



Poarch Creek Indians
Tribal Council Ordinance
 TCO 2011-007

ENACTMENT OF PROCUREMENT ORDINANCE

- WHEREAS,** the Poarch Band of Creek Indians is a federally recognized Tribe organized pursuant to the Final Determination of Federal Acknowledgment, 25 U.S.C. § 476;
- WHEREAS,** the Constitution of the Poarch Band of Creek Indians authorizes its Tribal Council to enact, amend or repeal an ordinance;
- WHEREAS,** on August 7, 2007, the Tribal Council passed the Tribal Construction Procedures for all Tribal entities;
- WHEREAS,** on March 17, 2009, the Tribal Council replaced Tribal Ordinance 88:001A (enacted on March 27, 1988) in its entirety with the Tribal Employment Rights Ordinance, which supersedes the Tribal Construction Procedures in large part; and
- WHEREAS,** the Tribal Council recognizes that there is no Tribal legislation that provides consistency for procurement and construction issues for all Tribal entities.

NOW THEREFORE BE IT ORDAINED that the Tribal Council hereby enacts the following Procurement Ordinance and repeals any other previously enacted Tribal procurement laws or policies in their entirety:

§37

**PROCUREMENT
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CHAPTER 1
GENERAL PROVISIONS

Section 37-1-1 Title

This Section of the Poarch Band of Creek Indians Tribal Code shall be known as the "Procurement Code".

Section 37-1-2 Purpose

The purpose of this Procurement Code is to set forth procurement methods and establish standards for the solicitation, award, and administration of contracts for goods and/or services, including construction, professional, and architectural/engineering services necessary for the operation of the Tribe. The Procurement Code is intended to:

- (a) Instill and ensure confidence in the quality and integrity of the procurement process of the Tribe;
- (b) Ensure fair and equitable treatment for all persons who seek to provide goods and services to the Tribe or Tribal Entities; and
- (c) Maximize the purchasing value of Tribal and federal funds in procurement.

Section 37-1-3 Application

This Procurement Code applies specifically to all contracts for the procurement of goods and/or services entered into by the Poarch Band of Creek Indians after the effective date of this Code. Nothing in this Code shall prevent the Tribe from complying with the terms and conditions of any grant or contract that are otherwise consistent with law.

Section 37-1-4 Definitions

For the purposes of this Procurement Code, the following terms shall have the meanings provided below:

- (a) "*Bidder*" means any person, contractor, subcontractor, vendor or other individual or entity responding to a procurement solicitation.
- (b) "*Certified Business*" means any business enterprise certified as a Tribal Business, Tribal Member Business, Indian Business, or Mentorship according to the criteria and procedures of Chapter 2 of the Tribal Employment Rights Ordinance.
- (c) "*Contract*" means all types of agreements, regardless of what they may be called, for the procurement of goods and/or services by Tribal Government or a Tribal Commercial Entity.
- (d) "*Contractor*" means any person, contractor, subcontractor, vendor or other individual or entity that enters into a contract or subcontract for goods to be provided to and/or services to be performed on Tribal Lands.
- (e) "*Indian*" means an enrolled member of a federally-recognized tribe.
- (f) "*Indian Preference*" means the preferences as set forth under the Tribe's Tribal Employment Rights Ordinance and under federal law.
- (g) "*Option*" means a unilateral right in a Contract by which, for a specified time, the PBCI may elect to purchase additional equipment, supplies, or services required by the Contract, or may elect to extend the term of the Contract.
- (h) "*Professional Services*" means services performed or rendered by a person authorized by law to practice a recognized profession and whose practice is regulated by law or the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged course of specialized instruction or study, as distinguished from general academic instruction, apprenticeship, or training (e.g., physicians, consultants, legal counsel, auditors, specialized printers, artisans, architects,

engineers, surveyors, mappers). Professional Services shall also include those services rendered in the provision of goods or performance of services that are original and creative in character in a recognized field of artistic endeavor. Professional Services shall also include extraordinary, unspecifiable services if, after evaluation and assessment, such services are determined to be such that they cannot reasonably be described by written specifications and are not adaptable to competitive bidding.

