

# *3<sup>rd</sup> DRAFT 06.25.09*

## **PROPOSED GOVERNMENT CODE**

### **ARTICLE 6**

#### **PROCUREMENT AND LEASING CODE OF CONDUCT**

##### **CHAPTER 1. GENERAL PROVISIONS**

###### **Section 6-101. Purpose**

This Article is intended to carry out the following purposes:

1. To provide for fair and equitable treatment of all persons, organizations or business entities involved with the Tribe.
2. To assure that leases, supplies, services and construction are procured efficiently, effectively and at the most favorable prices available to the Tribe.
3. To promote competition in procurement and leasing of agricultural and commercial sites.
4. To provide safeguards for maintaining a leasing and procurement system of quality and integrity.
5. To assure that purchasing actions are in full compliance with applicable Federal and Tribal laws and regulations.

###### **Section 6-102. Definitions**

A. "Actual Conflict of Interest" means an existing profiteering in which an individual, organization or business entity is in a position to exploit a professional or official capacity in some way for individual's, organization's or business entity's personal benefit.

B. "Conflict of Interest" means any situation in which an individual, organization or business entity is in a position to exploit a professional or official capacity in some way for individual's, organization's or business entity's personal benefit.

C. "Enterprise" means the enterprises of the Colorado River Indian Tribes.

D. "Leasing" means agriculture and commercial leases of tribal lands.

E. "Profiteering" means pecuniary gains or in-kind gains in the form goods, commodities, or services.

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F. “Procurement” means contracts and modifications (including change orders) for construction or services, purchase and lease or rental of supplies and equipment.

G. “Reasonably Foreseeable” means the anticipation of the consequence of an action by a person in the same given situation.

H. “Relative” includes grandfather, grandmother, father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, and half sister.

I. “Tribe” means the Colorado River Indian Tribes.

## **Section 6-103. Application**

A. This statement of Code of Conduct applies to all contracts for the procurement of supplies, services and construction and agriculture and commercial leases entered into by the Tribe or Enterprise. It shall apply to every expenditure of funds by the Tribe or Enterprises for public purchasing, regardless of the source of funds, including contracts that do not involve an obligation of funds (such as concession contracts). However, nothing in this statement shall prevent the Tribe or Enterprise from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with applicable Federal and Tribal laws.

B. When both Federal and non-Federal funds are used for a project, the work to be accomplished with the funds shall be separately identified. The Tribe’s Indian preference policy shall be applied to the total project.

C. The Tribal Council may direct the Controller to designate a Procurement Officer (“PO”) within the Accounting Department. The Tribal Council also has discretion to directly designate a Responsible Representative (“RR”) for procurement in the event that no PO has been designated by the Controller. The PO/RR shall enforce the provisions under this Article.

D. This Article shall not apply to the following circumstances: (1) Existing contracts and leases entered into prior to the date of adoption of this Article; (2) Renewal of existing contracts and leases that have been entered into prior to the date of adoption of this Article; and (3) Enterprise governed by Section 404 of the Gaming Code, Section 404 shall apply.

## **Section 6-104. Enforcement Authority**

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A. The PO/RR shall resolve all conflicts that involve an employee or agent of the Tribe or Enterprise. The PO/RR has the following duties under this Article:

1. To insure individual department's and enterprise's compliance with the provisions under Chapter 2 of this Article;
2. To collect all written disclosures of conflict;
3. To investigate the facts and circumstances surrounding reports and disclosures of conflicts;
4. To resolve conflict(s) in accordance with the provisions under Chapter 2 this Article, including rendering of recommendations and discipline; and
5. To refer conflict(s) that involves another Tribal Council Member to the Tribal Council.

B. The Tribal Council shall resolve all conflicts that involve another Tribal Council Member in accordance with the provisions under Chapter 2 of this Article.

## **CHAPTER 2. CONFLICT OF INTEREST**

### **Section 6-201. Persons**

No Tribal Council Member, employee or agent of the Tribe or Enterprise shall participate directly or indirectly in the selection of, or in the award of, or administration of any contract or lease if an actual or reasonably foreseeable conflict would be involved. Such conflict would arise when a financial or other interest in an organization, business or firm selected for award is held by:

1. a Tribal Council Member, employee or agent of the Tribe or Enterprise involved in making the award;
2. a Tribal Council Member's, Tribe or Enterprise employee's or agent's relative; or
3. a Tribal Council Member's, Tribe or Enterprise employee's or agent's business partner; or
4. an organization which employs, is negotiating to employ, or has any arrangement concerning prospective employment of any of the above persons.

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## **Section 6-202. Exception; Low-Income**

A. The conflict of interest provision under this Chapter shall not apply in instances where a person who might otherwise be included under the conflict provision, if that person meets all of the following requirements:

1. is low-income as defined by the specific funding program;
2. selected for assistance in accordance with the Tribe's written policies for eligibility for assistance; and
3. is without any conflict under applicable Tribal law other than this Article.

B. A person under this Section shall give a written disclosure of the nature of assistance to be provided and the specific basis for the selection of the person to the PO/RR.

