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INDIAN PREFERENCE POLICIES AND PROCEDURES
FOR THE CHEYENNE-ARAPAHO TRIBES OF OKLAHOMA

CHEYENNE-ARAPAHO TRIBES OF OKLAHOMA
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INDIAN PREFERENCE POLICIES AND PROCEDURES
FOR THE CHEYENNE-ARAPAHO TRIBES OF OKLAHOMA

CHAPTER 1

Indian Preference Policies

Section 1: Indian Preference on lands under the jurisdiction of the Cheyenne-Arapaho Tribes

Every entity engaged on the lands under the jurisdiction of the Cheyenne-Arapaho Tribes shall give preference to firms certified by the Tribes under Chapter 2 of this Ordinance in all contracts and subcontracts to be performed on tribal lands. An entity in such development may not enter into a contract or subcontract with a firm not so certified unless it has contracted every certified firm available that is technically qualified to perform the work required at a reasonable price. So long as a certified firm meets minimum threshold qualifications, no other firm may be selected for any contract or subcontract. If any entity determines that a certified firm lack the qualifications to perform all the work required under a contract or subcontract, the entity shall make a good faith effort to divide the work required into small portions so that the certified firm can qualify for a portion of the work. As used in this section, the terms "contract and subcontract" apply to all contracts, including, but not limited to, contract for

supplies, services, and equipment, regardless of tier. An entity engaged in business development shall be responsible for the compliance of all its contractors and subcontractors with this ordinance.

Section 2: Responsibility for evaluation technical qualifications and reasonable price

(a) Technical Qualifications

An entity engaged in business development shall have a discretion to determine technical qualifications. However, if the entity determines that all certified firms are not qualified, the entity must (1) interview the principals in all available certified firms to determine their knowledge and expertise in the area; provided that for certified firms that do not yet have an established record, the entity shall evaluate the basis of the individual qualifications of the principals in the firms, their equipment, and other factors which provide guidance on the firm's ability to perform the work; and (2) provide to each certified firm it rejects with a description, in writing, of areas where it believes the firm is weak and steps it could take to upgrade its qualifications.

(b) Reasonable Price

An entity may use any process it so chooses for determining a reasonable price including, but not limited to, competitive bidding (open or closed) or private negotiations. However, before an entity can reject a certified firm on the basis of price, it must offer the certified firm an opportunity to negotiate price. If there is only one technical qualified firm, an entity must enter into negotiations on price with such firm and 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 non-certified firm at the same or higher price.

Section 3: Submission of a contracting and subcontracting plan

(a) Before, or at the same time, an entity submits a request for a permit, lease or other authorization for business development within the lands under jurisdiction of the Cheyenne-Arapaho Tribes, it must submit a contracting and subcontracting plan to the TERO. The plan shall indicate contracts and subcontracts that will be entered into such development and the projected dollar amounts thereof. If the entity has already selected a firm to perform any contract or subcontract work, it shall list the name of that firm and indicate whether or not it is a certified firm. If it is not

a certified firm, the entity shall further indicate why each certified firm registered with the TERO in the relevant area of endeavor was not selected and the name of the contact person at each certified firm with which the entity dealt. No authorization shall be granted to any firm which submits a plan indicating that less than 100% of the value of all subcontracts will be paid to certified firm, unless the entity can demonstrate that it was unable to employ Indian firms qualified or available. To make such a demonstration the entity must show, at a minimum, that it interviewed all Indian firms listed on the TERO register in that area of endeavor and that: (1) a sufficient number was not available to enable it to meet its goals; or (2) the ones that were available and would have enabled the entity to reach its goal were rejected because they lacked the necessary technical qualifications.

(b) No entity that is authorized to develop a business on the lands under the jurisdiction of the Cheyenne-Arapaho Tribes shall deviate from its plan in a manner that will diminish the percentage of Indian subcontracting, without obtaining the prior written approval from TERO.

(c) The TERO shall have the right to inspect the records of any entity to ensure that a plan is complied with.

(d) No entity shall circumvent the requirements of this ordinance by hiring non-Indians and designating them as employees rather than a subcontractor.