- (i) “*Responsible Bid*” means a bid where the bidder has the overall capability, including, but not limited to, financial resources, employees, facilities, and references, to satisfactorily perform a contract.
- (j) “*Responsive Bid*” means a bid that meets all the terms, conditions, and specifications of the bidding documents.
- (k) “*Solicitation*” means an Invitation for Bids (IFB), Request for Proposal (RFP), Request for Qualification (RFQ) or other document used to procure goods and/or services.
- (l) “*TERO*” means Tribal Employment Rights Ordinance.
- (m) “*Tribe and Tribal*” means the Poarch Band of Creek Indians.
- (n) “*Tribal Council*” means the nine-member body elected by the General Council.
- (o) “*Tribal Commercial Entities*” means all authorities established by the Tribal Council for commercial purposes.
- (p) “*Tribal Government*” means the Tribal Council, the office of the Tribal Chairman, all offices and departments that report directly to the Tribal Chairman, governmental authorities, commissions, and all boards, instrumentalities, and other entities established by the Tribal Council.
- (q) “*Tribal Member*” means any enrolled member of the Poarch Band of Creek Indians.

Section 37-1-5 Scopes of Work and Specifications

The following general rules apply to developing scopes of work and specifications:

- (a) A common basis for bidding must be provided. Specifications and scopes of work should set out the essential characteristics of the services or items to be procured. Whenever possible, the expected quality of services to be provided or the performance characteristics of the item should be specified.
- (b) Specifications and scopes of work should not call for features or quality levels which are not necessary to meet the Bid requirements.
- (c) All optional items should be identified by the procuring entity and the solicitation documents should set forth the expected needs.
- (d) In order to foster free and open competition, specifications may not require a “brand name” product without listing its salient characteristics and allowing an “or equal” product, unless justified by legitimate business reasons. The specifications would, accordingly, describe the performance or other required characteristics of the brand name product.
- (e) Because standard specifications and requirements allow for more efficient operations and may result in lower prices, they should be used wherever suitable. Maximum use should be made of industry, federal, state and local government specifications and requirements.

Section 37-1-6 Electronic Procurement Systems

The Tribal Government or any Tribal Commercial Entity is authorized to obtain and use an electronic procurement system to support its purchasing operations as an aid to meeting these regulations.

Section 37-1-7 Prior Contract Obligations

Nothing in this Procurement Code shall be interpreted, applied, or enforced in such a way as to cause the Tribal Government or any Tribal Commercial Entities to be in violation of any prior contractual obligation or otherwise result in the Tribal Government or any Tribal Entities breaching any loan covenant made by the Tribal Government or any Tribal Commercial Entity in existence as of the effective date of this Code.

Section 37-1-8 Severability

If any clause, sentence, paragraph, section, or part of this Procurement Code shall, for any reason be adjudicated by any court of competent jurisdiction, to be invalid or unconstitutional, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which the judgment shall have been rendered.

Section 37-1-9 Repeal of Prior Acts and Provisions

This Ordinance shall have the effect of repealing any and all prior laws, resolutions and policies of the Tribe concerning procurement, including, but not limited to, the Tribal Construction Policies and Procedures.

Section 37-1-10 Effective Date

This Procurement Code shall become effective October 1, 2011.

CHAPTER 2
PROCUREMENT AUTHORITY AND ADMINISTRATION

Section 37-2-1 Establishment of Procurement Office

Tribal Government and each Tribal Commercial Entity shall establish a procurement office and/or system to administer and enforce this Procurement Code.

