

Ordinance 17-98

An ordinance establishing procurement requirements for the Mille Lacs Band of Ojibwe.

The District _II_ Representative introduced the following bill on the 21st day of January 1998.

Preamble

It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of establishing a body of law governing purchases by the Mille Lacs Band of Ojibwe. The Band Assembly determines that it is in the Band's best interest to provide protections and safeguards for Band assets by enacting effective and efficient purchasing processes. This act repeals and replaces Title 7 of the Mille Lacs Band Statutes Annotated in its entirety.

Section 1. Purchasing

- (a) All public service contracts awarded by the Band or any political subdivision and that is performed within the territorial jurisdiction of the Band shall only be awarded to businesses licensed under the laws of the Mille Lacs Band.
- (b) In order to protect the economic security of the Band and its political subdivisions, contracts may only be awarded to businesses organized pursuant to the laws of the Mille Lacs Band, the laws of a state of the United States or the laws of a federally recognized Indian tribe.
- (c) Authority to initiate a purchase or contract action on behalf of the Mille Lacs Band or any of its political subdivisions is hereby delegated by the Band Assembly.
- (d) The Corporate Commission of the Mille Lacs Band is expressly exempt from all provisions of this Act.

Section 2. Reservation of Right of Amendment.

The Band Assembly hereby fully reserves the right to alter, amend or repeal the several provisions of this title, and all rights and privileges granted or extended hereunder shall be subject to such reserved right.

Section 3. Procurement Procedures and Standards.

- (a) The Mille Lacs Band and its political subdivisions will use its own procurement procedures which reflect applicable law and regulations, provided that procurements for Federal and state assistance programs conform to the standards of applicable law.
- (b) The Mille Lacs Band hereby establishes standards and guidelines for procuring supplies, equipment, construction and services, complying with the provisions of all applicable law.

Section 4. Standards of Conduct.

- (a) Mille Lacs Band or political subdivision officials and employees who are engaged in procuring goods or services shall not solicit or accept gratuities, favors or anything of monetary value in excess of \$10 from contractors or potential contractors.
- (b) All Mille Lacs Band or political subdivision officials, employees and agents who are involved in purchasing or contracting activities must follow the standards of conduct set forth in applicable Band law and regulations.
- (1) Mille Lacs Band or political subdivision officials, employees and agents will refrain from participating in purchasing or contracting in which a conflict of interest, real or apparent, could be involved. Such a conflict arises when the official, employee or agent has a financial or other interest in a firm being considered for award of a purchase order or contract. A conflict also arises when an immediate family member (mother, father, brother, sister, husband, wife, son or daughter or in-laws) or a business partner or associate of the Band officer, employee or agent has an interest in a firm.
- (2) Any Mille Lacs Band or political subdivision official, employee or agent who has unknowingly obtained a benefit from a purchase order or contract awarded will immediately, upon discovery, report the benefit to his or her immediate supervisor. Failure to report such benefit is a breach of the ethical standards governing the Band procurement activities.
- (3) Officials, employees or agents of the Band or political subdivisions shall not knowingly use confidential information for actual or anticipated personal gain.
- (4) Band or political subdivision officials, employees and agents engaged in procurement activities will at all times act in good faith when dealing with actual or potential contractors.
- (5) Any Band or political subdivision official, employee, or agent who has doubts about the propriety of an action or decision shall refrain from taking such action or making such decision until consulting with a supervisor. When advice of counsel would be helpful and proper, the official, employee or agent should seek it.
- (6) All persons who are employed by or who represent the Band or a political subdivision thereof are responsible for complying with the Band's purchasing and contracting policies and for following all applicable procedures. All such persons will make purchases only through proper procedures and only after obtaining necessary approvals.

Section 5. Open and Free Competition.

All procurement transactions regardless of whether by sealed bids or by negotiation and without regard to dollar amount, shall be conducted in a manner that provides maximum open and free competition consistent with applicable provisions of this Act. Procurement procedures shall not be used to restrict or eliminate competition.

Section 6. Solicitation of Offers.

