

Request for Proposal (RFP)
Pole Barn Office Building
Requested by the Shoalwater Bay Indian Tribe

We are seeking the services from an experienced contractor to construct a 40' wide x 60' long x 10' high pole barn intended for use as an office building on the Shoalwater Bay Indian reservation located in Pacific County, Washington.

The project consists of furnishing all required materials, supplies, equipment, tools and personnel to perform all necessary labor for the as detailed by the plans and specifications.

The successful proposer will demonstrate, on the part of the lead planner, knowledge and experience in tribal/local/regional and state levels of construction.

The Shoalwater Bay Indian Tribe reserves the right to waive any informality in the proposal process and will award the contract(s) based upon the qualifications and experience of a contractor that best meets the type of work necessary and that are deemed to be in the best interest of the tribe.

Proposal Due Date: 07/13/2022 by 4:00 p.m. Pacific Time

Instructions for Submitting Proposals:

1. Submissions by email must be submitted to:

solicitations@shoalwaterbay-nsn.gov

Subject line: SBIT Pole Barn Office Building 2022 Proposal

2. Submissions of proposals must be mailed to the following address:

Procurement
Shoalwater Bay Indian Tribe
P.O. Box 130
Tokeland, WA 98590

Proposals shall be clearly marked stating- "SBIT Pole Barn Office Building 2022 Proposal – Do Not Open"

3. For any questions on the proposal and requirements, please contact solicitations@shoalwaterbay-nsn.gov by email only. All questions will be placed on and answered on the Tribe's website and addendum's will be forwarded to all bidding contractors. Questions will be accepted until 07/06/22.

Closing/Opening Date and Time and Method of Solicitation:

1. Proposals will be accepted up to 4:00 pm Pacific time on 07/13/2022, late submissions will not be considered. All timely responses to this RFP will be considered. The Shoalwater Bay Indian Tribe reserves the right to reject any and all proposals including those proposals received after the closing date and time.

2. This RFP has been published through the Shoalwater Bay Indian Tribe website as well as local and national media.

3. Bid opening will take place on 07/14/2022 in the Shoalwater Bay Indian Tribe meeting room. There will be no public opening of the bids for the SBIT Pole Barn Office Building project. Results will be posted on the Tribe's website after evaluation at [Shoalwater Bay Tribe \(shoalwaterbay-nsn.gov\)](http://shoalwaterbay-nsn.gov).

Disputes: Protest must be in writing, within 14 days after the Request for Proposal has been awarded and the submitters notified, the protest must be on valid grounds, and the Tribal Administrator or an assignee will review the protest and make a determination, which will be final and cannot be appealed. To start the deadline for the protest claims, all submitters will be informed by certified mail their bid was not accepted.

All blank spaces for bid prices must be filled in, in ink or typewritten. Each bid must be submitted in a sealed envelope bearing on the outside the name of the bidder, main business address, and the name of the project for which the bid is submitted. If forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed as specified in the bid form.

A cashier's check, a certified check, or a surety bond in the amount of twenty percent (20%) of TOTAL BID shall accompany the sealed bid of each bidder. Deposits will be returned to the unsuccessful bidders. Each bid submitted is a legal offer and when accepted by the SHOALWATER BAY INDIAN TRIBE, constitutes a FIRM AND BINDING CONTRACT. The SHOALWATER BAY INDIAN TRIBE reserves the right to REJECT ANY or ALL BIDS. The Shoalwater Bay Indian Tribe reserves the unconditional right to cancel all or any portion of this project within thirty (30) days from the date of opening of bids, for any reason and at its sole discretion.

Description of Shoalwater Bay Indian Tribe

The Shoalwater Bay Indian Tribe, a federally recognized Indian Tribe, is located on .5 square mile of reservation land in Tokeland, Washington. The Tribe owns 5,071 acres of off reservation lands mainly adjacent to the reservation but some in the outer Tokeland peninsula area and other across the Pacific County bay areas. SBIT infrastructure includes residential housing, Casino, Tribal businesses, Community Center, Tribal Police/Emergency Management, Education Center, and Wellness Center, and is located at sea level on the Pacific Coast. The Tribal membership consists of 473 members and 109 Tribal community members who currently reside on the reservation.

Instruction to Bidders

GENERAL The Term OWNER, when used within these specifications or on the plans, shall have the meaning: The SHOALWATER BAY INDIAN TRIBE.

EXAMINATION OF SITE Each bidder by making his bid represents that he has visited the site and familiarized himself with all the conditions under which the work is to be performed. No extra compensation will be allowed by reason of any matters or things concerning which the bidder did not inform himself/herself prior to bidding. ***SITE VISITS MUST BE COORDINATED IN ADVANCE WITH THE TRIBAL PROJECT MANAGER. (LARISSA PFLEEGER 360-267-8108) DO NOT INSPECT SITE WITHOUT COORDINATING YOUR VISIT FIRST.***

EASEMENTS Work performed on the SHOALWATER BAY INDIAN RESERVATION or use of, private easements shall be subject to the Laws, codes and ordinances of the SHOALWATER BAY INDIAN TRIBE and any provisions of any easement agreements on file and open to inspection in the office of the Transportation Director, SHOALWATER BAY INDIAN TRIBE.

EXAMINATION OF BIDDING DOCUMENTS Each bidder by making his bid represents that he has read and understands the bidding documents. The bidder shall include in his bid prices any and all costs that may be necessary to complete the work in accordance with the requirements of the contract documents.

INTERPRETATION OF CONTRACT DOCUMENTS Questions regarding documents, discrepancies, omissions, or intent of the specifications or drawings shall be submitted in writing to the Owner up to 7/6 prior to the bid due date to provide time for issuing and forwarding an addendum. Any interpretation of the contract documents will be made only by addendum duly issued or delivered by the Owner to each person receiving a set of documents. The Owner will not be responsible for any other explanations or interpretation of the contract documents.

QUANTITIES On all items on which bids are to be received, each bidder shall make his own estimate from the contract drawings of the quantities required on each item and calculate his bid for each item accordingly. Bids will be compared on the basis of total bid price, qualifications, Indian preference, and other items stated within the project specifications.

CONTRACT DOCUMENTS The Contract Documents consist of Contract Agreement, all Bid Documents, Addenda, General and Supplementary Conditions, Drawings, Specifications, other Documents listed in these contract documents, change orders, modifications issued after execution of the Contract Agreement. None of the constituent parts or portions thereof of these contract documents shall be removed from this bound copy of documents prior to the filing of this bid.

MATERIAL SUBSTITUTION Each bidder shall base his bid upon the materials and equipment as described in the bidding documents. The successful contractor will not be allowed to make any substitutions on his own initiative, but in each instance will be required to obtain authorization from the Owner before installing any work in variance with the requirements of the contract documents.

APPROVED EQUALS In order to be considered an approved equal the following criteria must be met:

1. Manufacturer's ability; material submitted for as-equal consideration shall be constructed by a manufacturer with a minimum of ten (10) years of specific experience.
2. Submit manufacturer's literature and technical data and any additional information identified by the special provisions.
3. Submit all required information and data before 7/6/22.
4. All approved equals shall be notified with written statements of their approval. Manufacturers shall not bid alternatives to the materials specified unless prior written approval is given by the owner.

BID SECURITY Bids will not be considered unless the original copy filed with the Tribe is accompanied by a Bidder's Bond, Certified Check, or Cashier's Check in the required amount, made payable to the Owner. The bid guarantee shall be in the amount of twenty percent (20%) of the total amount of the bid. It shall be twenty percent (20%) of the highest amount in the event of an alternate or several bids. The bid guarantee is required as evidence of good faith and as a guarantee that if awarded the Contract, the bidder will execute the Contract and furnish the required bonds within the required time and the guarantee will serve as liquidated damages in the event of failure to do so.

QUALIFICATIONS OF BIDDERS IN DETERMINING THE LOWEST RESPONSIBLE BID, THE FOLLOWING ELEMENTS WILL BE CONSIDERED: WHETHER THE BIDDER INVOLVED

- MAINTAINS A PERMANENT PLACE OF BUSINESS;
- HAS ADEQUATE EQUIPMENT TO DO THE WORK PROPERLY AND EXPEDITIOUSLY;
- HAS A SUITABLE FINANCIAL STATUS TO MEET OBLIGATIONS INCIDENT TO THE WORK;

- HAS APPROPRIATE TECHNICAL EXPERIENCE;

Each bidder may be required to show that former work performed by him has been handled in such manner that there are no just or proper claims pending against such work. No bidder will be acceptable if he is engaged on any other work which impairs his ability to finance this contract or provide proper equipment for the proper execution of same. Each bidder shall demonstrate his ability to meeting all requirements herein stipulated, if asked for them.