Section 37-2-2 Authority and Duties of All Procurement Offices

Incidental to the administration and enforcement of the Procurement Code, the Tribal Government and each Tribal Commercial Entity shall:

- (1) Develop and update as needed or agree to be governed by procurement procedures consistent with this Code for operation of Tribal Government or Tribal Commercial Entity;
- (2) Ensure compliance with any and all applicable requirements of Federal law, Federal regulations and Circulars, and all other applicable Tribal law and the Tribal policies and procedures (including approvals) relating to procurement;
- (3) Ensure that Bidders receive impartial, fair, and equitable treatment in accordance with the policies developed in accordance with this Procurement Code; and
- (4) Exercise all other authority delegated or conferred by law, or as may be reasonably necessary for the administration or enforcement of this Procurement Code;
- (5) Maintain all official Contract files;
- (6) Authorize, enter into, administer, and terminate Contracts only to the extent of the delegated contracting authority;
- (7) Be responsible for soliciting Bids, including ensuring that a clear and accurate specification/scope of work is developed for each procurement, as appropriate;
- (8) Coordinate the IFB, RFP, and RFQ process;
- (9) Oversee pre-bid and pre-proposal conferences, qualification hearings, and proposal evaluation meetings;

- (10) Conduct Contract negotiation sessions;
- (11) Manage the non-technical aspects of post award Contract administration, including negotiation of modifications, claims, and supplemental agreements;
- (12) Write, prepare and assemble Contract documents in coordination with the Legal Department;
- (13) Obtain necessary pre-solicitation approvals;
- (14) Advertise IFB's, RFP's, and RFQ's, issue amendments, and confirm satisfaction of any necessary requirements to finalize award;
- (15) Conduct investigations regarding proposed Bidders' responsibility, including proposed Bidders' past performance;
- (16) Consult with procuring entity or department to monitor Contractor's performance;
- (17) Manage termination for default or convenience procedures whenever the need arises; and
- (18) Consult with Tribal Employment Rights Office regarding Indian Preference programs and certification.

Section 37-2-3 Authority and Duties of Tribal Employment Rights Office

The Tribal Employment Rights Office shall administer and enforce Section 37-4 herein with respect to Bidder responsibility and suspensions and/or debarments.

Section 37-2-4 Procurement Records

- (a) Tribal Government and each Tribal Commercial Entity shall maintain records in sufficient detail to determine the significant history of each Solicitation in written or electronic form and in compliance with the Tribe's Records Management Ordinance. Regardless of format, such records shall document information consistent with the type of procurement.
- (b) Additionally, negotiated procurement records or files should provide at least the following pertinent information: justification for the use of negotiation in lieu of competitive bidding; Bidder selection; justification for Contract type; determination and findings; and record of negotiations.
- (c) All documents received in response to a Solicitation become the exclusive property of the Tribe. At such time as a Contract award is recommended, all documents become a matter of public record and shall be regarded as public records, with the exception of those elements in each proposal which are trade secrets and which are so marked as "TRADE SECRET," "CONFIDENTIAL" or "PROPRIETARY." The Tribe shall not in any way be liable or responsible for the disclosure of any such records or portions thereof, including, with limitation, those so marked if disclosure is deemed required by law or by an order of a court. Documents that indiscriminately identify all or most of the documents as exempt from disclosure without justification may be found technically unacceptable.
- (d) Records shall be maintained in accordance with all Tribal laws and policies.

**CHAPTER 3
METHODS OF PROCUREMENT**

Section 37-3-1 Small Purchases

- (a) A small purchase acquisition is a procurement whose total estimated cost is not expected to exceed the currently prevailing small purchase threshold of \$100,000 in any fiscal year. Purchases shall not be divided to avoid compliance with contracting actions.

