

TITLE 10 EMPLOYMENT AND CONTRACTING

CHAPTER 10-1 TRIBAL EMPLOYMENT RIGHTS

10-1-1 Legislative findings

Tribal members and other Indians have suffered discrimination in employment on and near the Colville Reservation. As a result, tribal members and other Indians continue to be excluded from the employment market and when employed by private employers experience discrimination; continue to suffer poverty and high unemployment rates; have lost the opportunity to learn needed skills; participate in job training programs; find employment to support tribal families; receive equal wages for equal work; to name but a few of the consequences of the failure of tribal members and other Indians to be treated fairly in employment. To insure that discrimination does not continue and that tribal members and other Indians on the Colville Reservation have an opportunity to participate in the work opportunities that arise on and near the Colville Reservation and may benefit from the unique rights that flow to tribal members and other Indians, it is necessary for the Confederated Tribes of the Colville Reservation (Tribes) to establish this Employment Rights Chapter.

10-1-2 Authority

The Colville Business Council enacts this chapter in accordance with the authority granted to it by the Colville Tribal Constitution and its inherent sovereign powers.

(Added 3/6/14, Resolution 2014-114) (Certified 3/18/14)

10-1-3 Applicability

(a) Unless clearly and expressly prohibited by federal law or tribal law this Chapter applies to employers, as defined under this Chapter, engaged in work on or near the Reservation or on all lands owned by the Tribes.

(b) All persons, entities, agencies, contractors and businesses under the jurisdiction of this Chapter shall comply with all applicable tribal law and policies.

(Added 3/6/14, Resolution 2014-114)(Certified 3/18/14)

10-1-4 Declaration of Policy

It is the intention of this Chapter to accomplish the following purposes:

(a) This Chapter is enacted to require employers doing business on or near the Reservation or on lands owned by the Tribes to give preference to enrolled members of the Tribes and other Indians in employment, hiring, training and promotion.

(Added 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(b) To insure that no employer covered by this Chapter discriminates against any Indian in any aspect of employment, including but not limited to, hiring, promotion, demotion, transfer, change in work status, lay-offs, and termination from employment.

(c) To require that all covered employers give preference to Indian preference eligible individuals in all aspects of employment, including but not limited to, hiring, promotion, demotion, transfer, change in work status, lay-offs, and termination from employment.

(d) To require that all entities awarding contracts give preference to Indian Business Enterprises for contract work on the Reservation or land owned by the Tribes.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(e) To require, in appropriate cases, that covered employers establish needed training programs intended to combat the effects of past discrimination.

(f) To require all covered employers to utilize the Tribes' hiring hall, to the extent available, in all hiring with respect to work to be performed on the Colville Reservation or lands owned by the Tribes.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(g) To provide services to covered employers to assist them in meeting their requirements under this Chapter, in locating qualified Indian preference applicants o to fill employment needs, establishing needed training programs, and meeting federal requirements guarding against discrimination.
(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(h) To require all covered employers to contribute to the services provided and the enforcement of this Chapter by the payment of fees established herein.

(i) To authorize agreements between the Tribes and the United States or any of its agencies or departments to enforce federal laws prohibiting discrimination as set out and limited in this Chapter.

(j) To provide for staff support, travel and training of TERO Commissioners.
(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(k) To provide training and or funding for training of Indians and Indian-owned businesses, contingent upon the availability of funds.

10-1-5

Definitions

For purposes of this Chapter, the following definitions shall apply:

(a) “Colville Business Council” or “CBC” means the Business Council of the Confederated Tribes of the Colville Reservation.
(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(b) “Certified firm” means a firm certified under Chapter 10-3 as either a 100% Colville Business Enterprises, Colville Family Business Enterprise, Colville Business Enterprise, or an Indian Business Enterprise.

(c) “Clear and Convincing” means that the evidence presented by a party during the trial must be highly and substantially more probable to be true than not, and the trier of fact must have a firm belief or conviction in its factuality. In this standard, a greater degree of believability must be met than the common standard of proof in civil actions, "Preponderance of the Evidence", which requires that the facts as a threshold be more likely than not to prove the issue for which they are asserted.
(Added 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(d) “Colville Family Business Enterprise” means an enterprise or organization which is 100% owned and controlled by a Colville member and their non-Colville spouse, parents or children, and which meets all criteria for certification under Chapter 10-3.
(Amended 11/19/98, Resolution 1998-852)

(e) “Colville Business Enterprise” means an enterprise or organization which is at least 60% owned and controlled by Colville tribal members and which meets all criteria for certification under Chapter 10-3.
(Amended 11/19/98, Resolution 1998-852)

(f) “100% Colville business enterprise” means an enterprise or organization which is 100% owned and controlled by Colville tribal members and which meets all criteria for certification under Chapter 10-3.
(Added 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(g) “Colville tribal member” means an enrolled member of the Confederated Tribes of the Colville Reservation.

(h) “Commission” means the Colville Tribal Employment Rights Commission established by this Chapter.

(i) “Contract” and subcontract" are intended to be interpreted broadly and shall apply to all contracts, whether written or oral, including, but not limited to, contracts for construction, supplies, materials, services, and equipment regardless of tie, unless exempted under this Chapter.

(j) “Covered employer” means (i) any Reservation Based Employer, and (ii) any employer employing two or more employees who during any twenty (20) day period spend, cumulatively, 16 or more hours performing work within the Colville Reservation or lands owned by the Tribes, unless such employer is specifically exempted by this Chapter, Status as a covered employer does not depend on the number of employees that perform the work on the Reservation.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(k) “Day” means calendar day unless otherwise specifically provided for under this Chapter.

(Added 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(l) “Director” means the Director of the Tribal Employment Rights Office (TERO).

(m) “Employee” means any person employed for remuneration.

(n) “Employer” means any person, partnership, corporation, or other entity that employs, for wages, two or more employees.

(o) “Entity” means any person, partnership, corporation, joint venture, government, governmental enterprise, or any other natural or artificial person or organization. The term “entity” is intended to be interpreted broadly to provide for maximum coverage of this Chapter.

(p) “Immediate Family” means any parent, child, sibling, grandparents, grandchild, spouse, the parents or child of any spouse, and any person living in the same household.

(Added 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(q) “Indian” means any member of a federally recognized Indian tribe, band, or nation. It also includes members of Canadian Indian tribes, bands or nations.

(Amended 11/19/98, Resolution 1998-852)

(r) “Indian Business Enterprise” means an enterprise or organization which is at least 60% Indian owned and controlled and which meets all criteria for certification under Chapter 10-3.

(Amended 11/19/98, Resolution 1998-852)

(s) “Indian Preference Eligible” refers to any person recognized as one of the following:

- (1) Colville tribal member;
- (2) Local Indian;
- (3) Non-local Indian.

(t) “Land Owned by the Confederated Tribes of the Colville Reservation” means any real property in which the Tribe or any of its members, individually or severally, hold at least a fifty-one percent (51%) interest, and any lands held in trust by the United States Government on behalf of the Tribes or its members.

(Added 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(u) “Local Indian” means any Indian who resides within the lands and territories of the Colville Reservation, or within thirty-five miles of said lands and territories.

(v) “Minimum qualifications” means a minimum level that any job applicant shall be required to meet prior to Indian Preference being applied to that job applicant. Criteria to establish minimum qualifications may be established by, but are not limited to the following: job descriptions; interview committees; skill test, RFP and license requirements; or other job requirements.

(Added 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(w) “Non-certified Entity” means any commercial, industrial, or other business firm or entity that does not meet the certification requirements under Chapter 10-3.

(Added 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(x) “Non-local Indian” means any Indian who does not live in a location which would qualify such

Indian as a local Indian.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(y) "On or Near" means within the boundaries of the Reservation or the distance within that area surrounding the Reservation or land owned by the Tribes that a person seeking employment could reasonably be expected to commute to and from in the course of the workday.

(Added 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(z) "Reservation-Based Employer" means any employer employing two or more employees with a place of business located within the boundaries of the Colville Reservation lands or territories.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(aa) "Sole Support" means an individual who provides the primary source of income, support, or residence for a member of the Confederated Tribes of the Colville Reservation.

