

## **Mille Lacs Band of Ojibwe**

### **Community Development Procurement Policies**

#### **I. Introduction**

- a. The mission of the Community Development Department is to provide affordable housing opportunities to Mille Lacs Band members and to build healthy, safe and clean communities. These policies are created to ensure the fair implementation of this mission, the most efficient use of the Band's funds dedicated to the Department and prevent fraud, waste and abuse. The Department will conduct all transactions with the goal of promoting open and free competition. The procurement policies will not be used to restrict or eliminate competition in any manner.

#### **II. Fiduciary Duties of Employees**

- a. All Community Development employees have a duty to act in the best interests of the Department. This means that negotiations with contractors will be made with the view to getting the best value for the Band.
- b. Community Development employees shall not solicit or accept gratuities, favors or anything of value in excess of \$10.00 from contractors or vendors.
- c. Community Development employees shall not participate in any purchasing or contracting in which a real or apparent conflict of interest could be involved. There is a conflict of interest where the employee has a financial or other interest in a company being considered for a contract or purchase. A conflict also arises when an immediate family member (defined as mother, father, brother, sister, husband, wife, son or daughter, or any in-law of the same relationship) or a business partner or associate of the employee is involved in a potential purchase or contract.
- d. When a transaction arises that could pose a conflict of interest, the employee should immediately disclose the relationship and should have no involvement in any part of the transaction. Another employee should take responsibility for working with that vendor and a memo should be attached to any purchase order or contract disclosing the relationship with a Department employee.
- e. Any employee who has unknowingly received a benefit from a purchase or contract shall immediately report the benefit to the Commissioner of Community Development and the Commissioner of Finance. Failure to report the benefit is a breach of the ethical standards governing the Band procurement activities. 7 MLBSA § 4(d).
- f. Employees are prohibited from using confidential information for any reason other than official Band business.

- g. Employees will act in good faith when dealing with actual or potential contractors.
- h. Any employee who has doubts about the propriety of an action or decision or about the presence of a conflict of interest shall seek the advice of the Department's attorney or another attorney from the Solicitor General's Office.
- i. All employees of the Department are responsible for following the Band's purchasing and contracting policies and the Procurement Statute. Mille Lacs Band Statutes Title 7. All purchases must be made through these proper procedures and must receive the required approvals.

### III. Requisition

#### a. Project Approval Form

- i. Each construction project file must include the Project Approval Form. This form should remain with the project folder. The Project Approval Form must be signed by the Commissioner of Community Development before the project may be placed out for bids.
- ii. The Project Approval Form must specify under which program the project falls.
- iii. The Project Approval Form must also include a Construction Plan with the following information:
  - 1. Project Cost Estimate. All projects must have a Project Cost Estimate prior to approval, which shall be designated "For Official Use Only." It must be limited to those personnel whose official duties require such knowledge. Under no circumstances should the Project Cost Estimate be shared with a potential bidder.
  - 2. Storage of Materials. The Construction Plan must identify where Band-owned and contractor-owned materials will be stored at the project site. A storage site must be determined to minimize the potential of weather-related damage and/or theft.

#### b. Solicitation of Bids

- i. Active Bidders Mailing List. The Project Manager Administrative Assistant shall maintain a list of active bidders reflecting the capabilities and capacities of construction firms.

- ii. Pre-solicitation Notice. A notice shall be sent to all bidders on the Active Bidder Mailing List before the Request for Proposals (RFP) is posted for any project estimated to cost more than \$100,000.
  
- iii. Request for Proposal.
  - 1. The RFP should state the name and location of a site visit, if required.
  - 2. The RFP must be posted on the Mille Lacs Band of Ojibwe's website for 14 days for all projects \$25,000.00 or more.
  
- iv. Site Visit.
  - 1. A site visit is required on all projects estimated to be valued at more than \$50,000. Additionally, a project manager may require a site visit within his or her own discretion, even if it would not ordinarily be required under this section.
  - 2. If a site visit is required, a bid will not be accepted unless the vendor has attended the site visit.
  - 3. As much information as possible should be conveyed to contractors at the site visit, including boring samples, records and plans of previous construction.
  - 4. If less than five contractors attend the scheduled site visit, Community Development may, at its discretion, schedule another site visit.
  