- (b) In an effort to balance the acquisition objectives of efficiency, speed, quality and fair and open competition, the Tribe classifies its small purchases for goods and/or services as follows:
 - (1) Micro Purchases (\$1 to \$1000).
 - (2) Quotation Memos (\$1001 to \$5,000).
 - (3) Small Solicitations (\$5,001 to \$50,000).
 - (4) Streamlined Bids and Proposals (\$50,001 to \$100,000)
 - (5) Professional Services Contracts (\$1 to \$100,000)
- (c) Micro purchases are relatively informal acquisitions that can be obtained using purchase descriptions, catalog pricing, comparison shopping and informal quotations from vendors and may be made without obtaining competitive quotations if it is determined that the price is fair and reasonable. How the determination is made must be documented by the Procurement Office staff authorizing the purchase and attached to the invoice.
- (d) Quotation memo purchases are acquisitions requiring brief purchase descriptions or other ordering information and pricing data prior to a purchase commitment. Oral bids or quotes will be accepted with written or e-mailed confirmation received within 24 hours of such bids or quotes.
- (e) Small solicitations are competitively solicited bid or proposal acquisitions that reflect modestly complex purchases requiring some level of formalized pre-award evaluation written findings prior to award.
- (f) Streamlined bid and proposal solicitations are competitive acquisitions requiring a greater level of documentation and justification consistent with a purchase greater than \$50,000 but less than \$100,000.
- (g) Professional services contracts within the small purchase threshold are acquisitions that are required on an as needed basis and are based on the procuring entity or department's evaluation of the necessary qualifications and/or specialized knowledge for a particular project. These acquisitions must be documented by a written contract that reflects the negotiation of fair and reasonable rates for such services.
 - (1) The Request for Qualifications (RFQ) method of procurement may be used to create a pool of qualified bidders to be used on an as needed basis for procurements that are not reasonably expected to exceed the small purchase threshold in any fiscal year.
 - (2) Persons engaged in providing designated types of professional services may submit statements of qualifications and expressions of interest in providing such professional services at any time to the appropriate Procurement Office or the procuring entity or department. Persons may amend these statements at any time.
- (h) All small purchase acquisitions shall be documented through the creation and maintenance of appropriate paper or electronic control files.
- (i) The decision on a small purchase must be based on sound business judgment made by a reasonable and prudent person considering the needs of the Tribe, ethical judgment, legal necessity and fair treatment to all.

Section 37-3-2 Competitive Procurement Process

Competitive procurement procedures shall be used for procurement of goods and/or services valued greater than \$100,000 in a fiscal year.

- (a) Invitation for Bids (IFB)

The IFB method of procurement is employed when all of the following apply:

- (1) A complete adequate and realistic specification or purchase description is available;
- (2) The procurement lends itself to a firm-fixed price Contract, and selection of the successful Bidder can be made on the basis of price; and
- (3) Scope of work is clearly definable.

(b) Request for Proposals (RFP)

(1) The RFP method of procurement is employed when conditions are not appropriate for the use of an IFB or RFQ, and the procurement will be based on factors other than price alone.

(2) The RFP process requires evaluation of proposer's proposed costs and understanding of the Contract performance requirements in accordance with established evaluation criteria and does not require award to the lowest priced proposer.

(c) Request for Qualifications (RFQ)

(1) The RFQ process may be employed when services are not well-defined and depend on a firm's ability to identify and appropriately address problems or issues, This process is typically used for selection of professional services, such as architects and engineers.

(2) The RFQ process requires evaluation of competitors' qualifications, and selection is based on the perceived ability to best achieve the most desired outcome, not the lowest price. Final selection is subject to negotiation of fair and reasonable compensation.

(d) Professional Services Contracts

Professional services contracts that exceed the small purchase threshold are acquisitions that are based on the procuring entity or department's evaluation of the necessary qualifications and/or specialized knowledge for a particular project. These acquisitions may, but are not required to, be obtained through the use of the RFP or RFQ process. In all events, these acquisitions must be documented by a written contract that reflects the negotiation of fair and reasonable rates for such services and must be approved by the employee with appropriate signature authority with notification to the Tribal Council and/or appropriate governing Board.

Section 37-3-3 Sole Source Procurements

(a) Justification

(1) A procuring department or entity must have written justification as to the reason why only one Contractor is acceptable and why it needs a Sole Source Procurement.

(2) A Contract amendment or Change Order that is not within scope of the original Contract may be considered a Sole Source Procurement.

(b) Conditions of Use

Sole Source Procurement may be used only when the award of a Contract is not feasible under small purchase procedures, sealed Bids, or competitive proposals and at least one of the following circumstances applies:

(1) The item or service is available only from a single source. Examples of such circumstances that could necessitate sole source procurement are:

- a. Where the compatibility of equipment, accessories, or replacement parts is the paramount consideration;
- b. Where a sole supplier's item is needed for trial use or testing;
- c. Where procurement of a sole-supplier item is for resale;
- d. Where service being purchased is a public service.

