

APPENDIX D

Tribal Employee Rights Compliance

**PUYALLUP TRIBE OF INDIANS
TRIBAL EMPLOYMENT RIGHTS OFFICE**

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PART A

CONTACT INFORMATION



Tribal Employment Rights Office

1423 E 29th St Tacoma, WA 98404

TERO Mission Statement

TERO protects tribal sovereignty by supporting Tribal Member self sufficiency through enforcing Indian Preference requirements in Employment, Training, and Contracting Opportunities.

TERO Contact Information

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Cell: (253) 778-5014

Email: Derek.R.Black2@PuyallupTribe-nsn.gov

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Penny Fryberg, Compliance Officer

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Cell: (253) 778-0203

Email: Derek.Youckton@PuyallupTribe-nsn.gov

PART B

QUICK REFERENCE GUIDE



TERO Compliance Quick Reference Guide



| | |
|--|--|
| Step 1: TERO Orientation Compliance Agreement | <p>All projects over \$20,000.00 or more it is required that all contractors and subs attend a mandatory TERO Orientation and sign a Compliance Agreement with the TERO Program.</p> <p style="text-align: center;">Contact TERO Program (253) 573-7846 Main Line (253) 680-5997 Fax TERO@puyalluptribe-nsn.gov email</p> <p>Note:</p> <ol style="list-style-type: none">1. Any contractors/sub-contractors failing to attend the mandatory TERO orientation or fail to submit an acceptable compliance plan may be denied the right to commence or continue business within the jurisdiction of the Puyallup Tribe of Indians.2. Contractor's responsibility to provide a copy of the approved TERO Compliance Agreement prior to mobilizing on site. <p>Reference:</p> <ul style="list-style-type: none">• Questions and Answers/What is TERO?• Compliance Plan Required Information Sheet (<i>completed by the contractor</i>)• Tribal Employment Rights Ordinance/Contractor's Compliance Agreement (<i>completed by TERO for signatures</i>) <p>*Contracts \$20,000.00 or less must have required work permits. Reference Step 4 of this guide.</p> |
| Step 2: Key Personnel | <p>Key Personnel: (25% Key Personnel Allowance)</p> <ul style="list-style-type: none">• All Key Personnel must be approved by TERO Program <p>Key Personnel Rule:</p> <ul style="list-style-type: none">• Examples: Owner, Supervisor, Superintendent, Foreman, Project Manager, Project Engineer, and Safety• Holds top supervisory position• Is or has been on the employer's annual payroll for 1 year or more• Work permits required for all approved key personnel |



TERO Compliance Quick Reference Guide



| | |
|--|--|
| | <ul style="list-style-type: none">Key Personnel with Tribal Affiliation complete TERO's Application for Employment <p>Note: All key personnel positions must be approved in advance by the TERO Program.</p> <p>Reference:</p> <ul style="list-style-type: none">TERO Application for EmploymentSample Work Permit |
| Step 3: Non-Key Personnel | <p>Non-Key Personnel: (75% TERO Hiring Rate)</p> <ul style="list-style-type: none">All Non-Key Personnel must be approved by TERO Program <p>Non Key-Personnel Rule</p> <ul style="list-style-type: none">Non-Key Personnel applies to all Trade PersonnelAll current Non-Key personnel complete TERO Application for EmploymentOpen positions- complete Contractor Employee Request FormWork Permits are issued for all non-tribal approved non-key personnelAll Puyallup Tribal Members and members' affiliated with other Tribes will be dispatched with and Introduction Card. It is the Employers responsibility to ensure information on card is correct including wage rate. <p>Contact Assigned TERO Compliance Officer <i>*Allow 48 hours for requests*</i></p> <p>Note: The employer agrees not to terminate any TERO client until the TERO Office has been notified and given opportunity to provide counseling.</p> <p>Contact TERO Office (253) 573-7846 Main (253) 680-5997 Fax TERO@puyalluptribe-nsn.gov Email</p> |
| Step 4: Contracts for Suppliers | <p>Contracts for Suppliers</p> <ul style="list-style-type: none">Complete Compliance Plan Required Information Sheet |



TERO Compliance Quick Reference Guide



| | |
|--|---|
| | <ul style="list-style-type: none">• Complete Employee Request Form for all Non-Key Personnel positions• Supply TERO with a list of all Key Personnel employees |
| Step 5: Reports | <p>Monthly Reports:</p> <ul style="list-style-type: none">• Payroll reports are due to TERO Office by the 10th of the following month. <p>Email: TERO.Reports@puyalluptribe-nsn.gov</p> <ul style="list-style-type: none">• Client Evaluation for TERO Client due to the TERO Office by the 10th of the following month. Note: use Client Evaluation as a mentoring tool. |
| Step 6: Notice of Violation | <p>TERO Notice: Subchapter 9 Enforcement, Section 3.24.340 of the Puyallup Tribal Code</p> <p>Contact TERO Director (253) 573-7846 Main (253) 680-5997 Fax TERO@puyalluptribe-nsn.gov Email</p> |
| Step 7: Miscellaneous Documents | <p>Misc. Documents included in Orientation Packet</p> <ul style="list-style-type: none">• TERO Approved Contractor's List• Tribal Labor Agreement• Proposed TERO Wage Scale |

PART C

COMPLIANCE INFORMATION



TRIBAL EMPLOYMENT RIGHTS OFFICE

Compliance Information

The following information is required prior to the actual compliance signing and/or before mobilization on-site. All companies awarded a contract of \$20,000.00 or less, as well as any service, trucking and delivery companies must complete this form. The TERO fee will not be applicable, however Indian Preference in Employment and Contracting does still apply. (Ord: 3.24.030, 3.24.040, 3.24.050, 3.24.060, 3.24.070, 3.24.080, 3.24.090)

PROJECT INFORMATION

| | |
|------------------------|--|
| Project Name | |
| Project Location | |
| Contract Awarded By | |
| Contract Amount | |
| Anticipated Start Date | |
| Duration of Project | |

COMPANY INFORMATION

| | | | |
|--------------------|---------|-------|--|
| Company Name | | | |
| Contact Name | | Title | |
| Phone number | | Email | |
| Address | | | |
| Scope of Work | | | |
| Union: Yes No | Union # | | |

SUBCONTRACTOR INFORMATION

| | |
|--|--|
| Were Indian Preference Contractors provided the opportunity to bid? Yes No | |
| If no, please explain: | |
| Company Name | |
| Scope of Work | |
| Contract Amount | |

| | |
|------------------------|--|
| Company Name | |
| Scope of Work | |
| Contract Amount | |

| | |
|------------------------|--|
| Company Name | |
| Scope of Work | |
| Contract Amount | |

TEAM STRUCTURE

Identify your Key Personnel who will be onsite. A key personnel employee is an Owner, Superintendent, Foreman, Project Manager, Foreman or any individual who holds a top supervisory position within the firm which is vital to operations. Key personnel are subject to final approval by TERO.

| Name | Title / Position | Years of Employment | Tribal Affiliation | Tribe |
|------|------------------|---------------------|--------------------|-------|
| | | | Yes No | |
| | | | Yes No | |
| | | | Yes No | |
| | | | Yes No | |
| | | | Yes No | |
| | | | Yes No | |
| | | | Yes No | |
| | | | Yes No | |

Identify your Non-Key Personnel you are requesting to be onsite. Non-key personnel is an employee that does not have a supervisory role. Non-key personnel are subject to TERO approval.

| Name | Title / Position | Years of Employment | Tribal Affiliation | Tribe |
|------|------------------|---------------------|--------------------|-------|
| | | | Yes No | |
| | | | Yes No | |
| | | | Yes No | |
| | | | Yes No | |
| | | | Yes No | |

| Name | Title / Position | Years of Employment | Tribal Affiliation | Tribe |
|------|------------------|---------------------|--------------------|-------|
| | | | Yes No | |
| | | | Yes No | |
| | | | Yes No | |

Labor Force Request to TERO.

| Position / Title | Length of employment | Date needed | How many positions ? | Certifications required? |
|------------------|----------------------|-------------|----------------------|--------------------------|
| | | | | Yes No |
| | | | | Yes No |
| | | | | Yes No |

Indian Preference Subcontractor Request

| Company Name or Scope(s) of work to be performed | Estimated duration | Union Preferred? |
|--|--------------------|------------------|
| | | Yes No |
| | | Yes No |
| | | Yes No |

3.24.030 Indian preference in employment.

All covered employers, for all employment on Tribal and trust lands within the exterior boundaries of the Puyallup Indian Reservation and on Tribally owned lands outside those boundaries, shall give preference to qualified Indians, with the first preference to local Indians, in all hiring, promotion, training, lay-offs, and all other aspects of employment. Such employers shall comply with the rules, regulations, guidelines and orders of the Puyallup Tribal Employment Rights Commission which sets forth the specific obligations of employers in regard to Indian preference and local Indian preference. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.310]

3.24.040 Application of Indian preference requirements.

These requirements shall not apply to any direct employment by the Puyallup Indian Tribe, the federal, state, or other governments or their subdivisions. It shall apply to all the contractors or grantees of such governments and to all commercial enterprises operated by such governments. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.320]

3.24.050 Indian preference in contracting.

All entities awarding contracts or subcontracts for supplies, services, labor, or materials in the amount of \$20,000 or more where the majority of the work on the contract or subcontract will occur on Tribal and trust lands within the exterior boundaries of the Puyallup Indian Reservation and on Tribally owned lands outside those boundaries shall give preference in contracting and subcontracting to qualified entities that are certified by the Commission as 51 percent or more Indian-owned and controlled, with a first preference to qualified entities that are 51 percent or more owned and controlled by local Indians. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.330]

3.24.060 Application of Indian preference in contracting.

These requirements shall not apply to the award of contracts awarded directly by the Tribal Council of the Puyallup Tribe of Indians, by the federal or state government or their subdivisions. These requirements shall apply to any contract awarded by any commercial enterprise of the Puyallup Tribe of Indians, even if said contracts must be submitted to the Tribal Council of the Puyallup Tribe of Indians for approval. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.340]

3.24.070 Tribal programs or divisions.

Tribal programs or divisions other than commercial enterprises shall not be required to comply with this chapter but shall, when submitting a contract to the Tribal Council for approval, indicate as part of the submission to the Council the steps taken to award the contract to a local Indian contractor. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.350]

3.24.080 Subcontracts included.

This chapter shall apply to all subcontracts awarded by a Tribal, federal, or state direct contractor or grantee, whether or not the prime contract was subject to this chapter. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.360]

3.24.090 All covered entities to comply. All covered entities shall comply with the rules, regulations, guidelines and orders of the Commission which set forth the specific obligations of such entities in regard to Indian preference in contracting and subcontracting. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.370]

**Any questions or concerns may be directed to the TERO Office at (253) 573-7846 or
TERO@puyalluptribe-nsn.gov**

PART D

CONTRACTOR COMPLIANCE AGREEMENTS



PUYALLUP TRIBE OF INDIANS
Tribal Employment Rights Office

TRIBAL EMPLOYMENT RIGHTS ORDINANCE

Notice To Construction Contractors

Notice is hereby given that the Puyallup Tribe of Indians has a Tribal Employment Rights Ordinance in effect covering Indian Preference in Employment, Training, Contracting, Sub- Contracting, Wages, Fees & Taxes. All bidders must contact the Puyallup Tribal Employment Rights Office to obtain all relevant information PRIOR to bidding. All Contractors and Sub-Contractors must attend a mandatory TERO Orientation and sign a Compliance Agreement with the TERO Office, BEFORE commencing any work or mobilizing on site, within the jurisdiction of the Puyallup Tribe of Indians.

Construction Contractors are advised that Section 3.24.220 of the Puyallup Tribe's TERO States:
Every covered employer/entity with a construction contract in the sum of 20,000 or more shall pay a fee of two and a half percent (2.5% of the total amount of the contract). Such fee shall be paid by the employer/entity prior to commencing work within the jurisdiction of the Puyallup Tribe. Where good cause is shown, the Director may authorize payment of the fee in installments over the course of the contract period.

Any Contractors/Subcontractors or Covered Entities failing to contact the TERO office, attend the mandatory TERO Orientation or failure to submit an acceptable Compliance Plan may be denied the right to commence or continue business within the jurisdiction of the Puyallup Tribe of Indians.

Bidders are required to contact the TERO Office for information concerning TERO requirements in the following areas:

-TERO Orientation

-Indian Preference Employment

-Indian Training Opportunities

-Indian Preference in Contracting

-Wages & Pay Rates

-Indian Preference in Sub-Contracting

-TERO Fees & Taxes

If you intend to bid on a project within Puyallup Tribe of Indians jurisdiction, Please contact the TERO Office immediately.

Main Office: (253) 573-7846 Fax: (253) 680-5997 Email: TERO@puyalluptribe-nsn.gov

Note: Section 3.24.060 of the TERO States: These requirements shall not apply to award of contracts awarded directly by the Tribal Council of the Puyallup Tribe, by the federal or state government or their subdivisions. These requirements shall apply to any contract award by any commercial enterprise of the Puyallup Tribe of Indians, even if said contracts must be submitted to the Tribal Council of the Puyallup Tribe of Indians.



Contractor Compliance Agreement

PROJECT NAME: _____ NO. _____

WHEREAS, the Tribal Employment Rights Office (TERO), and _____,
through its representative _____, have entered into an agreement as a result of
_____, being awarded a contract for _____ AND,,

WHEREAS, Employer is hereby notified that no construction activity shall commence within the
Puyallup Tribe of Indians Reservation until a written plan for Contractor Compliance with Tribal Indian
Preference laws has been agreed to.

THEREFORE PARTIES AGREE AS FOLLOWS:

ARTICLE I – CONTRACTOR: _____, hereinafter referred to as the
Employer, agrees to comply with the TERO Ordinance procedures for the selection of its employee(s).

ARTICLE II – EMPLOYMENT PRIORITY: The Employer agrees to utilize the TERO Hiring Hall for
reference of a qualified, available labor force in the hiring of its employee(s).

ARTICLE III – EMPLOYMENT REQUIREMENTS: The Employer agrees to abide by the Hiring Requirements
(Utilization Plan); and that any employee(s) hired must be cleared by TERO in writing, the forms to be
provided by TERO. *Any non-Indian found to be working on the project, who is not cleared by TERO will
be considered to be unlawfully employed and will cause the Employer to be subject to sanction(s) as
provided for in the TERO Ordinance.* Indians referred by TERO will fill all laborer, training and/or
apprentice positions.

TERO reserves the right to negotiate for any positions in addition to those listed in the Utilization Plan,
which are the minimum that must be hired by the Employer. Wages will be paid according to
applicable laws, when due.

Whenever the Employer determines an Indian employee referred by TERO is not performing
adequately, and may be in jeopardy of being terminated, the employer shall notify TERO about the
problem. TERO shall provide job counseling to the employee(s). The Employer agrees not to terminate
any Indian employee until the TERO has been notified and given an opportunity to provide counseling.

Employee Signature and Title

Date

TERO Representative

Date



Indian Preference Agreement

WHEREAS, this agreement is negotiated and entered pursuant to the Puyallup Tribe's Employment Rights Ordinance, (TERO) and

WHEREAS, _____, Company has successfully been awarded a contract for certain construction activities located on the Puyallup Indian Reservation; and

WHEREAS, _____, Company is an Employer (hereinafter "Employer"),

WHEREAS, the mission of TERO is to protect tribal sovereignty by supporting Tribal Member self sufficiency through enforcing Indian Preference requirement in Employment, Training, and Contracting Opportunities; and

WHEREAS, the Director of Tribal Employment Rights Office (hereinafter "Director") has been delegated the authority to negotiate "employment goals and procedure for meeting those goals with employers and labor unions, and to work with employers and unions to ensure that those goals are met"; and

WHEREAS, Employer agrees to fully comply with the Tribal TERO law.

NOW THEREFORE BE IT RESOLVED, the Employer and the Director agree as follows:

1. The tribe has an Indian employment ratio requirement of 25/75 including Core Crew, if there are qualified Indians to fill employment positions.
2. The Director agrees to refer specific Indians to fill each non-core crew position. The Director will first refer qualified Indian applicants and next will refer interested Indian individuals desiring training opportunities. Employer will expeditiously use its hiring procedure to determine whether an individual referred by TERO is eligible to be hired. Employer agrees to require all subcontractors to hire and train Indian individuals on all subcontract work consistent with the tribe's TERO Ordinance.
3. Employer agrees to hire and/or train Indian individuals to work with the core crew on a full time basis during the project period.
4. The project period runs _____ days, starting _____.
5. Employer will provide all information requested by the Director in a timely manner to decide and to verify employment decisions.
6. The Employer is encouraged to work with TERO to develop a training program in addition to 3 above, under 03.24.180 (d) of the Ordinance. This program shall be implemented only if needed as determined by the Director after 50 days of project construction. If it is determined that such a program is needed, the Director and Employer shall negotiate in good faith an appropriate job readiness-training program.

7. The Director shall be in receipt of the following in a timely manner:
- A. All job positions for the project together with job descriptions.
 - B. All employees hired to date shall be reported by name and qualifications, if requested.
 - C. All equipment leased or rented to date and future anticipated leasing or rental should be listed. Said listing shall include the name and address of the company from which the equipment is leased or rented and whether the company is Indian-Owned.
 - D. A copy of all certified weekly payrolls or monthly employee report form submitted to the TERO office each month no later than the 10th day of the following month.
 - E. Employer agrees to pay by _____, the TERO tax to the tribe in the amount of 2.5% of the total contract, to include all change orders.
8. If the Director determines that this Agreement has not been met in good faith, they shall proceed with enforcement of the TERO Ordinance as provided in Subchapter 9 thereof and tribal court may use any and all remedies specified in Subchapter 10 thereof.
9. Employer agrees to use all Indian subcontractors listed in this bid proposal on all work in the dollar amounts listed therein. Employer further agrees to timely pay all Indian and non-Indian employees and subcontractors.

Employee Signature and Title

Date

TERO Representative

Date



Utilization Plan

**Please complete these documents in their entirety. Incomplete Compliance Plans will not be accepted.
Compliance Plans need to be submitted 48 hours minimum prior to your project start date.**

| | |
|---|--|
| Prime/Subcontractor Name | |
| Prime/Subcontractor License# | |
| Orientation Date: | Time: |
| Location: Puyallup Tribe of Indians TERO, Tacoma, 98404 1423 East 29th Street, Tacoma, WA 98404, 2nd floor | TERO Indian Preference Firm (IP Firm): <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Prime Contractor: | Hiring Contractor (if any): |
| Project Name: | Hiring Contractor License #: |

Subcontract Detail

| | |
|--------------------------------------|--|
| Contact Name | |
| Contact Phone | |
| Prime/Subcontractor Address | |
| Current Union Agreements: Local # | |
| Contract Sub-package Name/Identifier | |
| Prime/Subcontract Dollar Amount | |
| Approximate Start Date | |
| Approximate Completion Date | |
| Job Site Location | |
| Job Superintendent | |
| Job Site Phone | |
| Craft Hiring Rep | |
| Project Manager | |
| Shifts | |
| Payday(s) | |
| Date Pay Period Ends | |

| | |
|---|---|
| First Aid Provider Hospital | |
| Worker Parking Provisions | |
| Drinking Water Provided by | <input checked="" type="checkbox"/> General Contractor <input checked="" type="checkbox"/> Subcontractors |
| Sanitation Facilities Provided by | <input type="checkbox"/> General Contractor <input type="checkbox"/> Subcontractors |
| Number of Workers & Crafts Expected | |
| Does your company have state industrial insurance? If no, list the name of your private insurance company? | |
| Have any of the company staff/key personnel attended a TERO cultural sensitivity workshop? | |
| Have you received a copy of the TLA | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Have you reviewed the workforce goals and requirements for the project? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Are you prepared to meet the stated Indian Preference goals? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| If "NO" what is preventing you from meeting the stated goals? | |



Subcontractors Request to TERO

NOTE: Indian Preference subcontract percentage shall be at 100%. (If the TERO Office has qualified Indian Preference Subcontractors, 100% is expected to be hired)

SUBCONTRACTOR:

Company: _____ Type of Work: _____

Total Bid: _____ Project Cost: _____

Company: _____ Type of Work: _____

Total Bid: _____ Project Cost: _____

Company: _____ Type of Work: _____

Total Bid: _____ Project Cost: _____

Company: _____ Type of Work: _____

Total Bid: _____ Project Cost: _____

Total Subcontract Dollars: \$ _____

Total Indian Preference Subcontractor Dollars: \$ _____

Total Indian Preference Subcontractor Percent Dollars: _____

NOTE: All Indian Preference bids will be considered acceptable if the “Qualified Contractor” is within reasonable prototype cost and/or estimate.

The Tribal TERO Office provides and maintains a listing of Indian owned construction and contracting companies.



Labor Force

Indian Preference in Employment is expected to be 100% if the TERO Office has qualified IP Employees.

| Craft | Peak / Average | Date Needed |
|--|----------------|-------------|
| Asbestos Workers | | |
| Boiler Makers | | |
| Brick Layers | | |
| Carpenters | | |
| Cement Masons | | |
| Electrical Workers (Inside Wiremen) | | |
| Electrical Workers (Outside Wiremen) | | |
| Elevator Constructors | | |
| Glaziers | | |
| Insulators | | |
| Iron Workers (Structural/Rebar) | | |
| Iron Workers (Ornamental/Architectural) | | |
| Laborers | | |
| Millwrights | | |
| Operating Engineers | | |
| Painters | | |
| Pile Drivers | | |
| Plumbers & Pipefitters | | |
| Plasterers | | |
| Roofers | | |
| Sheet Metal Workers | | |
| Teamsters | | |
| Other Craft: _____ | | |



Project Staff

| | |
|---------------------------------|--|
| Owner: | |
| Office Contact # | |
| Cell Contact # | |
| Email Address | |
| | |
| Office Contact/Dispatch: | |
| Office Phone | |
| Cell Phone | |
| Email Address | |
| | |
| Project Manager: | |
| Office Phone | |
| Cell Phone | |
| Email Address | |
| | |
| Safety Representative: | |
| Office Phone | |
| Cell Phone | |
| Email Address | |
| | |
| Drug Test Coordinator: | |
| Office Phone | |
| Cell Phone | |
| Email Address | |

At least two (2) active project staff (1 office staff and 1 field Supervisor) are required to attend the mandatory TERO Orientation.

Have either of the above named attended the TERO Orientation within the last two (2) years? Y N

If yes or no, reference the name of attendee and date they have or will be certified:

Office Attendee:

Date:

Field Attendee:

Date:



Key-Personnel Worker List

Contractors without a collective bargaining agreement with Unions signatory to the Puyallup Tribe TLA may employ up to 25% of their own core workers.