The Mille Lacs Band's written selection procedures shall provide the following procedural requirements. Solicitation of offers, whether by competitive sealed bids or competitive negotiations shall include:

- (a) Incorporation of a clear and accurate description of the technical requirements for the material, product or service to be procured. Such description shall not, in competitive procurements, contain features unduly restricting competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards which it must conform to. Detailed product specification should be avoided when possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name" or equal description may be used as a means to define the performance or other salient requirement. The specific features of the name brand which must be met by a vendor shall be clearly stated.
- (b) Clearly set forth all requirements which vendors must fulfill and all other factors to be used in evaluating bids or proposals.

Section 7. Contracting With Small and Minority Firms, Women's Business Enterprises.

Best efforts will be made to use small business and minority owned business for supplies and services. This provision shall apply only after Indian preference requirements have been met, and which are not inconsistent with other provisions of this Act.

Section 8. Contract Pricing.

The Mille Lacs Band and its political subdivisions shall perform some form of cost or price analysis in connection with every procurement action including contract modification. Costs or prices based on estimated costs for contracts under grants shall be allowed only to the extent that costs for incurred or cost estimates included in negotiated price are consistent with federal grant purchasing principals.

Section 9 Requisition

- (a) The basic purpose of the purchasing and contracting process is to support Mille Lacs Band or political subdivision program activities by obtaining the items and services needed. A requisition is the internal document that conveys the program activity's request for supplies, equipment or services. It officially initiates a particular purchasing or contracting action. No purchase or contract action may be initiated without a requisition.
- (b) Preparation of a requisition is the responsibility of Mille Lacs Band program personnel. Those personnel must ensure that the requisitions submitted provide a clear, accurate and complete description of program requirements. Additionally, they must ensure, prior to submitting a requisition that purchases of items or services are authorized by the program budget and that all necessary approvals have been obtained.

Section 10. Small Purchase Procedures.

- (a) Small purchase procedures are those relatively simple and informal procurement methods that are sound and appropriate for the procurement of services, supplies or other property, costing in the aggregate not more than \$25,000.

- (b) Competition will be obtained whenever the price of an item is estimated to exceed \$2000. Price or rate quotations shall be obtained from at least three (3) qualified sources if available.
- (c) A purchase order is issued under small purchase procedures by a document conveying the Mille Lacs Band's or political subdivision's offer to buy. If a seller then accepts the offer, the Purchase Order becomes a binding agreement having the same force and effect as a contract. The following provisions must be stated on the back or attached to the copy of the purchase order:
 - (1) Change Clause: Reserves for the Mille Lacs Band of Ojibwe or political subdivision the right to change a purchase order within reason.
 - (2) Termination for Convenience: The Mille Lacs Band may terminate an order at any time prior to delivery of the requested product or service if such action would be in the best interest of the Band.
 - (3) Termination For Default: The Mille Lacs Band may, in addition to any other remedy it may have, terminate an order for default, if the supplies or equipment delivered are not received on the due date(s) or are defective.
 - (4) The Contractor shall provide any commercial warranty normally offered to the public. The Band shall not accept delivery of supplies and equipment "as is" unless previously agreed to in writing.
 - (5) Audit: To the extent permitted by applicable law, the contractor agrees that the Comptroller General of the United States and other government representatives or appropriate Band officials may examine those records related to the equipment or supplies purchased.
 - (6) Discounts: All discounts from vendors must be listed by vendors on the invoice and credited to the procuring department.
- (d) Approval and signatures required on all purchase orders:
 - (1) \$.01- \$1999.99 – Purchasing Clerk
 - (2) \$2000-\$9999.99 Purchasing Clerk and Finance Officer.
 - (3) \$10,000-\$25,000.00 Commissioner of Finance.
 - (4) \$25,000.01 and above Chief Executive and Secretary-Treasurer
- (e) A change in a Purchase Order of up to 5% may be made by a commissioner or branch leader provided sufficient funds are available for purchases made pursuant to this section.
- (f) A purchase order shall not be created if there are insufficient funds in a budget line-item except in the case of a public emergency as determined by the Chief Executive and the Secretary-Treasurer.

Section 11 Competitive Sealed Bids; Formal Advertising.

- (a) Formal advertising with an adequate purchase description, sealed bids and public openings shall be the required method of procurement unless negotiated procurement pursuant to 7 MLBSA § 14 is necessary to accomplish sound procurement. However, procurement of \$25,000 or less need not be so advertised. Where such advertised bids are obtained the awards shall be made to the

responsible bidder whose bid is responsive to the invitation and is most advantageous to the Mille Lacs Band price and other factors considered. Any and all bids may be rejected when it is in the Mille Lacs Band's best interest to do so.

