

STOCKBRIDGE-MUNSEE COMMUNITY
COMPETITIVE CONSTRUCTION BID POLICY

1. Council Findings

(A) The Tribal Council finds that precision and consistency in the Tribal contracting bid process is needed in order to obtain the best possible quality construction at the most reasonable prices for the Tribe.

(B) The Tribal Council also recognizes that Indian preference in construction projects is important to the Community and must be a formal part of the construction bid process.

2. Purpose

The purpose of this Policy is to define the bidding process for tribally owned and/or operated facilities. The Tribal Council has determined that a competitive consistent bidding process will benefit the Tribe because the Tribe will be better equipped to make informed decisions when selecting a construction contractor. The Tribal Council has also determined that Tribal member contractors will also benefit from a bidding process that recognizes preference for Tribal member contractors. The intent of this Policy is to facilitate the Tribe in obtaining the best possible construction, within budget, while encouraging Tribal member owned enterprises to participate in the bidding process in a meaningful manner.

3. Definitions

(A) “Advertisement for bids” means an invitation by the Tribe for soliciting bids for a construction project or designated portion thereof, included as part of the bidding documents.

(B) “Agency” means any and all arms, departments, enterprises, organizations, instrumentality, corporations, Tribal Council, or other entities of the Tribe that has the final (ultimate) control over the plan preparation, bid process, posting, advertising, and/or acceptance of submitted bids.

(C) “Bid documents” means collectively, the bidding requirements and the proposed contract documents, including addenda issued prior to receipt of bids.

(D) “Complete bid” means a complete properly signed offer submitted in accordance with the bidding requirements by a contractor to contract or perform the work designated, or portion thereof for the amounts stipulated therein. It shall be comprehensive enough that the offer requires no further inquiry explanation, or clarification.

(E) “Emergency” means a situation usually caused by catastrophic events such as tornadoes, floods, storms, war, freezing, and other similar events that requires construction or repair to begin immediately to protect the health and welfare of the community or because of business necessity. Emergency does not mean a situation caused by ineffective planning.

(F) “Enrolled Member” means a person who is an enrolled member of the Stockbridge-Munsee Community.

(G) “Enterprise” means any business, corporation, partnership, sole proprietorship, or joint venture.

(H) “Housing” means the Stockbridge-Munsee Community Division of Community Housing.

(I) “Member Owned Enterprise” means any enterprise that is at least 51% owned by one or more enrolled member(s) of the Stockbridge-Munsee Community.

(J) “Preference” means enterprises will be selected for contracting so long as the enterprise is responsibly qualified and the bid and Member Owned Enterprise meet the requirements of this policy.

(K) “Team” means team as used and defined in Section 11(B)(C).

4. Coverage and Scope

(A) This Policy applies to all Agencies and construction projects and proposals that are expected to exceed \$5,000.00, except that the Housing Department shall be governed by Section 14 Housing. For construction projects that are expected to be less than \$5,000.00, Agencies are to act in a reasonable manner to assure that the Tribe is getting the best economic value. In all cases, Agencies shall avoid any appearance of impropriety, favoritism or other improper conduct.

(B) The Planning and Evaluation Team (section 11) shall apply to all projects that exceed \$100,000.00.

(C) Certain federal/state contracts and grants may supercede or contain provisions that are inconsistent with this Policy. If the contract/grant provisions are mandatory, those provisions of the contract/grant contract shall control, and the remaining portions of this Policy shall be adhered to.

(D) This Policy does not prohibit the Tribe or Agency from performing the proposed work or service itself, if the Tribal Council determines that the best interests of the Tribe would be better served if the Tribe performed the project or proposal.

(E) This Policy does not apply to an emergency, except:

(1) In emergencies, the Agency, Team, or Project Manager shall make reasonable efforts to notify all Approved Member Owned Enterprises of the work that needs to be performed.