(bb) "Spouse" means a legally married husband or wife of a member of the Confederated Tribes of the Colville Reservation. This does not include common law relationships.

(cc) "TERO" means the Tribal Employment Rights Office.

(dd) "Tribes" or "CCT" means the Confederated Tribes of the Colville Reservation.

(Added 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(ee) "Tribal affiliation preference policy" means a policy which may be adopted by employers or contracting entities to provide for preference in employment or contracting to descendants, spouses, or sole supporters of Colville tribal members in cases where it is properly determined that no Indian preference eligible individual or Indian Business Enterprise is available.

(Amended 11/19/98, Resolution 1998-852)

10-1-6 Commission—Members—Compensation—Quorum, Vacancy

(a) There is created a Colville Tribal Employment Rights Commission.

(b) The Commission shall be composed of four (4) regular members, one residing in each reservation district, and one (1) alternate member. Commission members shall be appointed by the CBC. The Commission shall designate one of the Commissioners as Commission chairman. To ensure continuity, the Commissioners' term shall be staggered. The CBC shall, in 1996, appoint two regular members and one alternate member to four-year terms, and the remaining two regular members to three year terms. Thereafter, all Commissioners shall be appointed to four-year terms.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(c) For carrying out their duties members of the Commission shall be entitled to receive, upon presentation of proper vouchers, such mileage and per diem payments as are in effect for members of the CBC. Such payments shall be funded by a budget approved by the CBC.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(d) Three Commissioners shall constitute a quorum to transact business. When a vacancy occurs in the Commission, the remaining members may exercise all the powers of the Commission until the vacancy is filled.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

10-1-7 Powers of the Commission

The Commission has the full power, jurisdiction, and authority:

(a) To carry out the provisions of this Chapter, and propose regulations pursuant to Chapter 2-4 of the Colville Tribal Code, and submit the proposals to the CBC for its action;

(b) To hold public hearings on tribal employment rights issues, initiate and assist in public education

efforts, and otherwise promote and encourage Indian employment and economy;

(c) To issue subpoenas and subpoenas duces tecum, hold hearings to adjudicate complaints and appeals from actions of the Director using the procedures set out in this Chapter and Chapter 2-4 of the Colville Tribal Code (CTC). However, the Commission's subpoena powers do not include the power to compel attendance, testimony or documents of the Colville Business Council;

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(d) To establish rules, regulations, and policies governing all activities of the Commission consistent with this Chapter and as approved by the Colville Business Council;

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(e) To take such other actions consistent with this Chapter as are necessary to achieve the purpose and objectives of the TERO;

(f) To develop a fiscal year budget for the operations of the Commission and the enforcement of this Chapter by the Commission. The budget, when approved by the Commission, shall be presented to CCT administration for processing through the tribal budget system;

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(g) The Commission shall retain all rights and privileges of sovereign immunity of the Confederated Tribes of the Colville Reservation.

10-1-8 Removal of Commissioner

(a) By a majority vote at a Special or Regular meeting The Colville Business Council may remove a Commissioner for:

- (1) malfeasance, dereliction, or neglect of duty;
- (2) conviction of any felony in tribal, county, state, or federal court;
- (3) willful and persistent misconduct reflecting on the dignity and integrity of the Commission;
- (4) unexcused absence from three (3) consecutive regular or special meetings of the Commission;
- (5) misappropriation of funds;
- (6) inability to perform their functions because of conflicts as defined in 10-1-9; or
- (7) failure to perform the duties imposed by this Chapter.

Provided that a member of the Commission subject to removal, and the Commission, are informed of the charges at least ten (10) business days prior to any vote, and given an opportunity to respond prior to any removal action. The opportunity to respond shall be provided at a committee meeting

(Added 3/6/14, Resolution 2014-114)(Certified 3/18/14)

10-1-9 Recusal of Commission Members

(a) No member of the Commission shall have contact with a complainant regarding the specifics of a complaint prior to a Commission hearing. If a Commissioner does have contact with a complainant regarding the specifics of a complaint prior to a Commission hearing the Commissioner shall recuse themselves from the matter.

(b) A Commissioner shall recuse themselves from any matter in which they have a conflict which is defined as direct financial business interest (contractual or otherwise), or any matter involving an immediate family member. Further, a Commissioner shall recuse themselves when they believe that they cannot act fairly or without bias, or there is an appearance that they cannot act fairly or without bias.

(c) A Commissioner, the Commission, or any other interested party may request recusal of a Commissioner if he/she believes that a Commissioner is unable to act impartially due to a relationship of any kind. In this circumstance, the Commissioners may hear arguments and review evidence, including testimony, and make a determination on recusal by majority vote. The decision of the Commission shall be final and not subject to appeal.

(Added 3/6/14, Resolution 2014-114)(Certified 3/18/14)

10-1-10 Director—Appointment—Qualifications, Reporting

The Executive Director shall have exclusive authority to appoint, direct, suspend, or remove the Director of the TERO as provided for under the Tribes' Employee Personnel Manual (EPM).

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

10-1-11 Authority of Director, Staff, Duties

The Director shall have the authority to carry out the day-to-day operations of the TERO, to enforce this Chapter, to employ and supervise staff for the TERO pursuant to the Tribe's Employee Personnel Manual (EPM) and such other authority as is convenient or necessary to the efficient administration of this Chapter. The Director's authority and duties include, but are not limited to, the following:

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(a) Assist the Commission to propose, adopt, amend, and rescind rules, regulations, or guidelines;

(b) Issue orders and assess penalties to remedy violations of this Chapter, and represent the TERO at hearings and appeals before the Commission, and any court or other adjudicatory body, or at proceedings before the Colville Business Council;

(c) Hire staff pursuant to EPM, to expend funds appropriated by the Colville Business Council, and to obtain and expend funding from federal, state, or other sources to carry out the purposes of this Chapter, subject to approval by the Colville Business Council;

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(d) Propose, recommend, draft, and administer the policies, authorities, and duties authorized by this Chapter and by the Commission;

(e) Investigate and process complaints alleging violations of this Chapter, either directly or through staff compliance officers; and in carrying out investigations, to enter onto business premises during business hours to inspect and copy documents, interview witnesses and gather necessary information, including personnel and contract documents.

10-1-12 Dissemination

TERO shall make good faith efforts, through direct contact and general public media information dissemination, to inform all covered employers, contractors, and local Indians on or near the reservation of the requirements of the Colville Tribal Employment Rights Chapter. All bid announcements issued by any tribal, federal, state, or other private or public entity for work within the jurisdiction of the Tribes shall contain a statement that the successful bidder will be obligated to comply with this Chapter and that a bidder may contact the TERO to obtain additional information. The Tribal Planning Department 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 provide information to such prospective employers of their obligations under this Chapter. Notwithstanding the above, it shall not be a defense in any enforcement action for an employer to allege that the Tribes failed to directly notify the employer of the requirements of this Chapter.

10-1-13 Intergovernmental Relationships

(a) The TERO Director, under supervision of the Executive Director and with approval from the CBC, is authorized to enter into cooperative relationships with federal employment rights agencies, such as Equal Employment Opportunity Commission (EEOC), and Office of Federal Contract Compliance Program (OFCCP), in order to eliminate discrimination against Indians on and off the Colville Reservation. Pursuant to this authority, the Commission, or the TERO Director, may act to enforce applicable federal employment

laws pursuant to the terms of agreements entered into with federal employment rights agencies, and approved by the Business Council, provided such activity is not inconsistent with the provisions of this Chapter or the civil regulatory jurisdiction of the Tribes.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(b) In the absence of specific agreements, the TERO Director and staff shall have no authority to investigate or act on employment or personnel complaints that are not related to alleged violations of the Indian preference provisions contained in this Chapter or Chapter 10-3. The TERO Director and staff may, however, provide appropriate information and referrals to employees with employment complaints not related to Indian preference complaints.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

10-1-14 Indian Preference—General Provisions

(a) All covered employers operating on the Reservation or on lands owned by the Tribes shall give preference in all aspects of employment to Indian preference eligible individuals. Covered employers shall give preference in the following order:

- (1) Colville tribal member;
- (2) Local Indian;
- (3) Non-local Indian;

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(b) All entities awarding contracts covered by the terms of section 10-1-24 shall give preference to certified Indian Business Enterprises. Contract awarding entities shall give preference in the following order:

- (1) 100% Colville Business Enterprise;
- (2) Colville Family Business Enterprise;
- (3) Colville Business Enterprise;
- (4) Indian Business Enterprise.