RETURN OF BID SECURITIES The security of the three lowest bidders will be returned after the execution of the agreement with the successful bidder and the approval of his bonds and insurance. The security of all other bidders will be returned promptly after the bids have been opened and reviewed by the Owner. If all bids are rejected, the securities will be returned at the time of rejection.

AGREEMENT, BONDS, and INSURANCE The attention of bidders is specifically directed to the forms of agreement and bonds to be executed and general insurance to be taken out in the event a contract award is made.

BID SUBMITTAL Each bid, properly signed, together with the bid security and all documents bound herewith, shall be enclosed in a sealed envelope addressed and entitled as specified in the Invitation to Bid. All addenda issued shall be signed and included with the documents at the time of bid submittal.

WORK PLAN A detailed work plan must be included as part of bid package.

WITHDRAWAL OF BID Any bid may be withdrawn at any time prior to the hour fixed in the Solicitation for Bids for the opening of bids, provided that a request in writing executed by the bidder or his duly authorized representative for the withdrawal of such bid is filed with the Owner prior to the time specified for the opening of bids. The withdrawal of a bid will not prejudice the right of a bidder to file a new bid, except that the new bid must be submitted prior to the date and time for submitting bids.

PENALTY FOR COLLUSION If at any time it shall be found that the person, firm, or corporation to whom the Contract has been awarded has, in presenting any bid or bids, colluded with any other party or parties, then the Contract so awarded shall be null and void, and the Contractor and his sureties shall be liable to the Owner for all loss for damage which the Owner may suffer thereby, and the Owner may advertise for new bids for said work.

LICENSE Each bidder shall possess state and local licenses required by law, and shall furnish satisfactory proof to the Owner upon request that the licenses are in effect during the entire period of the Contract.

AWARD OF CONTRACT The award of any contract or contracts will be made to the lowest responsible bidder or bidders. The Owner reserves the right to reject any or all bids, or to waive irregularities or informalities at its discretion. In the event that the approvals are not received or the Owner cannot award or reject said bids within 60 days from the date of opening of bids, bidders shall have the right to withdraw their bids on written notice to the Owner.

EFFECTIVE DATE OF AWARD If a contract is awarded by the Owner, such award shall be effective when formal notice of such award, signed by the authorized representative of the Owner, has been delivered to the intended awardees, or mailed to the awardees at the main business address shown on the bid, by some officer or agent of the Owner duly authorized to give such notice.

EXECUTION OF AGREEMENT Copies of the agreement in the number stated in the form of agreement shall be executed by the successful bidder and returned, together with the required bonds and insurance, within FIVE (5) calendar days after the date of the award of the Contract. Effective date of bonds shall be the same or later than the date of the agreement. THE EFFECTIVE DATE OF THE MAINTENANCE BOND WILL BE THE DATE OF FINAL ACCEPTANCE BY THE SHOALWATER BAY INDIAN TRIBE.

FAILURE TO EXECUTE AGREEMENT AND FILE BONDS AND INSURANCE Failure of a successful bidder to execute the agreement and file required bonds and insurance within the required time shall be just cause for the annulment of the award. On failure of a successful bidder to execute the agreement and file the required bonds and insurance within the required time, he shall forfeit his bid security as agreed herein above. Upon annulment of an award as aforesaid, the Owner may then award a contract to the next lowest responsible bidder.

PAYMENT FOR EXCESS COSTS AND LIQUIDATED DAMAGES The successful contractor will be required to pay for the excess cost of field engineering and inspection and liquidated damages as defined in the General and Supplementary Conditions and the Contract Agreement, if extensions of time are not granted by Owner because of avoidable delays as therein defined.

PERMITS Permits for this project will be acquired by SBIT's Natural Resource Department from Pacific County.

Required Credentials and Qualifications

Qualified candidates will possess the following education, background, and experience:

Required:

In determining the lowest responsible bid, the following elements will be considered:

- Contractor must be a certified builder and is actively licensed and bonded.
- Maintains a permanent place of business;
- Has adequate equipment to do the work properly and expeditiously;
- Has a suitable financial status to meet obligations incident to the work;
- Has appropriate technical experience.
- Each bidder shall possess state and local licenses required by law, and shall furnish satisfactory proof to the Owner upon request that the licenses are in effect during the entire period of the Contract.

Preferred:

- Be registered on Sam.gov website

Qualified candidates must provide the following:

- Resume or qualification papers showing relevant work performed;
- At least three references for relevant work performed;
- UEI number, EIN, SSN, or CCR number; and
- Acknowledgment of willingness to submit to a background investigation if selected.

Qualified candidates must meet the requirements as eligible to do business with the Federal Government as stated in Subpart 9.4—Debarment, Suspension, and Ineligibility

https://www.acquisition.gov/far/html/Subpart%209_4.html

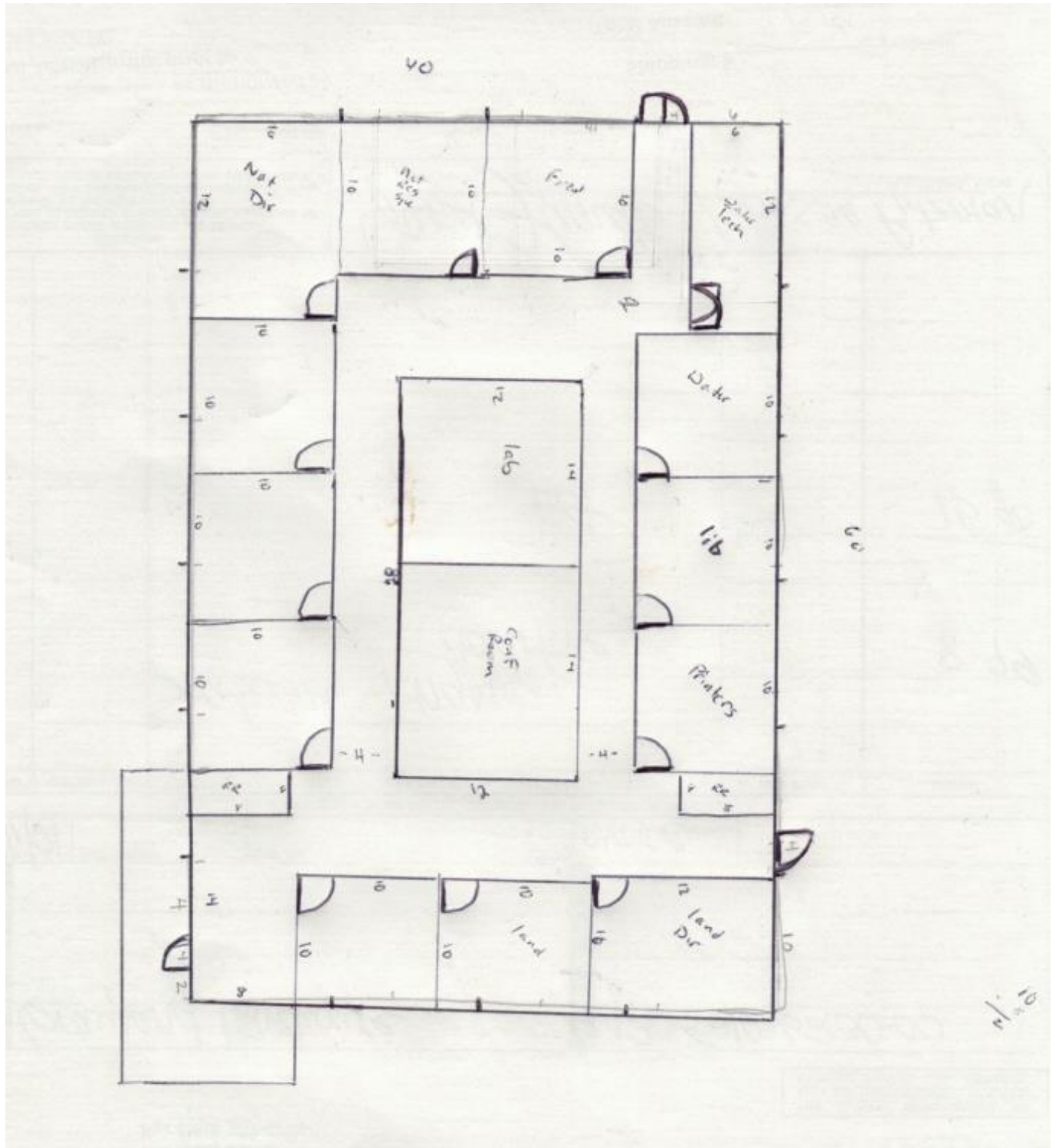
Scope of Work

The Shoalwater Bay Indian Tribe is seeking the services of a qualified company in the area of Construction. Contractor will construct a 40' wide x 60' long x10' high pole barn intended for use as an office building located on the Shoalwater Bay Indian Reservation in Pacific County, Washington. The pole barn will consist of the building shell, roof, windows, doors, porch cover, concrete, and interior frame. The project consists of furnishing all required materials, supplies, equipment, tools, and personnel to perform a necessary labor. Pole building shall be constructed in accordance to the below diagram and images.