- (2) If federally funded, the federal funding agency authorizes noncompetitive negotiations.
- (3) After solicitation of a number of sources, competition or economic benefit is determined inadequate.

Section 37-3-4 Emergency Procurements

- (a) Emergency procurement is defined as a procurement that is immediately necessary for the preservation of life or property or to prevent loss of revenues or embarrassment to the Tribe or a Tribal Commercial Entity.
- (b) An appropriately authorized employee of a procuring entity shall approve the purchase of all goods and/or services in emergency situations.
- (c) Upon completion of the emergency procurement, the employee shall notify the Procurement Officer who will review and document the actions taken and execute the proper requisition.
- (d) A written determination of the basis for the emergency and for the selection of the particular Bidder shall be included in the control file.
- (e) As soon as practicable, a record of each emergency procurement shall be made and shall set forth the Bidder's name, the amount and type of Contract, all listing of the item(s) procured under the Contract, and the identification number of the control file.

Section 37-3-5 Excepted Procurements

Certain acquisitions made by the Tribe are designated as excepted procurements because they are achieved through an authorized alternate source of supply. The decision to use excepted sources of acquisition is at the discretion of the procuring entity and exercised according to the Tribe's best interest. Excepted procurements include the following:

- (a) Government-to-Government acquisition of goods, services and construction, including acquisitions between or among Tribal Government and/or its Tribal Commercial Entities;
- (b) Federal schedule contracting from the General Services Administration, the Department of Defense or the Veterans Administration sources of supply;
- (c) Travel using negotiated federal travel rates;
- (d) Procurements by Tribal Government or a Tribal Commercial Entity that are controlled by existing insurance, warranty or other contractual obligations; and
- (e) Procurements by PCI Gaming Authority for gaming machines or supporting software.

CHAPTER 4 BIDDER QUALIFICATIONS AND DUTIES

Section 37-4-1 Bidder Responsibility

Procurements shall be conducted only with responsible contractors, i.e., those who have the technical and financial competence to perform and who have a satisfactory record of integrity.

- (a) A responsible Bidder is one who meets the standards set forth below:
 - (1) Has maintained a professional standard of conduct with all Tribal employees interacting with Bidder at all times prior to, during, and after Solicitations, evaluation, award, and performance of projects;
 - (2) Has adequate financial resources, or the ability to obtain such resources as required during performance of the Contract;

- (3) Is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments;
 - (4) Has a satisfactory record of performance;
 - (A) Bidders who are, or have been seriously deficient in current or past Contract performance, when the number of Contracts and the extent of deficiency of each are considered, may be considered to be non-responsible Bidders. Documented past unsatisfactory performance will ordinarily be sufficient to justify a finding of non-responsibility.
 - (B) Bidders who have committed serious breaches of Contract or had legal actions or lawsuits filed against or by the Tribe may be considered to be non-responsible.
 - (2) Has no principals who have had criminal convictions for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or other offense indicating a lack of business integrity or ethical violations;
 - (3) Have not been found to participate in bid rigging or collusion;
 - (4) Is otherwise qualified and eligible to receive an award under applicable laws and regulations;
 - (5) Has the necessary organization, experience, operational controls, and technical skills, or the ability to obtain them;
 - (6) Has the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and
 - (7) Is in compliance with federal and state taxes and has no outstanding judgments with the federal or state governments.
- (b) A responsible bidder for any construction project under \$50,000 is one who has the necessary organization, experience, operational controls, technical skills, licenses, and certifications and the necessary production, construction, and technical equipment and facilities to self-perform at least 50% of the work.
- (c) Evaluation of the responsibility of prospective Bidders may be made based upon the following sources:
- (1) A list from the federal, state or tribal governments of debarred, suspended or ineligible firms or individuals;
 - (2) From the prospective Bidder's responses to Solicitations, replies to questionnaires, financial data such as balance sheets, profits and loss statements, cash forecasts, and financial histories of the Bidder and affiliated concerns; current and past production records, list of tools equipment and facilities, written statements or commitments concerning financial assistance and subcontracting arrangements;
 - (3) Publications, including credit ratings, trade and financial journals, and business directories and registers may also be used; and
 - (4) References such as suppliers, subcontractors, customers of the prospective Bidder, banks and financial institutions, commercial credit agencies, other government agencies, purchasing and trade associations, and better business bureaus and chamber of commerce.