(Amended 11/19/98, Resolution 1998-852)

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(c) Where either: (1) federal or state funding requirements, or (2) federal laws applying to non-Indian covered employers preclude full implementation of the preference categories in (a) and (b) of this section, preference shall be given first to local Indians or local Indian Business Enterprises, and second to non-local Indians or non-local Indian Business Enterprises.

(d) Nothing in this Chapter is intended to prohibit covered employers and contract awarding entities from establishing a tribal affiliation preference policy, which is limited to situations where no Indian preference eligible individuals or Indian Business Enterprises are available. However, such policies shall in no way conflict with the requirements of this Chapter, and TERO shall require work permits for all tribal affiliation preference eligible individuals. The TERO shall have no role in enforcing tribal affiliation policies.

10-1-15 Submission of Compliance Plan

(a) Contractors: Each contractor or subcontractor intending to engage in business activity on the Reservation or on lands owned by the Tribes, prior to the time it commences work, must submit a contracting, subcontracting, employment, and/or training plan to the TERO. Contractors or subcontractors shall not commence or continue work until an acceptable plan for implementing their obligations under this Chapter has been approved by the TERO.

- (1) Employment and Training Plan: The employment and training plan shall show the number of man-hours, by craft and skill category, needed on the project. The employer

shall also identify those persons it wishes to have approved as permanent and key employees and shall provide all data needed by the TERO to verify the status of those employees. All non-permanent and non-key positions shall be subject to the Indian preference provisions of this Chapter unless the TERO has determined in writing that there is no qualified Indian preference applicant for that position, or unless the employer receives TERO approval for specific key position exemptions under the terms of the compliance plan. The plan shall also describe how the employer will participate in the Tribes' training programs.

(2) Contracting and Subcontracting Plan: A required contracting and subcontracting plan shall indicate all contracts and subcontracts that will be entered into and the projected dollar amounts thereof. If the entity has already selected a contractor or subcontractor to perform any contract or subcontract work, it shall list the name of that contractor or subcontractor and indicate whether or not it is a contractor or subcontractor certified as Indian preference eligible by the TERO. If the contractor or subcontractor is not certified as Indian preference eligible, the entity shall further indicate why each certified contractor or subcontractor, if any, registered with the TERO, that was technically qualified to perform the work was not selected. The plan shall also indicate how the entity intends to comply with the contracting and subcontracting provisions of this Chapter when awarding all contracts and subcontracts not yet awarded at the time the plan is submitted.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(b) Reservation-Based Employers: All compliance and utilization plan requirements applying to contractors shall also apply to reservation-based employers. Reservation-based employers shall also be required to submit yearly compliance and utilization plan updates. All reservation-based employers who are actively engaged in business without an approved compliance and utilization plan shall submit a plan by no later than forty-five (45) days after receiving written notification from the Director that they are out of compliance with this Chapter. All new employers who qualify as reservation-based employers shall submit a compliance and utilization plan within one month of commencing business on the reservation. All employer yearly plan updates shall be due on January 31 beginning after the first full calendar following submission of the initial plan.

TERO shall make efforts to notify all existing and new reservation-based employers of the requirements of this Chapter and to provide such employers with compliance and utilization plan forms. All existing reservation-based employers who have been notified by the TERO of these requirements, and who have not submitted an approved compliance and utilization within forty-five (45) days of notification, shall be subject to penalties of up to \$250 for every day that it is not in compliance with this section.

Failure of the TERO to directly notify a reservation-based employer of the requirements of this section shall not excuse the employer from complying with the compliance and utilization plan requirements.

(c) Plan Goals and Requirements: All compliance and utilization plans shall be used to monitor compliance with this Chapter, and as a tool to help maximize Indian employment and contracting. Compliance and utilization plan requirements and goals may be tailored to the individual circumstances of the contractor or reservation-based employer in order to reasonably maximize Indian employment and meet the requirements of this Chapter. Plans may contain hiring goals or state the minimum number of Indians the employer must employ on his workforce during the year or term of the contract and provide for incentives to meet Indian preference goals. The expectation is that subject to availability of qualified candidates, covered employers will maintain at a minimum a work force consisting of 51% Colville Tribal members, and when possible shall maintain a workforce consisting of 100% Colville Tribal members.

Compliance and utilization plan employment goals shall be reviewed at least annually and shall be revised as necessary to reflect changes in the number of Indians available or changes in employer hiring plans. The Director shall have discretion to develop compliance and utilization plans that may differ from the strict requirements of this Chapter, provided they are intended to maximize employment, training and contracting opportunities for Indian preference eligible individuals.

A compliance and utilization plan shall constitute a binding agreement, the terms of which shall be fully enforceable by the TERO. Failure to adhere to the terms of an approved compliance and utilization plan, or knowingly supplying false information to the TERO, shall subject the noncomplying entity to monetary penalties of up to \$1,000.00 per violation. Employers or entities have the right to appeal all penalties assessed under this section to the Commission in accordance with section 10-1-35.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(d) Reports and Monitoring: All entities engaged in any aspect of business activity on the reservation or lands owned by the Tribes shall submit reports and such other information, including but not limited to certified payroll records, personnel records and contract documents, as is requested by the TERO. Employees of the TERO shall have the right to make on-site inspections during regular working hours in order to monitor an entity's compliance with plan requirements and this Chapter.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

10-1-16 Indian Preference in Employment

(a) If an applicant or employee meets the minimum qualifications for employment, a covered employer shall give or provide Indian preference in employment decisions, including but not limited to; hiring decisions, promotion decision, training opportunities, reduction in force decisions, layoffs, or recall decisions;

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(b) The Director may approve exemptions from these requirements, or requirements regarding the minimum number of Indians the employer must employ based on the following criteria:

(1) Documented concerns regarding an employee showing poor work performance or serious work related disciplinary or attendance problems;

(2) Bona Fide concerns regarding an employee with a history of poor work performance, or serious work related disciplinary or attendance problems occurring within the year preceding the date of application;

(3) If the applicant is a past employee of the hiring employer, and the applicant either resigned or was terminated for cause within one year preceding the date of reapplication for employment;

(4) There are not enough preference qualified candidates who meet the minimum qualifications.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(c) The decision of whether to grant an exemption is in the sole discretion of the Director, but may be reviewed by the Commission if appealed by the employer or applicant as more specifically provided for under this chapter.

(Added 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(d) A Covered Employer shall comply with this Chapter and any resulting duly adopted rules, regulations, guidelines, and orders.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(e) The Tribes, its agencies and subdivisions shall be exempt from the Indian preference in employment sections of this Chapter. Instead, the Indian preference categories and order of preference as provided for in the Tribes' Employee Personnel Manual (EPM) shall apply to all employment by the Colville Tribes, its subdivisions and agencies. However, the TERO shall handle all complaints, investigations, and enforcement actions regarding alleged violations of the Indian preference in employment provisions of the EPM accordance with the procedures contained in CTC Sections 10-1-31 – 10-1-38. TERO shall have no authority to EPM provisions not directly related to Indian Preference.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(f) All tribal entities and instrumentalities not subject to the Tribes' EPM shall be subject to the Indian

preference categories and all other provisions of this Chapter.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(g) Nothing in this Section shall be construed as altering the tribal or sovereign status of the Tribes, its agencies or entities, or as a waiver of sovereign immunity except to the limited extent necessary to provide for enforcement of this Chapter.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

10-1-17 Hiring

(a) Tribal Hiring Hall: An employer may recruit and hire workers from whatever sources are available to him and by whatever process the employer so chooses, except the employer may not employ any non-Indian until five working days, or forty-eight (48) hours for logging and construction positions, have elapsed since the employer has provided the TERO with notice to locate and refer a qualified Indian preference eligible applicant

(Amended 11/19/98, Resolution 1998-852)

(b) Job Announcements: All job announcements or advertisements for employment positions covered by this Chapter shall conspicuously state that Indian preference applies.