Project scope of work consists of the below:

Construction of 40' wide x 60' long x10' high pole barn office to include the below specifications:

- 4/12" pitch roof snap lock metal roof
- L-shaped front porch cover with snap lock roof
- 2 - 5'x5' door covers
- Hardie board and batt siding / or concrete with metal insulation
- 3 - man doors
- 13 – 40"x30" windows
- Offices framed out per lay out provided below
- Ceiling framed out for sheetrock
- 4" concrete floor for entire foot print of building including porch cover and rear door covers
- Site preparation and grading will already be done and therefore will not need to be included in this proposal.
- Interior work including sheetrock, plumbing, electrical, paint, and any other finish work will be included in a future proposal.
- Engineered plans for the pole barn office building for use by SBIT Natural Resource Department in acquiring county permits.
- Permits for this project will be acquired by SBIT Natural Resource Department from Pacific County.





Length (ft)

Height (ft)

Roof Type **Gabled**

Roof Rise / 12"

Secondary Members **Steel**

Colors

Building Extension Options

Porches & Overhangs

Windows & Doors

Mezzanine



Length (ft)

Height (ft)

Roof Type **Gabled**

Roof Rise / 12"

Secondary Members **Steel**

Colors

Building Extension Options

Porches & Overhangs

Windows & Doors

Mezzanine

Shoalwater Bay Indian Tribe's Qualified Tribal and/or MBE, WBE, DBE Preference

The entity or individual qualifies for Tribal and/or MBE, WBE, DBE preference if the following conditions are met:

If Native owned:

- The company must be at least fifty-one (51) percent Native owned;
- Native ownership is only established by a Member(s) of a US Federally recognized Native American Tribe, nation or band, which includes Members of Federally recognized Alaskan Native villages, communities, and corporations;
- The qualifying Member(s) must be an active participant(s) in the company (not just a figure head(s));
- The company must have appropriate business license(s) and company and/or staff must have appropriate certifications for specific field(s); and
- The company must have the requisite experience and staff expertise to complete the contract.

If MBE/WBE/DBE owned:

- Minority group members are United States citizens who are Asian-Indian, Asian-Pacific, Black, Hispanic and Native American. Ownership by minority individuals means the business is at least 51% owned by such individuals or, in the case of a publicly owned business, at least 51% of the stock is owned by one or more such individuals (i.e. the management and daily operations are controlled by those minority group members.)
- A Woman-Owned Business Enterprise (WBE) is defined as one that is at least 51% owned, operated and controlled on a daily basis by one or more female American citizens.
- DBEs are for-profit small business concerns where socially and economically disadvantaged individuals own at least a 51% interest and also control management and daily business operations.

Applicants seeking Tribal/and or MBE, WBE, DBE preference shall submit the following applicable documents during the procurement/bidding process:

- Documentation of membership by a US Federally recognized Native American Tribe,
- Nation or band, including member of federally recognized Alaskan Native villages, communities, and corporations and proof of at least 51 percent Native ownership
- Business license certifications, business structure documents (sole proprietor, partnership, incorporations, LLC), insurance and bonding capabilities.
- Tribe shall require all other necessary licensing documentation specific for the service provided
- (Industry Standard) Portfolios that include proof of the experiences and staff expertise in the specific field listed, resume of jobs completed, and references.
- Business plan that includes proof of the experience and staff expertise in the specific field, projected financials and references.
- Any other documentation or pertinent information required by the Tribe. The Tribe shall have sole discretion in determining other requirements under this policy.
- For compliance and enforcement purposes each entity seeking Tribal preference is required to maintain a separate UBI and Federal EIN number.
- Documentation certifying MBE, WBE, and/or DBE status.

Provisions

1. The selected contractor will be required to submit to and satisfactorily pass a background investigation.
2. The selected contractor will be required to provide general liability in the amount of \$1,000,000 at a minimum.
3. The selected contractor must acquire a maintenance, performance, and payment bond.
4. If required, all parties must submit with their proposals a statement detailing their employment and training opportunities and their plan for providing preference to Indians. All contractors must observe the Shoalwater Bay Indian Tribe's preference policy.
5. The Shoalwater Bay Indian Tribe shall conduct all procurement transactions in a manner that provides fair, full and open competition.
6. The Shoalwater Bay Indian Tribe shall provide fair and equitable treatment for all persons or firms who are in the business of supplying goods and services.
7. The Shoalwater Bay Indian Tribe wish to assure that supplies, services, and construction are procured efficiently, effectively, and at the most favorable prices available.
8. The Shoalwater Bay Indian Tribe shall take reasonable affirmative steps to assure that DBE's, WBE's and MBE's are used when possible but without infringing on Indian preference where Indian preference is applicable.
9. The Shoalwater Bay Indian Tribe shall not use federal grantor funds to do business with any entity who is disbarred in accordance with the Federal Government Disbarment list.
10. Request for Proposals may be terminated by The Shoalwater Bay Indian Tribe at any time for cause.
11. Each party submitting a proposal is certifying that he/she has not colluded with any other person, firm or corporation in regard to securing the services being solicited.
12. No employee, Officer, or agent of the Shoalwater Bay Indian Tribe may solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subcontractors.
13. Negotiation: Provisions not addressed by this solicitation will be negotiated with the professional once a selection has been made.
14. Agreement: The selected professional will enter into an enforceable agreement that fully conforms to the contracting provisions pursuant to OMB 2 CFR 200. Copies of these requirements are online at <https://www.gpo.gov/fdsys/granule/CFR-2014-title2-vol1/CFR-2014-title2-vol1-sec200-320>

BID FORM

SHOALWATER BAY INDIAN TRIBE

THE UNDERSIGNED BIDDER, having examined the plans, specifications, the locations, arrangements, and conditions of roads, street, utilities and other facilities or appurtenances which affect or may be affected by the proposed work, the actual sites of the proposed improvements and being acquainted with and fully understanding: (1) the extent and character of the work covered by this bid; (2) the locations and specified requirements of and for the proposed improvements and other items of work appurtenant thereto; and (3) the normal existing and probable construction difficulties, hazards or all other factors or conditions which may or may not be apparent, which may affect or be affected by the specified work.

RECEIPT AND ACKNOWLEDGEMENT OF ADDENDUM(S): **THE UNDERSIGNED BIDDER** acknowledges receipt and consideration of the addendum(s) as listed below:

None

ADDENDUM NUMBER:

ADDENDUM DATE:

| ADDENDUM NUMBER: | ADDENDUM DATE: |
|------------------|----------------|
| | |
| | |
| | |
| | |

HEREBY PROPOSES to furnish all required materials, supplies, equipment, tools, and personnel to perform all necessary labor; and to construct, erect, equip, and complete all work stipulated in, required by, and in accordance with the contract documents hereto attached and the specifications referred to therein (as altered, changed, or modified by any and all addenda thereto), for and in connection with the Contract for which this bid is herein submitted for and in consideration of the prices set out herein.

The undersigned bidder hereby agrees to furnish the required Performance Bond, Payment Bond, Maintenance Bond, and evidence of insurance and to enter into a contract within five (5) calendar days after the acceptance of this bid, and further agrees to complete the work in fourteen (14) CALENDAR DAYS (stipulated in the Contract Agreement) from the date of the issuance by the Owner of a Notice to Proceed authorizing commencement of work.

Attached hereto is a Certified Check, Cashier’s Check or Bidder’s Surety Bond in the amount of:

_____ DOLLARS \$_____

as a bid guarantee which the undersigned agrees is to be forfeited to and become the property of the SHOALWATER BAY INDIAN TRIBE (as liquidated damages), should this bid be accepted and the Contract be awarded to the bidder, and the bidder fails to enter into a Contract in the form prescribed and to furnish the required bonds and evidence of insurance within five (5) calendar days as above stipulated, but otherwise the bid guarantee shall be returned to the undersigned upon the signing of the Contract and delivery of the approved bonds and evidence of insurance to the SHOALWATER BAY INDIAN TRIBE.

BID FORM

DATED IN _____ this _____ day of _____, 20_____.