Section 37-4-2 Debarment and Suspension

(a) Debarment

- (1) After reasonable notice to the Bidder involved and reasonable opportunity for that Bidder to be heard, the Tribal Employment Rights Commission is authorized to debar a Bidder for cause from consideration for award of Contracts.
 - (2) The reasons for debarment include:
 - (i) Conviction of Bidder or any of its principals for the commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private Contract or subcontract, or in the performances of such Contract or subcontract;
 - (ii) Conviction of Bidder or any of its principals under tribal, state or federal statutes for embezzlement, theft, forgery, bribery, falsification, or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity;
 - (iii) Conviction of federal antitrust activity, bid rigging or bid collusion arising out of submission of responses to Solicitations;
 - (iv) Serious breach of Contract obligations in which the Bidder defaults on Contract performances, is seriously late in Contract performance, engages in fraudulent conduct, or fails to fulfill any material provision of the Contracts awarded by the Tribe;
 - (v) Debarment by another Tribal, Federal, state or local governmental entity; or
 - (vi) Violation of any code of ethics applicable to the Bidder or any of its principals or key employees.
 - (3) The debarment shall be for a period of not less than one year, but not more than three years.
- (b) Suspension.
- (1) The Tribal Employment Rights Commission may suspend a Bidder from consideration for award of Contracts if there is probable cause to believe that the Bidder has engaged in any activity that might lead to debarment.
 - (2) The suspension shall be for a period of up to three months or until the issue of probable cause is resolved by a final determination of the Tribe as provided for in subsection (a)(1) above.

(d) Appeal.

Any Bidder who disagrees with its debarment or suspension may appeal the Tribal Employment Rights Commission's decision in accordance with Chapter 8 of the Tribal Employment Rights Ordinance.

CHAPTER 5 CONTRACT ADMINISTRATION

Section 37-5-1 Types of Contracts

Subject to the limitations of this Section, any type of contract that is appropriate for a procurement and that promotes the best interests of the Tribe may be used. The contract type selected must be based on sound business judgment and must be reasonable for the award.

- (a) *Cost plus a percentage of cost and percentage of construction cost contracts* are strictly prohibited in all circumstances. In such contracts, a contractor is reimbursed for all costs plus a percentage of those costs as profit and there is no fixed dollar amount. As a result, there is no limit on a contractor's profits.

- (b) *Cost plus fixed fee contracts* are permitted when the contractor will be reimbursed for all costs, and the fixed fee is based on the estimated cost of the work negotiated before work begins.
- (c) *Firm fixed-price contracts* (or variations thereof) are preferred when the procurement is based on known quantities or terms and conditions that permit stable pricing.
- (d) *Cost-reimbursement contracts* (or variations thereof) may be used only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.
 - (1) The appropriate procuring entity may use cost-reimbursement contracts only when all of the following apply:
 - (A) The Bidder's accounting system is adequate for determining costs applicable to the contract;
 - (B) Appropriate Tribal oversight during performance will provide reasonable assurance that efficient methods and effective cost controls are used; and
 - (C) The appropriate procuring entity determines that the lack of precision of the statement of work or the difficulty of accurately estimating the costs make the use of a fixed-price contract impractical.
 - (2) Each cost-reimbursement contract shall contain the following:
 - (A) A clause approved by the appropriate procuring entity indicating that only those direct costs determined to be reasonable and allocable will be reimbursable; and
 - (B) A clause approved by the appropriate Procurement Office establishing a stated limitation of costs.
- (e) Other types of contracts such as blanket purchase agreements or orders, indefinite quantity contracts, incentive agreements and multi-year contracts may be used as appropriate for the particular circumstances associated with the procurement.
- (f) The contract type selected shall be documented as part of the procurement history for every purchase.