(c) Permanent and Key Employees: All covered employers, reservation-based employers, and their contractors and subcontractors shall identify permanent and key employees in their compliance and utilization plan.

(1) Permanent employees of Covered Employers may continue to be employed for work on the Reservation or lands owned by the Tribes whether or not they are Indian preference eligible. A permanent employee is one who is and has been on the employer's or contractor's annual payroll for a period of at least one (1) year continuously, or is an owner of the firm. An employee who is hired on a project-by-project basis shall not be considered a permanent employee, but shall be considered a part-time employee.

(2) A key employee is one who is in a top supervisory position or 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. Key employees who are employed prior to the awarding of the contract may be employed for work on the Reservation or lands owned by the Tribes whether or not they are Indian preference eligible.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(d) Any employer or contractor filling vacant employment positions in its organization immediately prior to undertaking work pursuant to a contract to take place on the Reservation or on lands owned by the Tribes shall set forth evidence acceptable to the Director that its actions were not intended to circumvent these requirements. Upon its approval of each key or permanent employee requested by the employer, the TERO shall issue a permit to that worker, or approve such designation in a compliance and utilization plan.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(e) A covered employer is prohibited from employing any person who is not Indian preference eligible, unless TERO specifically approves such employment in the employer compliance and utilization plan or through issuance of a work permit. Work permits shall be granted under the following circumstances:

(1) To all key and permanent employees listed in the employer's approved compliance and utilization plan who are certified by the Director as meeting the criteria for key or permanent employees. The listing of employees as key or permanent employees in a compliance and utilization plan approved by TERO shall have the same effect as a valid work permit for such employees.

(2) To all Tribal affiliation eligible or non-Indian preference individuals after the covered employer has provided the TERO with notification to locate and refer an Indian preference

eligible individual and the TERO has been unable to do so within the time provided by this Chapter. Upon a showing of good cause, the Director may reduce the time an employer must wait for referral of an Indian preference eligible applicant prior to obtaining a work permit. When no Indian preference eligible candidate has applied for the job, and the TERO has been unable to locate and refer an Indian preference eligible applicant within the time provided, the employer shall request, and the TERO shall issue, a work permit for the non-Indian preference eligible applicant.

(3) To a person employed by a covered employer where the person is employed on the Colville Reservation in a permanent position and he or she began his or her employment on or before January 1, 1996.

(4) To all owners of covered entities, where the 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 work permit. Upon finding that the person is a legitimate owner, the Director shall issue said owner a work permit.

(5) To such other persons that are permitted by this Chapter or regulations to be entitled to a permit.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(f) Work Permits: In the case of employment by the Colville tribal instrumentalities subject to this section, the Director may, in his or her discretion, attach conditions or expiration dates to work permits in order to implement the tribal policy of achieving greater employment and promotional opportunities for Colville tribal members.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(g) The Director is authorized to order removal of any tribally affiliated or non-Indian preference employees who are not listed on the employer's compliance and utilization plan approved by the TERO, or who do not have a valid work permit. In deciding whether to order the employee removed, the Director shall consider whether any qualified Indian preference eligible individuals applied for or were available for hire at the time the position was filled, whether any timely complaints were filed regarding the hire, the length of time the non-permitted employee has been employed, and whether the employee would have qualified for a work permit had the employer followed the required procedure. If the Director elects not to order the employee removed, the Director shall nonetheless have the authority to penalize the employer for failing to comply with the requirements of this Chapter.

(h) Termination/Layoffs: Where non-Indian preference individuals remain employed, no Indian preference eligible employee shall be terminated except for disciplinary, job abandonment, or serious, documented poor job performance that the employee has had an opportunity to correct, but has failed to do within a reasonable time. Furthermore, if the employer lays off by crews, classifications or other categories, Indian preference eligible employees, in the order prescribed in section 10-1-14, shall be transferred to crews or positions that will be retained, so long as there are non-Indian preference eligible individuals in the same general craft employed on the crews that are to be retained and the preference eligible employees transferred are qualified to fill their positions.

(i) Unions: An employer, contractor, or subcontractor having a collective bargaining agreement with one or more labor unions must obtain written agreement from said unions indicating that they will comply with Indian preference requirements of this Chapter while working on the Reservation or lands owned by the Tribes. Specifically, the contractor may make initial job referral requests to the union. However, if the union does not have an Indian preference eligible applicant on any of its out-of-work lists, the union shall contact the TERO. If the TERO can identify an Indian preference eligible applicant, he/she will be referred through the union hiring hall to the job site. The union may not refer a non-Indian-preference eligible applicant until it has contacted the TERO. Before referring the non-Indian preference eligible applicant to the job site, the union shall request a work permit for that worker.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(j) No Indian preference eligible applicant shall be required to travel to a site off the Reservation to be processed by the union hiring hall. Such processing shall be done on the Reservation by telephone, mail, fax, or e-mail. Any Indian preference eligible applicant who does not wish to become a member of the union shall be granted a temporary permit for the duration of the project. Said worker but shall not be required to pay union dues, an initiation fee or contribute to standard benefits or programs from which they would derive no benefit, but shall be paid union scale wages.

10-1-18 Training

(a) As part of a compliance and utilization plan, or pursuant to requests or orders from the Director to help bring an employer into compliance with the provisions or goals of this Chapter, TERO may require covered employers to participate in training programs to assist Indian preference eligible individuals to become qualified in the various job classifications used by the employer. Employers engaged in construction shall participate in the Tribes' Apprenticeship Training, Employer and Labor Services (ATELS) certified training program or a union apprenticeship program, the Tribes shall make a best effort to share the costs of such training programs but employers may also be required to share part or all of the cost. Employers with collective bargaining agreements with unions may use apprenticeship programs, so long as they obtain agreement from the unions to use only Indian preference applicant as apprentices on the project. If no Indian preference apprentices are available, unions shall make available apprenticeship positions for Indian preference applicants.

(b) Both the Tribes and the employer shall share the responsibility and cost of providing cultural synergy training for employers and employees. Employers may be required to integrate culturally appropriate employee assistance programs as necessary for the employer to retain Indian preference eligible employees. The Director and covered employers may agree to initiate specialized programs designed to optimize opportunities for Indian preference individuals.

(Amended 2/5/04, Resolution 2004-94) (Certified 2/9/04)

10-1-19 Job Qualifications, Personnel Requirements, and Religious Accommodation

An employer may not use any job qualification criteria or personnel requirements which serve as a barrier to the employment of Indian preference applicants and which are not required by business necessity. The burden shall be on the employer to demonstrate that such criterion or requirement is required by business necessity. If the employer fails to meet this burden, it will be required to eliminate or waive the criterion or personnel requirement at issue. Employers shall also make reasonable accommodation for the religious beliefs and cultural traditions of Indian workers.

Where the Director and employer are unable to reach agreement on the matters covered in this section, the Director is authorized to immediately request a hearing before the TERO Commission to decide the dispute prior to hiring taking place under the disputed job requirements. However, nothing in this section shall preclude an applicant or TERO from challenging job requirements or criteria after hiring has taken place, provided such complaint is initiated within the time limitations imposed by section 10-1-31.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

10-1-20 Promotion

All covered employers shall give Indian preference eligible employees preferential consideration for all promotion opportunities and shall encourage Indian preference eligible employees to seek such opportunities.

10-1-21 Summer Students

Indian preference eligible applicants shall be given preference in the hiring of summer student help. Local Indians shall include students whose permanent residence is within the land of the Tribes but who are temporarily away from the Reservation attending school, for this section only.

10-1-22 Retaliation

No employer shall retaliate against any employee or person who has exercised his or her rights under this Chapter or has assisted another to do so, by means of harassment, unjustified discipline or termination.

Furthermore, any employer who harasses or abuses an employee of the TERO who is carrying on official duties under this Chapter may be subject to removal from the Reservation pursuant to the procedures of Chapter 3-2.

An employer shall be responsible for the actions of all of its employees, supervisory or otherwise, and for the action of its subcontractors and their employees in regard to prohibitions in this section.

If the Director finds that an employer retaliated against an employee or person who has exercised his or her rights under this Chapter, the Director is authorized to order punitive damages in addition to any other penalty or remedy authorized by this Chapter.