- v. Information to Contractors
  - 1. All questions regarding the scope of work or any other question related to the project should be directed to the same project manager. Every effort should be made to ensure that all contractors have access to the same information.
  - 2. When a project manager receives a question from a contractor, the question and answer should be posted as an addendum to the RFP online to ensure that all contractors have access to the same information. Addenda verification should be acknowledged on the bid form.

#### IV. Receiving and Opening Bids

- a. All contracts valued at more than \$2,000.00 and purchase orders for materials valued at more than \$25,000.00 must follow the rules as laid out in this section. Emergency contracts are exempt from the procedures to the extent described in Section IV(k). Purchase orders for materials less than \$25,000.00 are also exempt from these procedures to the extent described in Section IV(l).
- b. Purchase orders may only be used to purchase materials. It is absolutely prohibited to process payment for labor on a purchase order.
- c. Procurement may be negotiated according to 7 MLBSA § 13 only where it is impractical and unfeasible to obtain bids and if one of the following exist:
  - i. Public exigency will not permit delay incident to advertising;
  - ii. The contract is for personal or professional services or for any services rendered by a university, college or other institution,
  - iii. No acceptable bids have been received after advertising,
  - iv. The purchase is for highly perishable goods or medical supplies, for materials or services where the prices are established by law, for technical items or equipment requiring standardization or interchangeability of parts with existing equipment, for experimental developments or research work, for supplies purchased for authorized resale, and for technical or specialized supplies requiring substantial initial investment, or
  - v. Otherwise authorized by Band statute.

This provision will be strictly construed and should be used sparingly. Utilizing this procurement method must be approved and justified in a memorandum from the the Office of Solicitor General.

- d. All bids for work or service must be sent to the following address:

Mille Lacs Band Community Development  
P.O. Box 509  
Onamia, MN 56359

Bids may not be accepted at any other location, unless the bids are for an emergency contract. Bids will be checked weekly by a designee of the Office of Solicitor General (OSG), or as often as required when bids become due.

e. Bid Opening.

- i. The OSG will conduct a bid opening once three (3) qualified bids have been received after the bid deadline. In order to be qualified, the bid must comply with all requirements of this policy and the request for proposal. The OSG will first open the bids without revealing pricing information to determine that there are three qualified bids.
  - ii. If bids are disqualified and there are, therefore, less than three bids, the bid opening will be postponed until three bids have been obtained.
  - iii. If the contractor neglected to include a current vendor's license or insurance certificate, but the Department has a current copy of this document on file, this document may be added to a bid to make the bid qualified. Any of the requirements that do not include actual bid price information may be faxed into the Department to complete a bid. **Under no circumstances should the bid form or any other document with bid price information be faxed, mailed or walked into the Department itself – this must be mailed to the PO Box.**
  - iv. Bid information should be read aloud and recorded on the bid tally sheet. After the opening, the OSG will make a copy of the bid tally sheet and the first page of the general bid form for each bid. The OSG will retain copies of these documents in a locked drawer in his or her office.
- f. A bid from a vendor who has been debarred or is under a current suspension via Commissioner's Order (See Section XI of this Policy) is automatically disqualified and will be returned, unopened, to the vendor. This bid cannot count toward the three (3) required bids.
- g. Exception to three (3) bid rule. If the project manager or coordinator has attempted to obtain bids from at least five (5) vendors but was unable to get three (3) qualified bids, the project manager/coordinator may detail his or her attempts at bid solicitation in the memo that must accompany every contract. This should include the names of the vendors contacted, the method of contact and any responses they received. Upon presentation of such a memo to the OSG, the bid opening may proceed. This requirement may also be waived where the services are specialty services with limited contractors or vendors able to complete the work. A memo detailing such a circumstance must also be provided to the OSG before a bid opening may proceed.
- h. Bid Identification.
- i. Bids must be submitted in a sealed envelope with the project name clearly labeled on the outside of the envelope.