A **Key Employee** is an employee that meets all the following (3.24R):

- is and has been on the employers or subcontractors annual payroll for no less than one year, (the fact that an employee has worked for the employer on a previous project shall not qualify that employee as a key personnel employee)
- is an owner of the firm,
- holds a top supervisory position within the firm and is essential to the firms operations, such that the firm would suffer a financial loss if it is not able to employ that person.

Prior to award, the apprant low bidder, and prior to commencing work all subcontractors shall identify their key personnel employees. Such employees may be employed on the project whether or not they are Indian. A **Key Employee** includes a top supervisory employee or an employee who performs a critical function such that an employer would risk likely financial damage or loss if that task were assigned to a person unknown to the employer, and that employee has been on the employers' or contractors annual payroll for a period of 1 (one) year continuously. The contractor or any subcontractors that fill vacant employment positions within its organization immediately prior to undertaking work pursuant to this contract shall set forth evidence acceptable to the TERO office that its actions were not intended to circumvent these requirements.

Key workers and Non-Key workers must place their name with the respective union hall dispatch prior to work.

| Employee Name | Classification List Owner, Supervisor, Superintendent, Foreman, or other Lead title | Years Employed | Has worker been on payroll for a period of 1 year? | Does worker have any tribal affiliation? |
|---------------|--|----------------|---|--|
| | | | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| | | | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| | | | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| | | | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| | | | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> |

Non-Key worker request for clearance. These employees will only be granted clearance if TERO is unable to locate a qualified employee to fill the position.

NON-KEY WORKER LIST:

| Name | Classification | Years Employed | Has worker been on payroll for more than one (1) year? | Does worker have any tribal affiliation? | Name of Tribe |
|------|----------------|----------------|--|--|---------------|
| | Apprentice | | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> | |
| | | | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> | |
| | | | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> | |
| | | | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> | |
| | | | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> | |
| | | | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> | |
| | | | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> | |
| | | | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> | |
| | | | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> | |
| | | | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> | |

All Key and non-key workers with Tribal Affiliation and/or descendency must submit a TERO application and provide Tribal Identification or letter of descendency papers for verification

For additional non-key crew, print additional pages.



Buy Indian Act Policy

Request for Products or Supplies

NOTE: An Indian Preference Policy on all projects will be maintained where applicable.

Contractor [] Subcontractor []

| Product Or Supply | Quantity | Product Or Supply | Quantity |
|-------------------|----------|-------------------|----------|
| 1. | | 6. | |
| 2. | | 7. | |
| 3. | | 8. | |
| 4. | | 9. | |
| 5. | | 10. | |

NOTE: All "Buy Indian Products" will be considered acceptable if the qualified supplier is within the controllable estimate. (The controllable estimate shall be obtained from three (3) random suppliers, and averaged)

TERO provides and maintains listings of Indian Owned suppliers, vendors, manufacturers, repair, and maintenance firms.

Request for Rental Equipment

NOTE: An Indian Preference Policy on all rental equipment will be maintained where applicable.

Contractor [] Subcontractor []

| Type of Equipment | Quantity | Type of Equipment | Quantity |
|-------------------|----------|-------------------|----------|
| 1. | | 6. | |
| 2. | | 7. | |
| 3. | | 8. | |
| 4. | | 9. | |
| 5. | | 10. | |

All Indian Preference rental bids will be considered acceptable if the qualified supplier is within the controllable estimate. (The controllable estimate shall be obtained from three (3) at random rentals and averaged)

TERO provides and maintains a listing of rental equipment available to assist you with completion of your project.

Puyallup Tribe TERO
General/Sub Name: _____



TERO Employment Rights Ordinance

The foregoing Utilization Plan is fully acceptable on behalf of the Tribal Employment Rights Ordinance and TERO Office.

Company Represented

Company Address

Phone Number

Dated this _____

Company Representative Signature

Representative Title

TERO Representative

Puyallup Tribe TERO
General/Sub Name: _____



TERO Employment Rights Fee

Company: _____

Address: _____

Telephone: _____

Puyallup Tribal Employment Rights Ordinance Requires:

3.24.220 (a): Every covered employer or entity attaining a contract of \$20,000.00 or more shall pay a one (1) time Employment Rights Fee of 2.5% of the total amount of the contract award. The fee may be paid in installments over the length of the contract if approved by the TERO Director.

Lump sum payment: [☐]

Conditional progress payment:

Employment Rights Fee Due:

Contract Amount: \$ _____

\$ _____

\$ _____

APPROVED: [☐]

DENIED [☐]

TERO Representative

Company: _____

Signature: _____ Date: _____



Tribal Employment Rights Office

EMPLOYEE REQUEST FORM

A Minimum of 48 Hours is required for TERO to fill any requested position

- All fields must be filled out and form completed in its entirety. An incomplete form will not be accepted.
- Undue hiring criteria listed for a position that would intentionally prevent a TERO Client from being dispatched will not be accepted.

PROJECT INFORMATION

| | |
|-------------------------|--|
| Project Name | |
| Project Location | |
| Company Name | |
| Contact Name | |
| Title | |
| Phone Number | |

EMPLOYEE REQUEST INFORMATION

| | | | |
|---|---|-------------------|---|
| Position Title | | How Many | |
| Position Type | <input type="checkbox"/> Full Time <input type="checkbox"/> Part Time | Pay Rate | |
| Hours Per Week | | Shift(s) | Days Nights Weekends OT |
| Start Date | | Start Time | |
| Level | <input type="checkbox"/> Apprentice/What year? | | Journeyman |
| Union or Non Union | | Union # | |
| Reports to | | Contact | Location |
| If Position is unfillable by TERO, employee who will fill position | | | |

POSITION INFORMATION

General Job Description/ Duties:

| |
|--|
| |
| |
| |

Work Experience Requirements (Please Include Any Licenses, Certifications Etc If Required) :

| |
|--|
| |
| |
| |

Pre-Employment Screening (UA, 19 and W9 etc) :

| |
|--|
| |
| |
| |

TERO Office Use Only

| | | | |
|--------------------|--|---------------------------|--|
| Reviewed By | | Date Hired | |
| Approved by | | If No Hire, Reason | |

TERO@puyalluptribe-nsn.gov
253-573-7846

PART E

TERO WAGE SCALE – 2021



Tribal Employment Rights Office

Client Wages

These wages are base minimum pay for Non-Union Companies.

*Fringe Benefits are not included in these wages.

| COMMERCIAL PROJECT | |
|-------------------------------------|---------|
| TRADE / POSITION | WAGE |
| Asbestos / Abatement | \$32.41 |
| Boiler Maker | \$48.73 |
| Brick / Block Maker | \$36.34 |
| Carpenter | \$35.38 |
| Cement Mason | \$39.14 |
| Drywall Hangers / Tapers | \$39.77 |
| Electrician | \$40.22 |
| Electrician—Outside Lineman | \$46.27 |
| Elevator Mechanic | \$57.35 |
| Fence Erector | \$24.36 |
| Flagger | \$26.70 |
| Glazier | \$41.14 |
| Heat & Frost Insulator | \$39.66 |
| Heating Equipment Mechanic | \$37.09 |
| Heavy Equipment Operator | \$38.93 |
| HOD Carrier / Mason Tender | \$32.20 |
| Insulation Applicator / Installer | \$35.25 |
| Ironworker | \$41.92 |
| Laborer (General Laborer) | \$30.11 |
| Landscaping & Planting | \$16.51 |
| Painter | \$28.32 |
| Pipe Layer | \$33.40 |
| Plasterer | \$35.88 |
| Plumber / Pipe Fitter | \$43.90 |
| Refrigeration & A/C Mechanic | \$52.60 |
| Roofer | \$31.95 |
| Sheet Metal Worker | \$47.47 |
| Soft Floor Layer / Carpet | \$34.10 |
| Sprinkler Fitter (Fire Protection) | \$42.89 |
| Terazzo / Tile Finisher | \$30.26 |
| Tile Setter | \$36.19 |
| Traffic Control Striper | \$37.95 |
| Truck Driver (Dump Truck & Trailer) | \$24.17 |

| RESIDENTIAL PROJECT | |
|------------------------------------|---------|
| TRADE / POSITION | WAGE |
| Asbestos / Abatement | \$24.35 |
| Boiler Maker | \$24.42 |
| Brick Mason | \$28.73 |
| Carpenter | \$28.51 |
| Cement Mason | \$29.12 |
| Drywall Applicator | \$33.94 |
| Drywall Taper | \$39.19 |
| Electrician | \$26.05 |
| Glazier | \$30.81 |
| Heating Equipment Mechanic | \$21.63 |
| Heavy Equipment Operator | \$27.62 |
| HOD Carrier / Mason Tender | \$22.16 |
| Insulation Applicator / Installer | \$21.08 |
| Ironworker | \$26.09 |
| Laborer (General Laborer) | \$20.40 |
| Landscaping & Planting | \$13.88 |
| Painter | \$21.08 |
| Pipe Layer | \$21.77 |
| Plasterer | \$24.27 |
| Plumber / Pipe Fitter | \$27.99 |
| Power Line Tree Trimmer | \$26.14 |
| HEO Underground | \$25.79 |
| Refrigeration & A/C Mechanic | \$45.13 |
| Roofer | \$21.84 |
| Sheet Metal Worker | \$34.37 |
| Soft Floor Layer / Carpet | \$30.82 |
| Sprinkler Fitter (Fire Protection) | \$29.20 |
| Terazzo / Tile Finisher | \$20.34 |
| Tile Setter | \$15.29 |

-Union Member clients will be paid Union Scale Wage.

-Non Union Clients dispatched to a Union Company will receive Union Scale with fringe benefits applied directly to wages.

-Journeylevel Union Clients working for a TLA Signatory Union Company reserve the right to opt out of the Union on projects within the Puyallup Tribe Reservation within two weeks of hire.

PART F

**INDIAN PREFERENCE CONTRACTOR DIRECTORY
&
LABOR AGREEMENT**

PUYALLUP TRIBE OF INDIANS

TRIBAL EMPLOYMENT RIGHTS OFFICE



TERO CERTIFIED

INDIAN PREFERENCE CONTRACTOR

DIRECTORY

1423 East 29th Street - Suite 238 Tacoma Wa 98404 - Office (253) 573-7846 - Fax (253) 680-5997

Notice to all Entities and General Contractors who are awarding/awarded contracts within Puyallup Tribal Reservation jurisdiction. Please reference the Ordinance below regarding Indian Preference in Contracting:

3.24.050 Indian preference in contracting.

All entities awarding contracts or subcontracts for supplies, services, labor, or materials in the amount of \$20,000 or more where the majority of the work on the contract or subcontract will occur on Tribal and trust lands within the exterior boundaries of the Puyallup Indian Reservation and on Tribally owned lands outside those boundaries shall give preference in contracting and subcontracting to qualified entities that are certified by the Commission as 51 percent or more Indian-owned and controlled, with a first preference to qualified entities that are 51 percent or more owned and controlled by local Indians. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.330]

3.24.060 Application of Indian preference in contracting.

These requirements shall not apply to the award of contracts *awarded directly* by the Tribal Council of the Puyallup Tribe of Indians, by the federal or state government or their subdivisions. These requirements shall apply to any contract awarded by any commercial enterprise of the Puyallup Tribe of Indians, even if said contracts must be submitted to the Tribal Council of the Puyallup Tribe of Indians for approval. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.340]

3.24.080 Subcontracts included.

This chapter shall apply to all subcontracts awarded by a Tribal, federal, or state direct contractor or grantee, whether or not the prime contract was subject to this chapter. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.360]

3.24.090 All covered entities to comply.

All covered entities shall comply with the rules, regulations, guidelines and orders of the Commission which set forth the specific obligations of such entities in regard to Indian preference in contracting and subcontracting. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.370]

Puyallup TERO supports all of our Certified Indian Preference Contractors and Companies.

We encourage the support and utilization of these I.P. Firms regardless if a project is subject to TERO jurisdiction or not, be it an on or off reservation project.

Directory of Services

| Category | Page | Category | Page |
|------------------------------------|-------|---------------------------------|------|
| Architecture | 4 | Land Use Planning | 9 |
| Artwork & Designs | 4 | Masonry | 9 |
| Asbestos / Abatement | 4 | Mechanical/Plumbing | 9 |
| Carpentry | 4 | Moving | 9 |
| Carpet | 4 | Painting | 9 |
| Cleaning/Construction Cleanup/ | 4 | Printing | 9 |
| Communications | 4 | Product Supplies | 9 |
| Concrete | 5 | Residential | 10 |
| Consulting | 5 | Roofing | 10 |
| Crane & Rigging | 5 | Saw Cutting | 10 |
| Demolition | 5 | Sheet Metal | 10 |
| Drywall / Sheetrock | 5 | Signs & Graphics | 10 |
| Electrical | 5 & 6 | Site Preparation | 11 |
| Engineering | 6 | Steel/Iron work | 11 |
| Fencing | 6 | Stone & Tile | 11 |
| Finance | 6 | Supply | 11 |
| Fire Protection | 6 & 7 | Surveying | 11 |
| Flooring | 7 | Telecommunications/Technologies | 11 |
| General Contracting & Construction | 7 | Traffic Control | 11 |
| Heavy Civil Construction | 7 & 8 | Trucking & Transport | 12 |
| Heavy Equipment Operation (HEO), | 8 | Utilities | 12 |
| Highway Construction | 8 | Video Production | 12 |
| HVAC | 8 | Welding | 12 |
| Landscape | 8 | | |

Although Companies & Contractors are listed within each known scope, we encourage contacting each company as they may be capable of additional services

Architecture

Artwork & Designs

Speakthunder Galleries

Bus: (541) 325-2671

Email: Speakthunder32@gmail.com

Asbestos/Abatement

Carpentry

Nixon Construction

(425) 418-5995

601 Lakeside Way SW Mattawa WA 99349

Kevin.nixon@nixon-construction.com

Carpet

Great Floors LLC

(253) 474-9034

6818 Tacoma Mall Blvd, Tacoma, WA 98409

<https://www.greatfloors.com/>

Cleaning/Construction Clean Up/Maintenance

Baxters Carpet Cleaning

(360) 266-8109

PO Box 98 Bucoda, Wa 98530

baxterscarpetcleaning@yahoo.com

Omega Services & Supply

(253) 804-6000

3705 West Valley Highway N Auburn, Wa 98001

Omegaservicesandsupply.com

Communications

Roads West Inc Communications

(360) 403-8782

info@roadswestinc.com

PO Box 263 Arlington, Wa 98223

Roadswestinc.com

Omega Services & Supply

(253) 804-6000

3705 West Valley Highway N Auburn, Wa 98001

Omegaservicesandsupply.com

Concrete

Nixon Construction

601 Lakeside Way SW Mattawa WA 99349

(425) 418-5995

Kevin.nixon@nixon-construction.com

Omega Services & Supply

3705 West Valley Highway N Auburn, Wa 98001

(253) 804-6000

Omeegaservicesandsupply.com

Consulting

Process Resolutions Inc

20206 110th Ave Ct E Graham, Wa 98338

(253) 875-3113

Crane & Rigging

Barnhart Crane & Rigging

7625 S 228th St Kent, Wa 98032

(253) 630-6244

BarnhartCrane.com

Industry Erectors

1429 Avenue D #267 Snohomish, Wa 98290

Office: (425) 305-3581 Field: (425) 879-7334

Industryerectors.com

Demolition

Cates & ERB

PO Box 2027 616 S. Ferry St Omak, Wa 98841

(509) 826-4752

catesanderb@ncidata.com

Catesanderb.com

Nixon Construction

601 Lakeside Way SW Mattawa WA 99349

(425) 418-5995

Kevin.nixon@nixon-construction.com

Drywall / Sheetrock

Nixon Construction

601 Lakeside Way SW Mattawa WA 99349

(425) 418-5995

Kevin.nixon@nixon-construction.com

Electrical

Cowlitz Electric Construction

751 Schaffran Rd Castle Rock, Wa 98611

(360) 274-2929

cowlitzelectric@gmail.com

Kodiak Electric

34419 Thomas Rd Eatonville, Wa 98328

(253) 722-4739

kodiakelectric@hotmail.com

Electrical

Nisqually Construction Services

12820 Yelm Hwy SE Suite H Olympia, Wa 98513

(253) 722-5928 info@NisquallyConstruction.com

Nisquallyconstruction.com

OHM Electrical Contracting

620 S Orcas St Suite 80127 Seattle, Wa 98108

(206) 678-6744

ohmelectricalcontracting.com

Rodarte Construction Inc

17 E Valley Highway E Auburn, Wa 98092

(253) 939-0532

Facebook.com/rodarteconstructioninc

Smart Homes Electric Inc

6412 Fairlawn Dr SW Lakewood, Wa 98499

(253) 582-4663

Sundancer Electric

8041 S 228th St Suite 101 Kent, Wa 98032

(253) 398-2999 info@sundancerelectric.com

Sundancerelectric.com

Engineering

Akana

6400 SE Lake Road, Suite 270 Portland OR 97222

(971) 404-1622

Www.akana.us

OHM Electrical Contracting

620 S Orcas St Suite 80127 Seattle, Wa 98108

(206) 678-6744

ohmelectricalcontracting.com

Tribal Fire Systems

1565 S Rolling Hills Dr Meridian, ID 83642

(208) 906-8792 Jessica@tribalfiresystems.com

Tribalfiresystems.com

Fencing

Nixon Construction

601 Lakeside Way SW Mattawa WA 99349

(425) 418-5995

Kevin.nixon@nixon-construction.com

Finance

Commodore Asset Management

1206 N Fife St Tacoma, Wa 98406

(253) 279-4781

Fire Protection

Access Fire Extinguishers

PO Box 7576 Covington Wa 98042

Bus: (425) 413-2648 Mobile: (206) 380-6442

admin@accessfireprotection

Omega Services & Supply

3705 West Valley Highway N Auburn, Wa 98001

(253) 804-6000

Omegaservicesandsupply.com

Fire Protection

Tribal Fire Systems

1565 S Rolling Hills Dr Meridian, ID 83642

(208) 906-8792 Jessica@tribalfiresystems.com

Tribalfiresystems.com

Flooring

Great Floors LLC

6818 Tacoma Mall Blvd, Tacoma, WA 98409

(253) 474-9034

<https://www.greatfloors.com/>

General Contracting & Construction

Cates & ERB

PO Box 2027 616 S. Ferry St Omak, Wa 98841

(509) 826-4752

catesanderb@ncidata.com

Catesanderb.com

JKT Development

1033 Old Blyn Hwy Sequim, Wa 98382

(360) 681-4650

Marshbank Construction Inc

(425) 377-9708

Nisqually Construction Services

12820 Yelm Hwy SE Suite H Olympia, Wa 98513

(253) 722-5928

info@NisquallyConstruction.com

Nisquallyconstruction.com

Nixon Construction

601 Lakeside Way SW Mattawa, Wa 99349

(425) 418-5995

Kevin.nixon@nixon-construction.com

Rodarte Construction Inc

17 E Valley Highway E Auburn, Wa 98092

(253) 939-0532

Facebook.com/rodarteconstructioninc

Tru Colors Contracting

17122 45th St E Lake Tapps, Wa 98391

(253) 447-7063

Heavy Civil Construction

Cates & ERB

PO Box 2027 616 S. Ferry St Omak, Wa 98841

(509) 826-4752

catesanderb@ncidata.com

Catesanderb.com

JKT Development

1033 Old Blyn Hwy Sequim, Wa 98382

(360) 681-4650

Nisqually Construction Services

12820 Yelm Hwy SE Suite H Olympia, Wa 98513

(253) 722-5928

info@NisquallyConstruction.com

Nisquallyconstruction.com

Heavy Civil Construction

Nixon Construction

601 Lakeside Way SW Mattawa WA 99349

(425) 418-5995

Kevin.nixon@nixon-construction.com

Rodarte Construction Inc

17 E Valley Highway E Auburn, Wa 98092

(253) 939-0532

Facebook.com/rodarteconstructioninc

Heavy Equipment Operation (HEO), Excavation

Cates & ERB

PO Box 2027 616 S. Ferry St Omak, Wa 98841

(509) 826-4752

catesanderb@ncidata.com

Catesanderb.com

JKT Development

1033 Old Blyn Hwy Sequim, Wa 98382

(360) 681-4650

Highway Construction

Cates & ERB

PO Box 2027 616 S. Ferry St Omak, Wa 98841

(509) 826-4752

catesanderb@ncidata.com

Catesanderb.com

Industry Erectors

1429 Avenue D #267 Snohomish, Wa 98290

Office: (425) 305-3581 Field: (425) 879-7334

Industryerectors.com

Nisqually Construction Services

12820 Yelm Hwy SE Suite H Olympia, Wa 98513

(253) 722-5928

info@NisquallyConstruction.com

Nisquallyconstruction.com

HVAC

AirePro

2921 Meridian Ave E Edgewood, WA 98371

(253) 848-2626

airepro.com

Apollo Mechanical

3051 E Valley Rd, Renton, WA 98057

(253) 872-5151

apollomech.com

Landscape

Nixon Construction

601 Lakeside Way SW Mattawa WA 99349

(425)418-5995

Kevin.nixon@nixon-construction.com

Land Use Planning

Akana

6400 SE Lake Road, Suite 270 Portland OR 97222

(971) 404-1622

Www.akana.us

Masonry

Nixon Construction

601 Lakeside Way SW Mattawa WA 99349

(425) 418-5995

Kevin.nixon@nixon-construction.com

Mechanical / Plumbing

Apollo Mechanical

3051 E Valley Rd, Renton, WA 98057

(253) 872-5151

apollomech.com

Arrow Mechanical

1314 Rainier St Sumner Wa 98390

(253) 219-6626

tgweeks_44yahoo.com

Moving

Industry Erectors

1429 Avenue D #267 Snohomish, Wa 98290

Office: (425) 305-3581 Field: (425) 879-7334

Industryerectors.com

Painting

Armadillo Painting

(425) 641-5465

Mike Wedde Painting & Construction

8415 E F St, Tacoma, WA 98445

(253) 539-1667

Omega Services & Supply

3705 West Valley Highway N Auburn, Wa 98001

(253) 804-6000

Omegaservicesandsupply.com

Printing / Graphics

Active Screen Printing

(253) 376-0754

Unparalleled Apparel LLC

631 163rd St S Spanaway Wa 98387

(253) 592-8964

Unparalleledapparellic@gmail.com

Product Supplies

RBP Supply

126 Adams St, Mission SD 57555

(605) 856-5555

<https://shop.incomsupply.com/>

| Residential | |
|--|---|
| <u>JKT Development</u> 1033 Old Blyn Hwy Sequim, Wa 98382 | (360) 681-4650 |
| <u>Kodiak Electric</u> 34419 Thomas Rd Eatonville, Wa 98328 | (253) 722-4739 kodiakelectric@hotmail.com |
| <u>Nixon Construction</u> 601 Lakeside Way SW Mattawa WA 99349 | (425) 418-5995 Kevin.nixon@nixon-construction.com |
| <u>OHM Electrical Contracting</u> 620 S Orcas St Suite 80127 Seattle, Wa 98108 | (206) 678-6744 ohmelectricalcontracting.com |
| <u>Rodarte Construction Inc</u> 17 E Valley Highway E Auburn, Wa 98092 | (253) 939-0532 Facebook.com/rodarteconstructioninc |
| <u>Smart Homes Electric Inc</u> 6412 Fairlawn Dr SW Lakewood, Wa 98499 | (253) 582-4663 |
| Roofing | |
| <u>Nixon Construction</u> 601 Lakeside Way SW Mattawa WA 99349 | (425) 418-5995 Kevin.nixon@nixon-construction.com |
| <u>Tru Colors Contracting</u> 17122 45th St E Lake Tapps, Wa 98391 | (253) 447-7063 |
| Saw Cutting | |
| <u>Arrow Cutting</u> | (253) 984-7504 |
| Sheet Metal | |
| Signs & Graphics | |
| <u>Speakthunder Galleries</u> | Bus: (541) 325-2671 Email: Speakthunder32@gmail.com |
| <u>Signarama</u> 7610 S Tacoma Way, Tacoma, WA 98409 | (253) 474-1991 https://signarama.com/locations/wa-tacoma/ |