10-1-23 Counseling and Support Programs

(a) The TERO, in conjunction with other tribal and federal offices, may provide or refer employees to counseling and other support services. Covered Employers shall be required to cooperate with such counseling and support services.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(b) To improve the quality of the workforce, TERO may ask Covered Employers to complete surveys or otherwise provide feedback about employee performance. TERO may use this feedback in formulating recommendations for the employee and potential employers.

(Added 3/6/14, Resolution 2014-114)(Certified 3/18/14)

10-1-24 Indian Preference in Contracting and Subcontracting

(a) All entities awarding contracts or subcontracts for supplies, services, labor and/or materials in an amount of \$5,000.00 or more, where the majority of the work on the contract or subcontract will occur on the Reservation or on lands owned by the Tribes, shall give preference in contracting and subcontracting to qualified entities in the following order:

- (1) 100% Colville Business Enterprises;
- (2) Colville Family Business Enterprises;
- (3) Colville Business Enterprises;
- (4) All other Indian Business Enterprises.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(b) These requirements shall not apply to the award of contracts awarded directly by the Colville Business Council or by the federal or state government or their subdivisions. These requirements shall not apply to certified entities subject to the provisions of Chapter 10-3. These requirements 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 these requirements unless the subcontract is subject to the provisions of Chapter 10-3.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(c) All covered entities shall comply with this Chapter and 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. The TERO shall certify firms according to the requirements of this Chapter and Chapter 10-3.

(Amended 11/19/98, Resolution 1998-852)

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

10-1-25 Responsibility for Compliance

The entity engaged in business activity shall be responsible for the compliance of all its contractors and subcontractors with this Chapter, specifically:

(a) Construction: The entity awarding the prime construction contract shall be responsible for compliance with the requirement that preference be given in the award of the prime contract and for ensuring that the prime contractor is in compliance with the requirement that preference be given in the selection of subcontractors, provided, that when the prime contract is awarded directly by an agency of the United States Government, the prime contractor shall be the responsible entity. Provided, further, that where the entity is an Indian Housing Authority, it shall not be subject to any monetary sanctions and shall be exempt from any requirements of the Indian preference in contracting provisions of this Chapter that are inconsistent with the Department of Housing and Urban Development's Indian preference regulations;

(b) Personal Services and other Non-Construction Contracts: The entity awarding the non-construction contract shall be responsible for compliance with the requirement that preference be given in the award of the contract. All entities awarding subcontracts shall be responsible for giving preference in the award of such subcontracts;

(c) Natural Resource Development (Oil, Gas, Hard Rock Minerals, Timber, etc.): The entity obtaining the authorization from the Tribes to engage in development activities on the Reservation shall be responsible for compliance with this Chapter by all of its contractors and subcontractors;

(d) Direct Federal Contracts: To the extent permitted by federal law or otherwise agreed to, these regulations apply to the award of direct prime contracts by a federal agency. Additionally, the selected federal contractors shall be required to comply fully with all subcontract preference requirements;
(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(e) Certified Firm Directory: The TERO shall maintain a Directory of all certified firms and shall supply lists of certified firms, identified by contracting field, to requesting entities.

10-1-26 Certification Procedures and Requirements

The procedures and requirements to obtain certification as a 100% Colville Indian Business Enterprise, Colville Family Business Enterprise, Colville Business Enterprise or other Indian Business Enterprise are set forth in CTC, Chapter 10-3. All entities obtaining certification under Chapter 10-3 shall be deemed certified under this Chapter. Issues regarding certification, such as yearly updates of certification status, withdrawal of certification or appealing a denial of certification shall be governed by the procedures in section 10-3-5(d).

(Amended 2/5/04, Resolution 2004-94) (Certified 2/9/04)
(Amended 11/19/98, Resolution 1998-852)

10-1-27 Requirements in Contracting and Subcontracting

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

(a) Competitive Award: If the entity uses competitive bidding or proposals, competition shall be limited to certified firms. If the entity is unsure if there are any qualified certified firms, it may first publish a prior invitation for certified firms to submit a statement of intent with evidence sufficient to establish their technical qualifications. An entity may also contact the TERO for a list of all certified firms in the relevant field. If the entity fails to receive any statement of intent from a technically qualified certified 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 bidder. If only one certified firm submits a bid or statement of intent, the entity (unless otherwise prohibited by a federal law or regulation) 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 or subcontractor through negotiations or other informal process, it may not enter into a contract with a non-certified 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. Upon request, TERO shall provide entities with a list of all certified firms in the relevant field. If any certified firm meets the minimum

threshold qualifications and has bid the project at a reasonable price, no non-certified firm may be selected.

(c) 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 into, the name of the firm, whether it is or not certified, if not certified why it is not. The subcontract price information for each bidder shall be made available to the TERO upon request 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 in order to circumvent the requirements of this Chapter. 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 the Reservation or lands owned by the Tribes, or 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 reserves 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.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(3) The entity shall be prohibited from using qualification criteria that creates a barrier to Indian firms.

(4) 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 must permit the Indian subcontractor to provide another adequate form of security. A list of acceptable bonding alternatives is provided here:

(A) Increased retainers – 25% instead of normal;

(B) Letter of credit – 100%;

(C) 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.

(5) If it is determined that there is no certified firm available and 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.

(d) Contractors or subcontractors shall not submit false or fraudulent information to TERO, knowingly make a false statement to a Tribal official as it relates to contracting under this Chapter, operate as a front or pass-through company, or prevent or interfere with a contractor's or subcontractor's compliance with this Chapter.

(Added 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(e) Tribal entities may contract for imminent need and/or emergency repair or work on a time and materials basis. Each entity shall maintain a list of qualified contractors to utilize under these circumstances, and shall make a good faith effort to rotate qualified contractors used in an imminent need and/or emergency circumstance.

(Added 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(f) Tribal entities shall notify TERO within 24 hours of an imminent need and/or emergency repair or work. A compliance and utilization plan will be submitted to TERO within 24 hours of an imminent need and or emergency repair or work with the names and contact information of all contractors hired to conduct the imminent need and/or emergency repair or work.

(Added 3/6/14, Resolution 2014-114)(Certified 3/18/14)

10-1-28 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. TERO shall be provided notice of any pre- construction meetings to assist in compliance. However, if the entity determines that there are no certified firms that are technically qualified, the Director may require the entity to provide to each certified firm it rejects a description, in writing, of areas in which it believes the firm is weak and steps it could take to upgrade its qualifications. If a certified firm that was disqualified on the grounds of technical qualifications believes that the disqualification was the result of an improper effort by an entity, contractor, or subcontractor, to circumvent its preference responsibilities under this Chapter, it may file a complaint with the TERO under the provisions of section 10-1-31.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(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), or the establishment of a prototype cost ceiling before bidding commences. No entity may reject a certified firm and then contract with a non-certified firm at the same or higher price. Any contract modification in price that is justified is not a circumvention of this section. Any entity found to have violated this requirement by such circumvention shall be liable for treble damages for any losses suffered by a certified firm as a result of the entity's actions.

10-1-29 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 Chapter.

10-1-30 Employment Rights Fee

An Employment Rights Fee, to help defer the cost of regulating and providing services under this Chapter, will be assessed on all covered employers, including all contractors, sub-contractors and reservation-based employers as follows:

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(a) Contract Fees: The TERO shall assess a Contract Fee equal to 5% of the total gross contract price, on all contracts in the sum of \$5,000.00 or more where the majority of the work under the contract is to be performed within the Reservation or lands owned by the Tribes. The Contract Fee shall be assessed on the entity receiving the contract award. Where a construction or other type of contract involves subcontracting, the entity acting as prime contractor or awarding the subcontracts shall be responsible for paying the Contract Fee, including those attributable to the subcontractors. The Contract Fee shall be due in full prior to commencement of any work under the contract. However, where good cause is shown, the Director may authorize a covered employer to pay the Contract Fee in installments over the course of the contract.