(a) Approved Member Owned Enterprises shall be required to meet appropriate bid deadlines, project completion dates, cost and other budget considerations, and other applicable conditions and requirements of the project, including meeting the requirements of Section 6, Indian Preference.

(F) This Policy does not apply to change orders or change directives, which are added work or services within the general scope of an on-going project.

(G) This Policy does not prohibit an Agency or Team from retracting any invitation for bids.

5. Approved Contractors

(A) The Project Manager shall compile and regularly update a list of Approved Contractors. The Project manager shall submit the list of Approved Contractors to Tribal Council, Tribal Administrator and the Executive Director quarterly. It will be the responsibility of the Tribal Administrator and Executive Director to submit the list to departments they designate.

(B) The criteria for determining Approved Contractors include insurance, ability to obtain bonding, experience, reliability, previous references, background/portfolio of the enterprise, technical ability, financial ability, applicable certification and/or licenses, or other factors the Project Manager deems important.

(1) Contractors seeking to be on the Approved Contractors list the applicable information to the Project Manager on AIA Doc. 305, or similar form.

(2) The Project Manager, only with approval from his/her immediate supervisor, has the authority to remove a contractor from the Approved Contractor's list for cause. If a contractor is removed from the Approved Contractors list, the Project Manager shall so note the removal in his/her monthly report.

(3) If the Project Manager determines that an Indian Preference Enterprise (section 6) is ineligible to be an Approved Contractor, the enterprise must be notified in writing regarding what the specific deficiencies are and/or what must be corrected to become an Approved Contractor.

(C) Tribal Council reserves the right to remove a contractor from the Approved Contractor's list, if Tribal Council determines that it is in the best interest of the Tribe.

(D) Approved contractors must maintain and certify that all subcontractors are Approved Contractors or be subject to penalties of \$1,000.00 per day, for each violation, and/or the Tribe may consider such violation a material breach and may terminate the existing contract.

6. Tribal Preference

(A) The Agency or Team shall apply preference when a Member Owned Enterprise(s), submitted bid or proposal is within the proposed budget for the project, and the enterprise is an Approved Contractor. The Agency or Team has discretion not to adhere to the preference if the proposed bid or proposal from an otherwise qualified preference enterprise exceeds the lowest bid by more than the identified percentage listed below:

Projects up to	\$100,000	10%
Projects between	\$100,001 - \$500,000	5%
Projects greater than	\$500,000	3%

(B) Applicant(s) for Tribal preference will be required to provide proof that they are an enrolled member as defined in this policy.

(C) An applicant seeking preference has the burden to demonstrate that the enterprise is eligible for preference, by proving that the applicant is a Member Owned Enterprise as defined in this policy.

(D) Human Resources shall maintain a list of Tribal members who are eligible for hire in the construction field. Contractors are encouraged to supply information regarding potential Tribal member hires in their bid.

7. Site Selection

(A) Prior to final site selection, the Agency or Team need to consult and receive comments from the Tribal Roads, Environmental, and Forestry departments regarding the proposed site selection.

(B) If any of the above departments disapprove of the site selection, the department and Agency or Team shall notify Tribal Council.

(C) The site selection must be in compliance with Chapter 43, Land Use Ordinance, and other applicable ordinances.

8. Plans and Specifications

(A) The Team or Agency shall prepare plans and specifications, or have plans and specifications prepared, containing a description of the work, the type and/or quality of materials to be used and such other matters that will give perspective bidders a clear idea of the scope of work required.

(1) Such plans and specifications are essential to the bidding process to prevent a prospective bidder from gaining an unfair advantage over another bidder.

(2) Bids submitted based on uniform plans and specifications will aid the Team, Agency, or Tribal Council in comparing bids to determine which bid is the lowest responsible bid.

(3) The Agency or Team is permitted to charge a nominal fee for copies of the plans that perspective bidder's request.

(B) All requests for bids or proposals shall be based on the scope of work as described in the drawings and uniform specifications.