If an Individual:

doing business as:

If a Partnership:

by: _____

Names of other partners

If a Corporation:

by: _____

Title: _____

ATTEST: _____

Secretary
(Corporate Seal)

Business Address of Contractor:

BID FORM

SHOALWATER BAY INDIAN TRIBE SBIT 40' Wide x 60' Long x 10' High Pole Barn Office Building BID

| Item | Description | Amount |
|------|--|-------------|
| 1 | 4/12" pitch roof snap lock metal roof | |
| 2 | L-shaped front porch cover with snap lock roof | |
| 3 | 2 – 5'x5' door covers | |
| 4 | Hardie board and batt siding | |
| 5 | 3 – man doors | |
| 6 | 13 – 40"x30" windows | |
| 7 | Offices framed out per lay out provided on page 7 | |
| 8 | Ceiling framed out for sheetrock | |
| 9 | 4" concrete floor for entire foot print of building including porch cover and rear door. | |
| 10 | Engineered plans for pole barn office building | |
| 11 | | |
| 12 | | |
| 13 | | |
| 14 | | |
| 15 | | |
| | Calendar Days to Complete | Days |
| | Total Cost | |

*Attach additional pages if needed.

*All waste material shall become the contractor's property and shall be disposed of in accordance with federal, state and local laws and regulations.

BID FORM

BASE BID TOTAL \$ _____

IN WORDS _____

Company: _____

Address: _____

Phone: _____

Fax: _____

Federal Tax I.D. _____

Company
Representative: _____

Title: _____

Attest: _____

Secretary: _____

BUSINESS RELATIONSHIPS AFFIDAVIT

STATE OF _____)

)

COUNTY OF _____)

I, _____, of lawful age, being first duly sworn, on oath says that (s)he is the agent authorized by the bidder to submit the attached bid. Affiant further states that the nature of any partnership, joint venture, or other business relationship presently in effect or which existed within one (1) year prior to the date of this statement with the architect, engineer, or other party to the project is as follows:

Affiant further states that any such business relationship presently in effect or which existed within one (1) year prior to the date of this statement between any officer or director of the bidding company and any officer or director of the architectural or engineering firm or other party to the project is as follows:

Affiant further states that the names of all persons having any such business relationships and the positions they hold with their respective companies or firms are as follows:

(If none of the business relationships hereinabove mentioned exists, Affiant should so state.)

Affiant

Subscribed and sworn before me this _____ day of _____, 20 _____.

Notary Public

My Commission Expires:

(Seal)

MAINTENANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That _____,
as Principal, and _____,
a Corporation organized under the laws of the State of _____,
and authorized to transact business in the State of Washington, as Surety, are held and firmly bound unto
_____ in the penal sum of

Dollars (\$ _____) in lawful money of the United States of America, such sum being equal to the contract price and being in force for a period of one year from the date of the acceptance of the below described improvements by the SHOALWATER BAY INDIAN TRIBE. For the payment of which will and truly be made, we and each of us, bind ourselves, our heirs, executors and assigns, themselves, and its successors and assigns, jointly and severally, firmly by these presents.

DATED this _____ day of _____, 20 ____.

The condition of this obligation is such that:

WHEREAS, said Principal entered into a written Contract with the SHOALWATER BAY INDIAN TRIBE dated _____, 20 ____, for: CULVERT REPLACEMENT & ROADWAY CONSTRUCTION all in compliance with the specifications therefore, made a part of said Contract and on file in the office of the SHOALWATER BAY INDIAN TRIBE'S Project Manager.

NOW, THEREFORE, if said Principal shall pay or cause to be paid to the SHOALWATER BAY INDIAN TRIBE all damage, loss, and expense which may result by reason of defective materials and/or workmanship in connection with said work, occurring within a period of one (1) year from and after acceptance of said project by the SHOALWATER BAY INDIAN TRIBE; and if Principal shall pay or cause to be paid all labor and materials, including the prime contractor and all subcontractors; and if Principal shall save and hold the SHOALWATER BAY INDIAN TRIBE harmless from all damages, loss, and expense occasions by or resulting from any failure whatsoever of said Principal, then this obligation shall be null and void, otherwise to be and remain in full force and effect.

It is further expressly agreed and understood by the parties hereto that no changes or alterations in said Contract and no deviations from the plan or mode of procedure herein fixed shall have the effect of releasing the sureties, or any of them, from the obligations of this Bond.

MAINTENANCE BOND

IN WITNESS WHEREOF, the said Principal has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its duly authorized officers, and the said Surety has caused these presents to be attorney-in-fact, duly authorized so to do, the day and year first above written.

ATTEST:

Principal:

By: _____

Title: _____

Surety:

Address of Surety or Agent:

: _____

By: _____
Attorney-in-Fact

Telephone No: _____

APPROVED by the SHOALWATER BAY INDIAN TRIBE this _____ day of _____, 20____.

By: _____
CHAIRMAN

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That _____,

as Principal, and _____,

a Corporation organized under the laws of the State of _____,

and authorized to transact business in the State of Washington, as Surety, are held and firmly bound unto

_____ in the penal sum of

_____ Dollars (\$ _____) in lawful money of the United States of America, such sum being equal to the contract price for the payment of which, well and truly to be made, we bind ourselves and each of us, our heirs, executors, administrators, trustees, successors, and assigns, jointly and severally, firmly by these presents.

DATED this _____ day of _____, 20____.

The condition of this obligation is such that:

WHEREAS, said Principal entered into a written Contract with the SHOALWATER BAY INDIAN TRIBE dated _____, 20____, for: CULVERT REPLACEMENT & ROADWAY CONSTRUCTION all in compliance with the specifications therefore, made a part of said Contract and on file in the office of the SHOALWATER BAY INDIAN TRIBE'S Project Manager.

NOW, THEREFORE, if said Principal shall, in all particulars, will, truly and faithfully perform and abide by said Contract and each and every covenant, condition, and part thereof and shall fulfill all obligations resting upon said Principal by the terms of said Contract and said specifications; and if said Principal shall promptly pay, or cause to be paid, all labor materials and/or repairs and all bills for labor performed on said work, whether by subcontract or otherwise; and if said Principal shall protect and save harmless said SHOALWATER BAY INDIAN TRIBE from all loss, damage, and expense to life or property suffered or sustained by any person, firm, or corporation caused by said Principal or his or its agents, servants, or employees in the construction of said work, or by or in consequence of any negligence, carelessness or misconduct in guarding and protecting the same, or from any act or omission of said Principal or his or its agents, servants, or employees, and if said Principal shall protect and save SHOALWATER BAY INDIAN TRIBE harmless from all suits and claims in infringement or alleged infringement or patent rights or processes, then this obligation shall be null and void, otherwise to be and remain in full force and effect.

It is further expressly agreed and understood by the parties hereto that no changes or alterations in said Contract and no deviations from the plan or mode of procedure herein fixed shall have the effect of releasing the sureties, or any of them, from the obligations of this Bond.

PERFORMANCE BOND

IN WITNESS WHEREOF, the said Principal has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its duly authorized officers, and said Surety has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its attorney-in-fact, duly authorized so to do, the day and year first above written.

ATTEST:

Principal:

By: _____

Title: _____

Surety:

Address of Surety or Agent:

: _____

By: _____
Attorney-in-Fact

Telephone No: _____

APPROVED by the SHOALWATER BAY INDIAN TRIBE this _____ day of _____, 20____.

By: _____
CHAIRMAN

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

That _____,

as Principal, and _____,

a Corporation organized under the laws of the State of _____,

and authorized to transact business in the State of Washington, a Surety, are held and firmly bound unto _____

in the penal sum of _____

Dollars (\$ _____) in lawful money of the United States of America, such sum being equal to the current price for the payment of which, well and truly to be made, we bind ourselves and each of us, our heirs, executors, administrators, trustees, successors, and assigns, jointly and severally, firmly by these presents.

DATED this _____ day of _____, 20____.

The condition of this obligation is such that:

WHEREAS, said Principal entered into a written Contract with the SHOALWATER BAY INDIAN TRIBE dated _____, 20____, for: CULVERT REPLACEMENT & ROADWAY CONSTRUCTION all in compliance with the specifications therefore, made a part of said Contract and on file in the office of the SHOALWATER BAY INDIAN TRIBE'S Project Manager.

NOW THEREFORE, if said Principal shall fail or neglect to pay all indebtedness incurred by said Principal or subcontractors of said Principal who perform work in the performance of such contract, for labor and materials and repairs to and parts for equipment used and consumed in the performance of said Contract within thirty (30) days after the same becomes due and payable, the person, firm, or corporation entitled thereto may sue and recover on this bond, the amount so due and unpaid.

It is further expressly agreed and understood by the parties hereto that no changes or alterations in said Contract and no deviations from the plan or mode of procedure herein fixed shall have the effect of releasing the sureties, or any of them, from the obligations of this Bond.