| | |
|---|---|
| Site Prep | |
| <u>Nisqually Construction Services</u> 12820 Yelm Hwy SE Suite H Olympia, Wa 98513 | (253) 722-5928 info@NisquallyConstruction.com Nisquallyconstruction.com |
| Steel Work | |
| <u>Industry Erectors</u> 1429 Avenue D #267 Snohomish, Wa 98290 | Office: (425) 305-3581 Field: (425) 879-7334 Industryerectors.com |
| Stone & Tile | |
| <u>Nixon Construction</u> 601 Lakeside Way SW Mattawa WA 99349 | (425) 418-5995 Kevin.nixon@nixon-construction.com |
| Supply | |
| <u>RBP Supply</u> 126 Adams St, Mission SD 57555 | (605) 856-5555 https://shop.incomsupply.com/ |
| Surveying | |
| <u>Accurate Land Surveys</u> 1170 NE 64th Ln, Hillsboro, OR 97124 | (503) 645-2360 https://www.accuratelandsurveys.com/ |
| Telecommunication / Technologies | |
| <u>JKT Development</u> 1033 Old Blyn Hwy Sequim, Wa 98382 | (360) 681-4650 |
| <u>Roads West Inc Communications</u> PO Box 263 Arlington, Wa 98223 | (360) 403-8782 info@roadswestinc.com Roadswestinc.com |
| <u>Omega Services & Supply</u> 3705 West Valley Highway N Auburn, Wa 98001 | (253) 804-6000 Omegaservicesandsupply.com |
| Traffic Control | |
| <u>Nisqually Construction Services</u> 12820 Yelm Hwy SE Suite H Olympia, Wa 98513 | (253) 722-5928 info@NisquallyConstruction.com Nisquallyconstruction.com |

Trucking / Transport

| | |
|--|--|
| <u>Barnhart Crane & Rigging</u> 7625 S 228th St Kent, Wa 98032 | (253) 630-6244 BarnhartCrane.com |
| <u>Cates & ERB</u> PO Box 2027 616 S. Ferry St Omak, Wa 98841 | (509) 826-4752 catesanderb@ncidata.com Catesanderb.com |
| <u>Industry Erectors</u> 1429 Avenue D #267 Snohomish, Wa 98290 | Office: (425) 305-3581 Field: (425) 879-7334 Industryerectors.com |
| <u>Nisqually Construction Services</u> 12820 Yelm Hwy SE Suite H Olympia, Wa 98513 | (253) 722-5928 info@NisquallyConstruction.com Nisquallyconstruction.com |

Utilities

| | |
|--|--|
| <u>OHM Electrical Contracting</u> 620 S Orcas St Suite 80127 Seattle, Wa 98108 | (206) 678-6744 ohmelectricalcontracting.com |
| <u>Nisqually Construction Services</u> 12820 Yelm Hwy SE Suite H Olympia, Wa 98513 | (253) 722-5928 info@NisquallyConstruction.com Nisquallyconstruction.com |
| <u>Rodarte Construction Inc</u> 17 E Valley Highway E Auburn, Wa 98092 | (253) 939-0532 Facebook.com/rodarteconstructioninc |
| <u>Sundancer Electric</u> 8041 S 228th St Suite 101 Kent, Wa 98032 | (253) 398-2999 info@sundancerelectric.com Sundancerelectric.com |

Video Production

Welding

| | |
|---|--|
| <u>Industry Erectors</u> 1429 Avenue D #267 Snohomish, Wa 98290 | Office: (425) 305-3581 Field: (425) 879-7334 Industryerectors.com |
|---|--|

TRIBAL LABOR AGREEMENT

Between

THE PUYALLUP TRIBE OF INDIANS



and

TRIBAL EMPLOYMENT RIGHTS OFFICE

and

NORTHWEST NATIONAL CONSTRUCTION ALLIANCE

and

BUILDING TRADES CONSTRUCTION UNIONS

PURPOSE

This Agreement is entered into by and among the Puyallup Tribe of Indians hereafter referred to as "Tribe," the Tribal Employment Rights Office hereafter referred to as "TERO" and the Northwest National Construction Alliance (NWNCA) and additional Building Trades Unions signed to this Agreement hereafter referred to as "Union".

SCOPE

This Agreement applies to all construction projects located within the boundaries of the Puyallup Indian Reservation, on tribal trust property near the reservation, or lands otherwise within the jurisdiction of the Tribe.

This agreement represents a concerted effort among the parties to provide opportunities for family wage employment; to provide safe, healthy and clean working environments and working conditions; to provide ongoing Apprenticeship, training, employment and career path opportunities and to provide affordable family health care and the ability to retire with dignity.

Where the jurisdiction of this Agreement overlaps or conflicts with another Tribe or Tribal entity the jurisdiction of this agreement may be modified by mutual agreement between the applicable Tribes. If Agreement is not reached between the Tribes the Terms and Conditions of this Agreement or any Addendum to this Agreement may be waived by mutual written Agreement of the parties.

TRIBAL SOVEREIGNTY

All parties signatory to this Agreement acknowledge that the Puyallup tribal sovereign authority governs the Terms of this Agreement. The parties agree that the sovereign immunity and authority of the Tribe shall remain intact and unabridged throughout the life of this Agreement and that The Puyallup Tribal Council shall decide all issues regarding Tribal Sovereignty and its decision shall be both final and binding.

TERO RECOGNITION

The Puyallup Tribe has adopted a Tribal Employment Rights Ordinance hereafter referred to as "Ordinance" as Law within the Reservation or where the Tribe otherwise has jurisdiction. The Unions and all other parties agree to recognize the authority of TERO and agree to abide by the TERO Ordinance, regulations and applicable determinations. The parties recognize that TERO has a primary commitment to the employment of Tribal Members in the hiring of Indian preference employees.

UNION RECOGNITION

The Tribe and TERO authorize the Unions to enter into a Collective Bargaining Agreement with General Contractors and Sub Contractors for all construction projects, to act as party to that Agreement, as the exclusive Bargaining Representatives of all construction craft employees performing work covered by said agreement on construction projects with respect to wages, hours of work, and all other Terms and Conditions of employment, provided that:

- a) Indian preference contractors shall not be required to recognize the Union as exclusive Bargaining Representative of their employees.
- b) Indian preference employees may choose not to be Members of, or pay dues in lieu of Membership to, the Union.
- c) All Non-Indian preference contractors bound to this Agreement will abide by the Terms and Conditions of the applicable Collective Bargaining Agreement for the duration of the project and will be signatory to the appropriate craft Union Agreements.

LABOR LIAISON

If the Tribe so chooses, the Union will appoint a Labor Liaison. Such appointment is subject to approval of the Tribe. The Labor Liaison will serve as a point of contact in questions arising from the implementation and interpretation of this Agreement. The Liaison will help facilitate discussions concerning the execution and application of this Agreement and notify the appropriate parties of meetings, concerns, or other items of interest.

INDIAN PREFERENCE WORKERS

The Union and TERO shall mutually establish Hiring Hall Rules consistent with Tribal Employment Rights Ordinance requirements, which shall include first hire priority rights for all local Indian preference employees. TERO shall provide a Dispatch Form, a copy of which shall be forwarded to the signatory employer and the Union upon dispatch of the employees.

NON-UNION WAGE AND BENEFITS

If the Indian preference contractor or employee opts not to join the Union, the following pay schedule will be applicable:

1. Wages and Benefits will be in accordance with the applicable Union scale or Prevailing Wage, whichever is more favorable to the employee.
2. Should a non-Union Tribal employee opt not to participate in the Union; benefits will be paid as directed by TERO. Employees electing this option may exercise this option by completing the attached "Notification to Employees Registered with TERO."

APPRENTICESHIP AND TRAINING

The parties recognize the necessity for Specialized Training and agree to indenture qualified Indian Apprentice Candidates in Washington State Certified Apprenticeship Programs, including but not limited to Registered Tribal Apprenticeship Programs. Minimum Apprenticeship standards and ratios shall be established for the hiring of Indian preference Apprentices for the Project.

**Union sponsored Apprenticeship Programs shall allow for Direct Entry of qualified Indian Apprentice Candidates.*

RESOLUTION OF DISPUTES

In the event any issue arises pertaining to the interpretation or application of this Agreement, the parties shall arrange for a meeting to be conducted at the earliest mutually convenient time. In the event the Union and TERO Representatives cannot resolve any issue within thirty (30) calendar days, after the notification to all parties, the issue will be referred to the Puyallup Tribe's TERO Commission for a final and binding determination.

The Grievance Procedure found in the Collective Bargaining Agreement shall apply to all disputes arising under the Agreement. Indian preference employees shall have the ability to resolve disputes with either the TERO or the Union when working under the terms of this Agreement. TERO shall have the right to dispatch a representative to any grievance proceeding in which the Union is involved.

The foregoing procedure shall constitute the exclusive method for resolving issues arising under this Agreement. No party to this Agreement may resort to economic action (e.g., strike, slow-down, cessation of work or non-dispatch of personnel) to resolve any dispute between the parties throughout the life of this Agreement.

UNION MEMBERSHIP

Although Union Membership is not required for Indian preference employees, the Tribe agrees to allow a Union Representative and/or Training Agents to demonstrate the benefits of Union Membership to all Tribal members and other natives.

All Unions signatory to this Agreement further Agree that at no time will a Union Representative directly or indirectly harass, coerce or threaten any Tribal Member that chooses not to join the applicable Union in any way.

**Tribal Members that meet or exceed the basic Journeyman requirements for membership shall be allowed to join the Union as a Journeyman*

For the Puyallup Tribe:

[Signature]
Signature

Tribal Chairman
Title

2/22/13
Date

For TERO Director:

[Signature]
Signature

TERO Director
Title

2-11-13
Date

For TERO Commission:

[Signature]
Signature

TERO Commission Chair
Title

2/13/13
Date

For the UA LOCAL 26
PLUMBERS & PIPEFITTERS

[Signature]
Signature

Business Agent
Title

11, Feb. 2013
Date

For the NWNCA:

[Signature]
Signature

Vice - President
Title

2-11-2013
Date

For the Local 252

[Signature]
Signature

Vice President
Title

11 Feb 2013
Date

For the IUPAT 605 Painters
and Trades

[Signature]
Signature

Business Representative
Title

Date

For the Ironworkers Local 86

[Signature]
Signature

Business Rep
Title

2/11/13
Date

For the OPCMIA 528 :

Signature [Signature]

Title Field REP

Date 2-11-13

For the PACIFIC NW REGIONAL COUNCIL OF CARPENTERS :

Signature [Signature]

Title REPRESENTATION

Date FEB 11, 2013

For the Operating Engineers Local 612 :

Signature [Signature]

Title President

Date 2-11-2013

For the SHEET METAL WORKERS

Signature [Signature]

Title Business Rep

Date 2/11/13

For the I 40E 302 :

Signature [Signature]

Title Field Representative

Date 2-11-2013

For the U.A. Local #699 Sprinkler Fitters :

Signature [Signature]

Title WSA/UA/#699 Field Rep.

Date 2-11-13

For the TEAMSTERS 313 :

Signature [Signature]

Title Business Agent

Date 2-13-13

For the RODGERS UNION Local 153

Signature [Signature]

Title Business Manager

Date 3-6-13

For the _____:

Signature

Title

Date

For the _____:

Signature

Title

Date

DH:1-23-2013

For the _____:

Signature

Title

Date

For the _____:

Signature

Title

Date

NOTIFICATION TO EMPLOYERS REGISTERED WITH TERO

The employees registered with the Puyallup TERO wishing Union Membership shall have the right to join the Applicable Union with full benefits.

NOTIFICATION OF INTEREST TO JOIN THE UNION

I, _____, have been advised of my right to join the Union and receive the full benefit of Union Membership. I understand that upon application for Membership, I will have the same obligation and be required to meet the same requirement as all other Members. I understand contributions will be made to the usual customary benefit trust funds on my behalf. I further understand that deductions, including but not limited to dues, credit union and other Union supported programs, will be deducted from my wages.

Current Employer

Date Hired

Signature

Address

Phone Number

City

State

Zip Code

Employees registered with the Puyallup TERO not wishing to join the Union will individually sign a waiver of fringe benefits. Current wage and benefit amounts shall be paid directly to those employees not wishing to join the Union by signing said waiver. No Union deductions will be made from the employee's paycheck. This waiver shall only apply for the Native American Project listed below.

Project Name

Location

WAIVER OF RIGHT UNION MEMBERSHIP AND FRINGE BENEFITS

I, _____, have been advised of and understand my rights to join the Union and to have payments made on behalf to the usual and customary benefit trust fund, I choose not to have my employer make fringe benefit payments on my behalf to these trust funds and to have the Employer pay the total of the applicable wage and benefit payments directly on my payroll check. I understand I will not receive nor be eligible for any benefit from any of the trust funds.

Current Employer

Date Hired

Signature

Address

Phone Number

City

State

Zip Code

Pacific Northwest Regional Council of Carpenters



Affiliated with
United Brotherhood of Carpenters and Joiners of America

Dan Hutchins, Contract Administrator
25120 Pacific Highway South Suite 200, Kent, WA 98032
Cell 509.539.4258 • dhutchins@nwcarpenters.org



LETTER of UNDERSTANDING

This letter will confirm the discussions during the negotiations of the captioned Tribal Labor Agreement. The on-site fabrication and installation of structural/architectural systems between manufactured components which are traditionally the work of the PNW Regional Council of Carpenter members will continue to be recognized as such.

As you know, from the discussions in negotiations, if done off-site, this work will be performed in shops or at off-site assembly yards employing workers whose terms and conditions of employment equal or exceed those established in the area under prevailing wage for employees represented by the PNW Regional Council of Carpenters, unless such work is performed otherwise pursuant to the provisions of this letter.

The PNW Regional Council of Carpenters recognizes that the timely completion of Construction Projects is vital to Puyallup Tribe of Indians and the Community it is intended to serve. Therefore, if the nature of the work, under project schedule, or contracting circumstances make it necessary to obtain fabrication under conditions different than those described above, the PNW Regional Council of Carpenters agrees to cooperate in accommodating the reasonable needs of the Project. If, as a result of such circumstances, the fabrication is performed outside the region, the fabrication will be performed in shops or assembly yards whose terms and conditions of employment equal or exceed those established in that area under the prevailing wage laws applicable for the appropriate Carpenter classification in the locality where the work is performed. The Project Contractor and the Council agree to discuss any other circumstances affecting off-site fabrication contracting purchases where an accommodation is sought any reasons making it necessary to depart from the conditions set forth above. The PNW Regional Council of Carpenters will not unreasonably withhold its consent to such accommodations and the PNW Regional Council of Carpenters agrees to install on-site any components fabricated pursuant to the terms of this letter, without limitation. The parties will make every effort to keep an open channel of communication to insure that all parties are fully informed of the facts affecting the substance of this letter.

Dated this 11TH day of FEB 2013.

Puyallup Tribe of Indians/ Tero

By Tribal Chairman

Signature *[Signature]*

By Marian Gyon

Signature *[Signature]*

DH: 1-18-2013

PNW REGIONAL COUNCIL OF CARPENTERS

By CHRIS LAMBERT

Signature *[Signature]*

Sheet Metal Workers International Association

LOCAL UNION 66

11831 Beverly Park Road, B-2 · Everett, WA 98204
Main office: (425) 493-5900 · Fax: (425) 493-5901 · Toll-free: 1-800-659-5882 · Dupont: (253) 617-7909



TRIBAL LABOR AGREEMENT ATTACHMENT

Puyallup Tribe of Indians, Tribal Employment Rights Office Labor Agreement

LETTER OF UNDERSTANDING RE: OFF-SITE FABRICATION

The on-site fabrication and installation of sheet metal components between manufactured components which are traditionally the work of SMWIA members will continue to be recognized as such.

As you know, if done off-site, this work will be performed in shops or at off-site assembly yards employing workers whose terms and conditions of employment equal or exceed those established for employees per the Tribal Labor Agreement represented by the Sheet Metal Workers unless such work is performed otherwise pursuant to the provisions of this letter

The Sheet Metal Workers recognizes that the timely completion of this project is vital to the Tribe. Therefore, if the nature of the work, under project schedule, or contracting circumstances make it necessary to obtain fabrication under conditions different than those described above, the Sheet Metal Workers agrees to cooperate in accommodating the reasonable needs of the Project. If, as a result of such circumstances, the fabrication is performed outside the region, the fabrication will be performed in shops or assembly yards whose terms and conditions of employment equal or exceed those established in that area under the prevailing wage laws applicable for the appropriate Sheet Metal Worker classification in the locality where the work is performed.

The Puyallup Tribe of Indians and the Union agree to discuss any other circumstances affecting off-site fabrication contracting purchases where an accommodation is sought any reasons making it necessary to depart from the conditions set forth above. The Sheet Metal Workers will not unreasonably withhold its consent to such accommodations and Local 66 agrees to install on-site any components fabricated pursuant to the terms of this letter without limitation. The parties will make every effort to keep an open channel of communication to insure that both parties are fully informed of the facts affecting the substance of this letter. If you agree that this letter accurately sets forth the substance of our understanding and provides the basis for resolving any questions concerning the interpretation and application of Off-Site Fabrication for projects in conjunction with the Tribal Labor Agreement, please indicate your acceptance in the space provided below.

AKNOWLEDGED, AGREED AND ACCEPTED On behalf of Puyallup Tribe of Indians

By: 

AKNOWLEDGED, AGREED AND ACCEPTED On behalf of Sheet Metal Workers Local #66

By:  Eric J. Martinson, Business Manager

PART G

QUESTION AND ANSWERS



PUYALLUP TRIBE OF INDIANS

1423 E 29th St
Tacoma, Washington 98404
(253) 573-7846

Questions and Answers

The following presents a listing of some of the most common inquiries made about Indian Preference and Tribal Employment Rights Offices (TERO's).

1. WHAT IS TERO?

There are two (2) main elements of TERO:

- A. Conceptual – TERO is a sovereignty based, self-help, and systematic approach to Indian and economic self-reliance or self-determination.
- B. Programmatic – TERO is also a Tribal enforcement and compliance program that monitors employers to ensure optimal benefits are attained from Federal and Tribal employment laws, regulations, policies and procedures.

2. WHAT IS THE PURPOSE OF TERO?

To access more employment & training opportunities for Native Americans, and to provide more business & economic opportunities for businesses owned by Native Americans.

3. WHAT IS THE LEGAL BASIS FOR TERO?

A tribe's authority to enact and enforce an Indian employment preference is grounded in its inherent sovereign powers of self-government. This legal doctrine is the most basic principal of Indian laws and is supported by a host of Supreme Court decisions. These decisions have held that "Inherent sovereign powers derive from the principle that certain powers do not necessarily come from delegated powers granted by express acts of Congress, but are inherent powers of a limited sovereign which have never been extinguished. Tribes have a basic relationship with the federal government as sovereign powers. This is recognized in both treaties and federal statutes. The sovereignty of tribes has been limited from time to time by treaties and federal legislation; however, what has not been expressly limited remains within tribal sovereignty." One important area in which the inherent powers of tribes clearly apply is in the right of tribes to regulate and tax all commerce activity within the jurisdictional boundaries of their reservations. A full and accurate explanation of tribal sovereignty is found in Felix S. Cohen's handbook of Federal Indian Law.

4. WHAT ARE THE BASIC REQUIREMENTS OF TERO?

All employers operating within tribal jurisdiction are required to provide Indian Preference in employment, training, contracting, subcontracting and all other aspects of employment. Below are six (6) major provisions found in most TERO Ordinances that employers must agree to:



PUYALLUP TRIBE OF INDIANS

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Tacoma, Washington 98404
(253) 573-7846

- A. Submit an acceptable compliance plan detailing employer workforce needs and the steps to be taken to ensure Indian Preference. TERO compliance plans are fashioned closely after those used by OFCCP's for affirmative action compliance.
- B. Utilize the TERO Hiring Hall for all referrals and consider Indian applicants before interviewing or hiring non-Indian workers.
- C. Agree to hire no less than a specific number of Indians in each job classification and cooperate with tribal training programs to hire a certain amount of trainees.
- D. Eliminate all extraneous job qualification criteria or personnel requirements, which may act as a barrier to Indian employment. TERO's are guided by EEOC guidelines for verifying legitimate Bona-Fide Occupational Qualifications (BFOQ's).
- E. Agree to acknowledge and respect tribal religious beliefs and cultural differences and to cooperate with the TERO to provide reasonable accommodation.
- F. Tribes have found the most effective means by which they can ensure Indian Preference compliance is through the endeavors of their own TERO enforcement programs. The success of TERO programs can be directly attributed to the fact that these programs embody all of the critical elements listed above. Since TERO's are the core of an effective tribal employment rights effort, a close examination of TERO is necessary.