Section 37-5-2 Contract Clauses

- (a) Any contract funded in whole or in part by federal funds shall include any clauses required by federal statutes, executive orders, and their implementing regulations, as provided in 24 CFR 85.36(i). The insertion of the required clauses may be tailored to the circumstances of the each procurement.
- (b) Any contract funded by tribal funds shall include any clauses required by Tribal law, policies, and procedures or by the Legal Department, in consultation with the the procuring entity or department, to protect the best interests of the Tribe.

Section 37-5-3 Forms

In order to provide efficient and uniform procurement processes, Tribal Government and the Tribal Commercial Entities, in coordination with the Legal Department, are authorized to design, implement, modify, enhance, retire or replace forms for bidding, contracts, and other procurement-related forms for use by their respective entities.

CHAPTER 6
INDIAN PREFERENCE

Section 37-6-1 General Policy

It shall be the policy of the Tribe to effect a program of preferential treatment for Tribal Members, Indians, and enterprises which are owned and controlled by Tribal Members and/or Indians in order to:

- (a) Provide procurement opportunities for Tribal Members and Indians,
- (b) Promote sound and productive free enterprise,
- (c) Provide maximum contracting and subcontracting opportunities for enterprises which are owned and controlled by Tribal Members and/or Indians, and
- (d) Provide quality goods and services to the Tribe that are fair, reasonable and cost effective.

All procurement procedures shall be consistent with the Indian preference policy as set forth in the Tribal Employment Rights Ordinance, Section 33 of the Tribal Code.

CHAPTER 7
ENFORCEMENT

Section 37-7-1 Protest Procedures

Tribal Government and the Tribal Commercial Entities shall have protest procedures to resolve disputes relating to their procurements.

Section 37-7-2 Exclusivity of Remedy

No monetary damages or compensation of any kind shall be awarded by a procuring entity.

Section 37-7-3 No Waiver of Sovereign Immunity

Nothing contained in this Ordinance shall be construed as a waiver by the Tribe of sovereign immunity from unconsented lawsuits or as consent by the Tribe to the bringing of any action against the Tribe, its officers, agents, employees, departments or business entities or enterprises. In no instance shall any enforcement of any kind whatsoever be allowed against any assets of the Tribe.

Section 37-7-4 Decision Final and Binding

If the procurement is funded solely from the Tribe's funds, the decision of the procuring entity shall be final and binding and not subject to any right of appeals.

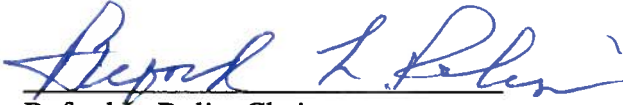
Section 37-7-5 Appeals where Federal Funds are Used in the Procurement

A protester adversely affected by a protest decision of a procuring entity may submit a protest to the federal agency funding the procurement in accordance with the provisions of relevant federal regulations as currently in effect as of the date of the Tribe's decision on the protest.

- (a) If an appeal to the federal funding agency is submitted, the Tribe and the protester shall proceed in accordance with the applicable federal regulations.

APPROVAL

I, the Chairman of the Poarch Band of Creek Indians, hereby affix my signature to the ordinance authorizing it to become official this 18th day of August, 2011.



Buford L. Rolin, Chairman
Poarch Band of Creek Indians

CERTIFICATION

I, the Secretary of the Poarch Band of Creek Indians, certify that the foregoing is a true extract from the minutes of the Tribal Council meeting of the Poarch Band of Creek Indians, comprised of nine members with 9 in attendance on the 18th day of August, 2011, and that the above is in conformity with the provisions therein adopted by a vote of 9 in favor, and 0 against, 0 abstentions.



David W. Gehman, Secretary
Poarch Band of Creek Indians