(b) "Formal Advertising" shall mean placing notice in a conspicuous public place in all districts for a period of at least fourteen (14) days.

Section 12. Competitive Sealed Bids; Generally.

(a) In competitive sealed bids (formal advertising), sealed bids are publicly solicited and a firm-fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price and best meets the Band's needs.

(b) In order for formal advertising to be feasible, appropriate conditions must be present, including, at a minimum, the following:

(1) A complete and accurate list of specifications or a thorough purchase description.

(2) Two or more responsible suppliers are willing and able to compete effectively for the business.

(3) The procurement lends itself to a firm-fixed price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.

(c) If formal advertising is used for procurement the following requirements shall apply:

(1) A sufficient time prior to the date set for opening of the bids. Bids shall be solicited from an adequate number of known suppliers. In addition, the invitation shall be publicly advertised.

(2) The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation.

(3) All bids shall be opened publicly at the time and place stated in the invitation for bids.

(4) A firm-fixed price contract shall be awarded by written notice to the responsible bidder. Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine low bids when prior experience of the contractor indicates that such discounts are available.

(5) Any or all bids may be rejected when there are sound documented business reasons and it is in the best interest of the Band to do so.

Section 13. Negotiated Procurement.

(a) Procurement may be negotiated if it is impractical and unfeasible to use formal advertising procurements and if one of the following situations exist:

- (1) Public exigency will not permit the delay incident to advertising; or
 - (2) The contract is for personal or professional services or for any services rendered by a university, college or other educational institution; or
 - (3) No acceptable bids have been received after formal advertising; or
 - (4) The purchase is for highly perishable goods or medical supplies, for materials or services where the prices are established by law; for technical items or equipment requiring standardization or interchangeability of parts with existing equipment; for experimental developments or research work; for supplies purchased for authorized resale; and for technical or specialized supplies requiring substantial initial investment; or
 - (5) Otherwise authorized by Band statute.
- (b) Notwithstanding the existence of circumstances justifying negotiations, competition shall be obtained to the maximum extent practicable.

Section 14. Competitive Negotiation.

- (a) In competitive negotiation, proposals are requested from at least three (3) sources and the request for proposals is publicized, submitting offers, and either a fixed-price or cost reimbursable type contract is awarded, as appropriate.
- (b) If competitive negotiation is used for a procurement the following requirements shall apply:
 - (1) Proposals shall be solicited from at least three (3) sources to permit reasonable competition consistent with the nature and requirements of the procurement. The request for proposal shall be publicized and reasonable request by other sources to complete shall be honored to the maximum extent practicable.
 - (2) The request for proposal shall identify all significant evaluation factors, including price or cost where required and their relative importance.
 - (3) The Band shall provide a mechanism for technical evaluation of the proposals received, determining responsible vendors for the purpose of written or oral discussion, and selection for a contract award.
 - (4) Awards may be made to a responsible contractor whose proposal will be most advantageous to the Mille Lacs Band, price and other factors considered. Unsuccessful offerors shall be notified promptly.
 - (5) The Mille Lacs Band may utilize competitive negotiation procedures for procurement of professional services, whereby competitors are selected, subject to negotiation of fair and reasonable compensation.

Section 15. Responsible Contractors.

Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity,

record of past performance, financial and technical resources or accessibility to other necessary resources.

Section 16. Procurement Records.

- (a) The Mille Lacs Band will maintain records in sufficient detail to track the significant history of all procurements over \$2000. The records shall include, but are not limited to information pertinent to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection and the basis for the price.
- (b) Procurement records or files for negotiated purchases over \$25,000 will provide justification for use of negotiations in lieu of advertising, contractor selection and the basis for the price.

Section 17. Bonding.

In all contracts for construction or facility improvements awarded for \$50,000 or more the Mille Lacs Band will observe industry standards for bonding requirements

Section 18. Environmental Standards.

Contracts in excess of \$10,000.00 shall contain a provision which requires the recipient of the contract to agree to comply with all applicable standards, orders, or regulations issued regarding Environmental Protections and as amended. Violations shall be reported to the Bureau of Indian Affairs and the Regional Office of the Environmental Protection Agency or other appropriate agencies.

Section 19. Contract Provisions.

In addition to provisions defining a sound and complete procurement contract, the Mille Lacs Band, will include the following contract provisions or conditions in all procurement contracts and subcontracts.

- (a) Contracts other than small purchases shall contain provisions or conditions which allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
- (b) All contracts in excess of \$10,000.00 shall contain suitable provisions for termination by the Mille Lacs Band and the basis for any settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
- (c) All contracts and sub-contracts for construction or facility repair shall include a provision for compliance with the Copeland "Anti-Kickback Act" (18 USC 874) and as supplemented in the Department of Labor regulations. This Act provides that each contractor or sub-contractor shall be prohibited from including, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The Mille Lacs Band will prosecute or report all suspected or reported violations to appropriate law enforcement officials.

- (d) When required by Federal Grant Program law or Band statute, all construction contracts in excess of \$5000 awarded by the Mille Lacs Band or any of its political subdivisions shall include a provision for compliance with the Davis-Bacon Act (40 USC 276a to 276a-7 and as amended) and as supplemented by the Department of Labor regulations. Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. The Mille Lacs Band shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination.
- (e) When applicable, all contracts awarded by the Mille Lacs Band and sub-contracts in excess of \$5000 for construction which involve the employment of laborers shall include a provision for compliance with the Contract Work Hours and Safety Standards Act (40 USC 327 to 330) and as supplemented by the Department of Labor regulations. Each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of eight (8) hours and a standard work week of forty (40) hours. Work in excess of the standard work day or work week is permissible provided that the worker is compensated at a rate of no less than one and one half (1 1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours in any calendar day or forty (40) hours in the work week. The Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to health and safety as determined under construction, safety and health standards promulgated by the Secretary of Labor. 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 information.
- (f) The contract shall include notice of requirements and regulations pertaining to reporting and patent rights under any contract involving research, developmental, experimental or demonstration work with respect to any discovery or invention which arises or is developed in the course of or under such contract and of requirements and regulations pertaining to copyrights and rights in data.
- (g) All negotiated contracts, except those awarded by small purchase procedures, awarded by the Mille Lacs Band shall include a provision that the Mille Lacs Band, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Contractor which are directly pertinent to that specific contract, for the purpose of making audits, examination, excerpts and transcriptions. The Mille Lacs Band shall require contractors to maintain all required records for three years after the Mille Lacs Band makes final payments and all other pending matters are closed.
- (h) Contracts and subcontracts in excess of \$100,000.00 shall contain a provision which requires compliance with all applicable standards, orders or requirements issued under the Clean Air Act (42 USC 1857(h) and as amended, the Clean Water Act (33 USC 1368) and as amended, Executive Order 11738, and Environmental Protection Agency regulations which prohibit the use under non-exempt Federal Contracts, grants or loans of facilities included on the EPA list of Violating Facilities. The provision shall require reporting of violations to the grantor agency.
- (i) Contracts shall recognize mandatory standards and policies relating to energy efficiency requirements issued in compliance with the Energy Policy and Conservation Act (42 USC § 6321).

- (j) Contracts and subcontracts awarded by the Mille Lacs Band of Ojibwe shall contain a section that prohibits the assignment of any rights or interests or obligations under the contract without the written approval of the contracting Officer.

Section 20 General Services Administration Supply Sources.

When the Mille Lacs Band is performing services under cost reimbursement contracts the Band shall be entitled to use the General Services Administration Supply sources to the extent allowable by law.

Section 21. Indian Preference

- (a) A contractor awarded a public service contract shall give preferential employment under the contract, including subcontracts thereunder, to qualified Indians and to the extent feasible and consistent with the efficient performance of the contract, provide employment and training opportunities to Indians regardless of age, religion or sex that are not fully qualified to perform under the contract. The contractor shall comply with all Indian preference requirements established by the Mille Lacs Band under the contract to the extent that such requirements are not inconsistent with the purpose and intent of this Act.
- (b) If a contractor or any of its subcontractors are unable to fill employment openings after giving full consideration to Indians as required in subsection (a), these employment openings may then be filled by other persons under the conditions set forth in the Equal Employment Opportunity clause of the contract. The contractor agrees to include this clause or one similar thereto in all subcontracts issued under the contract.
- (c) Indian Preference shall mean awarding a contract or a subcontract with a priority first given to qualified Mille Lacs Band Members. The second priority shall be given to qualified spouses of Band members. The third priority shall be given to qualified members of other federally recognized Indian tribes.
- (d) Indian Preference shall also mean that contracts bid by Band member contractors that are within 10% of the lowest competitive bid shall be given the opportunity to negotiate an acceptable bid.

Section 22. Equal Opportunity

During the performance of a contract and after complying with the Indian Employment Preference clause of the contract the contractor agrees as follows:

- (a) The contractor will not discriminate against any employee or applicant for employment because of race, age, religion or sex. The contractor will take affirmative action that applicants are employed and that employees are treated during employment without regard to their race, age, religion or sex. Such action shall include, but not be limited to the following: Employment upgrading; demotion or transfer; layoff or termination; rates of pay or other forms of competition, including apprenticeship.
- (b) The contractor will, in all solicitation or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, age, religion or sex.

- (c) The contractor will include provisions of these sections in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Mille Lacs Band may direct to enforce such provisions, including sanctions for non-compliance. However, if the contractor becomes involved in or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the Mille Lacs Band to enter such litigation to protect the interest of the Mille Lacs Band.

Section 23. Use of Indian Businesses.

- (a) As used in this section, the term “Indian Businesses” means Indian organizations or an Indian owned economic enterprise as defined in the code of Federal Regulations or the laws of the Mille Lacs Band.
- (b) The Mille Lacs Band and its political subdivisions shall give preference in awarding contracts and subcontracts to “Indian Businesses”.
- (c) The contractor agrees to give preference to qualified Indian businesses in the awarding of any subcontracts entered into under the contract consistent with the efficient performance of the contract. The contractor shall comply with any preference requirements regarding Indian businesses established by the Mille Lacs Band receiving services under the contract to the extent that such requirements are not inconsistent with the purpose and intent of this Act.
- (d) If no Indian businesses are available under the conditions in subsection (c) above, the contractor agrees to accomplish the maximum amount of subcontracting, as the contractor determines is consistent with efficient performance of the contract, with small business concerns or minority business. The contractor is not, however, required to establish a small business, labor surplus or minority business subcontracting program

Section 24. Buy Indian Provisions.

The Mille Lacs Band of Ojibwe, and political subdivisions, as well as all contractors and subcontractors who conduct business on lands under the jurisdiction of the Mille Lacs Band of Ojibwe pursuant to a contract or subcontract with the Band or political subdivision thereof shall comply with the provisions of the Buy Indian Act (25 USC 47) and regulations promulgated thereunder.

Section 25. Subcontracting.

- (a) Any contract proposal or plan of operations submitted by a tribal organization which proposes to do a portion of the work by subcontract shall identify the purpose and scope of the proposed subcontract, the manner in which the subcontractor will be selected, and the estimated cost of the subcontract.
- (b) Preference shall be given to qualified Indian businesses in awarding subcontracts, and the contractor shall comply with any preference requirements established by the Mille Lacs Band receiving services under the contract.
- (c) If no Indian businesses are available under the conditions in the above section, the contractor shall accomplish the maximum amount of subcontracting, as is

consistent with efficient performance of the contract, with small business concerns labor surplus area concerns and minority business enterprise.

- (d) Subcontract opportunities shall be advertised or negotiated in a manner which provides free and open competition to the extent provided for by law. Subcontracts shall be awarded in accordance with sound business practices and the preferential requirements in this act.

Section 26. Contract Administration.

- (a) A system for contract administration will be maintained to assure contractor conformance with terms, conditions and specifications of the contracts or orders and to assure adequate and timely follow-up of all purchases.
- (b) All contracts for services and materials shall be reviewed and approved in the following manner:
 - (1) The Office of Management and Budget shall review all contracts for budgetary and payment term consideration.
 - (3) The Solicitor General shall review all contracts over \$5000.
 - (4) Administrative Policy Board approval is required for all executive branch contracts over \$5000.
 - (5) Band Assembly ratification shall be required for all contracts in excess of \$25,000.

Section 27. Work Statements.

Work statements must satisfy clarity, precision, and completeness. The following requirements will be included in the work statements:

- (a) Objectives: to precisely identify desired end objectives of the project and associated requirements.
- (b) Context for project: list background information that will aid in understanding the nature and origin of the program. Include a brief summary of objectives, program authority, major programs and goals set by statute if relevant. Describe the relationship of the effort to other programs and goals.
- (c) Acceptance: identify milestones or management control points in the sequence of tasks where progress review, approvals, acceptances or rejections are to occur. Establish relevant and well-defined baselines for performance measurement. These baselines will serve at least four purposes including:
 - (1) Prevention of a contractor from drifting into areas not pertinent to the effort;
 - (2) Measure the results of completed work;
 - (3) Assist in defining whether or not subsequent changes or redirection of effort falls within the original scope of work;
 - (4) Assist the program official and the contracting officer in monitoring the progress of the work. Monitoring is particularly important for phase-type

contracts where it is necessary to detect unsatisfactory performance early. It will allow a Project Officer to inform procurement personnel of unpromising contractor actions that should be dealt with promptly before their effect compromises the entire contract effort.

- (d) Responsibility: identify all Mille Lacs Band or political subdivision and Contractor participation or cooperation that is needed for the success of the project, as well as the nature and extent of all task responsibilities. All tasks requiring Mille Lacs Band support (e.g., Band-furnished equipment, facilities, materials and extra laboratory government assistance) should be stated specifically. The nature and requirements of Band support to be provided also should be presented specifically.
- (e) Schedule: generate a schedule for the sequence of tasks to be performed by a contractor and a similar schedule for related responsibilities of the Mille Lacs Band.
- (f) Delivery: identify delivery requirements precisely and schedule a delivery date for each. Include details about the type and quantity of all deliverables. (State precisely what a contractor is to deliver at specified times as the work progresses and on completion of the next contract performance.)

Section 28. Changes

- (a) The Band's Contracting Officer may at any time, by written order, make changes within the general scope of the contract to any one or more of the following:
 - (1) drawings, designs or specifications when the supplies to be furnished are to be specially manufactured for the Band in accordance with drawings, designs or specifications; or
 - (2) method of shipment or packing; or
 - (3) place of delivery; or
 - (4) the scope of the service performed; or
 - (5) a change in the product delivered.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for performance of any part of the work under the contract, the Contract Officer is authorized to make an equitable adjustment of up to 5% in the contract price (provided sufficient funds are available), the delivery schedule, or both. Modifications of a contract in excess of five percent (5%) of the contract price must be approved by the Band Assembly for contracts over \$100,000. Failure of the parties to agree to any such adjustment shall be a dispute under the Disputes Clause. However, nothing in either this clause or the Disputes clause shall excuse the contractor from proceeding on the contract as changed.
- (c) The Contracting Officer shall be the respective Commissioner or leader of a respective branch or political subdivisions.

Section 29. Termination.

- (a) The Band may cancel a contract at any time with or without cause. Termination for convenience should be included in all contracts.

- (b)(1) The Band may terminate an order at any time prior to delivery of the requested product or service if such action would be in the best interest of the Band. If the contractor has begun work under an order, it shall so notify the Band Contracting Officer and submit a proposal for any necessary partial payment, restocking charge or other compensation. The Contracting Officer shall determine what compensation, if any, should be paid. Such determination shall be final unless a claim is made pursuant to the Disputes clause of the contract.
- (2) The Contracting Officer, by written notice may terminate the contract, in whole or in part, when it is in the Band's best interest. If the contract is terminated, the Band shall be responsible only for payment, pursuant to the payment provision of the contract, for services rendered before the effective date of termination.
- (c)(1) The Band or political subdivisions may, in addition to any other remedy available terminate the Contract for default if the supplies or equipment delivered are not received on the due date(s) or are defective. Upon termination, the Band may pursue any remedy it may have under federal, state or Band law, including but not limited to self-help or set off.
- (2)(A) The Band or political subdivisions may, by written notice of default to the Contractor, terminate this contract in whole or in part, when the Contractor fails to:
- (i) deliver the supplies or to perform the services within the time specified in the contract or any agreed upon extension;
 - (ii) make progress, so as to endanger performance of the contract (but see subparagraph (B) below) and;
 - (iii) perform any of the other provisions of the contract (see subparagraph (B) below).
- (B) The Band's or political subdivision's right to terminate a contract under the provision above, may be exercised if the Contractor does not cure such failure within ten (10) business days (or more if authorized in writing by the Contracting Officer) after receipt of a notice from the Contracting Officer specifying the failure.
- (C) If the Band or political subdivision terminates this contract in whole or in part, it may acquire under the terms and the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Band or political subdivision for any excess costs for those supplies or services. However, the Contractor shall continue the provisions of the contract not terminated.
- (D) Except for defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor.
- (E) If the failure to perform is caused by the default of a subcontractor and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess cost for failure to perform, unless the

subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

- (F) The Band or political subdivision shall pay the contract price for completed services performed and accepted. The Band may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Band against loss. Failure to agree on such an amount will be a dispute under the Disputes clause.
 - (G) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Band.
 - (H) The right and remedies of the Band or political subdivision in this clause are in addition to any other rights and remedies provided by the law or under the contract.
- (d) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the Administration Policy Board determines that the Contractor or its representative offered or gave a gratuity (e.g. an entertainment or gift) to an official, agent or employee of the Band, and intended by the gratuity to obtain a contract or favorable treatment under a contract.

Section 30. Warranties.

The contractor shall provide any commercial warranty normally offered to the public. The Band or political subdivisions shall not accept delivery of supplies and equipment "as is" unless the Contracting Officer has previously agreed in writing to such terms.

Section 31. Audit.

To the extent required by law, the contractor agrees that the Commissioner of Finance of the Mille Lacs Band and other Band Officials may examine those records related to the equipment or supplies purchased.

Section 32. Covenant Against Contingent Fees.

The Contractor warrants that no person or selling agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except a bona fide employee or bona fide established selling agent maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Band shall have the right to annul the contract without liability or in its discretion to deduct from the contract price, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

Section 33. Notice.

Notices to either party shall be given by addressing the communications to the address set forth in this agreement or such other address as shall be later given in writing, and depositing the same in the United States mail, postage prepaid.

Section 34. Mille Lacs Band Responsibilities.

The Mille Lacs Band or political subdivisions will be responsible, in accordance with good administrative practice and sound business judgement, for the settlement of all contractual and administrative issues arising out of procurement. These include but are not limited to source evaluation, protest, disputes and claims. Violation of law shall be referred to the appropriate Band, state or federal officials.

Section 35. Disputes.

Any claim by the contractor shall be submitted in writing to the Band's Contracting Officer for a written decision. A claim by the Band or political subdivision against the Contractor shall be subject to a written decision by the Contracting Officer. "Claim" as used in this section, means a written decision 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 the contract terms, or other relief arising under or relating to the contract. A voucher, invoice or other routine request for payment that is not in dispute when submitted is not a claim. It may be converted to a claim, by complying with the submission requirements of this section, if it is disputed either as to liability or amount or is not acted upon in a reasonable time. The Contracting Officer's decision shall be final unless the Contractor appeals the matter to the Administration Policy Board whose decision will be final unless the Contractor files suit. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal or action under the contract, and comply with any decision of the Contracting Officer or the Band's Administration Policy Board.

Section 36. Jurisdiction.


The Court of Central Jurisdiction is hereby granted subject matter jurisdiction for any cause of action which arises from this title or the application thereof. Nothing in this title shall be construed as a waiver of sovereign immunity of the Mille Lacs Band of Ojibwe in any court of competent jurisdiction.

Section 37. Construction and severability.

The provisions of this title shall be liberally construed so as to effectuate the purposes thereof. The provisions of this title shall be several and if any phrase, clause, sentence, or provision is held invalid by a court of competent jurisdiction, the validity of the remainder of this title and the applicability thereof shall not be affected thereby.

Ordinance 17-98

Introduced to the Band Assembly on this
Twenty-first day of January in the year one
Thousand nine hundred ninety eight.
Passed by the Band Assembly on this
Twenty-first day of January in the year
One thousand nine hundred ninety eight.



David Matrious, Speaker of the Assembly

APPROVED

Date: _____

Marge Anderson, Chief Executive

VETO

Date: _____

~~FILED~~

Date: 2/10/98



James Genia, Solicitor General

OFFICIAL SEAL OF THE BAND

BILL BECAME LAW WITHOUT
SIGNATURE OF CHIEF EXECUTIVE
AT 12:01 AM ON 1/31/98. SEE
SIGN-OFF FORM.