- ii. If a bid is not properly labeled, an OSG may open the unidentified bid for the purpose of identification. The OSG will explain the action on the outside of the envelope and reseal it. The explanation will include the date and time the bid was opened and the OSG's signature.
  - iii. The OSG may not reveal any information from the bid, even to Community Development staff.
- i. Bid Deadline
- i. The Bid Deadline is the date and time designated in the Request for Proposal as the last date and time for receipt of bids. Bids must be in the designated post office box by the Bid Deadline in order to be considered timely.
  - ii. All bids should be marked with the date and initials of the person retrieving the bids.
  - iii. Any bids delivered after the designated Bid Deadline will be disqualified, unless the three (3) bid requirement has not been met. These bids should be returned, unopened, to the bidder. The bid tally sheet should state "Refused – Not timely submitted" in the comments portion next to the bidder's name.
- j. All bids must follow bid submittal requirements as set forth in the Request for Proposals. Community Development must apply these requirements fairly and equally to all bids.
- i. MLB Bid Form. All bids must include an MLB Bid Form.
    - 1. Bids for construction must include a completed and signed MLB Community Development Construction Bid Form.
    - 2. Bids for all other products or services must include a completed and signed MLB Community Development General Bid Form.
  - ii. MLB Vendor's License. All bids must include a current copy of the contractor's MLB Vendor's License or a copy of a submitted application for the same.
  - iii. Current Insurance Certificate. All bids must include a current copy of the vendor's certificate of insurance. This certificate must show the limits of the vendor's policies.
  - iv. TERO Compliance Form. All construction bids must include a completed and signed TERO Compliance Form.

- v. Subcontractor List. All construction bids must include a list of the subcontractors the contractor intends to use and each subcontractor's phone number and sub-bid amount.
- vi. Relevant Licenses. Bids must include any licenses required on the Request for Proposals. All projects require a contractor's license issued by the state in which the work is to be performed. Small projects that do not require the use of subcontractors need not have this license, if so determined by the Commissioner of Community Development.
- vii. Other. Bids should include any other information required by the Request for Proposals.
- k. Cancelled Project. When a project is cancelled before a bid opening, bids should be returned, unopened to the bidders.
- l. Emergency Contracts. A contract can be approved on an emergency basis if it is required in order prevent harm to property or health that is likely to occur if the contract were required to proceed through the standard approval process. The determination that an emergency exists will be made by the Commissioner of Community Development. Emergency contracts need not adhere to the formal requirements as laid out in this section except for the following:
  - i. The contract may be awarded with two (2) qualified bids, provided that at least three (3) vendors were contacted to bid. Bids may be faxed or delivered to the Department directly.
  - ii. The memo accompanying the contract must include the following information:
    - 1. An explanation of why the contract is an emergency. An emergency is defined as a situation that will likely result in imminent bodily harm or property damage if it is not remedied quickly.
    - 2. A listing of the contractors that the project manager solicited for bids and any responses that he or she received.
    - 3. All requirements otherwise required in Section VI(a) of this policy.
- m. Purchasing Materials. The formal bid process need not be followed when purchasing materials for more than \$2,000 but less than \$25,000. A request for proposals must be generated, however, to provide to vendors interested in submitting proposals. In addition, three proposals must still be obtained, unless one of the exceptions to the three bid requirement exists.

- n. Fee-to-Trust Parcels. A payment bond will be required for all projects costing \$25,000.00 or more on parcels that are in any stage of the fee-to-trust process. Liens against property significantly affect the fee-to-trust process and this bond will minimize the risk of liens by assuring payments to all persons supplying labor or materials for work. **THERE IS NO EXCEPTION TO THIS REQUIREMENT.**

## V. Bid Awards

- a. Bids will be awarded to the lowest bidder. The Department has the right, however, to reject any bidder. If the project manager has concerns about the lowest bidder with regard to the quality of the work or the contractor's ability to complete the work on time or on budget, Community Development may award the contract to the next lowest bidder. The memo accompanying the contract must address the reasoning for not awarding to the lowest bidder.
- b. Band member contractors will be given the opportunity to negotiate with Community Development where the Band member contractor is within 10% of the lowest bid according to 7 MLBSA § 21(d).
- c. All bids must be reviewed for equality and completeness.
- d. Equally Low Bids. When the bid opening reveals that there are two or more equally low bids, the award should be made by drawing lots. When drawing lots, the bid tally sheet should include a note that a lot drawing occurred, the time and location of the drawing and at least three (3) signatures of witnesses. One of these witnesses must be the OSG.