5. WHAT IS THE EXTENT OF TERO JURISDICTION?

To the extent of what is legally described or defined by treaty or legislation which is the exterior boundaries of the reservation, including ceded territories and lands where jurisdiction has not been extinguished.

6. IS THERE A DIFFERENCE BETWEEN TRIBAL AND INDIAN PREFERENCE?

Yes, with jurisdiction on tribal projects which are funded, owned and operated by the tribe (i.e. Tribal Enterprises), tribes can require tribal preference. This is permissible under the federal law because tribes are exempt for Title VII of the Civil Rights Act, Executive Order 11246 and most other employment rights legislation.

- A. Indian Preference is permissible under some federal laws i.e. Indian Staff Determination Act, Buy Indian Act and under most federal laws.
- B. **Executive Order 11246 Provides:** "Contractors or subcontractors extending such a preference shall not, however, discriminate among Indians on the basis of religion, sex, or tribal affiliation and the use of such a preference shall not excuse a contractor from complying with other requirements contained in this chapter."



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7. ARE TERO TAXES LEGAL?

Yes, tribal authority to tax is equal to that of any government. Taxation, licenses, fees are a valuable source for financing tribal governmental operations. TERO Programs have the unique characteristics of being able to generate their own operating income and contribute to the tribal general fund.

- A. Employers can realize substantial savings since tribal taxes pre-empt state and other local taxation on reservation projects often to the benefit of the employer. The average TERO fee is 2.5% substantially lower than most states.
- B. The TERO has the responsibility to insure the due process of the employer under the tribal ordinance and that only qualified and screened referrals are made to the employer.

8. WILL TERO TAXES/FEE INCREASE THE COST OF THE PROJECT?

No. TERO fees range from ½ of 1% to 4% with the national average at 2.5%. The much lower tribal taxes and fees pre-empt other taxes and fee requirements on tribal projects and often mean a substantial savings to the contractor (most state taxes for example are in the 6% - 10% range).

- A. The Federal Highway Administration (FHWA) allows a 1% flow through for highway contractors, which means they can pass up to 1% of their tribal tax/fee burden on to the agency. This provides another incentive to support TERO. The remaining amounts are the contractors' responsibility and like other federal, state, county and local taxes/fees, must come out of the contractors' pocket.

9. IS INDIAN PREFERENCE “REVERSE DISCRIMINATION?”

No, there is no such thing as reverse discrimination, simply stated, discrimination is discrimination no matter who does it to whom. Indian preference is defined as a **“political preference, not a racial one”** which exists because of the nation-to nation relationship America has always enjoyed with tribes since Columbian times. TERO's do not violate any U.S. Equal Protection Laws.

- A. In (Morton vs. Mancari) the court held that “the preference as applied, granted to Indians not as a discrete racial group, but rather as members of quasi-sovereign tribal entities” Subsequently, the Indian preference classification is not racially, but politically based and as such does not violate Title VII or any other federal employment law.

10. ARE THERE ANY EXEMPTIONS TO TERO REQUIREMENTS?

Yes, there are several exemptions. Direct employment by federal/state governments, schools, churches and some non-profits are not covered by the TERO. Some tribes also exempt



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themselves from TERO coverage. It is important to note however, that any contract or sub-contract let by any of these entities is covered by TERO.

11. WILL TERO INTERRUPT MY DAILY BUSINESS OPERATIONS?

No, since TERO's are pro-active, TERO and employer sign the compliance agreements before the commencement of work, which prevents disputes. Most TERO ordinances provide for compliance and enforcement visits to the worksites during normal business hours but not to the detriment of operations. TERO's sanctioning employers for violations may shut down operations but only in severe disputes and in accordance with the applicable law.

12. WHAT SANCTIONS DO EMPLOYERS FACE FOR VIOLATIONS OF TERO?

Violation of TERO requirements may result in severe sanctions. If tribes determine that employers willfully and intentionally breached TERO requirements they may:

- A. Deny such party the right to commence or continue business on the reservation.
- B. Impose a civil fine on such party ranging on most reservations anywhere from \$500.00 to \$5,000.00 per violation.
- C. Terminate or suspend such party's operation and deny them the rights to conduct further business on the reservation.
- D. Order such party to dismiss any illegally hired non-Indians, take action to ensure future compliance and to make back payment of any lost wages be paid to aggrieved Indians.

13. ARE EMPLOYERS PROTECTED AGAINST UNFAIR TERO VIOLATION CHARGES?

Yes, the first level of protection comes from the TERO enforcement officer who handles the charge. These officers are trained to deal with facts and merits of the case before taking action. The TERO Commission provides a second level of protection by hearing grievances and again weighing the facts and merits of the case before making determinations. Beyond the TERO Commission, grievances can seek relief in the tribal and federal courts.

14. CAN SANCTIONS IMPOSED BY THE TERO COMMISSION BE APPEALED?

Yes. Sanctions imposed by the TERO Commission can be appealed in tribal court. Appeals of tribal court decisions can be made to the federal court system.

- A. It is important to note that only one (1) appeal to a TERO Commission and tribal court has ever been appealed to the federal court. The case ended at the Ninth Circuit Court of Appeals and Appellate, which upheld the TERO Commission and the tribal court decisions.



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Tacoma, Washington 98404
(253) 573-7846

15. HOW HAVE VARIOUS FEDERAL, STATE AND OTHER AGENCIES VIEWED TERO AND INDIAN PREFERENCE IN THEIR OPERATIONS?

When TERO's first appeared in the late seventies there was opposition from some and indifference from others. Over the years a great deal of progress has been made, some by direct legal action but most through pro-active, non-adversarial, synergistic effort. The results are Indian preference and TERO provision, policies and procedures figure prominently in the following:

- The Civil Rights Handbook
- The Job Training and Partnership Act
- The Small Business Administration 8(a) Program
- Public Law 93-638, The Indian Education Assistance and Self Determination Act of 1974
- HUD Regulations
- BIA Acquisitions Assistance Agreement 84-1
- EEOC/TERO Contracts
- Department of Commerce
- Economic Development Administration
- OFCCP Indian Employment Initiative
- FHWA ISTEA "Indians in Highway Construction Initiative
- US DOL/BAT Notice 84-1
- Indian Education Impact and Programs Under PL 81-815 (construction) and PL 81-874 (OPS/Admin)

16. DO TERO REFERRALS GET SPECIAL TREATMENT ON THE JOB?

No, TERO referrals should be treated like any other qualified employee with the same performance expectations and requirements. Special treatment of preference category employees serves only to isolate them and set them up for disparate or discriminatory treatment.

PART H

TRIBAL EMPLOYMENT RIGHTS ORDINANCE 3.24

Chapter 3.24

TRIBAL EMPLOYMENT RIGHTS ORDINANCE

Sections:

Subchapter 1. Policy

[3.24.010](#) Declaration of policy.

[3.24.015](#) Exemption.

Subchapter 2. Definitions

[3.24.020](#) Definitions generally.

Subchapter 3. Indian Preference

[3.24.030](#) Indian preference in employment.

[3.24.040](#) Application of Indian preference requirements.

[3.24.050](#) Indian preference in contracting.

[3.24.060](#) Application of Indian preference in contracting.

[3.24.070](#) Tribal programs or divisions.

[3.24.080](#) Subcontracts included.

[3.24.090](#) All covered entities to comply.

[3.24.100](#) System for certifying firms for Indian preference.

[3.24.110](#) Unions.

Subchapter 4. Tribal Employment Rights Commission

[3.24.120](#) Tribal Employment Rights Commission.

[3.24.130](#) Quorum.

[3.24.140](#) Recusal of Commission members.

[3.24.150](#) Definition of immediate family.

[3.24.160](#) Commissioner participation.

[3.24.170](#) Voluntary recusal.

Subchapter 5. Powers of the Commission

[3.24.180](#) Powers of the Commission.

Subchapter 6. TERO Director

[3.24.190](#) TERO Director.

[3.24.200](#) Authority of Director.

[3.24.210](#) Duties of the Director.

Subchapter 7. Employment Rights Fee

- [3.24.220](#) Employment rights fee.
- [3.24.230](#) Fee collected by Tribal Accounting Office.

Subchapter 8. Complaints and Their Investigation

- [3.24.240](#) Complaints.
- [3.24.250](#) Contents of complaint.
- [3.24.260](#) Investigation timeline.
- [3.24.270](#) Duties of the Director.
- [3.24.280](#) Investigations.
- [3.24.290](#) Authority to enter.
- [3.24.300](#) Trade secrets or confidential information.
- [3.24.310](#) Restriction of access to certain information.
- [3.24.320](#) Investigative powers.

Subchapter 9. Enforcement

- [3.24.330](#) Monitoring compliance.
- [3.24.340](#) Notice of violation.
- [3.24.350](#) Informal settlement.
- [3.24.360](#) Notice of violation to include.
- [3.24.370](#) Request for hearing.
- [3.24.380](#) Bond may be required.
- [3.24.390](#) Conduct of hearing.
- [3.24.400](#) Remedies when violation has occurred.
- [3.24.410](#) Decision of the Commission.
- [3.24.420](#) Injunctive relief.

Subchapter 10. Appeal

- [3.24.430](#) Appeal.
- [3.24.440](#) Notice of appeal.
- [3.24.450](#) Automatic stay.
- [3.24.460](#) Reversal or modification of Commission's order.
- [3.24.470](#) Order affirmed or no appeal taken.

Subchapter 11. Enforcement

- [3.24.480](#) Emergency relief.
- [3.24.490](#) Enforcement of order.
- [3.24.500](#) Petition for confiscation.

- [3.24.510](#) Notice of confiscation.
- [3.24.520](#) Sale of confiscated property.

Subchapter 12. Fair Labor Standards Act

- [3.24.530](#) Fair Labor Standards Act incorporated herein.
- [3.24.540](#) Enforcement.
- [3.24.550](#) Purpose of subchapter.
- [3.24.560](#) Credit for penalties paid to federal government.

Subchapter 13. Police Authorization

- [3.24.570](#) Police authorization.
- [3.24.580](#) Police not civilly liable.

Subchapter 14. Miscellaneous

- [3.24.590](#) Severability.
- [3.24.600](#) Repeal of prior acts.
- [3.24.610](#) Effective date.

Subchapter 1. Policy

3.24.010 Declaration of policy.

As a guide to the interpretation and application of this chapter, the public policy of the Puyallup Tribe of Indians is declared to be as follows:

The right to tax business activities on Tribal and trust lands within the exterior boundaries of the Puyallup Indian Reservation and on Tribally owned lands outside those boundaries is an important resource of the Puyallup Indian Nation.

Federal legislation enables the Puyallup Tribal Council to pass laws to implement and enforce this right for the welfare of the members of the Puyallup Tribe of Indians and other Indians.

Puyallup Tribal members and other Indians are entitled to the protection of the unique and special employment rights enacted by the federal government. Tribal government can and should participate in the enforcement of those laws. The Puyallup Tribe believes it important to establish an employment rights program and office to use these laws to increase employment of Puyallup Tribal members and other Indian workers and to eradicate discrimination against all Indians. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.110]

3.24.015 Exemption.

Marine View Ventures, Inc., its agents, contractors, lessees and assigns shall be exempted from application of this chapter for leases, activities and operations occurring on the Tribal lands managed by

MVV where the rents and other development costs for any such project equal or exceed \$50,000,000.
[Res. 240108D (01/24/08)]

Subchapter 2. Definitions

3.24.020 Definitions generally.

Words of this chapter shall have the meaning given them in this section unless the context clearly indicates another meaning. If the meaning of a word is not clear, it shall be construed in harmony with the purposes of this title.

- (a) "Commission" means the Puyallup Tribal Employment Rights Commission established by this chapter.
- (b) "Covered employer" means any employer hiring two or more employees who during any 20-day period perform 16 or more hours working within the exterior boundaries of the Puyallup Reservation on Tribally owned trust lands.
- (c) "Director" means the Director of the Puyallup Tribal Employment Rights Office.
- (d) "Employee" means any person employed for remuneration.
- (e) "Employer" means any person or entity that hires two or more employees.
- (f) "Entity" means any person, partnership, corporation, joint venture, association, government, governmental enterprise or any other natural or artificial person. The term "entity" is intended to be as broad and encompassing as possible to ensure the coverage of this chapter over all employment and contract activities within the Tribe's jurisdiction and the term shall be so interpreted by the Commission and Courts.
- (g) "Government commercial enterprise" means any activity by the Puyallup Tribe or other governments, local, state, or federal, that is not a traditional function of government as defined by the United States Internal Revenue Service.
- (h) "Indian" means any member of a federally recognized tribe.
- (i) "Local Indian" means any member of a federally recognized tribe who resides within the exterior boundaries of the Puyallup Indian Reservation.
- (j) "TERO" means the Puyallup Tribal Employment Rights Office. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.200]

Subchapter 3. Indian Preference

3.24.030 Indian preference in employment.

All covered employers, for all employment on Tribal and trust lands within the exterior boundaries of the Puyallup Indian Reservation and on Tribally owned lands outside those boundaries, shall give preference to qualified Indians, with the first preference to local Indians, in all hiring, promotion, training, lay-offs, and all other aspects of employment. Such employers shall comply with the rules, regulations, guidelines and orders of the Puyallup Tribal Employment Rights Commission which sets forth the specific obligations of employers in regard to Indian preference and local Indian preference. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.310]

3.24.040 Application of Indian preference requirements.

These requirements shall not apply to any direct employment by the Puyallup Indian Tribe, the federal, state, or other governments or their subdivisions. It shall apply to all the contractors or grantees of such governments and to all commercial enterprises operated by such governments. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.320]

3.24.050 Indian preference in contracting.

All entities awarding contracts or subcontracts for supplies, services, labor, or materials in the amount of \$20,000 or more where the majority of the work on the contract or subcontract will occur on Tribal and trust lands within the exterior boundaries of the Puyallup Indian Reservation and on Tribally owned lands outside those boundaries shall give preference in contracting and subcontracting to qualified entities that are certified by the Commission as 51 percent or more Indian-owned and controlled, with a first preference to qualified entities that are 51 percent or more owned and controlled by local Indians. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.330]

3.24.060 Application of Indian preference in contracting.

These requirements shall not apply to the award of contracts awarded directly by the Tribal Council of the Puyallup Tribe of Indians, by the federal or state government or their subdivisions. These requirements shall apply to any contract awarded by any commercial enterprise of the Puyallup Tribe of Indians, even if said contracts must be submitted to the Tribal Council of the Puyallup Tribe of Indians for approval. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.340]

3.24.070 Tribal programs or divisions.

Tribal programs or divisions other than commercial enterprises shall not be required to comply with this chapter but shall, when submitting a contract to the Tribal Council for approval, indicate as part of the submission to the Council the steps taken to award the contract to a local Indian contractor. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.350]

3.24.080 Subcontracts included.

This chapter shall apply to all subcontracts awarded by a Tribal, federal, or state direct contractor or grantee, whether or not the prime contract was subject to this chapter. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.360]

3.24.090 All covered entities to comply.

All covered entities shall comply with the rules, regulations, guidelines and orders of the Commission which set forth the specific obligations of such entities in regard to Indian preference in contracting and subcontracting. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.370]

3.24.100 System for certifying firms for Indian preference.

The Commission shall establish a system for certifying firms as Indian preference and local Indian preference eligible. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.380]

3.24.110 Unions.

Any covered employer who has a collective bargaining agreement with one or more unions shall obtain written agreement from such union(s) stating that the union shall comply with Indian preference laws, and with the rules, regulations and guidelines of the Puyallup Tribe of Indians. Such agreement shall be subject to the approval of the Director of the TERO. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.390]

Subchapter 4. Tribal Employment Rights Commission

3.24.120 Tribal Employment Rights Commission.

There is created a Puyallup Tribal Employment Rights Commission. The Commission shall be composed in the following manner: The Puyallup Tribal Council shall select from its general membership seven Tribal members to serve on the TERO Commission.

These Commissioners shall be entitled to reimbursement for services in the form of Committee stipends. Members shall serve until replaced. When a vacancy occurs, the remaining Commissioners may exercise all of the powers of the Commission until a vacancy is filled. [Res. 061195B (11/06/95); Res. 011292b (12/01/92); Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.410]

3.24.130 Quorum.

A majority of the Commission shall constitute a quorum to transact business. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.420]

3.24.140 Recusal of Commission members.

No member of the Commission shall participate in any action or decision by the Commission directly involving himself or herself, or a member of his or her immediate family, or any person, business or other entity of which he or she or a member of his or her immediate family is an employee, or in which he or she or a member of his or her immediate family has a substantial ownership interest, or with which he or she or a member of his or her immediate family has a substantial contractual relationship. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.430]

3.24.150 Definition of immediate family.

For the purposes of this subchapter, "immediate family" means, including by adoption, brother, sister, son, daughter, mother, father, husband, wife, step-brother, step-sister, half-brother, and half-sister. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.440]

3.24.160 Commissioner participation.

Nothing in this subchapter shall preclude a Commissioner from participating in any action or decision by the Commission which:

- (a) Generally affects a class of persons, regardless of whether the Commissioner or a member of his or her immediate family is a member of that class;
- (b) Affects the Puyallup Tribe of Indians or a Tribal enterprise, regardless of whether the Commissioner is a member of the Tribe. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.450]

3.24.170 Voluntary recusal.

A Commissioner may voluntarily recuse himself or herself and decline to participate in any action or decision by the Commission when the Commissioner, in his or her discretion, believes:

- (a) That he or she cannot act fairly or without bias; or
- (b) That there would be an appearance that he or she could not act fairly or without bias. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.460]

Subchapter 5. Powers of the Commission**3.24.180 Powers of the Commission.**

The Commission shall have full power, jurisdiction, and authority to:

- (a) Formulate, adopt, amend and rescind rules, regulations and guidelines necessary to carry out the provisions and intent of this chapter. Unless there are exigent circumstances, the Commission shall provide Tribal members a reasonable time for comment before promulgating any regulation.
- (b) Require each covered employer or entity to submit to the Commission an acceptable compliance plan indicating how it will comply with this chapter. Such compliance plans shall be submitted before a covered employer or entity may commence work on trust lands within the exterior boundaries of the Puyallup Indian Reservation.
- (c) Impose numerical hiring goals and timetables that specify the minimum number of Indians a covered employer or entity must hire, by craft or skill level.
- (d) Require covered employers to establish or participate in such training programs as the Commission determines necessary in order to increase the pool of qualified Indians on the Puyallup Indian Reservation as quickly as possible.
- (e) Establish in conjunction with Tribal employment and training programs a Tribal hiring hall or skills bank and impose a requirement that no covered employer may hire a non-Indian until

the Tribal hiring hall or bank has certified that no qualified Indian is available to fill the vacancy, with a first preference in referral to local Indians.

- (f) Prohibit covered employers from using qualification criteria or other requirements that serve as barriers to Indian employment unless the employer can demonstrate that such criteria or requirements are required by business necessity. In developing regulations to implement this subsection, the Commission shall adopt the EEOC guidelines to the extent they are appropriate. The Commission shall have the right to impose its own requirements in addition to or in lieu of EEOC guidelines when necessary to address unique qualification problems confronting Indians.
- (g) To enter into agreements with unions to ensure union compliance with this chapter. Such agreements shall in no way constitute recognition or endorsement of any union.
- (h) Impose contract and subcontract preference requirements, with a first preference to local Indian firms as eligible for Indian preference and local Indian preference.
- (i) Conduct hearings in accordance with such rules of practice and procedure as may be adopted by the Commission, and to order any relief or sanctions provided by this chapter, and to petition the Tribal Court for orders as are necessary and appropriate to enforce decisions of the Commission or Director and any sanctions imposed by them.
- (j) The Commission shall delegate to the Director the authority to carry out the day-to-day operations of the Commission and such other authority as is convenient or necessary to the efficient administration of this chapter, except that the Commission shall not delegate its authority to adopt, amend or rescind rules, regulations or guidelines or to conduct hearings or to impose sanctions.
- (k) The Commission acting through the Director is authorized to enter into cooperative relationships with federal employment rights agencies, such as EEOC and OFCCP, in order to eliminate discrimination against Indians on and off the Puyallup Indian Reservation and to enter into cooperative relationships with federal agencies, such as the BIA or IHS, in order to implement any federal Indian preference employment or contracting requirements, as such agency may lawfully delegate to the Puyallup Tribe. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.510]

Subchapter 6. TERO Director

3.24.190 TERO Director.

The Commission shall have exclusive authority to appoint, direct, suspend or remove the Director. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.610]

3.24.200 Authority of Director.

The Director shall have authority to hire staff, to expend funds appropriated by the Tribal Council, and to obtain and expend funding from federal, state or other sources to carry out the purposes of this chapter. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.620]

3.24.210 Duties of the Director.

The Director shall administer the policies, authorities and duties prescribed for him in this chapter and delegated to him by the Commission. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.630]

Subchapter 7. Employment Rights Fee

3.24.220 Employment rights fee.

An employment rights fee to raise revenue for Tribal operations and the operation of the Commission is imposed as follows:

- (a) Every covered employer or entity with a construction contract in the sum of \$20,000 or more shall pay a fee of two and one-half percent of the total amount of the contract. Such fee shall be paid by the employer or entity prior to commencing work within the jurisdiction of the Puyallup Tribe. Where good cause is shown, the Director may authorize a construction contractor to pay the fee in installments over the course of the contract.
- (b) Every covered employer or entity other than construction contractors working within the jurisdiction of the Puyallup Tribe, or with gross sales within the jurisdiction of the Puyallup Tribe of more than \$20,000, shall pay a quarterly fee of two and one-half percent of his employees' quarterly payroll which shall be paid within 30 days of the end of the quarter. This fee shall not apply to education, health, governmental, or nonprofit employers. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.710]

3.24.230 Fee collected by Tribal Accounting Office.

The fee shall be collected by the Tribal Accounting Office. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.720]

Subchapter 8. Complaints and Their Investigation

3.24.240 Complaints.

Any individual, group of individuals or organization that believes any covered employer or entity, the Director or the Commission has violated any requirements imposed by this chapter or regulations issued pursuant to it may file a complaint with the Director. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.810]

3.24.250 Contents of complaint.

The complaint shall be in writing and shall contain such information as is necessary to enable the Director to carry out an investigation. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.820]

3.24.260 Investigation timeline.

The Director shall complete the investigation within 30 days of the date on which a complaint is filed unless an extension has been granted by the Commission. Such extension shall not exceed 30 days. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.830]

3.24.270 Duties of the Director.

The Director shall complete the investigation within 30 days of the date on which a complaint is filed unless an extension has been granted by the Commission. Such extension shall not exceed 30 days. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.840]