PAYMENT BOND

IN WITNESS WHEREOF, the said Principal has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its duly authorized officers, and the said Surety has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its attorney-in-fact, duly authorized so to do, the day and year first above written.

ATTEST:

Principal:

By: _____

Title: _____

Surety:

Address of Surety or Agent:

: _____

By: _____
Attorney-in-Fact

Telephone No: _____

APPROVED by the SHOALWATER BAY INDIAN TRIBE this _____ day of _____, 20____.

By: _____
CHAIRMAN

INVOICE AFFIDAVIT

STATE OF _____)

)

COUNTY OF _____)

The undersigned (architect, contractor, supplier, engineer, or supervisory official), of lawful age, being first duly sworn, on oath says that this invoice is true and correct. Affiant further states that the (work, services, or materials) as shown by this invoice have been (completed or supplied) in accordance with the plans, specifications, orders, or requests furnished to the Affiant. Affiant further states that (s)he has made no payment, given, or donated or agreed to pay, give, or donate, either directly or indirectly, to any elected official, officer, or employee of the SHOALWATER BAY INDIAN TRIBE, of money or any other thing of value to obtain payment of this invoice.

Contractor or Supplier

Subscribed and sworn before me this _____ day of _____, 20_____.

Notary Public

My Commission Expires:

(Seal)

Architect, Engineer or
OWNER'S REPRESENTATIVE

Subscribed and sworn before me this _____ day of _____, 20_____.

Notary Public

My Commission Expires:

(Seal)

**PROFESSIONAL SERVICES
CONTRACT (FEDERAL FUNDS)
BETWEEN SHOALWATER BAY INDIAN TRIBE
AND**

This Contract is entered into on the Shoalwater Bay Indian Reservation, between the **Shoalwater Bay Indian Tribe** (“SBIT”) and _____ (“CONTRACTOR”), for the purpose of securing the services of CONTRACTOR to provide the professional services set out in Section 3 herein.

1. CONTRACT DOCUMENTS

- 1.1** CONTRACTOR enters into this Contract and remains throughout the term of this Contract as an independent contractor and not an employee.
- 1.1.1** CONTRACTOR is not subject to the day-to-day supervision of SBIT, but is contracted independently to complete the project(s) oversight described herein.
- 1.1.2** CONTRACTOR shall be directly responsible to SBIT for all purposes contractual, supervisory, and performance-related under this Contract.
- 1.1.3** CONTRACTOR is not entitled to the rights of benefits afforded to SBIT employees, including, but not limited to, disability or unemployment insurance, workers’ compensation, medical insurance, annual or sick leave, or any other employment benefit accorded SBIT employees.
- 1.1.4** CONTRACTOR is responsible for providing, at CONTRACTOR’s expense, employer’s taxes, applicable worker’s compensation and unemployment insurance, appropriate liability insurance, and applicable licenses for CONTRACTOR.
- 1.2** Contract documents consist solely of this written Contract signed by both parties and the submitted proposal by _____ dated _____, which is incorporated herein by reference.

1.2.1 If CONTRACTOR is retained to render services under contracts or grants received by SBIT, CONTRACTOR also shall be bound by the terms of those contracts or grants.

1.2.2 SBIT assumes no further obligations to CONTRACTOR other than those set forth in this Contract.

1.3 **SBIT's Contracting Officer** for the purposes of this Contract is: _____

2. TERM OF CONTRACT. The term of this contract shall be ended _____, unless extended pursuant to the terms of this Contract.

3. SERVICES TO BE PERFORMED BY CONTRACTOR

3.1 CONTRACTOR is retained to provide the following professional services:

3.1.1

3.2 CONTRACTOR will identify the need, if any, for consultants, subcontractors, or related business professional services, and provide such analysis to SBIT. SBIT will make the final determination, after consulting with CONTRACTOR, whether such consultants, subcontractors, or related business professional services are needed for the project. CONTRACTOR will procure such services through the applicable procurement process and consistent with all applicable competitive procurement requirements.

3.3 All work product generated under this Contract by CONTRACTOR, outside consultants, or subcontractors, shall be based upon CONTRACTOR's knowledge, experience, and professional judgment;

3.4 CONTRACTOR shall adhere to all laws, regulations, or standards applicable to such work in the performance of this Contract.

4. COMPENSATION

- 4.1 SBIT shall compensate CONTRACTOR for services rendered under this contract as follows:
_____.
- 4.2 SBIT shall pay compensation on the tenth of each month for the previous month's work, upon submission by CONTRACTOR of properly itemized invoices and receipts, or credit card itemized billings, to SBIT's Tribal Administrator.
- 4.3 In the event that this Contract is terminated without cause before completion of the Contract term, CONTRACTOR shall be paid such compensation as may be determined equitable to date of termination. In the event this Contract is terminated for cause, CONTRACTOR shall receive such compensation as is due under this contract to the date of termination set forth in such notice, so long as CONTRACTOR is performing in conformity with the terms of this contract and all Tribal and SBIT property is returned to SBIT.
- 4.4 Except in an emergency, advanced written approval shall be obtained from SBIT for additional amounts for fees and expenses.
- 4.5 The CONTRACTOR shall pay SBIT, the cost of additional field engineering and construction observation at a rate of one thousand and eight hundred dollars (\$1,800.00) for each and every CALENDAR DAY required to complete the contract, in excess of the contract time of 15 BUSINESS DAYS, except as provided for by an approved contract extension.
5. **CONDITIONAL CONSENT TO REPRESENT OTHER CLIENTS.** During the term of this Contract, CONTRACTOR shall not engage or participate in any activity that conflicts with, or business that is in direct competition with, the business of SBIT.
6. **GENERAL PROVISIONS**
- 6.1 **Integration.** This Contract expresses the complete understanding of the parties, and supersedes any and all other contracts or agreements, either oral or in writing, between the parties with respect to the terms of this Contract. Each party to this Contract acknowledges that no representation, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone dealing on behalf of any party, which are not embodied herein; and that no other agreement, statement, or promise not contained in this Contract shall be valid or binding on either party, except that any other

written agreement dated concurrent with or after this Contract shall be valid as between the signing parties.

6.2 Modifications. Any modification of this Contract will be effective only if it is in writing and signed by both parties.

6.3. Property of Parties

6.3.1 All records, of any nature, whether existing at the time of this Contract, produced through the efforts of CONTRACTOR, or obtained by CONTRACTOR from any other source, and whether prepared by CONTRACTOR or otherwise, shall remain the exclusive property of SBIT.

6.3.2 All SBIT equipment, books, and files/records utilized by CONTRACTOR in performing CONTRACTOR's duties under this Contract shall be returned immediately to SBIT by CONTRACTOR on expiration or termination of this Contract, regardless of whether any dispute exists between SBIT and CONTRACTOR at and/or following the expiration or termination of this Contract.

6.3.3 Intellectual Property.

6.3.3.1 If this Contract involves performance of experimental, developmental, or research work funded in whole or in part by the Federal government, CONTRACTOR and SBIT shall comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

6.3.3.2 Except as provided in Section 6.3.3.1, above, CONTRACTOR agrees that ownership of all materials developed under this Contract shall be in SBIT.

6.3.3.3 CONTRACTOR may retain all personal notes relating to work under this Contract, and may retain copies of documents generated by CONTRACTOR pursuant to this Contract; provided, however, that

copies of all notes and ORIGINAL copies of all documents created in the performance of this Contract, shall be provided to SBIT.

6.4 Waiver.

6.4.1 The failure of either party to insist on strict compliance with any terms, covenants, or conditions of this Contract by the other party shall not be deemed waiver of that term, covenant, or condition; nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power of all and or any other times.

6.4.2 Nothing in this Contract shall be construed to waive SBIT's sovereign immunity from suit.

6.5 Governing Law. The Laws of the Shoalwater Bay Indian Tribe shall govern this Contract.

6.6 Insurance. CONTRACTOR shall be liable for any damages to SBIT resulting from CONTRACTOR's acts and omissions, as well as the acts and omissions of any of CONTRACTOR's employees, agents, or officers, and CONTRACTOR shall carry insurance in the following amounts:

6.6.1 General Liability: \$1,000,000.00

6.6.2 Automobile Liability: \$0

6.6.3 Professional Liability: \$0

6.7 Attorney Fees. If any legal action is commenced or necessary to enforce or interpret the terms of this Contract, the prevailing party shall be entitled to reasonable Attorney fees and costs.

6.8 Termination.

6.8.1 SBIT may terminate this Contract in whole, or from time to time in part, for SBIT's convenience or the failure of the CONTRACTOR to fulfill the contract obligations (default). SBIT shall terminate by delivering to the CONTRACTOR a written Notice of Termination specifying the nature, extent, and effective date of the termination.

