Chapter 57
Indian Preference in Contracting
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Laws concerning the hiring of the Oneida People

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57.1. Purpose and Policy

57.1-1. *Purpose.* The purpose of this law is to establish an Indian Preference Office and increase economic benefits for the Tribe and Tribal members by providing for the maximum utilization of Indian workers and businesses on Tribal projects which occur on or near the Reservation.

57.1-2. *Policy.* It is the policy of the Tribe:

(a) To ensure that Indian preference provisions are applied fairly in all situations and in such a way that reflects the intent of this law; and

(b) To undertake reasonable efforts to ensure that all entities that enter into contracts with or on behalf of the Tribe utilize the labor force of Indian workers and businesses by applying Indian preference in all aspects of fulfilling that contract, including but not limited to: hiring, training, business opportunities, labor and/or professional services, and the supply of materials.

57.2. Adoption, Amendment, Conflicts

57.2-1. This law is adopted by the Oneida Business Committee by Resolution BC-03-27-13-B and shall be effective immediately.

57.2-2. This law may be amended pursuant to the procedures set out in Tribal law by the Oneida Business Committee or the Oneida General Tribal Council.

57.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

57.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. However, this law specifically supersedes the following:

(a) BC-04-03-96-A - Indian Preference Policy Rider I
(b) BC-05-22-96-A - Technical Amendments to Rider I Policy
(c) BC-06-10-98-D - Amendment to Resolution 5-22-96-A
(d) BC-07-29-98-B - Indian Preference Law
(e) BC-03-27-02-A - Sections 9-14 of the Indian Preference Law
(f) BC-03-26-03-A - Amendment to Indian Preference Law Addendum

57.2-5. This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

57.2-6. Adoption and enforcement of this law does not waive the sovereign immunity of the Oneida Tribe of Indians of Wisconsin.

57.3. Definitions

57.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Agent" means one who acts relative to a fiduciary relationship to another; a person authorized to negotiate and/or transact business on behalf of an entity.
(b) "Bid" means an offer to execute a specified job or jobs within a prescribed time and not exceeding a proposed amount, and includes both offers that become legally binding upon acceptance, and nonbinding or informal quotes.
(c) "Bid shopping" means the practice of divulging a contractor's or subcontractor's bid to other prospective bidders before the award of a contract, in order to secure a lower bid.
(d) "Broker" means an intermediary; an independent contractor employed to negotiate business between a buyer and seller for compensation.
(e) "Certification" means verification by the Indian Preference Office that an entity meets all the requirements necessary to qualify for Indian preference in accordance with this law.
(f) Certified entity. See Entity, Certified entity
(g) "Compliance agreement" means a binding agreement, negotiated between the Indian Preference Office and a contractor, identifying specific Indian preference-related requirements for a Tribal project.
(h) "Construction contract" means any contract issued to build, repair or remodel structures, and includes subcontracts and other construction agreements.
(i) "Contractor" means one who enters into a contract.
(j) "Core work crew" means the minimum amount of the contractor's key employees that are essential to start up and continue work on a Tribal project.
(k) "Days" means calendar days, except as otherwise provided.
(l) "Employee" means any person that performs services and/or labor for an employer in exchange for compensation.
(m) "Employer" means any entity, except the Oneida Tribe of Indians of Wisconsin, that controls and directs an employee under an express or implied contract of employment and is obligated to pay salary or wages in compensation.
(n) "Entity" means any person, sole proprietor, partnership, corporation, franchise, governmental enterprise, or any other natural or artificial person or organization. The term is intended to be as broad and encompassing as possible to ensure this law covers all employment and contract activities within the jurisdiction of the Tribe.

(1) "Certified entity" means an entity that has received certification as an Indian-owned business from the Indian Preference Office.

(2) "Tribal entity" means all Tribal programs, departments, boards, committees, commissions and similar business units, but shall not mean Tribal corporations, such as Oneida Seven Generations Corporation or Oneida Tribal Integrated Enterprises.

(o) "Front" means a business entity that is strategically structured, financed, operated or staffed such as to unfairly take advantage of Indian preference as granted under this law.
(p) "Indian" means an enrolled member of any federally-recognized Indian tribe.
(q) "Indian-owned business" means an entity which is majority owned and managed by an Indian.
(r) "Indian preference" means preference for Indians, regardless of tribal affiliation, in all aspects of employment and contracting.
(s) "Internal service" means any service provided for free or at cost for the Tribe and includes but is not limited to such services as certain types of advocacy or representation, mail delivery and pick up, grant writing or assistance, tourism initiatives, Human Resource assistance and technical support.