3.24.280 Investigations.

On his own initiative or pursuant to a complaint, the Director or his agent shall make such public or private investigation within the jurisdiction of the Puyallup Tribe of Indians as he or the Commission deems necessary to determine whether any covered employer or entity has violated any provision of this chapter or rule or order hereunder, or to aid in prescribing rules, regulations and guidelines hereunder. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.850]

3.24.290 Authority to enter.

The Director or his agent may enter during business hours the place of business or employment of any employer for the purpose of such investigations. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.860]

3.24.300 Trade secrets or confidential information.

When requesting any reports or other information from a covered employer, the Director shall request that the covered employer identify all material which contains trade secrets or privileged or confidential commercial, financial or employment information. Any material so identified shall be kept confidential by the Director or other interested party, the Commission determines that the material does not contain confidential information, the release of which would cause unnecessary or excessive business or financial injury or would invade individual privacy. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.870]

3.24.310 Restriction of access to certain information.

Any state or federal tax records, trade secrets, or privileged or confidential commercial, financial or employment information subpoenaed pursuant to this chapter or used in a compliance hearing or subsequent appeal to the Tribal Court shall be confidential records of the Commission or the Tribal Court, and shall not be opened to public inspection and the Tribal Court. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.880]

3.24.320 Investigative powers.

For the purpose of investigations or hearings, which, in the opinion of the Director or the Commission, are necessary and proper for the enforcement of this chapter, a Commissioner, the Director or his agent so designated may administer oaths or affirmations, subpoena witnesses, take evidence, and require, by

subpoena, the production of books, papers, contracts, agreements or other documents, records or information which the Director or the Commission deems relevant or material to the inquiry. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.890]

Subchapter 9. Enforcement

3.24.330 Monitoring compliance.

The Director or his agent may require the covered employer or entity to submit such reports as deemed necessary to monitor compliance with the requirements of this chapter or any rule or order hereunder. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.910]

3.24.340 Notice of violation.

When the Director has grounds to believe a violation of this chapter or the regulations issued pursuant to it has occurred, he shall notify the covered employer or entity in writing, specifying the alleged violations. The director may withhold the name(s) of the complaining party if there is reason to believe that such party will be subject to retaliation. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.920]

3.24.350 Informal settlement.

The Director shall seek to achieve an informal settlement of the alleged violation. If he is unable to accomplish this, he shall issue a formal notice of noncompliance, which shall also advise the covered employer or entity of the right to request a hearing. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.930]

3.24.360 Notice of violation to include.

The formal notice shall set out the nature of the alleged violation and the steps that must be taken to come into compliance. It shall provide the employer or entity with a reasonable time, which in no event shall be less than five days from the date of receipt of such notice, to comply, unless the Director has reason to believe irreparable harm will occur during that period, in which case the Director may require compliance to occur within five days. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.940]

3.24.370 Request for hearing.

The party may request a hearing before the Commission which shall be held no sooner than five days and no later than 30 days after the date for compliance set forth in the Director's notification to the party charged of a violation, unless an expedited hearing is deemed necessary by the Commission to avoid irreparable harm. If a party fails or refuses to comply and does not request a hearing, the Commission may proceed pursuant to PTC [3.24.400](#). [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.950]

3.24.380 Bond may be required.

If the party requests a hearing and the Director has good cause to believe that there is a danger that the party remove itself or its property for the jurisdiction of the Tribe prior to the hearing, he may, in his

discretion, require the party to post a bond with the Commission in an amount sufficient to cover possible monetary damages that may be assessed against the party at the hearing. If the party fails or refuses to post said bond, the Commission may also petition the Puyallup Tribal Court for such interim and injunctive relief as is appropriate to protect the rights of the Commission and other parties during the pendency of the complaint and hearing proceedings. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.960]

3.24.390 Conduct of hearing.

All hearings held pursuant to PTC [3.24.370](#) shall be conducted by the Commission. The Commission may consider any evidence which it deems relevant and the conduct of the hearing shall be governed by the rules of practice and procedure which may be adopted by the Commission. The Commission shall not be bound by technical rules of evidence in the conduct of hearings under this chapter and no informality in any proceeding, as in the manner of taking testimony, shall invalidate any order, decision, rule or regulation made, approved or confirmed by the decision, rule or regulation made, approved or confirmed by the Commission. No stenographic record of the proceedings and testimony shall be required except upon arrangement by and at the cost of the party charged. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.970]

3.24.400 Remedies when violation has occurred.

If, after the hearing, the Commission determines that a violation occurred and that the party charged has no adequate defense in law or fact, or if no hearing is requested, the Commission may:

- (a) Deny such party the right to do business on the Puyallup Indian Reservation;
- (b) Suspend such party's operation within the Puyallup Indian Reservation;
- (c) Terminate such party's operation within the Puyallup Indian Reservation;
- (d) Deny the right of such party to conduct any further business within the Puyallup Indian Reservation;
- (e) Impose a civil fine on such party in an amount not to exceed \$500.00 per day for each violation;
- (f) Order such party to make payment of back pay to any aggrieved Indian;
- (g) Order such party to dismiss any employees hired in violation of the Puyallup Tribe's employment rights requirements;
- (h) Order the party to take such other action as is necessary to ensure compliance with this chapter or to remedy any harm caused by a violation of this chapter, consistent with the requirements of [25 U.S.C. 1301](#) et seq. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.980]

3.24.410 Decision of the Commission.

The Commission's decision shall be in writing and shall be served on the charged party by registered mail or in person no later than 30 days after the close of the hearing. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.990]

3.24.420 Injunctive relief.

Where the party's failure to comply immediately with the Commission's order may cause irreparable harm, the Commission may move the Tribal Court for, and the Tribal Court shall grant, such injunctive relief as necessary to preserve the rights of the beneficiaries of this chapter, pending the party's appeal or expiration of the time for appeal. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.995]

Subchapter 10. Appeal

3.24.430 Appeal.

An appeal to the Tribal Court may be taken from any final order of the Commission by any party adversely affected thereby. The appeal shall be filed with the Court no later than 30 days after a final order is entered. The Tribal Court shall affirm the decision of the Commission unless it is determined that the final order or decision is arbitrary, capricious or in excess of the authority of the Commission. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.1010]

3.24.440 Notice of appeal.

The appeal shall be taken by serving a written notice of appeal with the Tribal Court, with a copy to the Director within 30 days after the date of the entry of the order. The notice of appeal shall:

- (a) Set forth the order from which the appeal is taken;
- (b) Specify the grounds upon which reversal or modification of the order is sought;
- (c) Be signed by the appellant. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.1020]

3.24.450 Automatic stay.

Except as otherwise provided herein, the order of the Commission shall be automatically stayed pending the determination of the Tribal Court. The Director, however, may petition and the Court, for good cause shown, may order the party requesting the hearing to post a bond sufficient to cover monetary damages that the Commission assessed against the party or to assure the party's compliance with other sanctions or remedial actions imposed by the Commission's order if that order is upheld by the Court. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.1030]

3.24.460 Reversal or modification of Commission's order.

If the order of the Commission is reversed or modified, the Court shall specifically direct the Commission regarding further action in the matter, including making and entering any order or orders in connection therewith, and the limitations or conditions to be contained therein. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.1040]

3.24.470 Order affirmed or no appeal taken.

If the Commission's order is affirmed on appeal, or if no appeal is sought within 30 days from the date of the Commission's order, the Commission shall petition the Court and the Court shall grant such orders as are necessary to enforce and appropriate to enforce the orders of the Commission and the sanctions imposed by it. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.1050]

Subchapter 11. Enforcement**3.24.480 Emergency relief.**

If, at any stage in the enforcement process, the Commission has reason to believe there is a danger that a party will remove itself or its property from the jurisdiction of the Tribal Court, such that the Commission or the Court will not be able to collect monetary damages or TERO fees that are owed by that party pursuant to any outstanding order of the Commission or Court, or which may be owed if the charges set out in any outstanding notice of violations are upheld, the Commission may petition the Tribal Court pursuant to the rules and procedures of that Court to attach and hold sufficient property of the party to secure compliance or for such other relief as is necessary and appropriate to protect the rights of the Commission and other affected parties. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.1110]

3.24.490 Enforcement of order.

If, 30 days after a decision by the Commission, no appeal has been filed, or, 30 days after a decision by the Court on an appeal from a decision by the Commission, a party has failed to pay monetary damages imposed on it or otherwise complied with an order of the Commission or the Court, the Commission may petition the Court to order the Tribal Police to confiscate and hold for sale such property of the party as is necessary to ensure payment of said monetary damages or to otherwise achieve compliance. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.1120]

3.24.500 Petition for confiscation.

The petition shall be accompanied by a list of property belonging to the party which the Commission has reason to believe is within the jurisdiction of the Tribal Court, the value of which approximates the amount of monetary damages at issue. If the Court finds the petition to be valid, it shall order the Tribal Police to confiscate and hold said property or as much is available. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.1130]

3.24.510 Notice of confiscation.

The Tribal Police shall deliver in person or by certified mail a notice to the party informing it of the confiscation and of its right to redeem said property by coming into compliance with the order outstanding against it. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.1140]

3.24.520 Sale of confiscated property.

If 30 days after confiscation the party has not come into compliance, the Court shall order the Police to sell said property and use the proceeds to pay any outstanding monetary damages imposed by the

Commission and all costs incurred by the Court and Police in the confiscation and sale. Any proceeds remaining shall be returned to the party. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.1150]

Subchapter 12. Fair Labor Standards Act

3.24.530 Fair Labor Standards Act incorporated herein.

The provisions of the Federal Fair Labor Standards Act, as amended now or in the future, regarding minimum wages (including Davis-Bacon minimum wages), overtime, fringe benefits, and time for payment of wages, are adopted by reference in and by this chapter. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.1210]

3.24.540 Enforcement.

The Commission shall have the authority to monitor and enforce those requirements, pursuant to the monitoring and enforcement authorities provided generally to the Commission by this chapter; provided, that this section shall apply only to those employers who are otherwise covered by the federal law. No employer who is not presently subject to the federal laws or subsequently made subject by amendments or Court decision shall be covered by this section. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.1220]

3.24.550 Purpose of subchapter.

The purpose of this subchapter is to give the Commission parallel authority to monitor and enforce the fair labor requirements against those already covered by federal law, not to expand such requirements against those already covered by federal law and not to expand such requirements to employers not already covered. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.1230]

3.24.560 Credit for penalties paid to federal government.

In imposing backpay awards, penalties and interest sanctions under this chapter, the Commission shall credit an employer with any backpay, interest, and penalties paid pursuant to an order of settlement entered into with the federal government for the same violation. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.1240]

Subchapter 13. Police Authorization

3.24.570 Police authorization.

The Puyallup Tribal Police are expressly authorized and directed to enforce such cease and desist or related orders as may from time to time be properly issued by the Commission and the Director. Such orders do not require a judicial decree or order to render them enforceable. A removal order, however, shall not be enforced unless it is accompanied by a judicial decree of the Tribal Court. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.1310]

3.24.580 Police not civilly liable.

The Police shall not be civilly liable for enforcing orders signed by the Director and the Commission. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.1320]

Subchapter 14. Miscellaneous

3.24.590 Severability.

If any provision of this chapter or the application of it to any person, entity or circumstance is held invalid, this chapter shall be given effect without the invalid provision or application and, to this end, the provisions, sections, and subsections herein are declared to be severable. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.1410]

3.24.600 Repeal of prior acts.

All provisions of any Tribal ordinance, resolution or regulation previously enacted or adopted by the Puyallup Tribe of Indians and its Tribal Council which are inconsistent with this chapter are hereby repealed. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.1420]

3.24.610 Effective date.

This chapter shall become effective on the twelfth day of July, 1991. [Ord. 150791 (07/15/91); Res. 86619 (07/12/91); prior code § 10.03.1430]

PART I

**TRIBAL EMPLOYMENT RIGHTS INDIAN
PREFERENCE REGULATIONS 3.24R**

Chapter 3.24R

TRIBAL EMPLOYMENT RIGHTS – INDIAN PREFERENCE REGULATIONS

Sections:

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- [3.24R.020](#) Dissemination.
- [3.24R.030](#) Definitions.
- [3.24R.040](#) Coverage.
- [3.24R.050](#) Submission of compliance plans.

Subchapter 2. Indian Preference in Employment and Training

- [3.24R.060](#) Hiring.
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Subchapter 3. Indian Preference in Contracting and Subcontracting

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Subchapter 4. Criteria and Procedures for Certifying Firms as Indian Preference Eligible

- [3.24R.210](#) General statement of policy.
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Subchapter 1. General Provisions

3.24R.010 Purpose.

The following regulations are issued pursuant to the authority granted to the Puyallup Tribe of Indians Employment Rights Office (hereinafter “TERO”) by the Puyallup Tribe of Indians Employment Rights Code (Chapter [3.24](#) PTC), which requires the preferential employment of Indians and Indian-owned firms by all contract-awarding entities and employers operating on lands held in trust for Indians or the Puyallup Indian Tribe within the exterior boundaries of the Puyallup Indian Reservation and on Tribally owned trust lands located elsewhere. [Res. 061293 (12/06/93) § 1.1]

3.24R.020 Dissemination.

The obligation of all employers to comply with Tribal employment rights requirements shall be made known to all existing and future employers. All bid announcements issued by any Tribal, federal, state or other private or public entity shall contain a statement that the successful bidder shall comply with these regulations and that a bidder may contact the TERO to obtain additional information. Those Tribal and other offices responsible for issuing business permits for the Reservation or otherwise engaged in activities involving contact with prospective employers on the Reservation shall be responsible for informing such prospective employers of these regulations. [Res. 061293 (12/06/93) § 1.2]

3.24R.030 Definitions.

- (a) “Commercial enterprise” means any activity by the Puyallup Tribe of Indians of the federal or state governments that is not a traditional government function as defined by the Internal Revenue Service.

- (b) "Covered employer" means any employer employing two or more employees who, during any 20-day period, work, cumulatively, 16 or more hours work on trust lands within the exterior boundaries of the Puyallup Indian Reservation.
- (c) "Employee" means any person employed for remuneration.
- (d) "Employer" means any person, partnership, corporation or other entity that employs, for remuneration, two or more employees.
- (e) "Entity" means any person, partnership, corporation, enterprise, or other natural or artificial person or organization. The term "entity" shall be defined to ensure coverage of all employment and contract activities within the Tribe's jurisdiction.
- (f) "Indian" means any member of a federally recognized Tribe.
- (g) "Local Indian" means a member of a federally recognized Tribe who has resided on or near the Puyallup Indian Reservation for a period of not less than 60 days before the start of the project at issue.
- (h) "Near the Reservation" means a location which is within a reasonable daily commuting distance of the job site at issue.
- (i) "Nonlocal Indian" means a member of a federally recognized tribe who does not live on or near the Puyallup Indian Reservation.
- (j) "Trust land(s)" means land held in trust by the United States government for the use and benefit of Indians or an Indian tribe. [Res. 061293 (12/06/93) § 1.3]

3.24R.040 Coverage.

- (a) Employment. These regulations shall apply to all covered employers. They shall not apply to employees of the Puyallup Indian Tribe, the federal government, the Washington State government, or the subdivisions of such government. These regulations shall apply to all contractors or grantees of such governments and to all commercial enterprises operated by such governments.
- (b) Contracting and Subcontracting. Contracts directly awarded by the Puyallup Tribal Council or the federal government are not subject to these regulations.

The contract and subcontract preference requirements of these regulations shall apply to an entity awarding one or more contracts and/or subcontract(s) for supplies, services, labor or materials in a total amount which exceeds \$20,000; provided, the majority of the work or the majority of the supplies or materials shall be expended on trust lands.

The subcontracts awarded by entities which have received contracts from the Tribe or federal government are subject to these regulations.

A contract awarded by a commercial enterprise of the Puyallup Indian Tribe is also subject to these regulations.

- (c) Employment Rights Fee. An employment rights fee of two and one-half percent of the contract amount shall be assessed against any covered employers. [Res. 061293 (12/06/93) § 1.4]

3.24R.050 Submission of compliance plans.

Each entity, contractor, or subcontractor, intending to engage in business activity on or near the Reservation, prior to the time it commences work on or near the Reservation, shall submit a contracting training plan to the TERO. No new employer or entity shall commence work on or near the Reservation until it has met with the TERO and developed an acceptable plan for implementing its obligations under these regulations.

- (a) Employment and Training Plan. The employment and training plan shall show the number of man-hours, by craft and skill category, anticipated to complete the contract or project. The employer shall identify those persons to be approved as permanent and key employees (see PTC 3.24R.060(b)) and shall provide sufficient data to verify the status of those employees.

The plan shall also describe how the employer intends to participate in the Tribe's training programs.

- (b) Contracting and Subcontracting Plan. The contracting and subcontracting plan shall indicate all contracts and subcontracts that will be entered into by an entity and the projected dollar amounts thereof.

If the entity has awarded a firm contract or subcontract work, it shall list the name of that firm and indicate whether it is a firm certified by the TERO as Indian preference-eligible. If the firm has not been certified, the entity shall further indicate why a technically qualified certified firm registered with the TERO, if any, was not selected. The plan shall also indicate how the entity intends to comply with Subchapter 3 of these regulations when awarding all contracts and subcontracts not yet awarded at the time the plan is submitted. [Res. 061293 (12/06/93) § 1.5]

Subchapter 2. Indian Preference in Employment and Training

3.24R.060 Hiring.

- (a) Tribal Hiring Hall. An employer may recruit and hire workers from whatever sources available and by whatever process chosen; provided, that (except as provided in subsection (b) of this section) the employer may not employ a nonlocal Indian or a non-Indian until the TERO is given 48 hours notice to locate and refer a qualified local Indian. In those instances where a

worker is needed in less than 48 hours, the employer may request this requirement be waived. Such waiver shall be granted, provided the employer can demonstrate that a need exists.

When an employer or the TERO cannot locate a qualified local Indian, a best faith effort shall be made to locate, refer and hire an Indian who does not qualify as a local Indian but who is a member of a federally recognized tribe; provided, that where not prohibited by federal law, first preference shall be given to members of the Puyallup Tribe, then if no qualified Puyallup Tribal members are available, second preference will be given to other Indians.

- (b) Permanent and Key Employees. Prior to commencing work on or near the Puyallup Indian Reservation, a prospective employer and all subcontractors shall identify key and permanent employees. Such employees may be employed on the project whether or not they are local Indians. A "permanent employee" is defined as one who remains on the employer's or subcontractor's annual payroll, or is an owner of the firm. A "key employee" means a top supervisory employee or an employee who performs a critical function such that an employer would risk likely financial damage or loss if that task were assigned to a person unknown to the employer. The fact that an employee had worked for the employer on previous projects shall not qualify that employee as a key or permanent employee.

Exceptions for regular employees may be granted by the TERO Director on a case-by-case basis. Any employer or subcontractor filling a vacant position in its organization immediately prior to undertaking work pursuant to the contract to be performed on trust lands shall provide satisfactory evidence to the TERO Director that such hiring was not intended to circumvent these regulations.

Upon approval by the TERO of each key employee or permanent employee requested by the employer, the TERO shall issue a permit to that employee.

(c) Work Permits.

- (1) No person who is not a Puyallup Tribal member or a local Indian shall be employed by a covered employer until he or she has obtained a work permit from the TERO.

- (2) Work permits shall be granted under the following circumstances:

- (A) To all key and permanent employees listed in the employer's preference plan who are certified by the TERO Director as meeting the criteria for key and permanent employees.
- (B) To nonlocal Indians or non-Indians hired after the employer has asked the TERO to locate and refer a qualified Tribal member or local Indian and the TERO has been unable to do so within the time provided by these regulations. When the TERO has been unable to locate and refer a local Indian within the time provided, the

employer shall request, and the TERO shall issue, a work permit for the nonlocal Indian or non-Indian hired for the position at issue.

- (C) To a person employed by a covered employer, when the person is employed on or near the Reservation, in a permanent position and he or she began his or her employment before the effective date of the TERO Ordinance (Chapter [3.24](#) PTC).
- (D) To all owners of covered entities when such owner will be performing work for his or her entity. Prior to commencing work, the person shall demonstrate that he or she is a legitimate owner of the entity and shall request a permit. Upon finding that the person is a legitimate owner, the TERO Director shall issue said person a work permit.
- (E) To such other persons that the Commission determines are entitled to a permit.

(d) Sanctions. Any nonlocal Indian found to be employed by a covered employer who does not have a valid work permit shall be summarily removed from the job and the employer shall be subject to such additional sanctions as the Commission may impose. In imposing sanctions under this section, the Commission shall consider the following factors:

- (1) Was the violation intentional?
- (2) Did the employer act quickly to remove the employee in question?
- (3) Whether the employer had been cited for work permit violations in the past?

(e) Termination. No Tribal member or local Indian worker shall be terminated until all nonlocal Indians or non-Indian workers in the same craft have been terminated. This method of termination shall continue until such time as there are no members of each class who meet the threshold qualifications for the job.

Should an employer lay off by crews, qualified local Indians shall be transferred to crews that will be retained; provided there are nonlocal Indians or non-Indians in the same craft employed on the crews that are to be retained.

(f) Unions. An employer or subcontractor who has a collective bargaining agreement with one or more labor unions shall obtain written agreement from said unions indicating that they will comply with these Indian preference requirements. Specifically, the contractor may make initial job referral requests to the union.

However, if the union does not have a qualified Tribal member or local Indian worker on any of its out-of-work lists, the union shall contact the TERO to identify a qualified local Indian

worker. Should TERO find such a worker, he or she shall be referred through the union hiring hall to the job site.

The union may not refer a nonlocal Indian or non-Indian until TERO has indicated that no qualified local Indian worker is available. Before referring the nonlocal Indian to the job site, the union shall request and the TERO shall issue a work permit for that worker. No Indian worker shall be required to travel to a site off trust lands to be processed by the union hiring hall. Such processing shall be done on trust lands or by telephone or mail.

Any Indian worker who does not wish to become a member of the union shall be granted a temporary work permit for the duration of the project. Said worker shall pay all union dues but shall not be required to pay an initiation fee. [Res. 061293 (12/06/93) § 2.1]

3.24R.070 Training.

Upon the request of the TERO, all employers shall participate in training programs to assist Indians become qualified in the various job classifications used by the employer. Employers engaged in construction shall participate in the Tribe's training programs or a union apprenticeship program. All trainees or apprentices shall be local Indians. If an employer is not participating in a union apprenticeship program, the Tribe shall make a best effort to bear the costs of such training or apprenticeship programs. Employers with collective bargaining agreements with unions may use union apprenticeship programs, provided they obtain agreement from the unions to hire Indian apprentices only on the project. [Res. 061293 (12/06/93) § 2.2]

3.24R.080 Job qualification or personnel requirements.