Upon receipt of the notice, the CONTRACTOR shall: (i) immediately discontinue all services affected (unless the notice directs otherwise); and (ii) deliver to SBIT all information, reports, papers, and other materials accumulated or generated in performing this contract, whether completed or in process.

- 6.8.2** If the termination is for the convenience of SBIT, SBIT shall be liable only for payment for services rendered and adequately performed before the effective date of the termination.
- 6.8.3** If the termination is due to the failure of CONTRACTOR to fulfill its obligations under the Contract (default), SBIT may (i) require CONTRACTOR to deliver to it, in the manner and to the extent directed by SBIT, any work as described in Section 6.8.1 above, and compensation be determined in accordance with the Changes clause herein; (ii) take over the work and prosecute the same to completion by contract or otherwise, and CONTRACTOR shall be liable for any additional cost incurred by SBIT; (iii) withhold any payments to CONTRACTOR, for the purpose of off-set or partial payment, as the case may be, of amounts owed to SBIT by CONTRACTOR.
- 6.8.4** If, after termination for failure to fulfill contract obligations (default), it is determined that CONTRACTOR had not failed, the termination shall be deemed to have been effected for the convenience of SBIT, and CONTRACTOR shall be entitled to payment as described in Section 6.8.2 above.
- 6.8.5** Upon the occurrence of any Event of Default by SBIT, and at any time as long as such Event of Default by SBIT continues, CONTRACTOR may, at its option, declare this Contract to be in default and exercise any one or more of the following remedies: (i) Terminate this Contract by written notice to SBIT, which termination shall be effective upon delivery of such notice to SBIT; (ii) Exercise all rights and remedies available to CONTRACTOR at law or in equity under the laws of the Shoalwater Bay Indian Tribe.
- 6.8.6** In the event of the death or disability of CONTRACTOR, this Contract may be terminated by SBIT, and SBIT shall pay to the administrator or personal

representative of CONTRACTOR's estate any compensation due CONTRACTOR hereunder.

6.8.7 Any disputes with regard to this clause are expressly made subject to the terms of clause titled Dispute Resolution herein.

7. INDIAN PREFERENCE (Section 7(b) Clause).

- 7.1** Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of the Shoalwater Bay Indian Tribe, SBIT, and the United States governing performance of the Scope of Services. This Contract is subject applicable governing law, which includes, but is not limited to: the Tribal employment and contracting preferences of the Shoalwater Bay Indian Tribe, if any.
- 7.2** If the Shoalwater Bay Indian Tribe does not have Tribal employment and contracting preferences, and only until such time as the Shoalwater Bay Indian Tribe adopts such preferences through law or regulation, the following Indian preference provisions shall apply.
- 7.3 Indian Preference (Section 7(b)) Clause:** The work to be performed under this contract is on a project subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) (the Indian Act). Section 7(b) requires that to the greatest extent feasible:
- 7.3.1** Preferences and opportunities for training and employment shall be given to Indians; and
 - 7.3.2** Preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.
 - 7.3.3** CONTRACTOR shall comply with the provisions of section 7(b) of the Indian Act.
 - 7.3.4** In connection with this Contract, CONTRACTOR shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned economic enterprises, and preferences and opportunities for training and employment to Indians.
 - 7.3.5** CONTRACTOR shall include this section 7(b) clause in every subcontract in connection with the project, and shall, at the direction of SBIT take appropriate action pursuant to the subcontract upon a finding by the recipient or HUD that the subcontractor has violated the section 7(b) clause of the Indian Act.

8. DISPUTE RESOLUTION.

- 8.1** "Claim" as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of Contract terms, or other relief arising under or relating to the Contract. A claim arising under the Contract, unlike a claim relating to the Contract, is a claim that can be resolved under a Contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by complying with the requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
- 8.2** All disputes arising under or relating to this Contract, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved exclusively under this clause.
- 8.3** The details and supporting documents of all claims by CONTRACTOR for additional compensation, or for an extension of time of performance, or for any dispute regarding a question of fact, or for interpretation of the Contract, shall be made in writing and submitted to the Contracting Officer for a written decision within ten (10) calendar days from the date of the occurrence of the dispute. CONTRACTOR agrees that unless these written notices are provided, CONTRACTOR will have no entitlement to additional time or compensation for such act, event or condition and such failure to provide such notice shall constitute a waiver of the claims. All claims by SBIT against CONTRACTOR shall be made in writing and submitted to CONTRACTOR within ten (10) calendar days from the date of the occurrence of the dispute.
- 8.4** Presenting Claim. In presenting the claim and supporting documentation, CONTRACTOR shall specifically include, to the extent then possible, the following:
- 8.4.1** Certification signed by CONTRACTOR that the claim is made in good faith, that the supporting data is accurate and complete to the best of CONTRACTOR's knowledge and belief, and that the amount requested accurately reflects the Contract adjustment for which CONTRACTOR believes SBIT is liable.

- 8.4.2** A narrative which describes the facts and outlines the analysis of responsibility and causal connection of the claim including: (i) A brief summary of the claim and the facts pertinent to the claim; (ii) The specific Contract provisions on which the claim is based; (iii) A description of the relative responsibilities of each party giving rise to the claims; (iv) A description of the cause and effect relationship between the relevant acts and omissions of the specific responsible parties and the damages or additional costs claimed; (v) Documentation which supports the narrative including schedules, graphs, charts, photographs, and any other pertinent documents or information; (vi) Quantitative analysis and presentation of requested additional compensation and/or the additional time including: (A) A summary of additional compensation and/or additional time requested; (B) Supporting calculations, sub calculations, cost data and documents including proof of expenditures to support the claimed additional compensation and/or additional time.
- 8.5** All claims by CONTRACTOR shall be made in writing and submitted to the Contracting Officer for a written decision.
- 8.6** The Contracting Officer shall, within _____ (60 unless otherwise indicated) days after receipt of the request, decide the claim or notify CONTRACTOR of the date by which the decision will be made.
- 8.7** The Contracting Officer's decision shall be final unless CONTRACTOR appeals in writing to a higher level in SBIT in accordance with SBIT's applicable policy and procedures for such appeals, if any. In the event that SBIT does not have a policy and procedures for such an appeal, an appeal may be made to the governing body of SBIT. Such appeal must be made within _____ (10 unless otherwise indicated) days after receipt of the Contracting Officer's decision.
- 8.8** CONTRACTOR shall proceed diligently with performance of this Contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the Contract, and comply with any decision of the Contracting Officer.
- 8.9** Nothing in this Contract, or any action taken by SBIT or any of its agents or employees in connection with this Contract shall be deemed to be a waiver of the sovereign immunity of SBIT or the Tribe.
- 8.10** CONTRACTOR hereby acknowledges and irrevocably consents to the exclusive personal and subject matter jurisdiction of the Tribal Court or other Tribal dispute resolution entity or mechanism of the Tribe over any dispute, suit or other legal action that may be filed relating to the Contract, provided that this provision shall not be deemed to be a waiver of the sovereign immunity of the Tribe or SBIT, which immunity is hereby expressly asserted,

and provided further that any order, judgment or award of such Court or dispute resolution entity or mechanism in favor of SBIT and against CONTRACTOR may be registered or enforced in any court of competent jurisdiction.

9. CHANGES

- 9.1** SBIT may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this Contract in the services to be performed or supplies to be delivered.
- 9.2** If any such change causes an increase or decrease in the hourly rate, the not-to-exceed amount of the Contract, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects the conditions of this contract, SBIT shall make an equitable adjustment in the not-to-exceed amount, the hourly rate, the delivery schedule, or other affected terms, and shall modify the contract accordingly.
- 9.3** CONTRACTOR must assert its right to an equitable adjustment under this clause within 10 days from the date of receipt of the written order. However, if SBIT decides that the facts justify it, SBIT may receive and act upon a proposal submitted before final payment of the Contract.
- 9.4** Failure to agree to any adjustment shall be a dispute under clause Disputes, herein. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed. No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of SBIT.

10. MISCELLANEOUS TERMS AND CONDITIONS

- 10.1 Lead-Based Paint Poisoning Prevention.** CONTRACTOR will comply with the lead-based paint poisoning prevention requirements set out in 24 CFR 1000.40.