Section 4: Operation of the contract or subcontract

Once an entity enters into a contract with a certified firm, the TERO will not intervene in any way in the relationship between the parties unless a certified firm demonstrates that action taken against it is intended primarily to circumvent the requirements of this ordinance.

Section 5: Placement of non-Indian firms by certified firms after a project is underway

When an entity hires a non-certified firm hired (it is not sufficient that the certified firm was in existence but not available) and if a qualified certified firm subsequently comes into existence, the entity must replace the non-certified firm with the certified firm; but only if the contract or relationship between the entity and the non-Indian firm will extend for more than one year beyond the date the entity is notified by the TERO of the existence of a certified firm.

(a) If the legal relationship between the entity and the non-certified firm is through a year-to-year contract, the non-certified shall be replaced only when the contract expires; provided that, in no case shall an entity have less than 270 days from the initial notification that a certified firm is available to make a transition from use of the non-certified firm to use of the certified firm. That is, if the contract expires within 270 days following notification that

a certified firm is available, the entity shall have the right to extend the contract with the non-certified firm to a date not to exceed 270 days from that notice. At the end of that period, the entity shall employ the Indian firm if it is qualified.

(b) If there is no written contract and/or an ongoing working relationship, the entity will have 270 days to make the transition.

(c) The transition period may be waived completely or extended by the TERO in individual cases upon a showing of hardships upon the entity.

Section 6: Reports and monitoring

All entities engaged in any aspect of business development on the lands under the jurisdiction of the Cheyenne-Arapaho Tribes shall submit such reports to the TERO as it is requested provided that the entity may refuse to submit any information which it can demonstrate must remain confidential for valid business purposes. The employees of the TERO shall have the right to on-site inspections during regular business hours in order to monitor compliance with this ordinance and shall have the right to talk to any employee on-site so long as it does not interfere with the operations of the business.

Section 7: Individual complaints

Any certified firm, group of certified firms or other person or entity which believes that any entity covered

by this ordinance has failed to comply with its requirements may file a complaint with the TERO whether or not the complaining party can demonstrate it is personally harmed by the alleged non-compliance.

Section 8: Compliance and hearing procedures

If the TERO has reason to believe that an entity covered by this ordinance has failed to comply with any of its requirements the TERO shall so notify the entity in writing (specifying the alleged violation). If the party being so notified is a contractor or subcontractor, notice shall also be provided to the entity holding the permit of authorization under which the contractor or subcontractor is operating and such entity may be a party to all further negotiations, hearings and appeals. The entity cited and the TERO shall have 20 days to pursue a voluntary, informal resolution of the problem. If no such resolution can be reached by the end of 20 days the TERO shall notify the Board (TERO Commission) and request that it set up a formal hearing on the problem within 20 days of such notice. The TERO shall notify the Review Board and request that it set up a formal hearing on the problem within 20 days notice. The TERO shall prosecute complaints it determines to have merit on the basis of their authority from the Cheyenne-Arapaho Tribes. If the Review Board shall decide that an entity has failed to comply with the ordinance, the Board shall impose one or more of the sanctions provided for this ordinance and may order the party to take such corrective actions as are necessary to remedy

any harm done to the Tribe or to certified firms by the non-compliance.

Section 1: Sanctions

Any or all of the following sanctions may be imposed for violation of the ordinance.

(a) Civil monetary fines not to exceed \$500.00 per violation. Each day a party is found to be out of compliance with this ordinance may be considered as a separate violation.

(b) Suspension or termination of an entity's authorization to develop a business on the lands under the jurisdiction of the Cheyenne-Arapaho Tribes; provided that the party shall be given a reasonable time to remove its equipment and other property it may have on the Tribal lands and to arrange with another party for assumption or any contractual obligations it has.

(c) Prohibit the party from engaging in future development on the lands under the jurisdiction of the Cheyenne-Arapaho Tribes for a specified period, or indefinitely.

(d) Provide monetary or other relief to any certified firm or other entity which was harmed by the party's non-compliance with this ordinance.