An employer may not use job qualification criteria or personnel requirements which are not required by business necessity to serve as barriers to the employment of Indians. The burden shall be on the employer to demonstrate that the criterion or personnel requirement is required by business necessity. The employer shall eliminate the criterion or personnel requirement at issue if it is unable to show such business necessity. [Res. 061293 (12/06/93) § 2.3]

3.24R.090 Religious accommodations.

Employers shall make reasonable accommodation to the religious beliefs of Indian workers.

In implementing these requirements, the TERO shall be guided by the principles established by the EEOC Guidelines, particularly [29](#) CFR Parts [1604](#) through [1607](#). However, the TERO shall have the right to go beyond the EEOC principles in order to address employment barriers unique to Indians.

Where the TERO and the employer are unable to reach agreement on matters covered in this section, a hearing shall be held, as provided for in these regulations. The TERO Director shall make a determination on the issues and shall order such actions as he deems necessary to bring the employer into compliance with this section. The employer may appeal the decision of the TERO Director under the procedures provided for in Subchapter 6 of these regulations. [Res. 061293 (12/06/93) § 2.35]

3.24R.100 Promotion.

The employer shall give local Indians preferential consideration for all promotion opportunities and shall encourage local Indians to seek such opportunities; provided, that where not prohibited by federal law, first preference shall be given to members of the Puyallup Tribe, then if no qualified Puyallup Tribal members are available, second preference shall be given to other Indians. [Res. 061293 (12/06/93) § 2.4]

3.24R.110 Summer students.

Local Indians shall be given preference in the hiring of summer student help. [Res. 061293 (12/06/93) § 2.5]

3.24R.120 Retaliation.

No employer shall punish, terminate, harass, or otherwise retaliate against any employee or other person who has exercised his or her rights under the TERO Ordinance (Chapter [3.24](#) PTC) or has assisted another to do so. Further, any employer who harasses or abuses an employee of the TERO carrying out official duties under this chapter shall be summarily removed from trust lands. An employer shall be responsible for the actions of its subcontractors and their employees regarding the prohibitions in this section. [Res. 061293 (12/06/93) § 2.6]

3.24R.130 Counseling and support programs.

The TERO, in conjunction with other Tribal and federal offices, will provide counseling and other support services to Indians employed by covered employers to help such Indians retain employment. Employers shall cooperate with such counseling and support services. [Amended during 2010 recodification; Res. 061293 (12/06/93) § 2.7]

Subchapter 3. Indian Preference in Contracting and Subcontracting**3.24R.140 Entity obligations.**

- (a) Generally. Every entity engaged in business activity on trust lands or within the jurisdiction of the Puyallup Tribe shall give preference to firms certified by the Tribe under Subchapter 4 of these Regulations in any contract or subcontract it awards; provided 50 percent or more of said contract or subcontract is to be performed on trust lands or within the jurisdiction of the Puyallup Tribe; and provided further, that there are qualified certified firms willing to perform the work at a reasonable price, as defined by PTC [3.24R.180](#). If the entity determines that certified firms are not qualified to perform all of the work required under a contract or subcontract, the entity shall apportion the project in such manner that the certified firms can qualify for that portion of the work.
- (b) Order of Preference. The following order of preference shall apply in the award of contracts and subcontracts:

- (1) First preference shall be given to Indian preference certified firms, 51 percent or more of which are owned by Puyallup and other local Indians.

(2) Second preference shall be given to other Indian preference certified firms.

If no Indian preference certified firms are available, Indian/non-Indian joint ventures approved by the TERO shall be given preference over wholly non-Indian-owned firms or joint ventures.

- (c) Notice to TERO and to Certified Firms. Any entity intending to issue a bid, request for proposal, or other action leading to the employment of a contractor covered by the TERO Ordinance (Chapter [3.24](#) PTC) and these regulations shall notify the TERO of its plans not less than 10 days before issuing notice to bidders or other potential contractors. The entity shall also obtain from the TERO a list of Indian preference certified firms and shall send a copy of the bid notice or other notice setting out the contract opportunity to each Indian preference certified firm engaged in the field of commerce in which the contract work will take place. The TERO shall identify such firms according to the order of preference set out in subsection (b) of this section. An entity that fails to comply with this requirement shall be subject to the sanctions set out in Subchapter 9 of the TERO Ordinance (Chapter [3.24](#) PTC).
- (d) Proviso. Provided, that if any requirement of these regulations is inconsistent with the requirements of federal law, the regulation shall take precedence to the latter. (As used in these regulations, the terms “contract” and “subcontract” apply to all contracts, including, but not limited to, contracts for construction, supplies, services, and equipment, regardless of tier.) [Res. 061293 (12/06/93) § 3.1]

3.24R.150 Responsibility for compliance.

Any entity engaged in business activity on trust lands or within the jurisdiction of the Puyallup Tribe of Indians shall be liable for the compliance of its contractors and subcontractors with these regulations. Specifically:

- (a) Construction. An entity awarding a prime construction contract shall give preference in the award of the contract and for ensuring that the prime contractor also gives preference in the selection of subcontractors.

When a prime contract is awarded directly by an agency of the United States government (see subsection (b) of this section), the prime contractor shall be the responsible entity.

When the entity is an Indian housing authority (IHA), it shall not be subject to any monetary sanctions as provided in PTC [3.24R.310](#), and shall be exempt from any requirements of these regulations that are inconsistent with the Department of Housing and Urban Development’s Indian preference regulations.

Given that no prime contractor shall be permitted to commence work on the Reservation until it has demonstrated that it will comply with the subcontract preference requirements, it is in the interest of the funding entity to ensure its low bidder will comply with the subcontract preference requirements prior to the award of the contract. The Tribe shall not be liable for any

losses incurred by the funding entity because it has entered into a contract with a prime contractor which, because of its failure to provide adequate proof that it will fully comply with the subcontract preference requirements of these regulations (e.g., through the submission of an acceptable subcontractor plan; see PTC 3.24R.050(b)), is not permitted to commence work on the Reservation.

- (b) Natural Resource Development (Oil, Gas, Hard Rock Minerals, Timber, Etc.). Whereas the Tribe does not have authority over the United States government and federal agency contracting policies and procedures, these regulations do not apply to the award of direct prime contracts by a federal agency. However, the selected contractor shall be required to comply with all subcontract preference requirements. [Res. 061293 (12/06/93) § 3.2]

3.24R.160 Requirements in contracting.

Preference shall be given to certified firms in the award of all contracts. An entity may select its contractor in any manner procedure it so chooses; provided:

- (a) Competitive Award. If an entity uses competitive bidding or proposals, competition shall be limited to certified firms. If the entity is unsure whether there are any qualified certified firms, it shall publish a prior invitation for certified firms to submit a statement of intent to respond to such a limited advertisement when published and to furnish, with the statement of intent, evidence sufficient to establish their technical qualifications. If the entity fails to receive any statement of intent from a technically qualified certified firm, it may, after notifying the TERO, advertise for bids or proposals to the low bidder. If only one certified firm submits a bid or statement of intent, the entity (unless otherwise prohibited by federal law or regulation) shall enter into negotiations with that firm and shall award the contract to that firm so long as the firm is technically qualified and is willing to perform the work at a reasonable price.
- (b) Negotiated Award. If the entity selects its contractor through negotiations or other informal process, it shall not enter into a contract with a noncertified firm unless it has contacted every certified firm in the relevant field and has determined that there is no certified firm available that is technically qualified to perform the work required at a reasonable price. A firm which is not certified shall not be selected, provided a certified firm meets the minimum threshold qualifications. [Res. 061293 (12/06/93) § 3.3]

3.24R.170 Requirements in subcontracting.

- (a) General Requirements. Preference shall be given in the award of all subcontracts to certified firms. The contractor may select its subcontractor in any manner it so chooses; however:
 - (1) If the contractor uses competitive bidding or proposals, competition shall be limited to certified firms. If the contractor is unsure whether there are any qualified certified firms, it may publish a prior invitation for certified firms to submit a statement of intent to respond to such a limited advertisement when published and to furnish, with the statement of

intent, evidence sufficient to establish their technical qualification. If the contractor fails to receive any statement of intent from a technically qualified firm, it may, after so notifying the TERO, advertise for bids or proposals without limiting competition to certified firms and may award to the low bid. If only one certified firm submits a bid or statement of intent, the contractor shall enter into negotiations with that firm and shall award the contract to it, provided the firm is technically qualified and is willing to perform the work at a reasonable price, as defined in PTC [3.24R.180](#).

- (2) If the contractor selects its subcontractor through negotiations or other informal process, it shall not enter into a contract with a noncertified firm unless it has contacted every certified firm in the relevant field and has determined that there is no certified firm available that is technically qualified to perform the work required at a reasonable price. So long as a certified firm meets the minimum threshold qualifications as defined in PTC [3.24R.180](#), no noncertified firm may be selected.

(b) **Special Requirements.** Entities awarding construction contracts shall comply with the following special requirements in the award of subcontracts:

- (1) The bid notice shall require that each bidder submit, as part of its bid, a subcontract plan showing, for each subcontract it intends to enter, the name of the firm, whether it is certified, if it is not certified why the contractor did not select a certified firm, and the projected subcontract price, as provided for in PTC [3.24R.050\(b\)](#). (Since, pursuant to that section, a contractor will not be permitted to commence work on the Reservation unless it has an approved subcontracting plan, it is in the contract-awarding entity's self-interest to declare as nonresponsive or nonresponsible any bidder who fails to submit a satisfactory plan.) The subcontract price information for each bidder shall be provided to the TERO and shall be used to ensure that a contractor has not engaged in bid shopping as a means to discourage certified firms or to force them to accept a subcontract at an unreasonably low price.
- (2) It shall be illegal for any contractor or bidder to engage in bid shopping. "Bid shopping" is defined as any practice involving or comparable to the contracting of different subcontracting firms, informing them that a competitor has underbid them, but offering them an opportunity to underbid the competitor. Any contractor found to have engaged in bid shopping shall be prohibited from engaging in work on trust lands or within the jurisdiction of the Puyallup Tribe of Indians; if engaged in work, shall be liable for treble damages for any losses suffered by a certified firm as a result of the contractor's bid shopping practices. The TERO shall have the right to require any contractor to demonstrate that a reasonable relationship exists between the dollar amount of a proposed subcontract and the reasonable costs of supplies, materials and labor.

(3) The contractor shall not be prohibited from requiring that a subcontractor provide some form of security. However, if a subcontractor bonding requirement has been imposed and an Indian firm is unable to obtain a bond, the prime contractor shall permit the Indian subcontractor to provide another adequate form of security. A list of acceptable bonding alternatives follows:

- (A) No bond required on amounts of less than \$25,000;
- (B) Surety bonds;
- (C) Cash bonds – to 25 percent – held in escrow by Tribal Attorney or bank;
- (D) Increased retainers – 25 percent instead of normal;
- (E) Letter of credit – 100 percent;
- (F) Letter of credit – 10 percent – with cash monitoring system;
- (G) Cash monitoring system;
- (H) Other options to be considered as they arise.

The final decision on whether an alternative form of security is sufficient shall rest with the TERO.

(4) If no certified firm available is qualified to perform a particular subcontract because the subcontract is too large for the capacity of any one certified firm, the contractor shall make a good faith effort to divide that subcontract into smaller pieces so that several certified firms may qualify and perform the work.

(c) Technical Assistance to Indian Subcontractors. The prime contractor shall develop, submit and implement a plan for assisting Indian subcontractors to develop and improve their technical and managerial capabilities. [Res. 061293 (12/06/93) § 3.4]

3.24R.180 Responsibility for evaluating technical qualifications and reasonable price.

(a) Technical Qualifications. The entity and its contractors and subcontractors shall have the discretion to determine technical qualifications. Should the entity determine that there are no technically qualified certified firms available it shall provide to each certified firm it rejects a description, in writing, of areas in which it believes the firm is weak and steps it should take to upgrade its qualifications.

If a certified firm that is disqualified because of insufficient technical qualifications believes that the disqualification was an improper effort by an entity, contractor, or subcontractor to circumvent its preference responsibilities under these regulations, it may file a complaint with

the TERO. The complaint shall be filed within 20 days after the firm received notice of nonqualification. The burden shall be on the complaining firm to demonstrate that it is qualified and its disqualification was the result of an effort to circumvent these regulations. If after a hearing, as provided for in PTC [3.24R.300](#), the complaint is found to be valid, the TERO Director shall impose such sanctions as he deems appropriate, including punitive damages.

- (b) **Reasonable Price.** An entity may use any process it so chooses for determining what constitutes a reasonable price including, but not limited to, competitive bidding (open or closed), private negotiations, or the establishment of prototype cost ceiling before bidding or negotiations commence.

Before an entity may reject all certified firms on the basis of price, it must offer one or more of the certified firms an opportunity to negotiate price. If there is only one technically qualified certified firm, an entity shall enter into negotiations on price with that firm and must contract with that firm if a reasonable price can be negotiated. No entity may reject a certified firm on the grounds that the price is not reasonable and subsequently contract with a noncertified firm at the same or higher price. Any contract modification executed between an entity and a noncertified firm during the course of a project which results in a higher price to that firm will be subject to review by the TERO to assure that the modification in price is justified and not a circumvention of this section. Any entity found to have violated this regulation by such circumvention shall be liable for treble damages for any loss suffered by a certified firm as a result of the entity's action. [Res. 061293 (12/06/93) § 3.5]

3.24R.190 Operation of the contract or subcontractor.

Once an entity enters into a contract with a certified firm, the TERO shall not intervene in the relationship between the parties unless a certified firm demonstrates that action taken against it is intended primarily to circumvent the requirements of these regulations. [Res. 061293 (12/06/93) § 3.6]

3.24R.200 Brokering and fronts.

No Indian firm shall represent that it is exercising management control of a project in order to qualify for Indian preference in the award of said contract or subcontract when in fact such management control is exercised by a non-Indian entity such that the Indian entity is acting as a front or brokering out services. [Res. 061293 (12/06/93) § 3.7]

Subchapter 4. Criteria and Procedures for Certifying Firms as Indian Preference Eligible

3.24R.210 General statement of policy.

Pursuant to its sovereign authority, the Puyallup Tribe of Indians of the Puyallup Indian Reservation has imposed Indian contract preference requirements as a tool for promoting the economic development of the Reservation. Indian preference in contracting can assist in the development of Indian businesses and thereby assist the Tribe and its members to achieve economic self-sufficiency.

If the preference tool is abused, however, it will undermine development and discredit the process. Therefore, it is the policy of the Tribe to require that an applicant for Indian contract preference certification provide substantial evidence that it is a legitimate Indian-owned and controlled firm.

Specific criteria shall apply in the evaluation of an applicant. See PTC [3.24R.220](#). Experience has shown that persons interested in abusing the Indian preference program are able to structure firms to get around most specific criteria. Therefore, in addition to applying the specific criteria, the reviewing body for the Tribe shall evaluate a firm under the following general criteria:

- (a) Applying sound management principles, whether the firm would be structured as it is, and whether the Indian owners would have been given the amount of ownership and control they have, if there were no Indian preference program in existence. If the reviewing body determines that there is good reason to believe that the firm has been structured (managerially or financially) in a manner that is convoluted or inconsistent with sound business practices in order to enable the firm to qualify for Indian preference certification, the firm shall be denied certification, even if it meets the specific criteria, unless the firm is able to demonstrate beyond a reasonable doubt that it was not structured to manipulate the Indian preference criteria.
- (b) The specific criteria also require that the ownership, control and management of a firm make sense from a sound business perspective. The Indian owners must own and control at least 51 percent of the firm. A primary consideration is what the Indian owner(s) brought to the firm as justification for a share of the business, were Indian preference not a factor. For example, assume the Indian owner paid for his share through a promissory note to the non-Indian owners. In the ordinary course of business, such a transaction would not occur unless the new owners brought something of value, such as managerial or technical expertise, capital, equipment, or marketing opportunities. The ability to qualify for Indian preference is not considered such a marketing opportunity. Such an arrangement would be cause to deny Indian preference certification unless a sound business reason for the arrangement exists. Where an Indian can demonstrate that he or she was unable to provide good value for his or her 51 percent share because the usual sources of capital were closed off to him or her because he or she was an Indian, that person shall be required to demonstrate that he or she extended his or her capital raising ability as far as possible – such that he or she is “at risk” in a significant way – e.g., mortgaged a house or vehicle.

The Indian owner(s) must be directly involved in the firm’s management. While it is not required that an Indian owner be the chief operating officer of the firm, at least one of the Indian owners must be involved in the day-to-day operations of the firm on a full-time basis and in a senior level position. The Indian person in this position shall have the experience or expertise in the area of business the firm is engaged in (or in management generally) to make the senior level role a legitimate one. The Indian owner(s) must also have sufficient knowledge about the firm to be accountable for the firm’s activities.

Certification shall not be granted to a firm whose Indian owners are not involved in the manner described above. There is virtually no benefit to the Indian community from such passive ownership, other than profits to the owners. It could take several years for a firm to show a profit, if one in fact materializes. Yet during that time the non-Indian managers can benefit at the expense of the Indian community. The limited benefits to the Indian owner(s) do not justify this risk. One of two exceptions to this rule is that certification will be granted to 100 percent Indian-owned firms where the manager of the business is a non-Indian spouse of an Indian and the family lives on or near the Reservation. No effort will be made to distinguish between the value contributed by a non-Indian spouse versus the Indian spouse. The family's contribution will be treated as an undivided unit. The second exception is for a more "public corporation," defined as one that is owned by 10 or more persons, 70 percent of which is Indian-owned and the chief executive officer is an Indian.

- (1) Joint Ventures. Joint ventures shall not be granted certification as Indian preference firms. However, an Indian/non-Indian joint venture will be given preference over non-Indian firms, if there are no certified Indian preference unitary firms available.

Such rigorous criteria, giving substantial discretion to the reviewing body, are necessary and appropriate for the Indian contract preference program. Neither the Tribe nor the Indian community benefits from the establishment of "bogus" Indian firms, while the certification of such firms undercuts the credibility of the Tribe's Indian preference program. An Indian firm or individual that is unable, on its own, to qualify as the prime contractor on a large project has other options open to it besides participating in the development of a bogus firm. For example, he or she can seek work at the subcontractor or employee level and benefit from the Tribe requirement that preference be given to Indian subcontractors and employees.

- (2) Procedural Requirements. The procedural requirements for certification provide that applications shall be reviewed by the staff of the Tribe's Tribal Employment Rights Office (TERO), which shall request any additional information it believes appropriate. The TERO will then submit the application, together with its recommended findings, to the TERO Commission. The Commission shall review the application and findings, interview the principals of the firm, request additional information appropriate, and make its determination whether certification should be granted. The firm has the right of appeal to the Tribal Court, which shall reverse the decision only if it finds that the decision was arbitrary or capricious.
- (3) Probationary Certification. A firm shall first receive a probationary certification of one year, or a longer period where the Commission believes such is necessary. The TERO and the Commission shall have the right at any time, either on their own initiative or upon filing of a complaint by any party, to conduct an investigation of a firm to determine if its certification should be suspended or withdrawn. [Res. 061293 (12/06/93) § 4.1]

3.24R.220 Criteria for Indian contract preference certification.

To receive certification as a firm eligible for Indian preference, an applicant must satisfy all the criteria set out in this section:

- (a) Ownership. The firm must be at least 51 percent Indian-owned. The applicant must demonstrate the following:

- (1) Formal Ownership. That an Indian or Indians own(s) 51 percent or more of the partnership, corporation, or other arrangement for which the application is being submitted. Such ownership must be embodied in the firm's organic documents, such as its stock ownership or partnership agreement. Ownership includes:

- (A) Financial ownership – i.e., the Indian(s) owns 51 percent or more of the assets and equipment, will receive 51 percent or more of the firm's assets upon dissolution, and will receive 51 percent or more of the profits; and
- (B) Control – i.e., the Indian(s)' 51 percent or more ownership provides him or her with a majority of voting rights or other decisional authority and that all decisions of the firm are to be made by a majority vote except where otherwise required by law.

- (2) Value. The Indian owner(s) provided real value for 51 percent or more ownership by providing capital, equipment, real property or similar assets commensurate with the value of the ownership share. It will not be considered "real value" if the Indian(s) purchased the ownership share, directly or indirectly, through a promissory note, the ultimate creditor of which is the non-Indian owner of the firm or an immediate relation thereof, or any similar arrangement, unless a convincing showing can be made that the Indian owner(s) brought such special skills, marketing connections, or similar benefits to the firm that there is a good reason to believe the arrangement would have been entered into even if there were not an Indian participant and that he or she could not pay good value for his or her 51 percent or more Indian ownership because the normal capital sources were closed to him or her because he or she is an Indian. The Indian owner(s) may satisfy this requirement by demonstrating further that he or she extended his or her capital-raising capability as far as possible, such that the Indian participant clearly is at risk in the business in relationship to his or her means.
- (3) Profit. The Indian owner(s) will receive 51 percent or more of all profits. If there is any provision that gives the non-Indian owner a greater share of the profits, in whatever form and under whatever name, such as through management fees, equipment rental fees, or bonuses tied to profits, certification will be denied. Salary scales will be reviewed to ensure the relative salaries being paid Indian and non-Indian owners are consistent with the skills of the parties and are not being used to circumvent the requirement that Indian owners receive 51 percent or more of the profits.

(b) Management Control. The firm must be under significant Indian management and control. The firm must be able to demonstrate that:

(1) One or more of the Indian owners must be substantially involved, as a senior level official, in the day-to-day management of the firm as his or her primary employment activity. The Indian owner does not have to be the chief executive officer. However, he or she must, through prior experience or training, have substantial occupational ties to the area of business in which the firm is engaged such that he or she is qualified to serve in the senior level position and is sufficiently knowledgeable about the firm's activities to be accountable to the Tribe for the firm's activities. This provision may be waived when:

- (A) The firm is 100 percent Indian-owned and the chief executive officer is the spouse and/or parent of the owner(s), the family lives on or near the Reservation, and the majority of employees are Indian; or
- (B) The firm is modeled on a publicly held corporation such that it is owned by 10 or more persons, is at least 70 percent Indian-owned, the chief executive officer and the highest-salaried employee in the firm is/are Indian, and a majority of the employees are Indian.
- (C) Integrity of Structure. There must be good reason to believe that the firm was not established solely or primarily to take advantage of the Indian preference program. In evaluating an applicant under this criterion the TERO will consider the factors set out below. The TERO shall exercise broad discretion in applying these criteria in order to preserve the integrity of the Indian preference program and in questionable cases shall deny the certification.