(Amended 9/18/08, Resolution 2008-719)

(Amended 5/10/10, Resolution 2010-303)

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(b) Reservation-Based Employer Fees: Every reservation-based employer shall pay a quarterly Reservation-Based Employer Fee (RBEF), of 1% of its employee's quarterly payroll which shall be paid within thirty (30) days after the end of each fiscal quarter. The RBEF shall apply only to the payroll employees that are assigned to work out of a Reservation location or that performed fifty-one (51%) of their work within the Reservation during the relevant quarter. On April 30, July 30, October 30, and January 30, the employer shall submit, on a form provided by the Director, information showing the total reservation-based payroll for the previous quarter, accompanied by a check for the total amount of the RBEF due under this section. If an employer operates on a different fiscal schedule, it may apply to TERO

for a different payment schedule.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(c) Fee Exemptions; Adjustments; Waivers:

(1) The TERO fee shall not apply to 100% Colville Business Enterprises, Colville Business Enterprises, or Colville Family Business Enterprises, whether for profit or not, and their contractors, sub-contractors and suppliers, except for construction and infrastructure development projects funded by state and federal grants.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(2) The TERO fee shall not apply to contracts let by educational, health, governmental, or non-profit employers and their contractors, sub-contractors and suppliers, except for construction and infrastructure development projects funded by state and federal grants.

(Amended 5/10/10, Resolution 2010-303)

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(3) All reservation-based employers whose total reservation-based workforce is at least 51% Indian preference eligible may apply to the TERO for a reduction in the amount of the RBEF. Upon receipt of sufficient documentation indicating the employer's workforce is at least fifty-one (51%) Indian preference eligible, TERO shall reduce the RBEF assessed to ½ of 1% of the employer's quarterly payroll.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(4) Any contractor, contracting entity or reservation-based employer, or covered employer may apply in writing for a full or partial waiver of TERO fees to (a) The Director for fee waivers in amounts less than \$50,000.00; or (b) The Commission for fee waivers in amounts over \$50,000.00. The Director or Commission may grant a fee waiver upon a finding that the contractor, contracting entity or reservation-based employer meets one of the following criteria:

(Amended 9/18/08, Resolution 2008-719)

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(A) The contract is for a public project intended to benefit the reservation community and is funded in whole or in part by Tribal dollars;

(B) The amount of the TERO fee assessment will result in extreme economic hardship making the contract or reservation based business economically unfeasible; or

(C) The Colville Business Council has passed a resolution waiving all or part of the TERO fee.

(5) Employers who meet or maintain tribal employment above the expected amount of 51% may apply for a refund of the TERO Fee as follows

70% -74% Tribal Employment = refund of 1% total TERO Fee

75% - 79% Tribal Employment = refund of 1.5% TERO Fee

80% -84% Tribal Employment = refund of 2% TERO Fee

85% -89% Tribal Employment = refund of 2.5% TERO Fee

90% - 95% Tribal Employment = refund of 3% TERO Fee

95% - 99% Tribal Employment = refund of 3.5% TERO Fee

100% Tribal Employment = refund of 4% of TERO Fee

To be eligible for the refund, Covered Employers must maintain the percentage of tribal employment for the duration of the contract or project, and the Covered Employer must apply for the refund from the TERO office within 90 days of completion of the project or expiration of the contract (whichever is earlier). As part of its application, Covered employers shall provide proof of tribal employment along with any required supporting documentation. The TERO Office shall

either provide a refund or notify the Covered Employer that their application for a refund has been denied within (30) days of receipt of a completed application.

(Added 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(6) TERO fee waivers are disfavored and will be granted only in cases where (1) the applicant for the waiver clearly establishes one or more of the above conditions apply and, (2) that the policy and purpose of this Chapter to increase Indian employment will be better served by waiving all or part of the TERO fees. The Director or Commission shall issue its decision in writing and such decision shall be final and not subject to further appeal or judicial review. The granting of a fee waiver request shall not operate to waive any other requirements of this Chapter, including those related to requiring Indian preference in employment and contracting.

(d) Enforcement, Collection:

(1) The Director shall be responsible for collecting said fees pursuant to this Chapter. The Director shall endeavor to mail or deliver a notice of fee assessment and applicable fee payment forms to all contractors and reservation-based employers. However, lack of notice shall not relieve any entity from their obligation to pay the required fee.

(2) If a contractor fails to pay the fee prior to commencing work on the Reservation or lands owned by the Tribes, or a reservation-based employer fails to pay the fee by the applicable quarterly due date, interest shall begin accruing at a rate of 10% per annum from the date due. The Director shall notify the entity by registered mail or by personal delivery that its payment is overdue and the consequences that will result if the fee is not paid immediately. If an entity fails to pay the required fee within fourteen (14) days of receipt of the notice from TERO, or five (5) days in the case of work being performed under contract, the Director shall issue a noncompliance order and schedule a hearing before the Commission. In the case of a contract fee, such hearing shall be scheduled within five working days of issuance of the notice of noncompliance or at such time as soon thereafter that the Commission is available to hold a hearing. The Director shall notify the employer of the time and place of the scheduled hearing.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(3) At the hearing, to be held whether or not the employer attends, the Commission shall determine whether or not the employer has complied with the requirements of this section. The burden of proof shall be on the employer. If the Commission finds non-compliance, it shall:

(A) Order payment of all fees plus interest;

(B) Impose penalties of up to 10% of the amount due;

(C) In the case of work being performed under contract, the Commission may issue an order halting all work under the contract until both fees and penalties are paid.

(e) If necessary, the Director may seek an immediate ex parte order in Tribal Court to enforce the Commission's stop work order. Upon a showing that the Commission entered a stop work order in compliance with the procedures set out above, the Tribal Court is authorized to issue an ex parte order directing the Tribal Police to serve and enforce the stop work order. The stop work enforcement order shall also note a show cause hearing for no later than ten (10) days after entry of the stop work enforcement order.

If an entity disputes the TERO's fee assessment or the amount of such assessment, it may avoid penalties or a stop work order by posting a bond with the Director equal to the amount of the fee assessed within five (5) days of receipt of the initial overdue notice, and request a hearing with the Commission.

If at any stage in the fee assessment enforcement process, the Director has good reason to believe there is a danger that a party will remove itself or its property from the jurisdiction of the Colville Tribal Court, such

that the Commission or the Court will not be able to collect monetary damages or TERO fees that are (1) owed pursuant to any outstanding order of the Director, Commission or Court, or (2) which may be owed if the charges set out in an outstanding noncompliance order are upheld, the Director may petition the Colville Tribal Court pursuant to the rules and procedures of the Court to attach property to secure compliance or for such other relief as is necessary and appropriate to protect the rights of the Commission and other affected parties.

(f) Annual Review of Fee Rates: Prior to the first quarter of every fiscal year, the Commission shall review the fee rates of contractors and reservation-based employers and make a recommendation to the Business Council regarding any changes to the fee rates. The Commission shall consider factors such as the economic burden on employers, the amount of fees assessed and collected under the current scheme, and the amount of funding required carrying out the provisions of this Chapter. The final decision on whether to amend the fee rates shall rest with the Business Council.

(g) Fees, Budget: Fees shall be paid to the Colville tribal finance department and shall be credited to TERO revenues. Unused TERO funds will be carried over into the TERO administration line item for use in the following fiscal year TERO budget.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

10-1-31 Complaints

(a) Non-Compliance by Covered Employers: Any person, group of persons, organization, or entity that believes any covered employer or entity has violated any requirements imposed by this Chapter or regulations adopted under it may file a complaint with the TERO. The Director shall also have authority to independently initiate a complaint investigation if he or she has reason to believe a violation has occurred.

The complaint must be filed with the TERO no later than thirty (30) calendar days from the date of the action (or omission) upon which the complaint is based. The complaint shall be in writing, shall be signed by the complainant, shall list the alleged violations, and shall provide such information as is necessary to enable the Director to carry out an investigation. Each complaint shall be assigned a lineal number and referred to as such throughout the investigation process. The Director shall cause every complaint over which TERO has jurisdiction to be investigated. If after investigation, the Director has reason to believe a violation of this Chapter or regulations adopted under it has occurred, and the TERO has jurisdiction over the complaint, the Director shall proceed pursuant to the provisions of section 10-1-30.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

If the Director or his designee makes a determination that the complaint does not allege a violation of this Chapter, the complaint shall be immediately dismissed. The complainant may seek review of this jurisdictional determination by the Commission by filing a written request for review within five (5) days of the date of the dismissal of the complaint. The complainant shall state in writing the nature of the complaint and the reasons they believe TERO has jurisdiction. The Commission shall review the dismissal for lack of jurisdiction without a hearing. The Commission's decision shall be final and not subject to further appeal.