- 10.2 Section 3 of the Housing and Urban Development Act of 1968.** CONTRACTOR will comply with Section 3 of the Housing and Urban Development Act of 1968, as and only to the extent required by 24 CFR 1000.42.
- 10.3 Contract Work Hours and Safety Standards Act.** In contracts awarded by SBIT in excess of \$100,000 that involve the employment of mechanics or laborers, CONTRACTOR will comply with 40 U.S.C. 3702 and supplemented by Department of Labor regulations as set out in 29 CFR Part 5. Under 40 U.S.C. 3702, CONTRACTOR must compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- 10.4 Prevailing Wage Requirements.** CONTRACTOR will pay prevailing wages as required by 25 U.S.C. § 4114 of the Native American Housing Assistance and Self-Determination Act. All labor furnished for the work provided in the contract shall be at or above the current prevailing wage rates determined by Secretary of Labor under the Davis-Bacon and Related Acts of 1931 (40 U.S.C. §3141 et. seq.), as promulgated in 29 C.F.R. Part 5, and as set out elsewhere in this Contract. ***Does not apply to this contract**
- 10.5 Use of Debarred, Suspended or Ineligible Contractors.** CONTRACTOR will comply with Executive Orders 12549 and 12689, and OMB implementation guidelines as set out in 2 CFR 180. A contract award must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. CONTRACTOR will comply with the prohibitions set out in 24 CFR Part 24, 2 CFR Part 200, 2 CFR Part 2424, as well as any Tribal and SBIT requirements, with regard to the use of debarred, suspended or ineligible subcontractors. (24 CFR 1000.44).

- 10.6 Drug-Free Workplace.** CONTRACTOR will comply with the Drug-Free Workplace Act of 1988, HUD's implementing regulations at 24 CFR Part 24, and any tribal requirements as set out in 24 CFR 1000.46.
- 10.7 Equal Employment Opportunity.** CONTRACTOR will comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, as further amended by Executive Order 13672 of July 21, 2014, and as supplemented in Department of Labor regulations (41 CFR chapter 60). CONTRACTOR shall include Equal Employment Opportunity language in all contracts and subcontracts as required by 41 CFR 60-1.4(b).
- 10.8 No Liens.** The parties hereby acknowledge that the work is to be performed on the reservation of the Shoalwater Bay Indian Tribe, which is comprised of lands held in trust by the United States for the benefit of the Tribe. As such, there is no authority for CONTRACTOR to assert or perfect a construction, mechanics', or other such lien on the property, and CONTRACTOR shall not attempt to assert or perfect any such lien, nor permit any subcontractors to do so.
- 10.9 Indemnity.** CONTRACTOR shall indemnify SBIT against and hold SBIT harmless from any and all claims, actions, damages, costs, expenses (including reasonable attorneys' fees), obligations, liabilities and liens (including any of the foregoing arising or imposed under the doctrines of "strict liability" or "product liability" and including, without limitation, the cost of any fines, remedial action, damage to the environment and cleanup and the fees and costs of consultants and experts), arising out of the services provided by CONTRACTOR pursuant to this Contract, or for any other activities of CONTRACTOR or CONTRACTOR's officers, agents, or employees, excluding, however, any of the foregoing resulting from the sole negligence or willful misconduct of SBIT. CONTRACTOR agrees that upon written notice by SBIT of the assertion of such a claim, action, damage, obligation, liability or lien, CONTRACTOR shall assume full responsibility for the defense thereof. CONTRACTOR's choice of counsel shall be mutually acceptable to both SBIT and CONTRACTOR.
- 10.10 Assignment.**
- 10.10.1** Neither party may assign this Contract or any interest in this Contract without the express prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, that SBIT may assign its rights under

this Contract to an affiliate of SBIT or to the Shoalwater Bay Indian Tribe in the event of a merger, reorganization, or consolidation as a result of which SBIT is not a surviving legal entity. In the event of any such assignment by either party, that party's assignee shall have all the rights, powers, privileges, remedies and obligations of the assigning party set forth in this Contract.

10.10.2 This Contract shall be binding upon and inure to the benefit of SBIT and CONTRACTOR and their respective permitted successors and assigns.

10.11 Copyrights and Rights in Data. The United States Department of Housing and Urban Development reserves an irrevocable, non-exclusive, and royalty-free license to reproduce, publish, or otherwise use, for Federal government purposes only and to the extent otherwise permitted by law, (a) the copyright in any work developed under a grant or subgrant, or contract under a grant or subgrant, and (b) any rights of copyright to which a grantee, subgrantee, or contractor purchases ownership with grant support.

10.12 Examination and Retention of Contractor's Records.

10.12.1 SBIT and the Comptroller General of the United States, and any of their duly authorized representatives, shall, until three years after final payment is made under this Contract, have access to and the right to examine any of CONTRACTOR's directly pertinent books, documents, papers, or other records involving transactions related to this Contract, for the purpose of making audit, examination, excerpts, and transcriptions.

10.12.2 CONTRACTOR agrees to include in all subcontracts under this Contract at any tier a clause substantially the same as subparagraph 10.12.1 above.

10.12.3 The periods of access and examination in subparagraphs 10.12.1 and 10.12.2 above for records relating to (1) appeals under the disputes clause of this Contract, (2) litigation or settlement of claims arising from the performance of this Contract, or (3) costs or expenses of this Contract to which SBIT or the Comptroller General or any of their duly authorized representatives have taken exception shall continue until the disposition of such appeals, litigation, claims, or exceptions.

- 10.13 Environmental Laws and Regulations.** CONTRACTOR shall comply with all applicable standards, orders, regulations, or requirements issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671(q)) the Federal Water Pollution Act Control Act as amended (33 U.S.C. 1251-1387), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15). This clause applies only to contracts and subgrants in excess of \$150,000. Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 10.14 Energy Policy and Conservation Act.** CONTRACTOR shall comply with all applicable mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
- 10.15 Restrictions on Lobbying.** CONTRACTOR shall comply with Restrictions on Lobbying (Public Law 101-121, Section 319) as supplemented by applicable HUD regulations. CONTRACTOR shall comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). CONTRACTOR must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Contract for an award exceeding \$100,000. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award as set out in 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. . Certifications and disclosures are forwarded from tier to tier up to the SBIT. Necessary certification and disclosure forms shall be provided by SBIT.
- 10.16 Notices.** Any notice, request, demand, statement, authorization, approval or consent required or permitted under this Contract shall be in writing and shall be made by, and deemed duly given upon, (a) deposit in the mail, postage prepaid, registered or certified, return receipt requested, (b) personal delivery, (c) delivery to an overnight courier of recognized reputation, or (d) facsimile transmission (with confirmation by mail), as follows, or to such other address and/or such additional parties as either party may specify by written notice given in accordance with this section:

If to CONTRACTOR:

[Redacted]

Attention: [Redacted]

If to SBIT:

Shoalwater Bay Indian Tribe
PO Box 130
Tokeland, Washington 98590

Attention: Interim Tribal Administrator

All such notices and communications hereunder shall be deemed given upon personal delivery, seven business days after deposit in the mail, two business days following deposit with any international courier service of recognized reputation or one business day after transmission by telefax.

- 10.17 Certificate and Release.** Prior to final payment under this Contract, or prior to settlement upon termination of this Contract, and as a condition precedent thereto, CONTRACTOR shall execute and deliver to SBIT a certificate and release, in a form acceptable to SBIT, of all claims against SBIT by CONTRACTOR under and by virtue of this Contract, other than such claims, if any, as may be specifically excepted by the Contractor in stated amounts set forth therein.
- 10.18 No Third Party Beneficiaries.** Neither this Contract nor any provision hereof, nor any document or instrument executed or delivered pursuant hereto, shall be deemed to create any right in favor of or impose any obligation upon any person or entity other than the parties hereto and their respective permitted successors and assigns, except for those provisions which recognize the rights of certain agencies of the United States.
- 10.19 Legal Advice and Construction of Contract.** Each party represents that it has received independent legal advice with respect to the preparation of, and the advisability of entering into, this Contract and neither has been entitled to rely upon nor has in fact relied upon the legal or other advice of the other party or such other party's counsel in entering into this Contract. Each party has participated in the drafting and preparation of this Contract, and, accordingly, in any construction or interpretation of this Contract, the same shall not be construed against either party by reason of the source of drafting.
- 10.20 Parties' Understanding.** Each party represents that it has carefully read this Contract, that this Contract has been fully explained to it by its attorney, that it fully understands the final

and binding effect of this Contract, that the only promises made to it to sign this Contract are those stated above, and that it is signing this Contract voluntarily.