(t) "Joint venture" means an entity that is fifty percent (50%) owned and managed by an Indian.
(u) "Key employee" means one who performs a critical function such that an employer would risk likely financial damage or loss if that task were assigned to a person unfamiliar with and/or untrained in the employer's procedures and routines.
(v) "Lowest responsible bidder" means a bidder who, after any Indian preference discounts are applied, submits the lowest bid and is considered to be fully responsible and qualified to perform the work for which the bid is submitted.
(w) "Office" means the Indian Preference Office or its designee.
(x) "Oneida" means the Oneida Tribe of Indians of Wisconsin.
(y) "Outsource" means to obtain goods or a service from a third party, instead of having the goods or services be provided from within the Tribe by a Tribal entity or Tribal enterprise.
(z) "Qualified trades worker" means a skilled worker qualified to perform services for the trade in which the person is trained, and includes general laborers.
(aa) "Reservation" means all the lands within the exterior boundaries of the Reservation of the Oneida Tribe of Indians of Wisconsin, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.
(bb) "Skills Bank" means the services provided by the Office, whereby listings of qualified trades workers are maintained and made available for those required to comply with this law.
(cc) "Subcontractor" means a trade contractor or a junior or secondary contractor who performs some or all of the prime contractor's contractual obligations.
(dd) "Trade contractor" means an entity that is awarded a contract for the supply of services pursuant to a construction agreement, including all entities that enter into any subcontracts.
(ee) "Tribal" or "Tribe" means the Oneida Tribe of Indians of Wisconsin.
(ff) "Tribal corporation" means a corporation chartered by the Oneida Tribe of Indians of Wisconsin pursuant to the Constitution and Bylaws of the Oneida Tribe.
(gg) "Tribal enterprise" means any internal operation owned and operated by the Tribe that generates revenues through its core business functions, including but not limited to: Oneida Gaming, Oneida Retail, Oneida Farm, and Oneida Printing.
(hh) Tribal entity. *See Entity, Tribal entity.*
(ii) "Tribal project" means any effort whereby the Tribe or a Tribal entity contracts for labor and/or goods or services that will support or benefit any aspect of the Tribal government, holdings, infrastructure, workplace, economy or community.

57.4. Jurisdiction

57.4-1. The Office shall have authority over matters relating to the interpretation and enforcement of this law as set out within this law. The Tribe's judicial system shall have exclusive jurisdiction over all other matters relating to the interpretation and enforcement of this law.

57.4-2. The Office and the Tribe's judicial system shall have jurisdiction over all parties to any contract, subcontract, or compliance agreement to which this law applies, as well as jurisdiction over all subcontractors, employees, or other entities working with, for, or on behalf of such a party in fulfilling such contract, subcontract or compliance agreement.

57.5. Indian Preference Office

57.5-1. An Indian Preference Office is hereby created for the purpose of implementing, monitoring and enforcing this law and other applicable laws and policies relating to Indian preference.

57.5-2. The Office shall have the following duties, along with other responsibilities as may be listed throughout this law.

(a) *Certification of Entities.*

(1) Verify information provided by entities seeking certification and make determination of eligibility.

(2) Issue certification.

(b) *Skills Bank.* Establish and maintain a Skills Bank and actively recruit qualified trades workers for listing in the Skills Bank.

(1) Identify, initiate, and sponsor training, internship and apprenticeship opportunities necessary in order to increase the pool of qualified trades workers and to assist Indians in becoming qualified in the various job classifications used by employers.

(2) Cooperate with other Tribal programs to provide counseling and support to assist Indians in retaining employment.

(c) *Negotiations*. Negotiate compliance agreements that include, but are not limited to the following:

(1) Numerical hiring goals and timetables that specify the minimum number of Indians that must be utilized per Tribal contract dollar.

(2) Compensation of qualified trades workers including wage scale, salaries and other benefits. Compensation shall be determined based on the prevailing federal, state and/or Tribal wage scales.

(d) *Monitoring.*

(1) Perform on-site inspections to verify compliance with this law.

(2) Require and review weekly workforce reports.

(3) Establish a mandatory training process for Tribal entities that do contracting or bidding as a regular function of their duties.

(4) Provide training to assist certified entities with understanding their rights and abilities under this law.

(5) Receive feedback from contractors regarding the performance of any certified entity or qualified trades worker.

(e) *Investigations*. Investigate written complaints and respond to inquiries.

(f) *Enforcement.*

(1) Enforce compliance agreements and the provisions of this law.

(2) Create internal procedures to implement and carry out the provisions of this law.

(3) Suspend or revoke certification of entities or remove trades workers from the Skills Bank.

(4) Issue Notices of Noncompliance.

(5) Represent the interests of the Tribe in bringing or defending Indian preference-related actions before the Tribe's judicial system relating to noncompliance with this law, a compliance agreement, or regulations or policies issued pursuant to this law.

(6) Establish a schedule of fines in accordance with 57.10-3, and impose such fines in accordance with 57.10-4.

57.5-3. *Records*. Any records created and maintained by the Office shall be made available in accordance with applicable Tribal and federal law.

57.5-4. Within the scope of authority defined in this law, the Office may enter into cooperative agreements with federal and state agencies, subject to the approval of the Oneida Business Committee.