CHAPTER 2

Certification Policies and Procedures

Section 1: Criteria for Indian Contract Preference

Certification

To receive certification as a firm eligible for Indian preference, and applicant must satisfy all of the following criteria.

Section 2: Ownerships

The firm or joint venture must be 51% or more Indian owned. The applicant must demonstrate the following:

(a) Formal Ownership

That an Indian or Indians own(s) 51% or more of the partnership corporation, joint venture, 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 included: (1) financial ownership-i.e., the Indian(s) own 51% or more of the assets and equipment, will receive 51% or more of the firm's assets upon dissolution, and received 51% or more of the profits and (2) control-i.e., the Indian(s) 51% or more ownership provides him or her with a majority of voting rights or other decisional mechanism and that all decisions of the firm are to be made by a majority vote except where otherwise required by law.

(b) Value

The Indian owner(s)) provided real value for his or her 51% or more ownership by providing capital, equipment, real property or similar assets commensurate with the value of his or her 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 arrangements would have been entered into even if there were not an Indian preference program in existence.

(c) Profit

The Indian owner(s) receives 51% or more of all profit if there is any provisions that gives the non-Indian owner a greater share of the profits, in whatever form and under whatever name, such as through management fee, equipment rental fees, bonus tied to profits or other vehicles, 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% or more of the profits.

Section 3: Management Control

the firm must be under significant Indian Management and control. The firm must be able to demonstrate that:

(a) Unitary Firms (non-joint Ventures)

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: (1) is qualified to serve in the senior level position; and (2) is sufficiently knowledgeable about the firm's activities. This provision may be waived when: (1) the firm is 100% 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 (2) the firm is modeled on a publicly-held corporation such that it is owned by 10 or more persons, is at least 51% Indian-owned, the Chief Executive Officer and the highest-salaried employee in the is/are Indian and a majority of the employees are Indian.

(b) Joint Ventures

In addition to the above requirement on management and control, a joint venture will be required to demonstrate that the Indian firm is, in fact, the controlling partner in the joint venture. The venture will be required to demonstrate that the Indian partner has the experience and expertise to manage the entire operation and that the non-Indian partner is providing specialized or limited resources or expertise to the venture and is not the manager in fact.

Section 4: 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 criticism 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 certification.

(a) 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, particularly whether the firm, a portion of the firm, or key factors in the firm originally associated with a non-Indian owned business gained little or business value in terms of capital, expertise, equipment, etc., by adding Indian ownership or by merging with an Indian firm.

(b) Employees

(i) Whether key non-Indians 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.

(ii) Whether Indians are employed in all or most of the positions for which qualified Indians are available. A high percentage of non-Indians employees in such positions will provide reason to believe the firm was established primarily to benefit non-Indians.

(iii) Whether any certified Indian owned firm with ten (10) or more employees will be required to employ 51% Indian employees, if it is impossible for various reasons it will be negotiable.

(c) Relative experience and resources

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

CHAPTER 3

Certification Procedures

Section 1: Application for certification

A firm seeking certification as a firm eligible for Indian preference shall submit a completed application to the Cheyenne-Arapaho Tribes TERO on a form provided by the TERO (application forms may be obtained at the TERO Office). TERO staff will be available to assist a firm to fill out the application. Within 21 days after receipt of a completed application, the TERO shall review the application, request such additional information as it believes appropriate (computation of the 21-day period shall be stayed during the time any request for additional information is outstanding), conduct such investigations as it deems appropriate and submit an analysis and recommend 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 applicant or any other party. When it is so required, the TERO may extend the

processing period by an applicant by registered mail. Within 15 days of receipt of the TERO's analysis and recommended disposition, the Review Board shall hold a hearing on the application, posting notice of the hearing time at the Tribal Office, the agency and the TERO Office at least five days prior to the hearing. All principals of the firm shall be present at the hearing. In addition, any other party wishing to present information to the Review Board shall be entitled to do so, by requesting, no less than one day represented by counsel. The hearing shall be conducted as provided in Chapter 4.