- 10.21 Force Majeure.** No party hereto shall be deemed in default if its performance of obligations hereunder is delayed or becomes impossible or impractical by reason of any act of God, war, fire, earthquake, strike, civil commotion, epidemic or any other cause beyond such party's reasonable control.
- 10.22 Limitation of Damages.** Except as expressly set forth herein, in any action or proceeding arising out of, relating to or concerning this Contract, including, without limitation, any claim of breach of contract, liability shall be limited to compensatory damages proximately caused by such breach and no party shall, under any circumstances, be liable to the other party for consequential, incidental, indirect or special damages, including but not limited to lost profits or income, even if such party has been apprised of the likelihood of such damages occurring.
- 10.23 Entire Agreement.** This Contract constitutes the entire agreement between the parties with respect to the subject matter covered by this Contract and supersedes all previous discussions, negotiations, oral or written, representations, statements, arrangements, agreements and understandings, if any, by and between the parties with respect to the subject matter covered by this Contract other than those herein, and any such discussions, negotiations, oral or written, representations, statements, arrangements, agreements and understandings are hereby canceled and terminated in all respects. This Contract may not be amended, changed or modified except by a writing duly executed by the parties hereto or their duly authorized representatives. The parties have made no representations or warranties not expressly set forth in this Contract.
- 10.24 Warranty of Work and Materials.** Contractor warrants to SBIT for a period of one year after the date of any specific services provided that the materials and equipment incorporated in the services provided will be new unless otherwise specified and that the work performed will be free from faults and defects unless SBIT has previously given Contractor an acceptance of such condition. Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not done by Contractor, improper or insufficient maintenance, improper operation, normal wear and tear under normal usage or the acts or omissions of SBIT, its employees, agents, contractors and all those claiming by, through or under them. Contractor shall, upon final completion of any specific project and upon receipt by Contractor of the final payment, assign to SBIT all warranties for materials and equipment incorporated in the work, to the extent such warranties are assignable.

- 10.25 Licenses and Permits.** Contractor hereby represents and warrants that all of its employees, officers, and agents possess the licenses and permits necessary under applicable law to perform the scope of services under this Contract.
- 10.26 Conflicts of Interest (24 CFR 1000.32).** Based on federal regulations (24 CFR 1000.32) and where 24 CFR 1000.32 applies, in all cases not governed by 2 CFR 200.318(c), the following conflict of interest provisions shall apply: No person who participates in the decision-making process or who gains inside information with regard to NAHASDA assisted activities may obtain a personal or financial interest or benefit from such activities, except for the use of NAHASDA funds to pay salaries or other related administrative costs. Such persons include anyone with an interest in any contract, subcontract or agreement or proceeds thereunder, either for themselves or others with whom they have business or immediate family ties. Immediate family ties are determined by the SBIT in its operating policies.
- 10.27 Employment Eligibility Verification.** Federal law requires Contractor and all subcontractors to employ only those individuals who may legally work in the United States – either U.S. citizens, or foreign citizens who have the necessary authorization. Contractor, and all subcontractors who are providing goods or services valued at \$3000 or higher must register with the United States Department of Homeland Security E-Verify system to confirm the eligibility of their employees to work in the United States.
- 10.28 References to Federal and Tribal Laws; No Waiver of Sovereign Immunity.** All federal and tribal laws and regulations referenced in this Contract are deemed incorporated into this Contract in their entirety. However, reference to and incorporation of such laws and regulations shall not be construed to waive SBIT's sovereign immunity with regard to such laws and regulations, nor shall such laws and regulations be construed to apply to or govern the activities of SBIT, and no phrase, clause, or provision of this Contract may be construed to be a waiver of the sovereign immunity of SBIT, which immunity is hereby expressly asserted.
- 10.29 Severability.** In the event any provision of this Contract or the application thereof to any circumstance shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable, it shall be construed to be limited or reduced so as to be enforceable to the maximum extent allowed by applicable law as it shall then be in force, and if such construction shall not be feasible, then such provision shall be deemed to be deleted here from in any action before that court, and all other provisions of this Contract shall remain in full force and effect.

- 10.30 Remedies.** All rights and remedies of the parties are separate and cumulative, and no one of them, whether exercised or not, shall be deemed to be to the exclusion of or to limit or prejudice any other legal or equitable rights or remedies which the parties may have. The parties shall not be deemed to waive any of their rights or remedies under this Contract unless such waiver is in writing and signed by the party to be bound. No delay or omission on the part of either party in exercising any right or remedy shall operate as a waiver of such right or remedy or any other right or remedy. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion.
- 10.31 Headings.** The headings contained in this Contract are for convenience only and are not a part of this Contract, and do not in any way interpret, limit or amplify the scope, extent or intent of this Contract, or any of the provisions of this Contract.
- 10.32 Counterparts.** This Contract may be executed in counterparts, each of which shall constitute an original, but which together shall constitute one and the same agreement.
- 10.33 Expenses.** Except as otherwise expressly provided for in this Contract, each of the parties shall pay its own expenses in connection with the negotiation, preparation and execution of this Contract or other related documents and the consummation of the transactions consummated herein and therein.
- 10.34 Copeland Anti-Kickback Act.** Contractor and all subcontractors shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3).
- 10.35 Reporting Requirements.** CONTRACTOR shall provide the SBIT with all documentation necessary for the SBIT to comply with UDSA reporting requirements, including but not limited to requirements of CARES Act grants as supplemented by Department of Labor regulations (29 CFR Part 5).
- 10.36 Value Engineering.** The Contractor is encouraged to develop, prepare and submit value engineering change proposals (VECP) voluntarily. The Contractor shall share in any Contract savings realized from accepted VECP.

10.36.1 Definitions as used in this clause:

10.36.1.1 "Contract savings" means the estimated reduction in the Contractor's cost of performance resulting from the Tribe/TDHEs acceptance of the VECP.

10.36.1.2 "TDHE costs" means those costs that result directly from implementing the VECP, such as any net increases in the cost of inspection, testing,

operations, and maintenance. The term does not include the normal administrative costs of processing the VECP.

10.36.1.3 “Value engineering change proposal” means a proposal that requires a modification to this Contract and results in reducing the Contract price or estimated cost without impairing essential function, characteristics, or quality of the work.

10.36.2 At a minimum the Contractor shall include in each VECP the following information:

10.36.2.1 A description of the difference between the existing Contract requirements and that proposed, the comparative advantages and disadvantages of each, and the overall effect of the change on the work of the Contract.

10.36.2.2 A list and analysis of the Contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

10.36.2.3 A separate, detailed cost estimate for both the affected portions of the existing Contract work and the VECP. The cost reduction associated with the VECP shall take into account the Tribe/TDHE’s development and operating costs, and include any costs attributable to subcontracts.

10.36.2.4 A statement of the time by which a contract change order accepting the VECP must be issued by the Contracting Officer in order to achieve the maximum cost reduction, noting any effect on the contract period or construction progress schedule.

10.36.3 Upon receipt of a complete VECP, the Contracting Officer shall consult with the Architect and others as appropriate and will notify the Contractor of the status of the VECP within 30 days of receipt by the Contracting Officer. If additional time is required, the Contracting Officer will notify the Contractor within the 30-day period and provide the reason for the delay and the expected date of the decision.

10.36.3.1 If the VECP is not accepted, the Contracting Officer will notify the Contractor in writing, explaining the reasons for the rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Tribe/TDHE.

10.36.3.2 Any VECP may be accepted, in whole or in part, by the Contracting Officer’s award of a modification to this Contract. The Contracting Officer may accept the VECP, even though an agreement on price reduction has

not been reached by written order. Failure to reach an agreement on any VECP shall be a dispute under the Disputes clause herein.

10.36.3.3 The decision to accept or reject all or part of a VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

10.36.4 Sharing. The TDHE's share of savings is 50 percent of the difference of the Contract savings less any TDHE costs as defined in (b) above. Payment of any share due to the Contractor for use of a VECP on this Contract shall be authorized by a modification to this Contract and shall be calculated by reducing the Contract price by the Contract savings and adding the Contractor's share of savings to the Contract price.

10.37 Procurement of Recovered Materials. CONTRACTOR shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency ("EPA") at 40 C.F.R. 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000.00 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.00; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

10.38 Domestic Preferences for Procurements. As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

10.38.1 For purposes of this section:

10.38.1.1 "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

10.38.1.2 "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

10.39 Prohibition on certain telecommunications and video surveillance services or equipment.

10.39.1 Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

10.39.1.1 Procure or obtain;

10.39.1.2 Extend or renew a contract to procure or obtain; or

10.39.1.3 Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

10.39.1.3.1 For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

10.39.1.3.2 Telecommunications or video surveillance services provided by such entities or using such equipment.

10.39.1.3.3 Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

10.39.2 In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

10.39.3 See Public Law 115-232, section 889 for additional information.

10.39.4 See also § 200.471.

IN WITNESS HEREOF, we the undersigned have executed this Contract:

SBIT

CONTRACTOR

By: _____

By: _____

Larry Kerns
Interim Tribal Administrator
Shoalwater Bay Indian Tribe

Date: _____

Date: _____

EXAMPLE