- (i) History of the Firm. Whether the history of the firm provides reason to believe it was established primarily to take advantage of the Indian preference program, and in particular whether the firm, a portion of the firm, or key actors in the firm originally were associated with a non-Indian-owned business that gained little of business value in terms of capital, expertise, equipment, etc., by adding ownership or merging with an Indian firm.
- (ii) Employees. Whether key non-Indian employees of the applicant are former employees of a non-Indian firm with which the Indian firm is or has been affiliated, through a joint venture or other arrangement, such that there is reason to believe the non-Indian firm is controlling the applicant.

Whether Indians are employed in all or most of the positions for which qualified Indians are available. A high percentage of non-Indian employees

in such positions will provide reason to believe the firm was established primarily to benefit non-Indians.

- (iii) Relative Experience and Resources. Whether the experience, expertise, resources, etc., of the non-Indian partner(s) is so much greater than that of the Indian(s) that there is little sound business reason for the non-Indian to accept a junior role in the firm other than to be able to take advantage of the Indian preference program.

- (D) Brokers. Brokers will be certified only if they are dealers who own, operate, or maintain a store, warehouse, or other establishment in which the commodities being supplied are bought, kept in stock, and sold to the public in the usual course of business; provided, that this requirement shall not apply where the applicant demonstrates that it is customary and usual in the area of trade for a broker/dealer not to maintain an establishment and to keep the commodities in stock.
- (E) Manufacturing Companies. In determining whether or not a manufacturing firm is 51 percent Indian-owned and controlled, the Commission shall be guided by the Small Business Administration Standard Operating Procedures on certifying firms as eligible for the 8(a) program. [Amended during 2010 recodification; Res. 061293 (12/06/93) § 4.2]

3.24R.230 Certification procedures.

- (a) Application for Certification. A firm seeking certification as an Indian preference eligible firm shall submit a completed application (see PTC 3.24R.240) to the TERO on a form provided by the TERO. (Application forms may be obtained at the TERO's Office.) TERO staff will be available to assist a firm fill out the application. Within 21 days after receipt of a completed application, the staff shall review the application, request such additional information as it believes during the time any request for additional information is outstanding), conduct such investigations as it deems appropriate, and submit analysis and recommended disposition to the Commission. Copies of the analysis and recommended disposition shall be kept confidential and shall not be made available to the applicant or any other party. When it is so required, the TERO may extend the processing period by an additional 21 days, by sending notification of the extension to the applicant by registered mail. Within 15 days of receipt of the TERO's analysis and recommended disposition, the Commission shall hold a hearing on the application, posting notice of the hearing time at the Tribal Office, the Agency, and the TERO's Office at least five days prior to the hearing. In addition, any other party wishing to present information to the Commission shall be entitled to do so, by requesting, no less than one day prior to the hearing, an opportunity to participate. A party may be represented by counsel. The hearing shall be conducted as provided for the TERO hearing procedures.

- (b) Probationary Certification. An applicant granted certification shall be issued a one-year probationary certificate. During that period, the TERO staff and the Commission shall monitor the firm's activities to ensure that the firm is operating in the manner described in its application. During the probationary period, the TERO and the Commission shall have the right to request and receive such information and documents as they deem appropriate.
- (c) Final Certification. At the end of the probationary period the Commission, after receiving recommendations from the TERO staff, shall either:

- (1) Grant full certification;
- (2) Continue the probationary period for up to six months; or
- (3) Deny certification.

- (d) Withdrawal of Certification. From the information provided in reports required by subsection (f) of this section and PTC [3.24R.250](#), on the basis of a written grievance filed by any other firm or person, or on its own initiative, the TERO may initiate proceedings to withdraw or suspend the certification of any firm. The TERO shall prepare an analysis and recommended disposition for the Commission and shall send the firm notice, by registered mail, that its certification is being examined, along with the grounds therefor. The Commission shall then set a date for a hearing to be held within 21 days after it receives the analysis and recommended disposition from the TERO. At the hearing, the TERO staff shall present the case for suspension or withdrawal and the hearing shall be conducted as set out in PTC [3.24R.300\(b\)](#). After the hearing, the Commission may:

- (1) Withdraw certification;
- (2) Suspend certification for not more than one year;
- (3) Probation; or
- (4) Order corrective action within a fixed period.

A firm that has had its certification withdrawn may not reapply for a period of one year.

- (e) Firms Certified Prior to the Adoption of These Criteria. Each firm holding Indian preference certification from the Tribe prior to the effective date of these regulations shall submit an application as required by these regulations to the TERO within 30 days following the effective date of these regulations.

Should the TERO determine the firm qualified it shall, within 21 days of its receipt by the TERO, recommend approval of the application within 21 days of receipt of the application to the Commission.

The Commission shall, within 30 days of receipt of the recommendation, issue a new certificate without holding a public hearing. The Commission may refuse to issue a new certificate when it has reason to believe that such certification is not merited.

Should the TERO determine the firm does not qualify, it shall prepare an analysis of the reasons therefor, together with its recommended disposition. The analysis shall be submitted to the Commission within 21 days after receipt of the application. Should the TERO require additional information from the firm, computation of the 21-day period shall be stayed by the Commission for a reasonable time to permit such information to be provided. The Commission, after providing the firm an opportunity for a hearing as provided in PTC [3.24R.300\(b\)](#), which shall be held within 15 days after receipt of the TERO's findings, shall:

- (1) Grant the firm a new certificate; or
- (2) Determine that the firm is not in compliance. If the Commission determines that the firm is not in compliance, it shall provide the reasons therefor. The firm shall then have 15 days from the date of the decision to demonstrate to the Commission that it has made such changes as are necessary to come into compliance. If at the end of the 15-day period the firm has failed to come into compliance, its certificate shall be withdrawn. A copy of the withdrawal notice shall be sent to the firm.

- (f) Change in Status and Annual Reports. Each certified firm shall report in writing to the TERO any changes in its ownership or control status within the 60 days following such. Each certified firm, on the anniversary of its receipt of permanent certification, shall update its initial application for certification on the annual report form provided by the TERO. Failure to provide such information shall constitute grounds for withdrawal of certification. [Res. 061293 (12/06/93) § 4.3]

3.24R.240 Application for certification as an Indian preference firm.

1. Firm Identification.

Name of firm (exactly as you want it to appear on all documents).

Address: _____

Telephone: _____

Date of Submission: _____

Single business: _____ Joint Venture: _____

Contact Person: _____

Address: _____

Telephone (Bus.) _____ Home: _____

Type of business (list all areas of business in which the firm intends to engage):

Federal Identification Number: _____

Number of Employees: _____ Number of Indian Employees: _____

Year business was established: _____

2. Ownership.

A. Type of ownership (check one):

____ Sole proprietorship

____ Partnership (attach copy of partnership agreement with all amendments since date partnership created).

____ Corporation (attach copy of the Certificate of Incorporation, Articles of Incorporation and Bylaws, including all amendments since date of incorporation).

B. Percent of Indian ownership: ____%

C. Provide for each Indian owner, his or her name, address, tribal affiliation, enrollment number, percent of ownership, amount of investment in the firm, method of investment (cash, equipment, loan or promissory note indicating who the loan is from), percent of voting control and position in the firm.

D. List for each non-Indian owner, his or her name, address, percent of ownership, amount of investment in firm, method of investment (cash, equipment, loan or promissory note indicating who the loan or note is from), percent of voting control, position in firm, name of all other firms in which the owner holds or has held within the past year an ownership interest (other than publicly held

corporations and similar ownerships held solely for investment purposes) or a management position.

E. List any management fee, equipment rental, bonuses or other arrangements that will provide payment to non-Indian owners beyond their share of profits and salaries, as indicated above.

F. Describe or attach any stock options or other ownership options that are outstanding and any agreements between owners or between owners and third parties which restrict ownership or control of Indian owners.

G. Identify any owner or management official of the named company who is or has been an employee of another company that has an ownership interest in or a present business relationship with the named company; present business relationships include shared space, equipment, financing, or employees as well as both companies having some of the same owners.

H. Indicate if this company or other companies with any of the same officers have previously received or been denied certification or participation as an Indian preference firm and describe the circumstances. Indicate the name of the certifying authority and the date of such certification or denial.

3. MANAGEMENT

A. Provide for each owner of more than 5% interest, all senior management personnel and members of the Board of Directors the following:

1. Name, address and social security number. If Indian, please include his or her Tribe and enrollment number.
2. Present position and description of duties.
3. Previous business experience.
4. Previous work experience in areas in which the firm intends to engage.
5. Other previous work experience.
6. Education and training.
7. Other jobs presently held.

B. Control of company. Identify by name, race, sex and title in the company of those individuals (owners and non-owners) who are responsible for day-to-day management, including, but not limited to, those with prime responsibility for:

1. Financial Decisions.

2. Management decisions, such as:

- a. Marketing and sales;
- b. Hiring and firing;
- c. Purchase of major equipment or supplies;
- d. Supervision of field personnel.

4. CAPITAL AND EQUIPMENT

A. Equipment. List all equipment which costs \$300.00 or more when new.

| QUANTITY | DESCRIPTION | PRICE | HOW OBTAINED (Purchased, etc.) |
|----------|-------------|-------|-----------------------------------|
|----------|-------------|-------|-----------------------------------|

B. Capital.

- 1. Attach a current balance sheet.
- 2. Identify amount and source of original and present capital. (e.g., contributed by owner, bank loan – if loan, indicate name(s) of those legally bound to repay if other than organization).

C. Additional submissions.

Each applicant shall submit with this application the following:

1. List of officers, principal stockholders, and directors, with mailing addresses and number of shares held by each.

2. A sworn statement of the proper officer showing:

- a. The total number of shares of the capital stock actually issued and the amount of cash paid into the treasury on each share sold; or, if paid in property, the kind, quantity and value of the same per share.
- b. Of the stock sold, how much remains unpaid and subject to assessment.
- c. The amount of cash the company has in its treasury and elsewhere.
- d. The property, exclusive of cash, owned by the company and its value.
- e. The total indebtedness of the company and the nature of its obligations.

5. CERTIFICATION

I hereby certify that the information provided in this application is true and complete to the best of my knowledge and belief. I further certify that I have read the applicable ordinances, regulations, criteria and procedures of the Puyallup Tribe of Indians and do hereby submit to the jurisdiction provided therein.

Name of firm: _____

By: _____

(Signature of authorized officer and title)

Name: _____

Title: _____

[Res. 061293 (12/06/93) Appendix]

Subchapter 5. Fees

3.24R.250 Provision for collection of fees.

Except as otherwise provided all fees are due and shall be paid in full by any covered employer prior to commencing work. Other arrangements for payment shall be in writing and signed by the Director.

Immediately upon becoming aware that a covered employer is intending to engage in work, the Director shall mail to the employer, by registered mail, a notice regarding the nature and purpose of the fee, the percentage, the specific amount due, if known, the date due, and the possible consequences should the employer fail to comply. The notice shall be accompanied by a formal notice of fees due informing him/her that payment is overdue.

Should the employer fail to pay the fee by the day it commences work on trust lands or within the jurisdiction of the Puyallup Tribe of Indians, interest shall begin to accrue on that date at the rate of 10 percent per annum. On the day following that on which the employer commenced work, the Director shall send notice to the employer, by registered mail, that the fee is overdue and of the consequences imposed if the fee is not paid immediately.

If the fee is not paid by the fifteenth day after the employer commenced work, the Director shall file a formal charge of noncompliance, and shall schedule a Commission hearing to be held in five days or as soon thereafter as the Commission can meet and shall inform the employer of the scheduled hearing.

At the hearing, to be held whether or not the employer attends, the Commission shall determine whether the employer has failed to comply. If it finds noncompliance, it shall:

- (a) Impose penalties of not more than 10 percent of the amount due;

- (b) Petition the Tribal Court to affirm the decision of the Commission and to enforce its order through confiscation proceeding as provided by law.

Where the Director of the Commission has reasonable cause to believe that an employer will flee the jurisdiction prior to resolution of the matter, the Director may initiate any of the procedures provided for in PTC [3.24.480](#), notwithstanding the above procedure. [Amended during 2010 recodification; Res. 061293 (12/06/93) § 5.1]

3.24R.260 Employers with a permanent place of business on the Reservation.

An employer whom the Director determines will have a permanent place of business on the Reservation shall pay the fee pursuant to the following:

- (a) On April 15th, July 15th, October 15th and January 15th, the employer shall submit, on a form provided by the Director, information showing his total payroll for the previous quarter, accompanied by a check equal to two and one-half percent of the payroll for that quarter.
- (b) The Director, upon receipt of a written request may authorize, in writing, an employer to submit the information and payments on a quarterly schedule other than the one set out in subsection (a) of this section. When doing so, make the schedule compatible with the employer's fiscal year structure.
- (c) An employer covered by this section shall be subject to the same interest, penalty and enforcement requirements and deadlines as those established in PTC [3.24R.250](#). The Director shall send said employers appropriate notices and forms. [Res. 061293 (12/06/93) § 5.2]

3.24R.270 Alternative arrangement.

The Director, in his discretion, may, upon receipt of a written request, authorize an employer to pay the required fee in installments over the course of the year or the contract, as appropriate, when:

- (a) The total annual fee exceeds \$10,000; and
- (b) The employer demonstrates hardship or other good cause.

The decision to authorize an alternative arrangement, which shall be in writing, shall rest solely with the TERO Director and is not appealable to the Commission or the Courts.

The employer shall pay interest, at the prime rate, on all amounts paid after the day he commences work on the Reservation when paying under an alternative arrangement. [Res. 061293 (12/06/93) § 5.3]

Subchapter 6. Administrative Procedures

3.24R.280 Reports and monitoring.

All entities engaged in any aspect of business activity on trust lands or within the jurisdiction of the Puyallup Tribe of Indians shall submit reports and such other information as requested by TERO. Employees of the TERO have the authority to make on-site inspections during regular working hours in order to monitor an entity's compliance with these regulations.

Employees of the TERO also have the authority to inspect and copy all relevant records of an entity, of the entity's signatory unions or subcontracts, to speak with workers on the job site and to engage in similar investigatory activities. All information collected by the TERO is confidential, unless disclosure is required during a hearing or appeal as provided for in these regulations. [Res. 061293 (12/06/93) § 6.1]

3.24R.290 Individual complaint procedures.

- (a) Noncompliance by an Entity. Any Indian or group of Indians, representatives or group of a class of Indians, certified firm, group of certified firms, or other persons or entity who believe that an entity has failed to comply with these regulations, or who believe that they have been discriminated against by a covered entity because they are Indian, may file, whether or not they can show that they were personally harmed by the entity's noncompliance.
- (b) Noncompliance by TERO. Any entity, group of entities, noncertified firms, non-Indian workers, or entity who believe that an action of the TERO Office under these regulations is in violation of these regulations, or Tribal or federal law, may file a complaint with the TERO. Persons may file whether or not they can show they were personally harmed by the TERO's action. [Res. 061293 (12/06/93) § 6.2]

3.24R.300 Compliance and hearing procedures.

- (a) Informal Settlement. If the TERO has reason to believe that a covered entity has failed to comply with any of these regulations, it shall notify the entity in writing, specifying the alleged violation(s). Should the party notified be a contractor or a subcontractor, notice shall also be provided to the entity holding the permit or authorization under which the contractor or subcontractor is operating and such entity shall be a party to all further negotiations, hearings and appeals.

The TERO shall then conduct an investigation of the charge and shall attempt to achieve an informal settlement of the matter. If voluntary conciliation cannot be achieved and the Director has reasonable cause to believe a party has violated the ordinance (Chapter [3.24](#) PTC) or regulations, he shall issue a formal notice of noncompliance to the party and shall proceed with the enforcement procedure provided by law.

- (b) Procedures for Hearing. All hearings before the Commission shall be governed by the Puyallup Tribe of Indians' due process hearing procedure. [Res. 061293 (12/06/93) § 6.3]

3.24R.310 Sanctions.

The Commission may impose any or all of the following sanctions where it finds a violation of the ordinance (Chapter [3.24](#) PTC) or regulations. If, after the hearing, the Commission determines that the violation alleged and that the party charged has no adequate defense in law or fact, or if no hearing is requested, the Commission may:

- (a) Deny such party the right to commence business on or near the Puyallup Indian Reservation;
- (b) Impose a civil fine in an amount not to exceed \$1,000 for each violation;
- (c) Suspend such party's operation on or near the Puyallup Indian Reservation;
- (d) Terminate such party's operation on or near the Puyallup Indian Reservation;
- (e) Deny the right of such party to conduct any further business on or near the Puyallup Indian Reservation;
- (f) Order such party to make payment of back pay to any aggrieved Indian;
- (g) Order such party to dismiss any employees hired in violation of these regulations;
- (h) Order such party to take such other action as is necessary to ensure compliance with the ordinance (Chapter [3.24](#) PTC) or to remedy any harm caused by a violation of the ordinance.

The Commission's decision shall be in writing, shall be served on the charged party by registered mail or in person and shall be submitted not later than 30 days after the close of the hearing. Where failure to comply immediately with the Commission's orders may cause irreparable harm, the Commission may move the Tribal Court for, and the Tribal Court shall grant, such injunctive relief as necessary to preserve the rights of the beneficiaries of the ordinance (Chapter [3.24](#) PTC), pending the party's appeal or expiration of the time for appeal. [Res. 061293 (12/06/93) § 6.4]

3.24R.320 Appeals.

Any entity or complaining party shall have the right to appeal any decision of the Commission to the Tribal Court. [Res. 061293 (12/06/93) § 6.5]

3.24R.330 Bonds.

The Director may require an entity to post a bond with the Commission pending a hearing before the Commission and may petition the Court from a decision of the Commission, upon making a written finding that any of the following conditions exist. The entity:

- (a) Has no permanent place of business on trust lands or within the jurisdiction of the Puyallup Indian Tribe; and
- (b) The amount of sanction exceeds or likely will exceed \$1,000; and

- (c) The project on which the entity is employed will be substantially completed within 60 days, such that it may be difficult to locate property of said employer on trust lands or within the jurisdiction of the Puyallup Indian Tribe that would be available for attachment or confiscation should the entity fail to pay a sanction imposed on it; and
- (d) The entity has failed to comply with an order of the Commission or the Courts in the past, and the employer has engaged in behavior that demonstrates a disregard for the authority and requirements of the Commission, such that the Director or Commission has good reason to believe the entity will not comply with the orders of the Commission or the Court. [Res. 061293 (12/06/93) § 6.6]

3.24R.340 Attachment.

The Commission may petition the Court for attachment of property of an entity should any of the following conditions exist:

- (a) An entity has refused or failed to post a bond after being ordered to do so by the Director, Commission or Court as provided in PTC [3.24R.330](#); or
- (b) The Commission has good reason to believe the entity will remove itself or its property before it can complete its efforts to require the entity to post a bond; or
- (c) The entity has demonstrated an intent to disregard the orders of the Director, Commission or Court. [Res. 061293 (12/06/93) § 6.7]

3.24R.350 Irreparable harm.

A finding of irreparable harm upon the petition of the Commission or Director for injunctive relief shall be made only upon a showing that damage will occur that cannot be adequately remedied through the payment of monetary damages. Such showing shall include but is not limited to the following:

- (a) That a contractor or subcontractor is about to or has begun work on a contract or subcontract entered into in violation of the provisions of the ordinance (Chapter [3.24](#) PTC) or regulations requiring contract or subcontract preference, when there is one or more Indian firms available to perform said contract or subcontract, since it is impossible to measure in monetary terms the damages suffered by an Indian firm's failure to obtain a contract or subcontract.
- (b) An entity or its subcontractor is about to or has hired two or more persons in violation of the provisions of the ordinance (Chapter [3.24](#) PTC) or regulations requiring Indian employment preference, and there are Indians available to fill those positions, since it is difficult to identify the specific Indians who would fill those positions once the number of positions at issue is two or greater, making the payment of payback difficult to achieve.

- (c) An entity refuses to submit a preference plan in the time required and indicates through words or action that it intends to disregard the requirement imposed by the ordinance (Chapter [3.24](#) PTC) or regulations. [Res. 061293 (12/06/93) § 6.8]

Subchapter 7. Due Process Hearing Procedures

3.24R.360 Prehearing procedures.

- (a) Review of TERO Files. The respondent employer or entity against whom the charge has been filed shall have the right to review the case file of the Director by scheduling a visit to the TERO Office during regular working hours at any point after receiving notice of a hearing. The Director, however, shall have the right to protect confidential information. The file shall be cleared of confidential information in a manner that causes the loss of the least amount of relevant information from the files.
- (b) List of Witnesses. Ten days prior to the hearing (or as soon as possible if the hearing is to be held within 10 days after notice), the respondent and the Director shall submit to the Commission Chairman a list of witnesses that each intends to call at the hearing, the approximate length of their testimony, and the subject matter and relevance of their testimony. It shall indicate any witnesses that must be subpoenaed. The Director shall then issue the subpoenas.
- (c) Prehearing Interviews of Witnesses. The respondent and the Director shall have the right to interview the witnesses of the other party, prior to the hearing. The Director's witnesses shall be interviewed in the presence of the Director or his delegate. The respondent's witnesses shall be interviewed under such reasonable conditions as are established by the respondent. Either party may appeal to the Chairman of the Commission if cooperation is not forthcoming and the Chairman is empowered to require such steps as are necessary to resolve the problem.
- (d) Subpoenas of Documents and Things. The respondent shall, no later than 10 days prior to the hearing (or as soon as possible if the hearing is noticed less than 10 days before the hearing), provide the Director with a list of items it wishes to have subpoenaed and the relevance of each. The Director shall subpoena all relevant items listed as well as items needed by the Director. Any disputes shall be brought to the Chairman of the Commission who shall resolve such disputes.
- (e) Postponements. Any request for a postponement of the hearing must be submitted in writing to the Chairman of the Commission no fewer than three days prior to the hearing. Should the Director and the respondent mutually submit a request for a postponement because of the possibility of settling the matter, the requests for a postponement may be submitted at any time. [Res. 061293 (12/06/93) § 7.1]

3.24R.370 Conduct of the hearing.

(a) Presiding Officer. As presiding officer, the Chairman of the Tribal Employment Rights Commission will control the proceedings. He or she will take whatever action is necessary to ensure an equitable, orderly, and expeditious hearing. Parties shall abide by the presiding official's rulings. The presiding official has the authority, among others, to:

- (1) Administer oaths or affirmations;
- (2) Regulate the course of the hearing;
- (3) Rule on offers of proof;
- (4) Limit the number of witnesses when testimony would be unduly repetitious; and
- (5) Exclude any person from the hearing for contemptuous conduct or misbehavior that obstructs the hearing.

