items of non-expendable personal property. It is the Property Manager's duty to make the Program Manager aware of maintenance requirements and the Program Manager's duty to see the required maintenance is carried out. The state of maintenance will be noted on the annual inventory of non-expendable equipment.

(2) An effective preventative maintenance program will consist of, but not be limited to, the following:

(a) Inspection of buildings at periodic intervals so as to detect the need for repairs.

(b) Inspection of non-expendable equipment for wear or needed repair to keep in good operating condition.

(c) Proper storage and preservation of non-expendable equipment.

(d) Entering into maintenance contracts for all applicable equipment.

13.105 Disposition of BIA Property.

The following provisions shall apply to all unneeded property, BIA property:

(1) When non-expendable personal property is acquired by a grantee wholly or in part with Bureau funds, title will not be taken by the Bureau except as provided in sub. (5) of this section but shall be vested in the grantee subject to the following restrictions on use and disposition of the property.

(2) The grantee shall retain the property acquired with Bureau funds in the grant program as long as there is a need for the property to accomplish the purpose of the grant program, whether or not the program continues to be supported by Bureau funds. When there is no longer a need for the property to accomplish the purpose of the grant program, the grantee shall use the property in connection with the other Federal Grants it has received in the following

order of priority:

(a) Other grants from the Bureau needing the property.

(b) Grants of other Federal agencies needing the property.

(3) When the grantee no longer has need for the property in any of its Federal grant programs, or programs that have purposes consistent with those authorized for support by the grantor, the property may be used for its own official activities in accordance with the following standards:

(a) Non-expendable property with an acquisition cost of less than $500 and used four years or more. The grantee may use the property for its own official activities without reimbursement to the Federal Government or sell the property and retain the proceedings.

(b) All other non-expendable property. The grantee may retain the property for its own use if a fair compensation is made to the Bureau for the latter's share of the property. The amount of compensation shall be computed by applying the percentage of Bureau participation in the grant program to the current fair market value of the property.

(4) If the grantee has no need for the property, disposition of the property shall be made as follows:

(a) Non-expendable property with an acquisition cost of $1,000 or less. Except for that property which meets the criteria of sub. (3)(a), the grantee shall sell the property and reimburse the Bureau an amount which is computed in accordance with sub. (4)(b).

(b) Non-expendable property with an acquisition cost of over $1,000. The grantee shall request disposition instructions from the Bureau. The Bureau shall determine whether the property can be used to meet the Bureau's requirement. If no requirement exists within the Bureau, the availability of the property shall be reported to the General Services Administration (GSA) by the Bureau to determine whether a requirement for the property exists in other Federal agencies. The Bureau shall issue instructions to the grantee within 120 days and the following procedures shall govern:

(i) If the grantee is instructed to ship the property elsewhere, the grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the grantee's participation in the grant program to the current fair market value of the property, plus any shipping or interim storage costs incurred.

(ii) If the grantee is instructed to otherwise dispose of the property, he shall be reimbursed by the Bureau of such costs incurred in its disposition.

(iii) If disposition instructions are not issued within 120 days after reporting, the grantee shall sell the property and reimburse the Bureau an amount which is computed by applying the percentage of Bureau participation in the grant program to the sales proceeds. Further, the grantee shall be permitted to retain $100 or 10 percent of the proceeds, whichever is greater, for the grantee's selling and handling expenses.

(5) Where the Bureau determines that property with an acquisition cost of $1,000 or more and financed solely with Bureau funds is unique, different, or costly to replace, it may reserve title to such property, subject to the following provisions:

(a) The property shall be appropriately identified in the grant agreement or otherwise made known to the grantee.

(b) The Bureau shall issue disposition instructions within 120 days after the completion of the need for the property under the grant for which it was acquired. If the Bureau fails to insure disposition instructions within 120 days, the grantee shall apply the standards of sub. (2), (3)(b), and (4)(b).

13.106 <u>Disposition of Other Federal Property</u>.

(1) Federally owned non-expendable personal property. Unless statutory authority to transfer title has been granted to an agency, title to Federally owned property (property to which the Federal Government retains title including excess property made available by the Bureau to grantees) remains vested by law in the Federal Government. Upon termination of the grant or need for the property, such property shall be reported to the Bureau for further Bureau use or, if appropriate, for reporting to the General Services Administration for other Federal agency use. Appropriate disposition instructions will be issued to the grantee after completion of Bureau review.

(2) When property is no longer needed by the Tribe for all other Federal agencies the Tribe will report the property to the applicable Federal agency and await disposition instructions from that agency.

(3) No non-expendable personal property will ever be disposed of without instruction from the applicable Federal agency.

13.107 <u>Indian Preference</u>.

(1) Indian Preference is available to any otherwise qualified Indian organization or Indian-owned economic enterprise, which includes both:

(a) Any "economic enterprise" as defined in Section 3(e) of the Indian Financing Act of 1974 (P.L. 93-262); that is, "any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit provided that such

Indian ownership and control shall constitute not less than 51 percent of the enterprise"; and

(b) Any "tribal organizations" as defined in Section 4(c) of the Indian Self-Determination and Education Assistance Act (P.L. 93-838); that is, "the recognized governing body of any Indian Tribe; any legally established organization of Indians which is controlled, sanctioned or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organizations and which include the maximum participation of Indians in all phases of its activities."

(2) The Tribe shall advertise for bids without limiting the advertisement to Indian organizations and Indian-owned economic enterprises, but such advertisement shall contain notice that the awarding of the contract is subject to Indian preference pursuant to this policy, and advising bidders to indicate with their bid if they are claiming such preference.

(3) Indian preference in the award of the contract may be applied only to those otherwise qualified Indian organizations or Indian-owned economic enterprises whose bids are within the following range of the lowest bid received from a qualified contractor:

(a) Greater by no more than 5% of such bids for a bid amount of less than $500,000; and

(b) Greater by no more than $25,000 plus 1% of the amount by which the bid exceeds $500,000 for a bid amount of $500,000 or more.

(4) Any bidder seeking Indian preference shall present with the bid or upon request from the Tribe after the bid opening such evidence as the Tribe may require that the bidder has the technical, administrative, and financial capability to perform contract work of the size and type involved. A bidder failing to provide satisfactory evidence upon request shall not be awarded the contract.

(5) The Tribe shall receive from each bidder with the bid or upon request from the Tribe thereafter evidence that the bidder qualifies for Indian preference. Such evidence may include:

(a) Evidence showing fully the extent of Indian ownership, control and interest, including the organic documents of the bidding entity;

(b) Evidence of structure, management and financing affecting the Indian character of the enterprise, including major subcontracts and purchase agreements; materials or equipment supply arrangements; the management salary or profit-sharing arrangements; and evidence showing the effect of those on the extent of Indian ownership and interest, and

(c) A certified audit report on the bidding entity which plainly shows the distribution of capital, income, and other payments between Indian and non-Indian owners and employees. A bidder failing to provide satisfactory evidence upon request shall not be entitled to Indian preference.

(6) The Tribe shall award a contract to a bidder who meets the qualifications for Indian preference set forth herein. If no bidder qualifies for Indian preference, the contract shall be awarded to the lowest qualified bidder.