(b) Non-Compliance by the TERO: Any person, group of persons, organization, or entity who believes that an action by the Director or TERO staff is in excess of the authority granted under this Chapter or is otherwise in violation of the Colville Tribal Code or the Colville Constitution, may file a complaint with the Commission. The complaint must be filed no later than 20 calendar days from the date of the action (or omission) upon which the complaint is based. A hearing on such complaint shall be heard pursuant to Chapter 2-4, at which the complainant shall have the burden of proof by a preponderance of the evidence.

(Amended 11/19/98, Resolution 1998-852)

10-1-32 Investigations

The Director, or any field compliance officer employed by the Director, shall make such investigations as the Director or the Commission deems necessary to determine whether any covered employer or other covered entity has violated any provision of this Chapter or any rule or order hereunder, or to aid in prescribing rules, regulations, and guidelines hereunder. The Director or a field compliance officer may

enter, during business hours, the place of business or employment of any covered employer for the purpose of complaint investigation or as the Director deems necessary to monitor compliance with the requirements of this Chapter or any rule of order hereunder. When a bona fide investigation is underway based on a complaint, employees of the TERO shall 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. Workers shall not be compelled to speak with or not speak with TERO investigators. All information collected by the TERO shall be kept confidential, unless disclosure is required for further investigation, or during a hearing or appeal as provided for in this Chapter.

TERO staff shall conduct all investigations in a professional manner which does not unduly interfere with the business activities of the entity under investigation. TERO staff may obtain relevant information and documents through written requests for production.

If a covered employer or other entity refuses to permit TERO staff from entering onto business premises during business hours or from reasonably inspecting or copying documents, the Director may issue a stop work order based upon the covered employer's or other entity's refusal to permit entry or inspection or copying of documents, such order to be in effect until the employer or entity complies with the TERO request, or until the order is lifted by the TERO Commission upon appeal of the order, whichever first occurs.

(Amended 9/18/08, Resolution 2008-719)

10-1-33 Initial Complaint Determination

At the conclusion of the TERO's investigation, the Director or compliance officer shall notify the complainant and responding entity of the TERO's findings and the basis for such findings. If the TERO finds insufficient evidence to establish that a violation occurred, the complaint shall be closed, with notice provided to the complainant and responding party. If the TERO finds that a violation did occur the Director, or the compliance officer handling the case, shall notify both the complainant and non-complying entity in writing stating the specific violations found, and the basis for the findings. Upon a showing of mistake or other good cause, any person may petition the Director to reopen a closed investigation. The decision whether to reopen shall be in the Director's sole discretion.

The Director shall not be required to issue a complaint determination notice prior to issuing a non-compliance order for violations of TERO fee or compliance and utilization plan requirements. The TERO shall, however, contact the employer or entity in an attempt to achieve voluntary compliance of fee and compliance plan requirements prior to issuing a noncompliance order.

10-1-34 Enforcement of Violations

(a) Conciliation: Upon issuance of an initial complaint determination which contains a finding of a TERO violation, the Director shall attempt to bring the entity into compliance and remedy the violation by settlement conference or conciliation. Conciliation conferences shall be considered confidential and the contents of these discussions shall not be used as evidence in any subsequent hearing unless agreed to by the parties. If settlement is reached, the agreement shall be reduced to writing and signed by the respondent, and an order shall be entered by the Commission setting forth the terms of said agreement. Conciliation agreements may be made public if the complainant and respondent agree.

(b) Noncompliance Order: If voluntary conciliation cannot be achieved and the complainant has not elected to sue privately, the Director shall issue a formal noncompliance order, which shall also advise the non-complying entity of all rights to appeal the order. The noncompliance order shall set out in writing the nature of the violation(s), the fact that conciliation was attempted but was unsuccessful, the penalties, sanctions and back pay or lost profit amount assessed to remedy the violation, if any, and any other steps that must be taken to bring the entity into compliance. The order shall provide that the entity shall either comply or appeal the order to the Commission within twenty (20) days of issuance of the order. If the Director has reason to believe irreparable harm will occur during the twenty (20) day period, the Director may require that compliance occur within fewer than twenty (20) days. The order shall provide a clear statement of the entity's rights to appeal the noncompliance order, and the consequences of failing to comply with or appeal the order.

(c) Enforcement, Failure to Appeal: If the non-complying entity fails or refuses to comply, and has not appealed the noncompliance order to the Commission within the twenty (20) day appeal period, the non complying entity shall lose all rights to challenge or appeal the order and such order shall be immediately enforceable. The Director shall have authority to seek enforcement in Tribal Court, if necessary. If the non complying entity fails to comply after its appeal period has run, and the Director is forced to enforce the order in Tribal Court, the court shall assess attorney's fees and costs, and such other sanctions in addition to those contained in the Director's order, that the court deems just and reasonable.

(d) Temporary Injunctive Relief: Where the Director believes that immediate action is necessary to carry out the purposes of this Chapter, the Director may at any time request an expedited hearing before the Commission to seek a temporary order for immediate interim injunctive relief to prevent irreparable harm resulting from an alleged violation of this Chapter. The Director shall attempt to give notice of the hearing to the non-complying entity, but the hearing may be held ex parte. Any interim injunctive relief granted by the Commission shall be for a period not to exceed ten (10) days.

(e) Bonds: The Director may request that an entity post a bond with the Commission pending a hearing before the Commission, upon making a written finding that any of the conditions set out below exists, the entity:

- (1) Has no permanent place of business within the lands and territories of the Colville Indian Reservation;
- (2) The amount of the sanctions exceeds or likely will exceed \$1,000.00; and
- (3) The project on which the entity is employed will be substantially completed with sixty (60) days, such that it may be difficult to locate property of said employer on the Reservation that would be available for attachment or confiscation if the entity fails to pay any sanction imposed on it; or
- (4) The entity has failed to comply with an order of the Commission or the Court in the past, and the employer has engaged in behavior that demonstrates a blatant disregard for the authority and requirements of the Commission, such that the Director or Commission good reason to believe the entity will not comply with the orders of the Commission and/or the Court.

(Amended 11/19/98, Resolution 1998-852)

10-1-35 Appeals to TERO Commission

Any covered employer, entity, or individual that is aggrieved by an order of the Director may appeal the order to the Commission. The aggrieved party shall have twenty (20) days from the date the order is issued, to file a notice of appeal of such order. The appealing party's notice of appeal shall be submitted in writing to the Commission, shall state the order appealed and have attached a copy of the order or decision appealed. If the TERO Commission determines that it lacks jurisdiction to hear a matter, or if it determines that a hearing would serve no legitimate purpose, it may dispose of the matter without a hearing, otherwise the Commission shall set the matter for a hearing. The procedures and conduct of the hearing shall be governed by the following provisions and the contested case provisions of Chapter 2-4.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

10-1-36 Pre-Hearing Procedures

(a) Review of TERO Files: Any party to an appeal 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.

However, the Director shall have the right to excise proprietary information, the identity of confidential informants or other confidential information from the file which will not be relied upon in the presentation of TERO's case. Non-relevant confidential information shall be excised in a manner that causes the loss of the least amount of information from the files.

(b) List of Witnesses: Ten (10) days prior to the hearing (or as soon as possible if the hearing is to be held within ten (10) days after notice), the respondent and the Director shall submit to the Commission chairperson, a list of witnesses each intends to call at the hearing, the approximate length of their testimony, and the subject matter and relevance of their testimony. The witness list shall also contain any requests for subpoenas to compel attendance of witnesses. The Commission may, in its discretion, deny subpoena requests where the party has failed to establish the relevance of the testimony.

(c) Pre-Hearing 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 on this matter and the chairman is empowered to require such steps as are necessary to resolve the problem.