(C) If the project is for a new public, commercial, or multi-family facility the plans and specifications shall be prepared and stamped by a licensed professional and reviewed and approved by the appropriate state authority.

9. Advertisement and Posting

(A) All Invitations for Bids or Proposals under this Policy shall be posted at the Tribal Posting Boards throughout the Stockbridge-Munsee Community at least 14 days before the bidding date is closed.

(B) Invitations for Bids and Proposals under this Policy shall be sent to applicable Approved Contractors.

(1) Invitations for Bids or proposals may be published in at least one newspaper of general circulation in such places as are most likely to reach prospective bidders.

(2) Invitations for Bids or Proposals may be sent to Building Exchanges.

(C) Invitations for Bids or proposals shall contain the basic information regarding the project. Applicable and pertinent information may include:

1. All contractors are required to be an Approved Contractor (AIA Doc. 305),
2. Contractors must supply a list of their subcontractors with their bid.
3. All contractors are required to certify (from the Tribe's Approved Contractors list) that all subcontractors are Stockbridge-Munsee Approved Contractors,
4. Description of the project,
5. Project or contract number, if applicable,
6. Plans and specifications, if applicable, and/or price and location where plans and specifications can be purchased,
7. Due date and time for bids to be submitted,

8. Date, exact time, and place of bid opening, and statement that bidders are invited to attend,
9. Address where the bids should be mailed or hand delivered, or phone number where bids can be faxed,
10. Whether specific bid sheets/forms are required,
11. Contact person for more information on the project,
12. All Invitations for Bids shall include a statement that Indian preference shall be adhered to in contracting, subcontracting, and hiring,
 - (a) Contractors who hire Tribal/Member Owned Enterprises or Tribal members are encouraged to submit bids and those bids maybe considered as a factor in awarding of the bid.
13. Bid security requirement and percentage (if applicable),
14. Contract security requirement (if applicable),
15. Statement of Qualifications of the Contractor (if applicable),
16. Project starting date, milestones, and completion date,
17. The awarded contract will contain a Liquidated damages clause,
18. The awarded contact will contain a clause that contract disputes will be resolved in Tribal Court.
19. Bond and insurance requirements,
20. Tribe's right to reject any and all bids,
21. Whether bids may be withdrawn,
22. Whether Tribal, federal Davis Bacon, or H.U.D wage rates apply,
23. Whether AIA contracts and documents shall be utilized,
24. Tribes right to withdraw Advertisement for Bids, and,
25. The Tribe will not accept a bid that is not complete,
26. And other relevant information.

(D) Addendum to Invitations for Bids and Proposals.

- (1) An addendum shall be mailed or faxed to all Approved Contractors and to all contractors that have submitted bids on the particular project.

(E) All bidders should have access to a current copy of this policy.

(F) All sealed bids will be sent to the Tribal Council Secretary.

10. Bid Opening

(A) The bid opening shall occur at the Tribal offices at the scheduled time, unless special circumstances require that the bid opening occur at another location.

(B) The Project Manager, Tribal Attorney, Team or Agency and available members of the Tribal Council shall be present at the bid opening.

- (1) The names of the bidder and the price of each bid shall be read aloud and recorded at open bid openings.

(2) The Tribe is not bound to make a decision as to which bid to accept at the bid opening.

11. Projects over \$100,000.00: Bid Bonds, Payment Bonds, and Performance Bond Requirements, Planning and Evaluation Team

(A) Bid Bonds:

1. Each proposal must be accompanied by a Cashier's Check, Certified Check or a Bid Bond ("Bid Bond") duly executed by the Bidder as Principal and having as a Surety thereon a company qualified to act as Surety in the State of Wisconsin. The check or Bid Bond must be enclosed in the same envelope with the Proposal. The Bid Bond shall not be less than five percent (5%) of the total amount of the base Bid, payable to Stockbridge-Munsee Community.