## VI. Contract Rules

- a. Memo. All contracts must be accompanied by a memo addressed to all approving bodies. The memo must include the following information:
  - i. The subject line of the memo should include the project address and/or name and the program from which the project is funded. For example, if the project is for an elder renovation, the subject line should read "555 Oak Street, Brainerd – Elder Renovation."
  - ii. The memo should be written from the project manager responsible for the project.
  - iii. The memo should list the other contractors who bid on the project and their bid amounts.
  - iv. The memo should include a narrative of the reason for the project. Project managers are encouraged to be as detailed as possible. The more



information provided in the memo, the more likely it is that necessary parties will approve without sending the contract back for further explanation.

- v. The memo should also include the line item and contract amount and estimated time of completion.
  - vi. If the contract is being processed without the required number of qualified bids, the memo should indicate the attempts the project manager made at achieving the required number of bids. The PM must show that he or she solicited bids from five (5) contractors, the method of contact and any responses he or she received.
  - vii. If the contract is awarded to a contractor that is not the lowest bidder, the memo should provide the justification, as required in §6(c) of this policy.
- b. Approvals.
- i. Contracts over \$2,000.00 must be approved by OMB.
  - ii. Contracts over \$5,000.00 must be approved by OMB, OSG, and APB.
  - iii. Contracts over \$25,000.00 must be approved by OMB, OSG, APB and Band Assembly.
- c. Contract Forms. All contracts must be on approved and adopted MLB Contract Forms, as follows:
- i. Contracts for construction totaling more than \$10,000.00 must be made on the MLBO Construction Contract.
  - ii. Contracts for design professional work must be on the MLBO Owner-Design Professional Contract, regardless of total contract amount.
  - iii. Contracts for any other service or for construction less than \$10,000.00 must be on the MLBO Service Contract.
- d. Changes. The Commissioner of Community Development may approve change orders to the construction contract. This change order must be processed as an addendum to the Contract. If the change order results in an increase of 5% or more in the contract amount, the addendum must be approved by the bodies that approved the original contract. Additionally, if an addendum results in an increase that puts the contract amount above one of the approval thresholds (i.e. \$2,000, \$5,000 or \$25,000), the newly implicated approving body must approve the change order.

- e. Required Contract Information. All contracts for construction regardless of amount must incorporate by reference a specific scope of work (by date) that was generated by the Department.
- f. Lien waivers must be obtained before payment will be released to contractors in order to protect the Band from liens against Band property.
- g. Contractors are absolutely prohibited from working for the Community Development Department until a written contract is fully executed and approved. The only exception to this rule is an emergency contract where imminent harm to life or property will occur.

#### VII. Managing the Construction Contract

- a. The Compliance Department may from time to time complete audits or spot checks of project files and sites to ensure compliance with all applicable policies, regulations and statutes. Community Development staff will make files and documentation available to the Compliance Department staff when requested.
- b. Storage of Band Materials. Project managers must confirm that all Band materials used on their projects are being stored properly and in compliance with the Construction Plan.

#### VIII. Ethical Considerations

- a. Debarment/Suspension of Contractors. The Commissioner of Community Development may, by Commissioner's Order, debar or suspend a contractor from bidding on Band projects and the Order will be forwarded to the Corporate Commission's Licensing Office for any further action.
  - i. If the Commissioner of Community Development determines that a contractor or vendor has engaged in bid rigging or bribed or provided a kickback to an employee of the Department in violation of this policy or Mille Lacs Band Statutes, that contractor and its principals will be permanently barred from contracting with the Department.
  - ii. The Commissioner of Community Development may within his or her discretion suspend contractors for repeated quality issues or other violations including repeatedly failing to complete projects on time or repeatedly failing to complete projects within budget.
  - iii. The Commissioner of Community Development may at his or her discretion permanently bar a contractor from contracting with the Department if the contractor has repeated problems with suspensions.

IX. Forms

- a. Project Approval Form
- b. Bid Tally Sheet
- c. Sample Signature Sheet
- d. Construction Bid Form
- e. General Bid Form
- f. TERO Compliance Form
- g. Bid Requirements Checklist