(d) Subpoenas: The Director and respondent shall, no later than ten (10) days prior to the hearing provide the Chairman of the Commission with a list of items they wish to have subpoenaed and the relevance of each. The parties shall only request a subpoena duces tecum for documents and items that are not reasonably accessible through less formal means of production. The Commission may, in its discretion, deny subpoena requests where the party has failed to establish the relevance or need for the subpoena duces tecum.

(e) Postponements: Any request for a postponement of the hearing must be submitted in writing to the Chairperson of the Commission no fewer than three (3) days prior to the hearing.

However, if the Director and respondent mutually submit a request for a postponement because there is a possibility of settling the matter, the request for a postponement may be submitted at any time.

10-1-37 Conduct of Commission Hearing

(a) Presiding Officer: As presiding official, the chairperson of the Commission will control the proceedings. He or she will take whatever action is necessary to insure an equitable, orderly, and expeditious hearing. The conduct of the Commission hearing shall be governed by Chapter 2-4, the Colville Administrative Procedures Act.

(b) Director: The Director or the Director's attorney shall represent the TERO in all Commission hearings even if the hearing was initiated by a complaint filed by a private individual. Provided, the complainant may retain independent counsel and submit testimony and be fully heard.

(c) Respondent: The respondent shall be present for the entire hearing and he/she and his/her representative shall represent him during the proceedings.

(d) Attorneys: Either party may have an attorney present as an advisor, or a spokesman.

(e) Prohibition Against Reprisals: All parties shall have a right to testify on their own behalf, without fear of reprisal.

(f) Burden of Proof: The covered employer, entity or individual aggrieved by the Director's order, shall have the burden of proof by Clear and Convincing Evidence finding that that the Director issued a decision that was (1) Unsupported by substantial evidence; (2) Incorrect, unreasonable, or improper.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

10-1-38 Commission Decision

If after the appeal hearing the Commission determines the Director was correct in finding the entity violated the Chapter, and that the penalties and other remedies ordered are appropriate for the violations found the Commission shall enter an order affirming all or all parts of the Director's order which the Commission finds to be correct. The decision shall be in writing and issued within thirty (30) days after the hearing.

(a) Penalties and Remedies Authorized: If the action appealed is from a noncompliance order, the Commission may assess any or all of the following penalties against the non-complying entity, provided, that the Commission may not assess total monetary penalties or remedies in excess of the total amount of monetary penalties or damages issued by the Director in the written noncompliance order, except for justified adjustments in back pay or lost profit amounts:

- (1) Deny such party the right to commence or continue any business within the Colville Reservation;
- (2) suspend such party's operation within the Colville Reservation or lands owned by the Tribes;
(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)
- (3) Terminate such party's operation within the Colville Reservation or lands owned by the Tribes;
(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)
- (4) Deny the right of such party to conduct any further business with the Confederated Tribes of the Colville Reservation;
- (5) Impose a remedial civil penalty on such party in an amount not to exceed \$5,000.00 for each violation;
- (6) Order such party make payment of back pay to any aggrieved person;
- (7) Order any employer to hire, promote, or train an Indian preference eligible individual found to have been denied applicable preference;
- (8) Order a covered employer to dismiss any employees hired in violation of this Chapter;
- (9) Order an entity to pay lost profits (contract price less estimated expenses, materials and labor costs) to any aggrieved Indian Business Enterprise who was deprived of a contract through violation of this Chapter;
- (10) Order payment of punitive damages only where such damages are permitted by specific provisions of this Chapter;
- (11) Order the party to take such other action as is necessary to ensure compliance with this Chapter or regulations adopted under it, or to remedy any harm caused by a violation of this Chapter, although monetary damage awards to complainants shall be limited to orders of back pay or lost profits.

(b) The notice shall be effective and enforceable immediately when the Commission enters its order.

(c) If a covered employer fails to comply with a Commission order the Director may petition the Colville Tribal Court for an order of enforcement. The Tribal Court shall assess attorney's fees and costs, and any other sanctions in addition to those contained in the Commission's order, that the court deems just and reasonable.

(d) If pending appeal, the Director can show that there is good cause to believe that there is a danger that the employer requesting the hearing will remove itself or its property from the jurisdiction of the Tribes prior to the hearing, the Director may request that the Commission require the covered employer post a bond with the Commission in an amount sufficient to cover possible monetary damages that may be assessed at the hearing. If the Commission orders that a bond be posted and the covered employer does not post the bond, the Commission shall issue a written order authorizing the Director to seek immediate enforcement of the Director's ordered monetary penalty or damages in Tribal Court.

10-1-39 Appeals to Tribal Court

(a) An appeal to the Colville Tribal Court may be taken from any final order of the Commission by any party adversely affected thereby, including the complainant. Said appeal must be filed no later than twenty (20) days after the party receives a copy of the Commission's decision. The appeal shall be conducted pursuant to the provisions of Chapter 2-4 governing Colville Tribal Court appeals of the orders of an administrative body; provided, that where this Chapter applies a specific rule or procedure, the specific rule or procedure shall govern over the general rules set out in Chapter 2-4. The parties to an appeal shall be the parties of record in the proceedings before the Commission.

(Amended 3/6/14, Resolution 2014-114)(Certified 3/18/14)

(b) Any appeal must:

- (1) Set forth the order from which appeal is taken;
- (2) State with specificity the parts of the order being appealed and the specific grounds upon which reversal or modification of order is sought;
- (3) Be signed by appellant.

(c) The order of the Commission shall not be held in abeyance pending the determination of the Colville Tribal Court. However, all monetary awards appealed shall be paid and held in an escrow account or covered through posting of a bond with the Director pending a determination on appeal. For good cause shown, any party to an order of the Commission may petition the Court for an order requesting a stay of enforcement of all or part of the Commission's order pending the appeal.

10-1-40 Miscellaneous Enforcement Provisions

(a) Confiscation and Sale: If a party has failed to pay monetary damages imposed on it or otherwise failed to comply with an order of the Commission or the Court, the Director may petition the Court to hold such party in default, and to order the Tribal Police to seize, and hold for sale, such property of the defaulting party as is necessary to ensure payment of said monetary damages or to otherwise achieve compliance.

Said petition shall be accompanied by a list of property belonging to the party which the Director has reason to believe is within the jurisdiction of the Colville Tribal Court. If the Court finds a party in default, it shall order the Tribal Police to confiscate and hold said property or as much of it as is available and necessary to satisfy the order or judgment. The Tribal Police shall deliver in person or by certified mail, return receipts requested, 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. If thirty (30) days after confiscation the party has not come into compliance, the Court shall order the chief of 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 from whom the property was confiscated. Where a covered employer or other entity has failed to pay monetary damages imposed on it as set out in this Chapter, and the covered employer is owed funds by any entity within the jurisdiction of the Tribes, the Director may petition the Colville Tribal Court to order that the above described funds be paid over to the registry of the Court and a hearing held to determine whether the above described funds may be paid to the TERO. Provided, that this section shall not be construed as a waiver of the sovereign immunity of any Colville tribal entity.

(b) Attachment: The Director may petition the court for attachment of property of an entity, pursuant to this Chapter, when it finds that any one of the conditions set out below exists:

- (1) An entity has refused or failed to post a bond after being so ordered to do so by the Director, Commission, or Court;
- (2) If good cause exists to believe that the entity will remove itself or its property from the Jurisdiction of the Court prior to conclusion of an investigation or enforcement action;

(3) The entity has demonstrated through its behavior an intent to disregard the requirements and orders of the Director, Commission, and/or Court.

(c) Irreparable Harm: A finding of irreparable harm, such that the Director or the Commission may petition the Court 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 a showing shall include but is not limited to the following:

(1) 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 this Chapter requiring contract or subcontract preference, when there is one or more Indian firms available to perform said contract or subcontract;

(2) An entity or its subcontractors is about to or has hired four or more persons in violation of the provisions of this Chapter requiring Indian employment preference, and there are Indians available to fill those positions;

(3) An entity refuses to submit a compliance and utilization plan in the time required and indicates through words or action that it intends to disregard the requirements imposed by this Chapter.

(Chapter 10-1 Amended 2/5/04, Resolution 2004-94)

(Amended 1/13/98, Resolution 1998-16)

(Chapter 10-1 Adopted 5/5/94, Resolution 1994-277)