Section 2: Probationary certification

An applicant granted certification shall be issued a six-month probationary certification. During that period, the TERO and the Review Board 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 Review Board shall have the right to request and receive such information and documents as they deem appropriate.

Section 3: Final certification

At the end of the probationary period the Review Board, after receiving recommendations from the TERO, shall either: (1) grant full certification; (2) continue the probationary period for up to six months; or (3) deny certification.

Section 4: Withdrawal of certification

From information provided in the change notices or

annual reports, 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 certification for any firm. The TERO shall prepare an analysis and recommended disposition for the Review Board and shall send the firm notice by registered mail, that its certification is being examined, along with the grounds thereof. The Review Board shall then set a date for the hearing, which shall 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 hearings shall be conducted as in Chapter 4. After the hearing the Board may: (1) withdraw certification; (2) suspend certification for up to one year; (3) put the firm on probation; and/or (4) order the corrective action be taken within a fixed period. A firm that has had its certification withdrawn may not reapply for a period of one year.

Section 5: Firms certified prior to the adoption of these criteria

Each firm holding Indian preference certification from the Tribe at the effective date of this ordinance shall submit an application required under these criteria to the TERO within 30 days after the effective date of these criteria. If the TERO determines the firm qualifies under these new criteria, it shall, within 21 days of receipt of the application so recommended to the Review Board, which,

unless it has grounds to act to the contrary, shall issue a new certificate within 30 days of receipt of the TERO's recommendation without the need for public hearing. If the TERO has reason to believe the firm does not qualify, it shall prepare an analysis of the reasons therefore, along with its recommended disposition. The analysis shall be submitted to the Review Board 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 board for a reasonable time to permit such information to be provided. The Review Board, after providing the firm an opportunity for a hearing as provided in Chapter 4, which shall be held within 30 days after receipt of the TERO's findings, shall: (1) grant the firm a new certification; or (2) determine that the firm is not in compliance; (3) if the Review Board determines that the firm is not in compliance, it shall provide the reasons therefore and the firm shall have 15 days from the date of the decision to demonstrate to the Review Board 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, by registered mail, to the firm.

Section 6: Annual and other reports

Each certified firm shall report to the TERO, in its ownership or control status within 60 days after such changes

have occurred. Each certified firm, on the anniversary of its receipt of permanent certification, shall update the information provided in its initial application on a Annual Report form provided by the FERO. Failure to provide information pursuant to these requirements shall constitute grounds for withdrawal of certification.

Chapter 4

Hearing and Appeal Procedures

Section 1: Hearing Procedures

At all hearings before the Review Board, all participants shall have the following rights:

- (1) to be represented by counsel at their own expense;
- (2) to be present at the hearing;
- (3) to present relevant sworn testimony and documentary evidence;
- (4) to call witnesses and to ask questions to witnesses or other participants.

All hearings before the Review Board shall be conducted in an orderly manner but formal rules of evidence need to not be observed.

Section 2: Decisions after hearing

After the hearing, the Review Board shall issue its written decision. All decisions shall state the grounds therefore. A copy of the decision shall be sent to all participants by registered mail.

Section 3: Appeals

A party shall have the right to appeal any decision of the Review Board to the Cheyenne Arapaho Tribal Court. An appeal shall be filed within 30 days after receipt of notice of the Review Board's decision. The TERO Director shall represent the interests of the Tribe on appeal. The Court shall reverse the decision of the Review Board only where it finds that decision to be arbitrary and capricious or unsupported by substantial evidence.

DEFINITIONS

1. Indian

An enrolled member of an Indian Tribe. Upon request, applicant will be required to provide certification from the Tribes or BIA Agency Superintendent for the Tribes for which enrollment is alleged.

2. Indian Tribe or Entity

A federally recognized as defined by the Indian Self-Determination Act, 25 U.S.C. S450b(b).

3. Joint Venture

An association of two or more persons or firms to carry out a single or limited number of business enterprises for profit, for which purpose they combine their property, money, effects, skills and knowledge.

4. Near the Reservation

A person will be determined to live on or near the Reservation if he or she lives within reasonable daily commuting distance of the Reservation.