- (b) Director. The TERO Director shall represent the TERO on all charges filed by it, even if the charge was initiated by a complaint filed by a private individual.
- (c) Respondent. The respondent shall be present for the hearing and he or his representative (other than an attorney) shall represent him during the proceedings.
- (d) Attorneys. Either party may have an attorney present as an advisor. The attorney, however, may not make any presentations, cross-examine witnesses or address the Commission.
- (e) Recording of the Hearing. The Commission shall electronically record the hearing and shall retain the electronic record for not less than one year after the hearing. The respondent shall be permitted to record the hearing.
- (f) Prohibition Against Reprisals. All parties shall have the right to testify on their behalf without fear of reprisal.
- (g) Starting Time. The hearing shall be opened promptly at the time specified by the Commission.
- (h) Opening Statements. Both parties may present opening statements regarding what they intend to prove at the hearing.
- (i) Order of Proceedings. The Director shall present the TERO's case first.
- (j) Examination and Cross-Examination of Witnesses. Both parties may subpoena and examine friendly and hostile witnesses. Both parties may examine and cross-examine witnesses. No harassment or efforts to intimidate witnesses shall be permitted. The Commission members may examine witnesses at any point in their testimony. The testimony of all witnesses shall be under oath or affirmation.

- (k) Irrelevant Testimony. Parties may object to clearly irrelevant material, but technical objections to testimony as used in a court of law will not be entertained. The Commission shall prohibit any testimony that it deems irrelevant in order to keep control of the hearing.
- (l) Written Testimony. Written testimony shall be admitted into evidence during the hearing only when a witness cannot appear in person. When a party wishes to use the written testimony of a witness who cannot appear, the party must submit in advance of the hearing a written explanation for the nonappearance of the witness to the Commission. If the Commission is satisfied with the explanation, the party may obtain the testimony by means of an interrogatory. When, for reasons satisfactory to the Commission, an interrogatory cannot be used, an affidavit or deposition from the witness may be used. A signed but unsworn statement will be admitted into evidence only under unusual circumstances and when the Commission is satisfied that the testimony cannot be obtained otherwise.
- (m) Closing Statement. Closing statements for each party will be permitted. The Director shall proceed first. [Res. 061293 (12/06/93) § 7.2]

3.24R.380 The decision.

The Commission shall render a decision by majority vote and deliver the decision in writing to each of the parties. [Res. 061293 (12/06/93) § 7.3]

PART J

EXECUTIVE ORDER 11246

EXECUTIVE ORDER 11246 (SEPTEMBER 24, 1965)

1. Objectives – General Provisions:

- A. Bans federal contractors and subcontractors from discriminating against employees and applicants for employment because of their race, color, religion, sex, or national origin.
- B. Requires federal contractors to practice affirmative action – that is to go beyond refraining from discriminatory practices/policies by taking positive, results – oriented steps toward the elimination of employment barriers to minorities and women.

2. Specific Coverage of Indian Preference Under Executive Order 11246:

Work on or near Indian reservations:

“It shall not be a violation of the equal opportunity clause for a construction or non-construction contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation. The use of the word “near” would include all that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day. Contractors or subcontractors extending such a preference shall not, however, discriminate among Indians on the basis of religion, sex, or tribal affiliation, and the use of such a preference shall not excuse a contractor from complying with the other requirements contained in this chapter.”

3. Coverage:

Basic Contractual Obligations – covered Contractors:

- A. Applies to all federal contractors and subcontractors that have construction, supply or service contracts of:
 - \$10,000 or more (Need EEO Policy)
 - \$50,000 or more (Need Affirmative Action Plan)



IN REPLY LETTER TO
Contracting and Grants
Administrative Staff

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20215

JUNE 19 1984

ACQUISITION AND ASSISTANCE AGREEMENT INSTRUCTION 84-1

- TO: (1) All Area Directors
(2) Central Office Directors (Codes 200,300,400,500,600)
(3) Central Office Codes: 105, 660A, 700, 800, 880A, 882
- FROM: Deputy Assistant Secretary – Indian Affairs (Operations)
- SUBJECT: Preference Status for Indian/Alaska Native Persons and Economic Enterprises as Bureau Contractors
- REFERENCE: (1) Indian Self-Determination and Education Assistance Act (Pub. L. 93-638).
(2) 25 CFR Part 271
(3) 48 CFR Subpart 1404.7.
(4) 19 BIAM Supp. 16
(5) Acquisition and Assistance Agreement Instruction 83-2 (dtd. 10 June 1983)
(6) 25 U.S.C. 47. (Buy Indian Act).
1. Purpose. To supplement Acquisition and Assistance Agreement Instruction 83-2 (dtd. 10 June 83-2 (dtd. 10 June 1983)
 2. Cancellation. None
 3. Background. Refer to prior Series Issuance and to Ref. (3) and (5).
 4. Discussion. Section 7(b) of Ref. (1) prescribes Indian/Alaska Native preference on all Federally-funded contracts and on all subcontracts awarded for the benefit of Indian/Alaska Native persons.

Section 7(b) states specifically:

“Any contracts, subcontracts, grant, sub grant – pursuant to this Act, or any other Act authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians, shall require that to the greatest extent feasible: (1) preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and (2) preferences in the award of subcontracts and sub grants in connection with the administration of such contracts or grants shall be given to Indian/Alaska Native persons.”

As a consequence, the Bureau of Indian Affairs works cooperatively with Indian tribes and the tribally designated and sanctioned Tribal Employment Rights Offices (TERO) to develop, support, monitor and enforce the consistent application and implementation of the Section 7(b) preference requirement with regard to all Bureau contracts awarded for services provided on or near Indian reservations and in Alaska Native villages.

As an adjunct, it is Bureau policy to continue efforts to contract directly with Indian/Alaska Native economic enterprises under the authority of Ref. (6).

5. Score. This Instruction applies to all Bureau Central/Area Office activities/locations, and it's personnel.
6. Action. The following procedures are provided for Bureau personnel responsible for the implementation of Section 7(b) preference requirements.
 - A. The legislative requirements of Section 7(b) of Ref. (1) and relevant Bureau Releases apply to all Bureau contracts, regardless of award authority.
 - B. The Contracting Officer [and the Contracting Officer's Representative (COR) Designated specifically to monitor Section 7(b) preference compliance] shall Review all solicitation documents to ensure the latter contain the required Indian/Alaska Native preference provisions. Where a Departmental Solicitor-approved TERO ordinance is in effect, or where the Tribe has an approved TERO and/or Tax ordinance that is applicable, the solicitation shall contain the following:
 - (1) A copy of the TERO ordinance and tax (if applicable); and
 - (2) A notice on page one (1) of the solicitation that the Tribe has a TERO ordinance and taxes with which the successful bidder must comply; and
 - (3) A certification to be signed by each bidder that (s) he is aware of, and Understands, the applicable tribal requirements; and
 - (4) A list of potential Indian/Alaska Native subcontractors; and
 - (5) A notice that there will be a pre-bid/proposal conference and the time and place of the conference.
 - C. If the project is to be carried out on a reservation and no TERO ordinance exists, the Tribal Chairman/designee shall be notified of the pending solicitation two weeks in advance.
 - D. The Contracting Officer and TERO Director or Tribal representative will provide a comprehensive briefing on Section 7(b) Indian/Alaska Native preference requirements to the prospective offerors. A list of potential subcontractors (Indian/Alaska Native economic enterprises) shall also be given to the prospective offerors by the Contracting Officer/TERO Director.

- E. The Commerce Business Daily (CBD) announcement shall provide for the submission of a subcontracting plan, which will outline the contractors steps to be taken to implement the Section 7(b) preference requirements. The preference plan shall include the following:
- (1) A list of each subcontractor (identified as Indian or non-Indian) that the offeror intends to use on the project; and
 - (2) For each non-Indian subcontractor on the list, the plan shall describe the steps taken by the successful offeror to locate an acceptable Indian/Alaska Native firm. This shall include contacts with the local TERO office; and
 - (3) A list of all employment opportunities on the project: (with their approximate starting and ending dates) shall be provided by both the prime contractor and all subcontractors; and
 - (4) Any positions which the offeror wishes to be classified as Core Crew (See 6H (3) below); and
 - (5) An agreement not to deviate from the preference plan, subject to sanctions under the contract/TERO ordinance without first receiving written permission from the Contracting Officer; and
 - (6) A schedule of written periodic reports to be submitted which will reflect the extent of preference compliance; and
 - (7) A list of possible trainee or apprenticeship positions available under the contract.
- F. Failure to negotiate an acceptable Section 7(b) subcontracting plan shall render the offeror non-responsive. Negotiations may then be conducted with the next low offeror.
- (1) The Contracting Officer shall forward a copy of that plan to the Contracting Officer's Representative and TERO Director or Tribal Representative for review and comment within ten (10) working days. The Contracting Officer will give substantial weight to the recommendation of the Contracting Officer's Representative and TERO Director or Tribal representative as to whether or not the plan is acceptable.
 - (2) The requirement to submit a Section 7(b) subcontracting plan shall be applicable to all offerors, regardless of size.
- G. Where a local TERO ordinance is in effect and approved by the cognizant Solicitor's office, contractors/subcontractors are subject to those TERO requirements. If there is a conflict between the local TERO requirements and the Acquisition and Assistance Agreements Instruction procedures, the local TERO provisions shall apply unless prohibited by statute or regulation.

H. It shall be the responsibility of the offeror to seek and select Indian/Alaska Native subcontractors for the project. The Bureau shall provide the following to the offeror at the time of solicitation:

- (1) Soliciting or accepting of offers from non-Indian business Enterprises is forbidden at this point;
- (2) Bid shopping (peddling) is strictly prohibited;
- (3) If only one Indian/Alaska Native subcontractor is available to bid, the contractor will advise that subcontractor of the contract and solicit an offer. If the offer is reasonable, it shall be accepted. If the offer is not reasonable, the contractor shall advise the Indian/Alaska Native subcontractor that the offer was unreasonable and shall attempt to negotiate a fair and reasonable offer; and
- (4) If the Indian/Alaska Native subcontractor will not negotiate a fair and reasonable offer, the contractor may solicit offers from non-Indian subcontractors. The solicitation of offers from non-Indian subcontractors will be done only after a positive attempt has been made by the contractor to negotiate a fair and reasonable offer from the Indian/Alaska Native subcontractor and the effort has failed to result in a fair and reasonable offer; and
- (5) The Contracting Officer will provide all information pertaining to the project to the TERO Director who may advise the former as to the efficiency of an "honest effort" to negotiate a fair and reasonable offer. However, the final determination of "good faith" rests with the Contracting Officer.

I. Section 7(b) of Ref. (1) requires that preference to Indian/Alaska Native persons be given in the areas of employment and training. Offerors shall be advised, at the time of solicitation, of the following procedures to be followed for employment opportunities under the contract:

- (1) In all cases where the local tribal government has an approved TERO ordinance in effect, employment will be in accordance with those local directives; and
- (2) Where there is no TERO ordinance in effect, the Contracting Officer's Representative will directly, or through an agreement with the tribe's manpower office, establish a referral system for Indian employees, consistent with the requirement that the contractor/subcontractor may not hire any non-Indian person until it has given the Contracting Officer's Representative (or tribal office) an opportunity to locate a qualified Indian person for any vacancy. After the Contracting Officer's Representative (or Tribal office) has received the hiring schedule from the contractor/subcontractor, (s)he will fill those positions, and then shall submit it to the contractor/subcontractor. The Contracting Officer's Representative/

Tribal office will assist the contractor/subcontractor in locating such persons; and

- (3) The preference requirements under Section 7(b) and these JAI procedures shall not apply to employees of the contractor or subcontractor who qualify as "Core Crew: members. A Core Crew member is defined as:

"Any person who is in the contractor/subcontractor's crew who holds a key position such that the employer would face a serious loss if that position were filled by a person who had not previously worked for that contractor or subcontractor."

The contractor and subcontractor(s) will list all positions they want Identified as Core Crew and present that list to the Contracting Officer's Representative and TERO Director (where applicable), with a written explanation supporting why they believe each listed position qualifies for inclusion. The Contracting Officer may, based on recommendations from the Contracting Officer's Representative and/or the TERO Director, disapprove any or all of the positions listed on the grounds that they are not Core Crew-eligible.

- J. In all cases where the local tribal government has an approved TERO ordinance in effect, the Bureau shall award a contract for monitoring and enforcement of the Section 7(b) preference requirements with the tribal TERO office if so requested by the tribe or TERO office in accordance with tribal procedures. The amount of the firm fixed-price contract will be negotiated on the merits of the contract. However, where the tribe has a TERO tax or fee in effect, a no cost monitoring agreement shall be entered into.
- K. In cases where the local tribal government does not have a TERO ordinance in Effect, and the tribe does not want to provide services to monitor the Section 7(b) preference compliance, the BIA Agency Office Employment Assistance Officer (or another person designated by the Contracting Officer) shall serve as the contract administrator will actively and vigorously monitor the contractor's/subcontractor's compliance with the Section 7(b) preference requirements. Monitoring will include the following minimum steps:
 - (1) Periodic on-site visits; and
 - (2) Review and analysis of periodic progress and final reports submitted by the contractor; and
 - (3) Review of the contractor's/subcontractor's payroll records to verify the use of Indian/Alaska Native employees consistent with the Section 7(b) preference requirements; and
 - (4) Inform Indian/Alaska Native persons about their rights under these procedures and of the complaint procedure; and
 - (5) Inform local Indian/Alaska Native persons and other Indian/Alaska

Native communities of the employment opportunities available on the project, and of the Section 7(b) preference requirements that apply.

- L. The use of the Bureau's administrative procedures by the Contracting Officer for contractor non-compliance in no way prevents the TERO Director from processing an identical complaint, or from independently imposing sanctions in accordance with the local TERO ordinances. However, the Contracting Officer's Representative will seek to combine investigations with the TERO Director to reduce the burden on all parties and avoid duplication.
 - (1) Where no TERO exists, all complaints and/or violations of these procedures (As outlined) will first be brought to the attention of the Contracting Officer's Representative who will attempt to resolve the complaint/violation informally. If that fails, the Contracting Officer will attempt to process the complaint and issue a decision before any irreparable damage occurs. If necessary, the Contracting Officer's Representative and the Contracting Officer shall conduct a joint investigation; and
 - (2) The Contracting Officer may instruct a party to delay taking an action that will cause irreparable damage prior to completion of the complaint review process.
- M. The use, or non-use, of sanctions by the Contracting Officer in any way prevents the local TERO Director from imposing independent sanctions in accordance with the local tribal TERO ordinance. Upon recommendation of the Contracting Officer's Representative, any or all of the following sanctions may be imposed by the Contracting Officer for violation of the Section 7(b) preference requirements.
 - (1) Suspension or termination of the contract;
 - (2) Implement debarment procedures.
- N. Union compliance with Indian/Alaska Native preference requirements on reservation work projects will be in accordance with the local TERO ordinance.
 - (1) Where a TERO ordinance does not exist, all contractors and subcontractors who have collective bargaining agreements with any union organization are responsible for union compliance with regards to Indian/Alaska Native preference to qualified persons in the referrals of job applicants to the contractor/subcontractors. Specifically, as long as there is a qualified Indian/Alaska Native person on any of the referral lists maintained by the union, the Contracting Offer or the tribe, that Indian/Alaska Native person will be referred before any non-Indian person is referred, even if the non-Indian person is on a preferred referral list.
 - (2) The contractor/subcontractor may not request a non-Indian person by name as long as there is a qualified Indian/Alaska Native person on any of the lists.

(3) No work on the scheduled project will begin until these written agreements are made; or, the contractor makes substitute agreements that, in the judgment of the Contracting Officer in consultation with the TERO Director, provide satisfactorily for implementation of the Section 7(b) preference requirements.

- O. Copies of this Instruction are to be made available to all Warrant System Contracting Officers, as well as to all program managers at Area/Agency Offices.
- P. Central Office Code 512 shall copy Area and Agency Office education supervisors, post-secondary institutions, and Bureau-funded Community that are recipients of funds under Bureau contract/subcontracts shall comply with the provisions of Ref. (1), (3), (5) and this instruction.

7. Additional Actions-Buy Indian Contracts:

- A. If the Contracting Officer has reason to believe that there will be no (or too few) Indian/Alaska Native firms qualified to perform the proposed project, the Contracting Officer shall consult with the relevant Bureau and Tribal programs office to determine if the contract can be divided into several smaller contracts. If doing so is programmatically feasible, the project will be so divided, unless it is determined that doing so will cause the total project cost to be unreasonably increased. "Reasonableness" will be determined by the cognizant Area Director after considering the recommendation of the relevant staff offices.
- B. In order to determine the reasonableness of all offers, the initiating program office shall provide the Contracting Officer with a government estimate.
- C. If offers received exceed the government estimate, the Contracting Officer shall advise each responsive, responsible Indian/Alaska Native bidder(s) that they exceed the estimate. The Contracting Officer shall then attempt to negotiate a fair and reasonable offer with the lowest, responsive bidder in accordance with 45 CFR 15.214.
- D. If only one Indian/Alaska Native offeror submits a bid and that bid exceeds the government estimate, the Contracting Officer shall advise the offeror that the offer was too high and will attempt to negotiate a fair and reasonable offer.
- E. If, under C and D above, the Indian/Alaska Native offeror will not negotiate a fair and reasonable price, the Contracting Officer shall cancel the solicitation and follow normal procurement procedures. The opening of the solicitation to non-Indians shall be done only after a good faith effort is made to negotiate a lower offer with the Indian offeror and the effort has failed. The Contracting Officer, after full consultation with the TERO Director/tribal representative, will determine a "good faith effort."
- F. If there are no Indian/Alaska Native offerors, or none who have reached a reasonable negotiated offer, the solicitation will be cancelled and normal procurement procedures shall be followed.

8. Reports:

- A. Appropriate contract clauses will be developed by the Contracting and Grants Administration Staff (Central Office) and made available to Bureau Contract Offices.
- B. A new report form will be developed to monitor the Bureau's compliance with Section 7(b) of Ref. (1) and will be included in AMS Handbook No. 2. The report shall be submitted to Contracting and Grants Administration Staff (Central Offices) within thirty (30) calendar days after the completion of the project.



IN REPLY LETTER TO
Contracting and Grants
Administrative Staff

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20215

August 17 1984

ACQUISITION AND ASSISTANCE AGREEMENT INSTRUCTION 84-1A

- TO: (1) All Area Directors
(4) Central Office Directors (Codes 200,300,400,500,600)
(5) Central Office Codes: 105, 660A, 700, 800, 880A, 882
- FROM: Deputy Assistant Secretary – Indian Affairs (Operations)
- SUBJECT: Amendment to No. 84-1, Preference Status for Indian/Alaska Native Persons and Economic Enterprises as Bureau Contractors
1. Purpose. To amend and correct Acquisition and Assistance Agreement Instruction 84-1 (dtd. June 19, 1984).
 2. Correction. Under item 6 – Action – paragraph A, delete “regardless of award authority.” Insert “except those contracts issued and awarded pursuant to Title I and to Indian Tribes and Indian Organizations under Title II of Pub. L. 93-638 (25 U.S.C. 450 et. seq., and 25 U.S. 455 et. seq. respectively).”

Item 6B(1) is revised to read as follows”

“A written notification that a Tribal TERO ordinance and/or tax is in effect; the percentage figure of the tax and the legal requirement of the contractor to pay such tax. Whenever feasible, a copy of the ordinance shall be included in the solicitation package or a statement identifying where a copy may be obtained; and”

Under item 6E(4), change the reference from 6H(3) to 6I(3).

Item 6F is revised to read as follows:

“Failure to submit an acceptable Section 7(b) subcontracting plan shall render the offeror non-responsive. Award of a contract as a result of an unrestricted formally advertised solicitation shall be made to the lowest bidder with an acceptable plan. Otherwise, negotiations may be conducted with the most technically acceptable and/or lowest offeror.”

Item 7C revised to read as follows:

"If offers received exceed the government estimate and are not considered to be fair and reasonable by the Contracting Officer, the Contracting Officer shall advise each responsive, responsible Indian/Alaska Native to negotiate a fair and reasonable offer with the lowest, responsive, responsible bidder. Prior to such negotiation, the Contracting Officer shall prepare an appropriate Determination and Findings setting for the reasons why the initial offer(s) was not considered fair and reasonable."

3. Action. Each holder of the Instruction Series should take appropriate steps to effect these changes. Central Office Code 512 shall provide copies to field Education Supervisors and to post-secondary institutions.

A handwritten signature in black ink, appearing to be "JL 277" with a long, sweeping underline.

TITLE VII – CIVIL RIGHTS ACT OF 1964 (AS AMENDED)

1. Objectives – General Provisions:

- A. Title VII prohibits discrimination in hiring, promotion, discharge, pay, fringe benefits, and other aspects of employment on the basis of race, color, religion, sex, or national origin.
- B. In 1978, Title VII was amended to include the Pregnancy Discrimination Act, which requires employers to treat pregnancy and pregnancy-related medical conditions the same as any other medical disability in the administration of employment practices and employee health benefits.

2. Specific Coverage of Indian Preference Under Title VII:

Title VII, Section 703 (i) states:

“Nothing contained in this Title shall apply to any businesses or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business enterprise under which preferential treatment is given to any individual because he is an Indian.”

3. Coverage:

- A. Employment discrimination by any of the groups having 15 or more employees is prohibited:
 - Private employers
 - State and local governments
 - Educational institutions
 - Labor organizations
- B. Employment discrimination by any of these groups is also prohibited:
 - The federal government
 - Private and public employment agencies
 - Joint labor management committees for apprenticeship and training

PART K

SAMPLE – WORK PERMIT



**Puyallup Tribe Of Indians
Tribal Employment Rights Office
TERO
253-573-7846
Work Permit**

This document is certification that the named employer stated below contacted the Tribal Employment Rights Office (TERO). The TERO was not able to locate an Indian Preference client for the craft/position requested.

Your employee has been cleared through the TERO office for employment on the project listed below which is located within the boundaries of the Puyallup Indian Reservation. The position this individual has been cleared to work is stated below. If and when this permit expires please contact the TERO Office immediately.

StartDate: 2/11/2015 **Project Title** I5 WSDOT Project

Company Name Hamilton Construction

First Name C **Last Name:** A

Position: Field Engineer

Clearance Duration 60 Days

Reason of Approval: Unfillable

TERO Approval:

Comments: