

Fort Peck Tribal Court
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Poplar, MT 59255



Title 13 – Indian Employment and Contracting Preferences

Table Of Contents

Chapter 1. Definitions	1
Chapter 2. Establishment	1
Chapter 3. Tribal Employment Rights Review Board.....	2
Chapter 4. Business Licensing, Registration; Employment Preference; and Work Permits	4
Chapter 5. Contracting and Subcontracting Preference; Registration; Contracting Plan.....	7
Chapter 6. Voluntary Indian Preference	14
Chapter 7. Liaison Officers	15

Chapter 1. Definitions

Sections:

Sec. 101. Definitions	1
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Sec. 101. Definitions.

For the purposes of this Chapter:

(a) "Near the Reservation" means within reasonable daily commuting distance of any Indian community on the Reservation;

(b) "TERO" shall mean the Tribal Employment Rights Office established by Section 201;

(c) "Director" shall mean the director of TERO appointed under Section 202

(d) "Review Board" shall mean the Tribal Employment Rights Review Board created by Section 301;

(e) "Covered entity" shall mean any individual, corporation, association, partnership, or other entity doing business on trust land on the Reservation other than the Tribes or any entity administered, owned, or operated by the Tribes.

(f) "Business on trust lands" includes doing business that requires regular access to, or use of, trust land within the exterior boundaries of the Reservation.

(g) "Contract and subcontract" shall mean all contracts, including but not limited to, contracts for supplies, services, and equipment, regardless of tier.

(h) "Indian" shall mean a member of a federally recognized Indian tribe.

(i) "Qualified" shall mean meeting the minimum qualifications for a job.

Chapter 2. Establishment.

Sections:

Sec. 201. Establishment	1
Sec. 202. Director	1
Sec. 203. Functions	1
Sec. 204. Implementation of programs.....	1
Sec. 205. Processing discrimination complaints	2
Sec. 206. Annual reports	2
Sec. 207. Duties of other employment programs	2

Sec. 201. Establishment.

There is hereby created the Fort Peck Tribal Employment Rights Office (TERO) as an independent office of the Tribes, reporting directly to the Tribal Executive Board in such manner as the Tribal Executive Board directs.

Sec. 202. Director.

The director of TERO shall be appointed by the Tribal Executive Board. The director shall have the authority, subject to the approval of the Tribal Executive Board, to hire staff, expend funds appropriated by the Tribal Executive Board, and to obtain and expend funds from federal, state or other sources to carry out the purposes of TERO. **(AMENDED AS PER RESOLUTION #26-475-2012-03; DATED 3/12/2012)**

Sec. 203. Functions.

TERO shall:

(a) Implement and enforce all provisions of this Title;

(b) Provide training, counseling and support to Indian workers on the Reservation in conjunction with tribal employment and training programs and other appropriate tribal and federal offices;

(c) Cooperate with federal agencies to enforce federal anti-discrimination statutes, eliminate discrimination against Indians, and to enforce all Indian preference requirements in federal law or contracts with the federal government.

Sec. 204. Implementation of programs.

(a) In implementing this Title, TERO shall develop and phase in programs at a gradual pace in order to ensure a stable and effective program and avoid unnecessary disruption of the business environment on the Reservation;

(b) TERO may implement programs or components of programs on a Reservation-wide basis or it may implement programs covering particular types of covered entities

(c) No significant new program or component of a program shall be introduced, or extended to new types of covered entities, without prior approval of the Tribal Executive Board.

Sec. 205. Processing discrimination complaints.

TERO shall assist the Equal Employment Opportunity Commission (EEOC) and other federal agencies in ensuring protection of the rights of Indians under Title 7 of the Equal Employment Opportunity Act of 1972 or other federal laws, by:

(a) Disseminating information informing Indians and others that Indians are protected by federal law against employment discrimination, and of the procedures for making employment discrimination complaints. Such dissemination may include meetings, conferences, distribution of written materials, and other publicity;

(b) Meeting with appropriate offices of the EEOC and other federal agencies as necessary to arrange mutually satisfactory methods of promoting and enforcing the employment rights and preferences of Indians;

(c) Assisting Indians and employers in obtaining informal resolution of discrimination complaints by meeting with both parties and mediating a mutually agreeable solution;

(d) Where informal resolution fails, and the Indian involved desires to press a formal discrimination complaint, assisting the Indian in filing and processing charges of unlawful discrimination with the EEOC, the Office of Federal Contract Compliance, or other appropriate federal agencies, in accordance with the regulations and procedures of those agencies.

Sec. 206. Annual reports.

The TERO Director shall present to the Tribal Executive Board such reports as the Tribal Executive Board may require, including at least annual reports on TERO's activities. The annual reports shall include:

(a) A description of the activities and programs TERO has conducted in the preceding year;

(b) A description of the activities and programs TERO plans to carry out in the upcoming year;

(c) A plan for financing TERO for the upcoming year. The director should consider new

funds or reallocation of existing funds from such sources as CETA, ONAP, EEOC, BIA employment assistance, HUD and EDA;

(d) Such other information as the Tribal Executive Board may require.

Sec. 207. Duties of other employment programs.

Tribal employment and training programs and BIA employment assistance programs on the Reservation shall, to the extent consistent with the laws and regulations governing them:

(a) Devote such part of their resources as is necessary to prepare Indians for job opportunities opened up by programs under this Title;

(b) Coordinate with TERO in the development of their training programs; (c) Co-operate with TERO in carrying out Section 203(b) of this Chapter.

Chapter 3. Tribal Employment Rights Review Board

Sections:

Sec. 301. Establishment.....	2
Sec. 302. Qualifications.....	3
Sec. 303. Compensation.....	3
Sec. 304. Jurisdiction.....	3
Sec. 305. Sanctions.....	3
Sec. 306. Hearing procedures.....	3
Sec. 307. Decisions after hearing	3
Sec. 308. Appeals.....	3
Sec. 309. Contracts Providing for Termination Unaffected.....	4

Sec. 301. Establishment.

(a) There is hereby created the Fort Peck Tribal Employment Rights Review Board;

(b) The Review Board shall consist of three (3) members and two (2) alternates appointed by the Tribal Executive Board, who serve at the pleasure of the Tribal Executive Board;

(c) A quorum shall consist of two (2) or more members or one member and one alternate. When, at the time scheduled for a meeting to begin, a member is present but not a quorum, the

member may call in either alternate in order to make a quorum.

Sec. 302. Qualifications.

To be eligible to serve on the Review Board, a person must have a high school diploma, be at least twenty five (25) years of age, not have been convicted of a felony, not have been dishonorably discharged from the Armed Forces, not be affiliated with or employed by a business certified or seeking certification under Chapter 5, be physically capable of carrying out the duties of the office, and in the opinion of the Tribal Executive Board, be of sound judgment, good character and possess a reputation for honesty, fairness and impartiality.

Sec. 303. Compensation.

The compensation of members of the Board shall be fixed from time to time by the Tribal Executive Board.

Sec. 304. Jurisdiction.

The Review Board shall:

(a) Conduct hearings and impose sanctions for violations of the Indian employment preference in accordance with Section 409 of this Title;

(b) Conduct hearings and impose sanctions for violation of the Indian contracting and sub-contracting preference in accordance with Section 508 of this Title;

(c) Make certification decisions with respect to Indian firms in accordance with Sections 511 through 515 of this Title;

(d) Review actions of TERO at the instance of aggrieved parties, in accordance with Section 607 of this Title.

(e) Promulgate regulations to govern the implementation of this Title.

(AMENDED AS PER RESOLUTION NO. 2315-87-02, DATED 02/25/87.)

Sec. 305. Sanctions.

The Review Board, after a hearing may impose upon any covered entity which fails to comply with any applicable provision of this Title any of the following sanctions:

(a) Denial or suspension of the right to do business on trust land within the Reservation, provided that the employer shall be given a reasonable time to remove equipment or other property it may have on the Reservation and to arrange with another party For assumption of any contractual obligations it has on the Reservation "Reasonable time", shall mean a maximum of thirty (30) days unless an extension of time for removal is requested from and granted by the TERO Review Board, upon a showing of legitimate reason(s).

(AMENDED AS PER RESOLUTION NO. 2464-89-5, DATED 05/23/89.)

(b) Denial or suspension of the right to commence new business on trust land within the Reservation;

(c) Payment of back pay or other monetary relief to correct harm done to Indians or other entities by the non-compliance;

(d) Civil fines, not to exceed five hundred dollars (\$500.00) per violation. Each day a covered entity is found to be out of compliance may be considered as a separate violation.

Sec. 306. Hearing procedures.

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

(a) To be represented by counsel at their own expense;

(b) To be present at the hearing;

(c) To present relevant sworn testimony and documentary evidence, to call witnesses, and to ask questions of witnesses of other participants. All hearings before the Review Board shall be conducted in an orderly manner, but formal rules of evidence need not be observed.

Sec. 307. Decisions after hearing.

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

Sec. 308. Appeals.

A party shall have the right to appeal any decision of the Review Board to the Tribal Court. An

appeal shall be filed within thirty (30) days after receipt of notice of the Review Board's decision. The TERO director shall represent the interests of the Tribes on the appeal. The Court shall reverse the decision of the Review Board only where it finds that decision to be arbitrary and capricious, or unsupported by substantial evidence.

Sec. 309. Contracts Providing for Termination Unaffected.

Contractors who contract with the Tribes, or an agency or instrumentality of the Tribes, as the owner of a project may be subject to termination under the terms of their contract with the Tribe or the agency or instrumentality of the Tribes without regard to any procedures set forth in this Chapter.

Chapter 4. Business Licensing, Registration; Employment Preference; and Work Permits

Sections:

Sec. 401. Indian employment preference	4
Sec. 402. Index of Indian applicants	4
Sec. 403. Business License; Registration; Hiring Requirements; Work Permits.....	4
Sec. 404. Layoffs	6
Sec. 405. Promotion.....	6
Sec. 406. Summer students.....	6
Sec. 407. Effect of collective bargaining agreements.....	6
Sec. 408. Individual complaints.....	6
Sec. 409. Compliance and hearing procedures.....	6
Sec. 410. Retaliation forbidden.....	7

Sec. 401. Indian employment preference.

Every covered entity is required to give preference to qualified Indians resident on or near the Reservation in hiring, promotion and training of employees on trust land within the Reservation. The provisions of this Chapter apply to all such hiring, promotion and training.

Sec. 402. Index of Indian applicants.

TERO shall maintain an index of Indians seeking employment, and their qualifications. The index shall be maintained and cross-referenced so that TERO can easily and efficiently determine whether any Indians in the index meet the qualifications for a particular job and can develop a list of those who do.

Sec. 403. Business License; Registration; Hiring Requirements; Work Permits.

(a) Every covered entity seeking to conduct business on trust lands within the Reservation with any number of employees or any number of contractors or subcontractors shall register with, and obtain a Business License from, TERO. TERO shall set a schedule of fees, to be approved by the Executive Board, for Business Licenses for the following categories: Temporary (up to 30 days), Six Months, and One Year, provided that for any project for which the entity will receive \$100,000 or more, the Business License fee shall be 3% of the total value of the project.

(b) Upon registering with TERO under subsection (a), the covered entity shall describe its form of business association and provide such other documentation as TERO may require.

(c) TERO shall not issue a Business License to a covered entity unless the covered entity, as part of the registration process certifies that it has;

(1) Read and understands this Title 13 of this Code;

(2) Identified a Liaison Officer, if required pursuant to Chapter 7 of this Title;

(3) Read and understands Title 22 of this Code (Protection of the Environment);

(4) Notified the Office of Environmental Protection of its intent to conduct business on trust lands within the Reservation and complied with such registration process as that Office may require; and

(5) Notified the Cultural Resources Department of its intent to conduct business on trust lands within the Reservation and complied with such registration process as that Office may require.

(d) Upon registering with TERO under subsection (a), the covered entity shall receive a list of those Indians in the TERO index who meet the qualifications for employment specified by the covered entity, or TERO shall refer a specified number of such Indians to the entity.

(e) A covered entity commencing business on trust lands within the Reservation without a preexisting work crew may recruit and hire employees or trainees from whatever source and by whatever process it chooses, provided that (1) it may not hire a non-Indian until TERO certifies that no Indians meeting the qualifications set by the covered entity are listed on its index and (2) it complies with the registration and Work Permit requirements for non-Indian employees under subsection (f)(2) and for non-members of the Fort Peck Tribes under subsection (g).

(f) Any covered entity commencing business on trust lands within the Reservation with a preexisting work crew may maintain a workforce made up of 20% or more of non-Indians only if such a covered entity shall, prior to commencing work on any project,

(1) Obtain certification from TERO that either

(i) No less than 80% of the covered entity's workforce is made up of Indians or

(ii) No Indians meeting the qualification for the covered entity's positions are listed on the TERO index to enable the covered entity to employ a workforce that is made up of at least 80% Indians,

(2) Register with TERO the names of all non-Indian employees of the covered entity and any such other information TERO may require, and

(3) Purchase Work Permits from TERO for every employee who is not an Indian.

(g) In addition to the Work Permit requirements set forth in subsection (f), any covered entity who employs an individual who is an Indian but not a member of the Fort Peck Tribes shall;

(1) Register with TERO the names of all such Indian employees of the covered entity and any such other information TERO may require and

(2) Purchase Work Permits from TERO for every Indian employee who is not a member of the Fort Peck Tribes.

(h) Every employee for whom a covered entity registers and pays for a Work Permit in accordance with subsections (f) and (g) shall;

(1) Separately register with TERO, and provide TERO with any such additional information it may request so that TERO may maintain an up-to-date registry of the names, addresses, and other information with respect to all employees working for covered entities who are not members of the Fort Peck Tribes and

(2) Maintain on his or her person at all times a TERO certified Work Permit. The TERO Director shall have authority to revoke any Work Permit issued under this section with or without cause.

(i) Every covered entity shall be responsible for ensuring that their employees holding Work Permits under this section, who are not United States citizens, possess valid Department of Homeland Security documentation, which allows them to work in the United States under the Immigration Reform & Control Act. Should TERO become aware of the presence of any unauthorized foreign worker within the exterior boundaries of the Reservation, it shall inform the Department of Homeland Security of such presence and coordinate with that agency to request appropriate authorities to remove the unauthorized foreign worker from the Reservation.

(j) An employee or covered entity who fails to comply with the requirements of this section or who makes any misrepresentation in the registration requirements set forth herein shall be subject to sanctions in accordance with the provisions and procedures set forth in Chapter 3, and sanctions against employees may include the same civil fines that may be imposed upon a covered entity or exclusion from the Reservation.

(k) Job qualifications set by any covered entity may not include non-job-related qualifications which have a discriminatory impact on Indian applicants.

(l) The fees for Work Permits required by this section, and their duration, shall be established by TERO with the approval of the Executive Board.

(m) The requirements of this section shall apply, upon enactment, to any covered entity currently doing business on trust lands.

(AMENDED AS PER RESOLUTION NO. 788-88-5, DATED 05/11/88. AMENDED AS PER RESOLUTION NO. 261-2008-01, DATED 01/14/2008.)

Sec. 404. Layoffs.

In all layoffs and reductions in force, no Indian shall be terminated if a non-Indian worker in the same craft or job remains employed. If a covered entity lays off by crews, qualified Indians shall be transferred to crews that will be retained so long as there are non-Indians in the same craft or job employed.

Sec. 405. Promotion.

Every covered entity shall give preference to Indians in consideration for promotion and shall encourage Indians to seek promotion opportunities. For all promotions to supervisory positions filled by non-Indians, the employer shall file a report with TERO stating what Indians applied for the job, the reasons why they were not given the job, and the efforts made to inform Indians of the opportunity.

Sec. 406. Summer students.

Indians shall be given preference in the hiring of summer student help. The employer shall make every effort to promote after-school, summer, and vacation employment for Indian youth.

Sec. 407. Effect of collective bargaining agreements.

In no event shall a collective bargaining agreement with any union constitute an excuse for failure to comply with the Indian preference policy of this Chapter. Covered entities with collective bargaining agreements shall obtain any necessary agreement from any union with which it has a col-

lective bargaining agreement or give other satisfactory assurance that the covered entity and union will:

(a) Comply with this Chapter;

(b) Give absolute preference to qualified Indians in referral, regardless of which union referral list they are on

(c) Establish mechanisms, such as phone or mail registration, or a union sub-office near the Reservation, so that Indians do not have to travel great distances to retain their place on union lists;

(d) Establish necessary journeyman upgrade and advance apprenticeship programs for Indian workers

(e) "Blanket in" to the union all Indians who qualify and who wish to join the union; and

(f) Grant work permits to Indians who do not wish to join the union. TERO's participation in a written agreement with a union shall not constitute official tribal recognition of any union or tribal endorsement of any recruiting activities conducted by any union.

Sec. 408. Individual complaints.

Any person or entity which believes that any covered entity has failed to comply with the requirements of this Chapter may file a complaint with TERO whether or not the complaining party can demonstrate it is personally harmed by the alleged non-compliance.

Sec. 409. Compliance and hearing procedures.

If TERO has reason to believe, either as a result of a complaint filed pursuant to Section 408 or through its own investigations, that a covered entity has failed to comply with any of the requirements of this Chapter, TERO shall so notify the entity in writing specifying the alleged violations(s). If the party being so notified is a contractor or subcontractor, notice shall also be provided to the entity holding the permit or authorization under which the contractor or subcontractor is operating, and such entity may be a party to all further negotiations, hearings and appeals. The entity cited and TERO shall have twenty (20) days to pursue a voluntary, informal resolution of the

problem. If no such resolution can be reached at the end of twenty (20) days, TERO shall notify the Review Board and request that it set up a formal hearing on the problem within twenty (20) days of such notice. The procedures at such hearings shall be as provided in Chapter 3. TERO shall pursue on behalf of the Tribes complaints it determines to have merit. If the Review Board decides that an entity has failed to comply with the ordinance, it may impose one or more of the sanctions provided for in Section 305.

Sec. 410. Retaliation forbidden.

Any covered entity and any union or person subject to tribal jurisdiction which retaliates against any employee, employer, union, or other entity because of its exercise of rights under this Chapter, or compliance with provisions of this Chapter, shall be subject to the sanctions set forth in Section 305. In additions, if the Review Board determines a complaint has merit, TERO may petition the Tribal Court to order reinstatement or other temporary or permanent injunctive relief to prevent harm or further harm caused by such retaliatory actions.

Chapter 5. Contracting and Subcontracting Preference; Registration; Contracting Plan

(CHAPTER AMENDED AS PER RESOLUTION NO. 231 5-87-2, DATED 02/25/87.)

Sections:

Sec. 501. Indian references for contracting and subcontracting	7
Sec. 501.1. Scope of preference.....	7
Sec. 502. Responsibility for evaluation of technical qualification and reasonable price. .	8
Sec. 503. Submission of a contracting and subcontracting plan.	8
Sec. 504. Operation of the contract or subcontract	9
Sec. 505. Replacement of non-Indian firms by certified firms after a project is underway	9
Sec. 506. Reports and monitoring.....	10
Sec. 507. Individual complaints.....	10

Sec. 508. Compliance and hearing procedures.	10
Sec. 509. Criteria for Indian contract preference certification	10
Sec. 510. Applications for certification.....	12
Sec. 511. Certification determinations; Temporary Certification; Licensing and Registration.....	12
Sec. 512. Probationary certification.....	13
Sec. 513. Final certification; Registration and Licensing	13
Sec. 514. Withdrawal of certification.	13
Sec. 515. Firms certified prior to the adoption of these criteria.....	13
Sec. 516. Annual and other reports.....	13
Sec. 517. List of certified entities	13
Sec. 518. Retaliation forbidden.	14
(SECTIONS 519-522 ARE REPEALED AS PER RESOLUTION NO. 2315-87-2, DATED 02/25/87.).....	14

Sec. 501. Indian references for contracting and subcontracting.

Every covered entity engaged in any business on trust land within the Reservation, shall give preference to firms certified by the Tribes under this Chapter in all contracts and subcontracts to be performed on the Reservation.

(AMENDED AS PER RESOLUTION NO. 423-94-1, DATED 01/11/94).

Sec. 501.1. Scope of preference.

An entity engaged in activity subject to this Chapter may not enter into a contract or subcontract with

a firm not certified under this Chapter unless it has contacted every certified firm in the relevant field and has determined that there is no certified firm that is technically qualified to perform the work required and willing to do so at a reasonable price. So long as a certified firm meets minimum threshold qualifications, no other firm may be selected for any contract or subcontract. If the entity determines that a certified firm lacks the qualifications to perform all of the work required under a contract or subcontract, the entity shall make a good faith effort to divide the work required into

smaller portions so that the certified firm can qualify for a portion of the work. An entity engaged in activity subject to this Chapter shall be responsible for the compliance of all its contractors and subcontractors with this Chapter. No entity shall circumvent the requirements of this Section by hiring non-Indians and designating them as employees rather than contractors or subcontractors.

(a) "Near the Reservation" means within reasonable daily commuting distance of any Indian community on the Reservation;

(b) "TERO" shall mean the Tribal Employment Rights Office established by Section 201;

(c) "Director" shall mean the director of TERO appointed under Section 202

(d) "Review Board" shall mean the Tribal Employment Rights Review Board created by Section 301;

(e) "Covered entity" shall mean any individual, corporation, association, partnership, or other entity doing business on trust land on the Reservation other than the Tribes or any entity administered, owned, or operated by the Tribes.

(f) "Business on trust lands" includes doing business that requires regular access to, or use of, trust land within the exterior boundaries of the Reservation.

(g) "Contract and subcontract" shall mean all contracts, including but not limited to, contracts for supplies, services, and equipment, regardless of tier.

(h) "Indian" shall mean a member of a federally recognized Indian tribe.

(i) "Qualified" shall mean meeting the minimum qualifications for a job.

Sec. 502. Responsibility for evaluation of technical qualification and reasonable price.

(a) Technical qualifications. A covered entity engaged in activity subject to this Chapter shall determine the technical qualifications required for a particular contract or subcontract. However, if the entity determines that all certified firms are not qualified, the entity must first;

(1) Interview the principals in all available certified firms to determine their knowledge and expertise in the area and

(2) Provide to each certified firm it rejects a description, in writing, of areas where it believes the firm is weak and steps it could take to upgrade its qualifications. The entity shall evaluate a certified firm that does not yet have an established record on the basis of the individual qualifications of the principals in the firm, their equipment, and any other relevant factors which provide guidance on the firm's ability to perform the work.

(b) Reasonable price. A covered entity engaged in activity subject to this Chapter may use any process it chooses for determining a reasonable price including, but not limited to, competitive bidding (open or closed) or private negotiations. However, before an entity can reject a certified firm on the basis that it is not willing to do the work at a reasonable price, it must offer the certified firm an opportunity to negotiate price. If there is only one technically qualified certified firm, an entity must enter into negotiations on price with such firm and contract with that firm if a reasonable price can be negotiated. No covered entity may reject a certified firm on the grounds that the price is not reasonable, and subsequently contract with a non-certified firm at the same or a higher price.

Sec. 503. Submission of a contracting and subcontracting plan.

(a) Every covered entity seeking to conduct business on trust lands within the Reservation with any number of employees or any number of contractors or subcontractors shall register with, and obtain a Business License from, TERO in full compliance with section 403 of this Title.

(b) Every such covered entity seeking to conduct business on trust lands within the Reservation with any number of contractors or subcontractors shall, before commencing any work, submit a contracting and subcontracting plan to TERO for approval. The plan shall indicate contracts and subcontracts that will be entered into in such activity and projected dollar amounts

thereof. If the entity has already selected a firm to perform any contract or subcontract work, it shall list the name of that firm and indicate whether or not it is a certified firm. If the firm selected is not a certified firm, the covered entity shall further indicate why each certified firm registered with TERO in the relevant area of endeavor was not selected, and the name of a contact person at each certified firm with which the covered entity dealt. No authorization shall be granted to any firm which submits a plan indicating that less than one hundred percent (100%) of the value of all subcontracts will be paid to certified firms unless the entity can demonstrate that it was unable to employ Indian firms for sub-contract categories because there was an insufficient number of Indian firms qualified or available. To make such a demonstration the entity must show, at a minimum, that it interviewed all Indian firms listed on the TERO register in that area of endeavor and that:

(1) A sufficient number was not available to enable it to meet the goal; or

(2) The ones that were available and would have enabled the entity to reach the goal were rejected because they lacked the necessary technical qualifications; or

(3) That no certified firm was willing to do the work at a reasonable price after negotiation as required by Section 502;

(c) No entity authorized to engage in activity subject to this Chapter shall deviate from its plan in a manner that diminishes the percentage of Indian subcontracting, without prior written notification to TERO, and obtaining prior written approval of TERO;

(AMENDED AS PER RESOLUTION NO. 2465-89-5, DATED 05/23/89.)

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

Sec. 504. Operation of the contract or subcontract.

Once an entity enters into a contract with a certified firm, the Tribes 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 Title.

Sec. 505. Replacement of non-Indian firms by certified firms after a project is underway.

(a) When an entity hires a non-certified firm because no certified firm exists at the time the non-certified firm was hired and a certified firm subsequently comes into existence, TERO shall promptly notify the entity of the existence of the certified firm;

(b) The entity shall replace the non-certified firm with a certified firm if:

(1) The contract or relationship between the entity and the non-Indian firm is expected to extend more than one year beyond the date of notification by TERO;

(2) The certified firm is technically qualified to do the work, and

(3) The certified firm is prepared to undertake the work on the same terms, including price, as the non-certified firm performing the contract.

(c) If the relationship between the entity and the non-certified firm is through a year-to-year contract, the non-certified firm shall be replaced only when the contract expires; provided that, if the contract expires within one hundred twenty (120) days following notification that a certified firm is available, the entity shall have the right to extend the contract with the non-certified firm to a date not to exceed thirty (30) days from that notice,

(d) If there is no written contract or if the contract is not a year-to-year contract, the entity will have thirty (30) days after notification by TERO to replace the non-Indian firm with the certified firm;

(AMENDED AS PER RESOLUTION NO. 2466-89- 5, DATED 05/23/89.)

(e) The requirements of this Section may be waived or the transition period extended by TERO in individual cases upon a showing of hardship upon the covered entity.

Sec. 506. Reports and monitoring.

(a) All entities engaged in any activity subject to this Chapter shall submit such reports to TERO as it requests. An entity may refuse to submit any information which it can demonstrate must remain confidential for valid business purposes;

(b) Employees of TERO shall have the right to make on-site inspections during regular business hours in order to monitor compliance with this Chapter and shall have the right to talk to any employee on-site so long as it does not interfere with the operations of the business.

Sec. 507. Individual complaints.

Any certified firm, group of certified firms, or other person or entity which believes that any entity engaged in activity subject to this Chapter has failed to comply with the requirements of this Chapter may file a complaint with TERO whether or not the complaining party can demonstrate it is personally harmed by the alleged non-compliance.

Sec. 508. Compliance and hearing procedures.

If TERO has reason to believe, either as a result of a complaint filed pursuant to Section 507 or through its own investigations, that an entity engaged in activity subject to this Chapter on trust land has failed to comply with any of the requirements of this Chapter, TERO shall so notify the entity in writing specifying the alleged violation(s). If the party being so notified is a contractor or subcontractor, notice shall also be provided to the entity holding the permit or authorization under which the contractor or subcontractor is operating, and such entity may be a party to all further negotiations, hearings and appeals. The entity cited and TERO shall have twenty (20) days to pursue a voluntary, informal resolution of the problem. If no such resolution can be reached at the end of twenty (20) days, TERO shall notify the Review Board and request that it set up a formal hearing on the problem within twenty (20) days of such notice. The procedures at such hearings shall be as provided in Chapter 3. TERO shall pursue on

behalf of the Tribes complaints it determines to have merit. If the Review Board decides that an entity has failed to comply with this Chapter, it may impose one or more of the sanctions provided for in Section 305, and may order the party to take such corrective actions as are necessary to remedy any harm done to the Tribes or to certified firms by the non-compliance.

Sec. 509. Criteria for Indian contract preference certification.

To receive certification as a firm eligible for Indian preference an applicant must satisfy all of the following criteria:

(a) Ownership. The entity must be sixty percent (60%) or more Indian owned. The applicant must demonstrate the following:

(1) Formal ownership. That an Indian or Indians own(s) sixty percent (60%) or more of the partnership, corporation, joint venture, or other arrangement for which the application is being submitted. Such ownership must be embodied in the firm's organic documents, such as its stock ownership or partnership agreement. Ownership includes:

(i) Financial ownership and

(ii) Control The Indian(s)' ownership must provide him or her with a majority of voting rights or other decisional mechanisms regarding all decisions of the firm and the Indian(s) must receive at least a majority of the firm's assets upon dissolution;

(2) Value. The Indian owner(s) must provide real value for his/her majority ownership by providing capital, equipment, real property, or similar assets commensurate with the value of his/her ownership share. It will not be considered real value if the Indian(s) purchased his/her ownership share, directly or indirectly, through a promissory note, the ultimate creditor of which is the non-Indian owner of the firm or an immediate relation thereof, or any similar arrangement, unless a convincing showing can be made that the Indian owner(s) brought such special skills marketing connections, or similar benefits to the firm that there is good reason to believe the arrangement would have been entered into even if there

were not an Indian preference program in existence;

(3) Profits. The Indian owner(s) must receive at least sixty percent (60%) of all profits. If there is any provision that gives non-Indian owner(s) a greater share of the profits, in whatever form and under whatever name, such as through management fees, equipment rental fees, bonus tied to profits, or other vehicles, certification will be denied. Salary scales will be reviewed to ensure that the relative salaries being paid Indian and non-Indian owners are consistent with the skills of the parties and are not being used to circumvent the requirement that Indian owners receive at least sixty percent (60%) of the profits.

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

(1) Unitary firms (non-joint ventures). One or more of the Indian owners is substantially involved as a senior level official in the day-to-day management of the firm. The Indian owner does not have to be the Chief Executive Officer: However he or she must, through prior experience or training, have substantial occupational ties to the area of business in which the firm is engaged such that he or she:

(i) Is qualified to serve in the senior level position; and

(ii) Is sufficiently knowledgeable about the firm's activities to be accountable to the Tribes on the firm's activities.

This provision shall be waived when:

(i) The firm is one hundred percent (100%) Indian-owned and the Chief Executive Officer is the spouse and/or parent of the owner(s), the family lives on or near the Reservation, and the majority of employees are Indian; or

(ii) The firm is owned by ten (10) or more persons, is at least seventy percent (70%) Indian-owned, the Chief Executive Officer and the highest-salaried employee in the firm are Indian, and a majority of the employees are Indian; **(AMENDED AS PER RESOLUTION NO. 2467-89-5, DATED 05/23/89.)**

(2) Joint ventures. A joint venture will be required to demonstrate that the Indian firm, in

addition to meeting the requirements on management control set out in subsection (b)(1) above, is, in fact, the controlling partner in the joint venture. The venture will be required to demonstrate that the Indian partner has the experience and expertise to manage the entire operation and that the non-Indian partner is providing specialized or limited resources or expertise to the venture and is not the manager in fact.

(c) Integrity of structure. The firm must not have been established solely or primarily to take advantage of the Indian preference program. In evaluating an applicant under this criterion TERO will consider the factors set out below. TERO shall exercise broad discretion in applying these criteria in order to preserve the integrity of the Indian preference program and in questionable cases shall deny certification:

(1) History of the firm. Whether the history of the firm provides reason to believe it was established primarily to take advantage of the Indian preference program, particularly whether the firm, a portion of the firm, or key actors in the firm originally associated with a non-Indian-owned business that gained little of business value in terms of capital, expertise, equipment, etc. by adding Indian ownership or by merging with an Indian firm.

(2) Employees.

(i) Whether key non-Indian employees of the applicant are former employees of a non-Indian firm with which the Indian firm is or has been affiliated, through a joint venture or other arrangement, such that there is reason to believe the non-Indian firm is controlling the applicant;

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

(3) Relative experience and resources. Whether the experience, expertise, resources, etc., of the non-Indian partner(s) is so much greater than that of the Indian(s) that there is little sound business reason for the non-Indian to accept a junior role in the firm or venture other than

to be able to take advantage of the Indian preference program.

(d) Residence. The entity must have its principal place of business on or near the Fort Peck Reservation. This provision may be waived when the firm has met the criteria above and TERO and the Review Board are satisfied that the firm is bona fide and is not attempting to circumvent the requirements of this chapter.

(AMENDED AS PER RESOLUTION NO. 25-2149-2011-05, DATED 05/23/2011.)

Sec. 510. Applications for certification.

An individual or entity seeking certification as eligible for Indian preference shall submit a completed application, accompanied by an application processing fee of twenty-five dollars (\$25.00), to TERO on forms provided by TERO office. TERO staff will be available to assist an applicant in filling out and filing the application. The application shall contain, at a minimum, the following information:

(a) The applicant's name, residence, business name and address, the period of time the applicant has resided or done business on the Reservation, and if the applicant is an individual, satisfactory proof that the applicant is an Indian. If the applicant is other than an individual, the name, address and period of residence

at that address of each partner, officer and other person owning a financial interest in the net earnings of the applicant's on-Reservation business, The percentage ownership interest of each partner, officer, and other person in the applicant's net earnings from on-Reservation activities whether such partner, officer and other person is Indian or non-Indian, and if Indian, satisfactory proof that the individual is an Indian;

(b) Information sufficient to demonstrate that the criteria of Section 509(a) and (b) are met;

(c) Information concerning the origins and history of the applicant, and its employees sufficient to allow evaluation of the firm under Section 509 (c);

(d) Satisfactory proof that the applicant is qualified to conduct and operate the business for which certification is sought;

(e) A statement of the applicant's policy with respect to the employment of Indians resident on the Reservation and a history, if any, of past employment of Indians resident on the Reservation;

(f) A statement reading as follows: The undersigned each hereby certify on behalf of the applicant and each for himself or herself that the foregoing statements are true and correct and that if any material is false, any license granted pursuant to this application shall be void and of no force or effect.

Sec. 511. Certification determinations; Temporary Certification; Licensing and Registration.

Within twenty-one (21) business days after receipt of a completed application, TERO shall review the application, request such additional information as it believes appropriate (the twenty-one (21) day period shall be stayed during the time any request for additional information is outstanding), conduct such investigations as it deems appropriate, and submit an analysis and recommended disposition to the Review Board. Copies of the analysis and recommended disposition shall be kept confidential and shall not be made available to the applicant or any other party. When it is so required, TERO may extend the processing period by an additional twenty-one (21) days, by sending notification of the extension to the applicant by registered mail. Within thirty (30) days of receipt of TERO's analysis and recommended disposition, the Review Board shall hold a hearing on the application, posting notice of the hearing time at the Tribal Office, and Agency, and the TERO office at least five (5) days prior to the hearing. In addition, any other party wishing to present information to the Review Board shall be entitled to do so, by requesting, no less than one (1) day prior to the hearing, an opportunity to participate and may be represented by counsel. Hearings and any appeals shall be conducted as provided in Chapter 3 of this Title.

The TERO Director shall have discretion to issue temporary certification for up to thirty (30)

days to any applicant for Indian ownership certification when the Director is confident that the criteria for such certification under this Chapter are, more likely than not, to be met. Such a temporary certification may, at the discretion of the TERO Director, be extended for one additional 30 day period if the Review Board has not yet reached decision on certification. Any entity granted temporary certification shall comply with the licensing, registration, and other requirements of this Title.

Sec. 512. Probationary certification.

An applicant granted certification shall be issued a six (6) month probationary certificate, upon payment to TERO of a fifty dollars (\$50.00) certification fee. During that period, TERO shall monitor the firm's activities to ensure that the firm is operating in the manner described in its application. During the probationary period, TERO shall have the right to request and receive such information and documents as they deem appropriate. All entities granted probationary certification shall comply with the licensing, registration and other requirements of this Title.

Sec. 513. Final certification; Registration and Licensing.

At the end of the probationary period the Review Board, after receiving recommendations from TERO, shall either grant full certification or deny certification. All entities granted final certification shall comply with the licensing, registration and other requirements of this Title.

Sec. 514. Withdrawal of certification.

From information provided in the change notices or Annual Reports required by Section 516, on the basis of a written grievance filed by any other firm or person, or on its own initiative, TERO may initiate proceedings to withdraw or suspend certification for any firm. TERO shall prepare an analysis and recommended disposition for the Review Board and shall send the firm notice, by registered mail, that its certification is being examined, along with the grounds thereof.

The Review Board shall then set a date for a hearing, which shall be held within twenty one (21) days after it receives the analysis and recommended disposition from TERO. At the hearing, TERO staff shall present the case for suspension or withdrawal and the hearing shall be conducted as in Chapter 3 of this Title.

After the hearing, the Board may:

- (1) Withdraw certification;
- (2) Suspend certification for up to one (1) year;
- (3) Put the firm on probation; and/or (4) order that corrective action be taken within a fixed period. A firm that has had its certification withdrawn may not reapply for a period of one (1) year.

Sec. 515. Firms certified prior to the adoption of these criteria.

Each firm holding Indian preference certification from the Tribes prior to the effective date of this Chapter shall remain certified without submitting a new application under Section 510. However, if any such firm does not meet the criteria of Section 509, certification may be withdrawn in accordance with Section 514.

Sec. 516. Annual and other reports.

Each certified firm shall report to TERO, in writing, any changes in its ownership or control status within sixty (60) days after such changes have occurred. Each certified firm, on the anniversary of its receipt of permanent certification, shall update the information provided in its initial application on an Annual report form provided by TERO. Failure to provide information pursuant to these requirements shall constitute grounds for withdrawal of certification.

Sec. 517. List of certified entities.

TERO shall maintain a current list of all entities certified pursuant to this Chapter. Copies of this list shall be posted in a conspicuous place in the TERO office, shall be made available to the interested public, for a reasonable copying fee, and shall be brought to the attention of those persons,

associations, partnerships and corporations seeking to contract subcontractors for activity subject to this Chapter. No preference as between certified entities shall be indicated on the list.

Sec. 518. Retaliation forbidden.

Any covered entity and any union or person subject to tribal jurisdiction which retaliates against any employee, employer, union, or other person because of the person's exercise of rights under this Chapter, or compliance with provisions of this Chapter, shall be subject to the sanctions set forth in Section 305. In addition, if the Review Board determines a complaint has merit, TERO may petition the Tribal Court to order reinstatement or other temporary or permanent injunctive relief to prevent harm or further harm caused by such retaliatory actions.

(SECTIONS 519-522 ARE REPEALED AS PER RESOLUTION NO. 2315-87-2, DATED 02/25/87.)

Chapter 6. Voluntary Indian Preference Sections:

Sec. 601. Voluntary Indian preference policy.	14
Sec. 602. Employment	14
Sec. 603. Oil and gas subcontracting	14
Sec. 604. Reporting	15
Sec. 605. Preference for contracts with the Tribes and tribal corporations	15
Sec. 606. Publicity	15
Sec. 607. Review of TERO's actions	15

Sec. 601. Voluntary Indian preference policy.

(a) It is the policy of the Tribes that all employers on or near the Reservation, which are not covered entities subject to Chapter 4 of this Title, should give preference to Indians resident on or near the Reservation in hiring and promotion of all employees;

(b) It is the policy of the Tribes that all entities engaged in activities on or near the Reservation, which would be subject to Chapter 5 of this Title if they were conducted on trust land, should give

preference to firms certified under Chapter 5 in contracting and subcontracting.

(AMENDED AS PER RESOLUTION NO. 2315-87-2, DATED 02/25/87.)

Sec. 602. Employment.

(a) Prior to opening a new business or beginning a new project requiring the hiring of employees on or near the Reservation, but not within trust lands, the Tribes request that an employer notify TERO of its intentions. TERO shall ascertain how many employees the employer expects to hire and the relevant qualifications for each job category. Based on the availability of qualified Indians, TERO shall determine how many Indians should be hired, and when, for each employer to honor the voluntary Indian employment preference policy of Section 601(a);

(b) TERO shall monitor all such employers on or near the Reservation to determine whether the policy of Section 601(a) is being honored. Following appropriate consultation and investigation, TERO shall issue certificates of compliance to employers honoring the employment preference policy, and certificates of non-compliance to employers not honoring the policy. Employers without good cause refusing TERO access to information necessary to make such a determination shall be issued a certificate of non-compliance;

(c) Upon request, TERO shall provide any employer on or near the Reservation with a list of those Indians in its index who meet the qualifications specified by the employer, or will refer a specified number of such Indians to the employer.

Sec. 603. Oil and gas subcontracting.

(a) Prior to beginning a new project on or near the Reservation, but not on trust lands, the Tribes request that an entity engaged in activity subject to 601(b) notify TERO of its intentions. TERO shall consult with all such entities to assist in carrying out the contracting and subcontracting preference policy of Section 601(b). For each such entity TERO shall ascertain what contracts and subcontracts the entity expects to let. Based on

the availability of certified firms, TERO shall determine how many certified firms should be utilized for the entity to honor the voluntary policy;

(b) TERO shall monitor all entities engaged in activity subject to 601(b) to determine whether the policy of Section 601(b) is being honored. Following appropriate consultation and investigation, TERO shall issue certificates of compliance to entities honoring the policy and certification of non-compliance to entities not honoring the policy. Entities without good cause refusing TERO access to information necessary to make such determination shall be issued a certificate of non-compliance;

(c) Upon request, TERO shall provide any entity engaged in activity subject to 601(b) with copies of the list of certified entities maintained pursuant to Section 517.

(AMENDED AS PER RESOLUTION NO. 2315-87-2, DATED 02/25/87.)

Sec. 604. Reporting.

The first week of each month, TERO shall report the names of employers and entities it has found honoring and not honoring the policy of this Chapter to the Executive Board.

Sec. 605. Preference for contracts with the Tribes and tribal corporations.

The Tribes, and all tribally owned corporations, shall give a preference to employers and entities which comply with the policy set forth in this Chapter in the awarding of contracts and in all other business transactions.

Sec. 606. Publicity.

(a) With the approval of the Executive Board, TERO may publicize in newspapers or otherwise, the names of employers or entities in compliance with, and the names of employers or entities not in compliance with, the Tribes' Indian preference policy;

(b) A least ten (10) days prior to the publication of the name of any employer or entity that employer or entity shall be notified that it will be

named, and in which category. If an entity believes a mistake has been made, it may so advise TERO and seek a change.

Sec. 607. Review of TERO's actions.

Any person aggrieved by an action of TERO, its Director or employees under this Chapter shall have a right to appeal the action to the Review Board in accordance with Chapter 3. The challenged action shall be upheld unless the person aggrieved can show that the action was arbitrary, capricious, beyond the authority of TERO as set forth in this Chapter, or in violation of federal or tribal law. The Executive Board and its Chairman, TERO and its Director and employees shall not be liable for monetary damages for actions taken in good faith under this Chapter by TERO, its Director or employees.

Chapter 7. Liaison Officers

(CHAPTER AMENDED AS PER RESOLUTION NO. 231 5-87-2, DATED 02/25/87.)

Sections:

Sec. 701. Requirement for liaison officers assigned by TERO.....	15
Sec. 702. Duration.....	16
Sec. 703. Duties	16
Sec. 704. Liaison Fee.....	16

Sec. 701. Requirement for liaison officers assigned by TERO.

(a) Any covered entity engaged in:

(1) Geophysical exploration on trust land;

(2) Drilling for oil and gas on trust land; or

(3) Geophysical exploration or drilling for oil and gas on fee land where a right-of-way has been granted across trust land to facilitate the activity on fee land, shall be appointed a Liaison Officer by TERO.

(b) Any covered entity constructing a road, power line, telephone line, water line, sewer line, or oil or gas transportation line or other public utility:

(1) Across trust land; or

(2) Across fee land if a right-of-way has been granted across trust land to facilitate the construction, shall be appointed a Liaison Officer by TERO if the total cost of the project is expected to exceed twenty thousand dollars (\$20,000.00).

Sec. 702. Duration.

The Liaison Officer shall be appointed by TERO

(a) On a geophysical project or project subject to Section 701 (b) from the start of the project, ordinarily beginning with the surveying, through the final inspection of the Tribes;

(b) On drilling for oil and gas from site preparation through completion, or plugging and abandonment, of the well.

Sec. 703. Duties.

The duties of the Liaison Officer shall be as follows:

(a) Act as liaison between the covered entity and the Tribe's oil and gas committee, the Tribal Minerals Resources Department, TERO and the Bureau of Indian Affairs;

(b) Detour projects around tribal historical sites, such as buffalo jumps, teepee rings, burial grounds, social areas, etc., to the extent feasible;

(c) Inspect the right-of-way or the permitted or leased area for the condition of the land, livestock, and fencing prior to the project's start, during the project and at the completion and final inspection of the project or termination of the Liaison Officer's duties as stated in Section 702;

(d) Report all violations of land damage, fire, employee discrimination, and TERO regulations and complaints to the proper authorities;

(e) File weekly reports to the Tribal Oil and Gas Committee, or Tribal Mineral Resources Department, as appropriate, TERO, and the Bureau of Indian Affairs on all daily activities.

Sec. 704. Liaison Fee.

Any entity required to have a Liaison Officer under this section shall pay a fee to be determined by TERO for the manpower costs of the assignment in accordance with a fee schedule approved