2. The Bid Bond will be returned to the Bidder in accordance with the following provisions:

- (a) Checks will be returned to all bidders except the three (3) selected Bidders within three (3) business days after the formal opening of bids.
- (b) Bid Bonds from the three (3) selected bidders will be returned within three (3) business days after the Owner (Tribe) and the successful Bidder have executed a contract.
- (c) If all bids are rejected by the Owner (Tribe), all Bid Bonds will be returned to the respective Bidders within three (3) business days of the date of rejection.

3. Successful bidders must present performance bonds and payment bonds to the Project Manager (or Project Coordinator, if a Housing project) within ten (10) business days of executing a contract and prior to the Tribe issuing a notice to proceed.

4. Once a performance bond and payment bonds are issued to a contractor, the contractor has a duty to inform the Tribe if there are any changes to the performance bond and/or payment bonds.

(B) Construction projects over \$100,000.00 require that a planning and evaluation team ("Team") be created. The Team's purposes are:

- 1. to ensure that the construction project is planned to meet the needs of the Tribe,
- 2. to create a specific checklist for the project,
- 3. to ensure that the Invitations for Bids or Proposals are clear and complete, and meet the needs of the Tribe,
- 4. to facilitate the bid opening, including determining if the bid should be an open or closed opening,
- 5. to negotiate with bidders, if it is in the best interests of the Tribe to negotiate details prior to recommending a bid to Council,
- 6. to recommend to Tribal Council the bid to select for the project,

7. to make other recommendations to Tribal Council, as needed depending on the scope and size of a particular project,
8. to recommend to Tribal Council the architect to be selected (if applicable),
9. to assist the Tribal Project Manager, as needed, to ensure that the construction project proceeds as planned,
10. to consult with applicable AIA documents for guidance, and
11. to seek consultation with Legal, as needed.
12. to ensure all bonds are presented prior to work starting on the construction project.

(C) The Team shall be comprised of the Project Manager, Project Coordinator if a Housing Project, a Project Accountant; designated from the Finance Department, Project Attorney; designated from the Legal Department and at least two other individuals listed below:

1. the applicable Tribal Department Director(s) and Assistant(s),
2. the Tribal Environmentalist,
3. the project Architect, if applicable,
4. the Tribal Development Planner,
5. members of applicable boards, or,
6. other Tribal employees (subject to approval from their supervisor and the Tribal Project Manager) who have experience, or need experience with construction projects.
 - a. Some members of the team may have a limited duration with the team, while the Project Manager, Project Accountant, Project Attorney and others will remain on the team for the entire project. For example, the environmentalist may be needed for only certain times of the project, while the applicable department director may be needed for the entire project.
 - b. The Human Resources Department will work with the project's contractors and Team to coordinate efforts to hire qualified Tribal Members.
 - c. The Project Manager remains the owner's representative, unless Tribal Council deems otherwise.
 - d. The Project Manager will submit weekly reports to his immediate supervisor and members of the Team, detailing the progress of the construction project in relation to the project timetable.
 - e. The Project Accountant shall perform financial reviews of all project financial transaction and provide a monthly financial statement to the Project Manager.
 - f. The Project Attorney shall provide reports of all contractual obligations of each project as needed.

(D) The Project Manager, as the Tribe's (owner's) representative shall recommend to Tribal Council who shall be members of the team for each project.

12. Projects under \$100,000.00: Agencies

(A) Except as provided in Section 14 Housing, Agencies shall adhere to as many as the requirements and functions of the Planning and Evaluation Team as is reasonably possible.

13. Minor Changes in the Work

(A) The Project Manager is limited to authorizing minor changes in the work to correct minor errors and omissions, or for changes that are manifestly necessary to carry out the intent of the contract, so long as the minor change in the work does not exceed the project budget. Any changes that exceed the approved budget must come before Tribal Council.

14. Housing

(A) Housing projects that are expected to exceed \$100,000.00, Housing shall adhere to the general provisions of this Policy that are applicable to other Agencies, except that the Housing Coordinator may perform most, if not all of the Tribe's Project Manager's functions.

(B). The Housing Project Coordinator shall compile and regularly update a list of Approved Contractors.

(a) The Housing Director shall submit the list of Approved Contractors to the Tribe's Project Manager and the Tribal Administrator on a quarterly basis or in the event there is a change to the list.

(b) The Housing Project Coordinator, instead of the Project Manager listed in Section 5, shall follow all other requirements in Section 5, Approved Contractors.

(C) For Housing projects that are expected to exceed \$5,000.00 but are expected to be less than \$100,000.00, the following procedures shall be adhered to:

1. The Housing Department shall adhere to Section 6, Indian Preference.
2. The Housing Department shall prepare a scope of work that includes a description of the work, the type and/or quality of materials to be used, and such other matters that will give perspective bidders a clear idea of the scope of work required.

(a) A clear, accurate scope of work will enable the Housing Department to receive comparable bids, prevent bidders from gaining an unfair advantage over other bidders, and will aid the Housing Department in determining which bid is the most desirable.

3. Invitations for Bids shall be sent to Approved Contractors and should normally be advertised in at least one newspaper of general circulation in such places as are most likely to reach prospective bidders.

(a) Advertising in a newspaper may not always be practical or cost effective. In these situations, the Housing Director has the discretion not to advertise.

(b) All sealed bids should be sent to the Housing Administrative Assistant.

4. Bid Openings shall occur at the Housing Office or Tribal Office at the scheduled time and shall be open to the public.

(a) At least two of the following persons shall be present at the bid opening.

- i. The Housing Director/Manager,
- ii. The Housing Project Coordinator,
- iii. Housing Department Staff, or,
- iv. Housing Board Member(s).

(b) The names of the bidder and the price of each bid shall be read aloud and recorded at the bid opening.

(c) The Housing Department is not bound to make a decision as to which bid to accept at the bid opening, and the Housing Department is not obligated to provide other information to the bidders.

5. The Project Coordinator is limited to authorizing minor changes in the work to correct minor errors and omissions, or changes that are manifestly necessary to carry out the intent of the contract, so long as the minor change in the work does not exceed the project budget.

6. The Housing Department must comply with all of the requirements of Section 15, Compliance except that:

a. The Housing Director and Project Coordinator, rather than Tribal Council, have the authority to select bidder(s) for the project utilizing the criteria in Section 15 (E).

(D) For Housing projects expected to be less than \$5,000.00 or are otherwise an emergency, as defined in Section 2(E), Housing should utilize as many of the provisions of this Section 14, as is practical. Housing shall be guided by the following principles:

- (1) Housing shall act in a reasonable manner that will assure that the Tribe is getting the best economic value.
- (2) Housing shall avoid any appearance of impropriety, favoritism or other improper conduct.

15. Compliance

(A) All Agencies are bound by this Policy. Each Agency and Team shall fully comply with all terms of this Policy. Agencies and Teams shall not divide projects, or take other actions to avoid being subject to this Policy.

(B) Persons who do not comply with this Policy are subject to disciplinary action.

(C) Before any bid or proposal is recommended to Tribal Council, the Team or Agency must complete a Bidding Preference Compliance Report that is included at the end of this Policy as Appendix A. The Project Manager shall keep completed Bidding Preference Compliance Reports on file for three years, for future reference by other Teams.

(D) Under no circumstances are Agencies, Teams, or Tribal Council bound to accept bids, even though an invitation for bids or proposals has been published and the bids have been opened.

1. Tribal Council reserves the right not to enter into contracts.

(E) Teams or Agencies are not bound to recommend the lowest submitted bid. Teams or Agencies have the right to reject bids that are not complete. Teams or Agencies shall consider the best interests of the Tribe when making recommendations to Tribal Council. Teams and Agencies shall consider:

1. Price contained in the submitted bid,
2. Whether the bidder is an Approved Contractor and has identified all subcontractors.
3. Whether the bidder has certified that all subcontractors will be Approved Contractors throughout the duration of the project.
4. Whether all bond requirements have been met and/or can be met.
5. Quality of the workmanship, service, or materials, contained in the bid,
6. Past experience with the contractor or bidder,
7. Tribal preference,
8. Whether the bid indicates the number of Tribal member employees or Member Owned Enterprises will be subcontractors, and,
9. Reputation of the contractor or bidder.