C. When applicable, the Tribe shall provide the appropriate funding agency a copy of the disclosure before the assistance is provided to the person.

## **Section 6-203. Disclosure**

Tribal Council Member, employee or agent of the Tribe or Enterprise shall disclose any actual or reasonably foreseeable conflict of interest under Section 6-201 under this Chapter to the PO/RR as soon as facts creating the conflict become known to him/her, whether that conflict of interest involves themselves or another. This disclosure shall be as follows:

1. in writing;
2. stating the actual or foreseeable conflict(s); and
3. signed by the person who completes it.

## **Section 6-203. Resolution**

A. All conflict resolution recommendations shall be made in writing and shall state the reasons therefore.

B. A conflict can be resolved through the following actions:

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1. Competitive bidding process; and
2. Award of contracts is based on clear and specific quantitative and/or qualitative terms.

C. A noncompetitive award (single source contract) must meet one of the following requirements:

1. The item is available only from a single source;
2. An exigency or emergency that will not permit a delay resulting;
3. The awarding agency authorizes noncompetitive proposals; or
4. After solicitation of a number of sources, competition is determined inadequate;

E. When a Tribal Council Member, employee or agent of Tribe or Enterprise is part of the selection or awarding process, that person shall recuse himself/herself from the awarding process.

## **Section 6-203. Resolution; Finality**

All conflict resolution recommendations or decisions by the PO/RR or the Tribal Council are final.

## **CHAPTER 3. OTHER DISALLOWABLE ACTIONS**

### **Section 6-301. Gratuities, Kickbacks, And Use Of Confidential Information**

Tribal officers, employees or agents shall not solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, lessees or parties to subcontracts, and shall not knowingly use confidential information for actual personal gain.

### **Section 6-302. Gifts**

An officer, employee, or agent may accept a gift only if it is:

1. not from a contractor or subcontractor; and
2. of nominal value that is not worth more than \$20 per occurrence and not more than \$50 from a single source per year; and

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3. acceptance will not result in an actual or reasonably foreseeable conflict of interest.

## **Section 6-303. Prohibition Against Commission, Brokerage & Contingent Fees**

No one shall retain a person to solicit or secure a Tribal or Enterprise contract for a commission, percentage, brokerage, or contingent fee unless it is the usual practice in the area to utilize a broker such as real estate transactions or financial investments and the like.

## **CHAPTER 4. DISCIPLINARY ACTIONS**

### **Section 6-401. Reprimand of Tribal Council Members**

Proper procedural sequence for reprimanding a Tribal Council Member that fails to adhere to the provisions under Chapter 2 of this Article shall be:

1. First occurrence will be a written warning from the Tribal Council.
2. Second occurrence will be a written warning from the Tribal Council.
3. Third occurrence will result in a written notice of referral for criminal charges for Abuse of Office under Section 334 of Article III under the Law and Order Code to CRIT law enforcement.

### **Section 6-402. Reprimand of Tribal and Enterprise Employees**

Proper procedural sequence for reprimand of a Tribal employee or agent that fails to adhere to the provisions under Chapter 2 of this Article shall be:

1. First occurrence will be provided a written warning issued by the PO/RR. In the case of the PO/RR, the Tribal Council shall give the written warning.
2. Second occurrence will result in a ten (10) day suspension without pay provided by written notice by the PO/RR. In the case of the PO/RR, the Tribal Council will make this determination.
3. Third occurrence shall be provided in writing and will result in discharge of employment. In the case of the PO/RR, the Tribal Council will make the determination.

### **Section 6-403. Reprimand of Contractors**

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Proper procedural sequence for reprimand of contractors that fails to adhere to the provisions under Chapter 2 of this Article shall be:

1. First occurrence will result in a written warning by the PO/RR.
2. Second occurrence shall constitute a violation of the contract and said contract shall be terminated. Contractor or agent will be suspended, debarred or determined ineligible to do business with the Tribe, in accordance with Tribal law or Federal or State financing agency regulations regarding future contracts.

## **Section 6-404. Written Notice**

A copy of the written letter to warn, suspend or terminate will be given to the person or entity that is being reprimanded. Another copy shall be given to the Human Resources Director for record keeping and to the Tribal Council for information.

## **Section 6-405. Time Limit and Record Keeping**

A. Investigation by the PO/RR or the Tribal Council shall commence within two (2) business days from the date when the facts of a conflict violation become known to them. Investigations shall be completed and a written decision issued within seven (7) business days from the commencement date.

B. Disciplinary action records of Tribal government or Enterprise employees, agents and contractors shall be kept for a period of four (4) years from the date of the first written warning. Disciplinary action records of Tribal Council Members shall be kept for the entire office term. Tribal Council Members', employees', agents' and contractors' files shall reset after the specified period under this Section.

## **CHAPTER 5. METHOD OF AWARENESS**

All Tribal Council Members, employees, agents or contractors will be provided a copy of this Code of Conduct Policy and will be required to sign a statement that they have read the Code of Conduct Policy and understand its provisions. The Tribe will reiterate the provisions of the Code of Conduct Policy to all officers, employees, and agents on an annual basis.