(F) Tribal Council shall have discretion to disclose information relating to accepted bids to unsuccessful bidders.

(G) Legal shall review all contracts before the Tribe signs the contract. The contract shall contain a clause that as a condition of payment, the contractor will provide the project manager with a list of Tribal employees and/or Member Owned Enterprises that are subcontractors.

16. Effective Date; Severability

(A) The provisions of this Policy shall take effect 30 days after Tribal Council, by Resolution, adopts this Policy.

(B) If any provision of this Policy is ruled illegal by a court of competent jurisdiction, the remaining provisions of this Policy shall remain unaffected.

17. Inconsistent Policies

(A) This Policy supercedes all conflicting Tribal Policies.

Legislative History

Adopted by Council, 1-18-00.

Amended by Council, April 3, 2001:

- 1) Sections 2, 3(M), 6, 14(E)(5), (6), 14(G) amended to limit Indian preference to Tribal preference. Sections 3(E)(I)(J)(L)(N) are deleted to reflect the change.
- 2) Section 3(F) "Emergency" is expanded.
- 3) Sections 4 (E)(1) and 4(E)(1)(a) is newly created.
- 4) Section 5(B)(1) is amended adding, "cause" and requiring the Project Manager to report removed Approved Contractors in the quarterly report.
- 5) Section 9(C) is amended:
 - a. (6) adding that bidders are invited to attend bid opening,
 - b. (7) (reference to open or closed bidding) is deleted,
 - c. (11)(a) is newly created,
 - d. (16) is amended requiring notice that contract will contain liquidated damage clause,
 - e. (17) is newly created,
 - f. (24) is newly created.
- 6) Section 9(E) is newly created.
- 7) Section 10(C), provision for incomplete plans and specifications is deleted.
- 8) Section 13(A) is amended and Section 13(B) is deleted so that change orders are required to stay within the approved budget.

Amended by Tribal Council on October 1, 2002:

- 1) Section 5(C) is newly created.
- 2) Section 5(D) is renumbered from Section 5(C).
- 3) Section 5(E) is newly created.
- 4) Section 9(C)(1) is reworded.
- 5) Sections 9(C)(2) and 9(C)(3) are newly created.
- 6) Sections 14(E)(2) and 14(E)(3) is newly created, and Section 14(E)(4) “Whether the bidder is responsibility qualified” is deleted.
- 7) Sections 14(E)(4), (5), (6), (7) are renumbered.

Amended by Tribal Council on April 19, 2004:

- 1) Section 3(H) and 4(K) newly created; Section 3(I) and 4(J) renumbered.
- 2) Section 4(A) amended to indicate that Housing has its own section, and the scope of the policy includes all projects over \$5,000.00.
- 3) Section 5 amended by reorganizing Section and adding reporting requirements to certain positions.
- 4) Section 6(A) is amended by establishing a scale of Member Owned preference that relates to the size of the project in dollars.
- 5) Section 7(C) is newly created.
- 6) Section 8(C) is amended by adding the word “new.”
- 7) Sections 9(B), (C), (E) amended to clarify some of the requirements. Section 9(F) is newly created.
- 8) Section 10(B) amended to include “available members of Tribal Council.”
- 9) Section 11(A) is newly created adding requirements for bid bonds, payment bonds, and performance bonds. Section 11(B)(12) is newly created.
- 10) Section 11(C) is amended to clarify some of the responsibilities of the team.
- 11) Section 12(A) is amended to provide an exception for Housing (Section 14).
- 12) Section 14 is newly created.
- 13) Sections 14, 15, 16, and 17 renumbered.