57.5-5. Prior to the posting or announcement of a contract for any Tribal project, the specifications for such project shall be submitted to the Office.

(a) The Office shall, with experts identified from other Tribal entities, review the specifications, including bidding requirements, to ensure that there are no unnecessary and unjustifiable restrictions that may:

(1) preclude certified entities from bidding or being eligible to fulfill the contract or subcontract;

(2) disqualify qualified trades workers from employment opportunities created under such contract or subcontract; or

(3) create conditions that would make bidding, compliance, or employment unduly burdensome for qualified trades workers or certified entities.

(b) *Unbundling a Contract*. The Office may require that specific portions of a contract be outsourced to internal services, Tribal enterprises, certified entities and/or qualified trades workers, even if a single entity is capable of providing all of the goods and/or services required under the contract. Provided that, such outsourcing shall not cause undue hardship, unnecessary delay or additional expenses in completing the Tribal project.

57.6. Certification of Entities

57.6-1. Applicants seeking certification of an Indian-owned business shall submit a completed and signed application to the Office, along with any documentation required under 57.6-4.

57.6-2. The Office may interview the applicant(s) and/or request additional information as may be necessary to make a determination regarding certification.

57.6-3. Within thirty (30) days of receiving the application and any additional requested information, the Office shall inform the applicant of a determination to:

(a) grant the certification; or

(b) deny the certification, including a full written explanation of the reason for the denial; or

(c) grant probationary certification for a period of up to one (1) year, if so determined by the Office for reasonable and just cause as identified and set out in regulations. During the probationary period, the applicant shall satisfy any conditions imposed by the Office, and the Office shall monitor the activities of the applicant, and may request and receive such information as necessary to ensure compliance with this law. The Office shall either grant or deny full certification at the end of the probationary period, or upon petition by the applicant, whichever occurs first.

57.6-4. Certification may be granted to entities that qualify in accordance with the criteria listed in this law. In order to receive certification, an applicant entity shall provide proof of:

(a) Indian financial ownership, control and management of at least fifty-one percent (51%) of the entity. Evidence of both financial ownership and control shall be embodied in the entity's organizational documents, including, but not limited to the documents of incorporation, stock ownership, or a partnership agreement.

(1) *Indian Financial Ownership*. Indian financial ownership is established where the Tribe, Tribal members and/or other Indians own fifty-one percent (51%) or more of the assets and equipment, receive fifty-one percent (51%) or more of

distributed net profits, and would receive fifty-one percent (51%) or more of the entity's assets upon dissolution.

(2) *Indian Control.* Indian control is established where the Tribe, Tribal member and/or other Indian owner(s) maintain a minimum of fifty-one percent (51%) of voting rights or other controlling decisional authority.

(3) *Indian Management.* Indian Management is established where an Indian owner(s) is directly involved in the entity's management, this can be shown where:

(A) at least one (1) Indian owner is directly involved in the daily operations of the entity on a full-time basis and in a senior-level position; or

(B) at least one (1) Indian owner is responsible for the oversight of operations, even though the daily operations are conducted by non-owner employees.

(b) Financial responsibility, including but not limited to, evidence of an adequate line of credit, contributions of sufficient working capital, applicable required bonding and insurance, materials and/or equipment necessary to perform applicable work.

(c) All past and current licensing or certifications, including any penalties, or other punitive actions or debarments taken by any licensing body within the past ten (10) years.

57.6-5. Once an applicant entity has been granted certification, the Office shall mail a certificate to the entity. Granting an entity certification does not convey any comment regarding the ability of the entity to perform any work nor does it guarantee that an entity has met all the qualifications to obtain work under any particular contract where Indian preference may be applied.

57.6-6. A certified entity shall report the following to the Office within ten (10) business days of such an occurrence:

(a) changes in the ownership or control status of the entity; and/or

(b) suspension, revocation, lapse or loss of any licensing, certification, insurance, bonding, or credit lines; and/or

(c) any other changes that could:

(1) affect an entity's eligibility for certification,

(2) affect the financial liability of any entity, contracting party or the Tribe, or

(3) alter the status of the qualifications of the entity.

57.6-7. *Certification Renewal.* Certification is granted on an annual basis, and shall lapse after one (1) year unless renewed.

(a) To apply for a renewal certification, each certified entity shall complete and return a renewal application and annual reporting form so that the Office may update its records.

(b) Annual renewal notices, applications and reporting forms shall be mailed to each certified entity at least thirty (30) days prior to the expiration of an entity's certification; however the responsibility for renewal is upon the entity.

57.6-8. *Open Records.* In accordance with the Open Records and Open Meetings law, general, non-proprietary and non-private information provided for the purposes of acquiring certification shall be considered open records and available for public inspection. Provided further, that all information given for purposes of receiving certification, including financial information, is subject to internal audit of the Tribe.

57.6-9. *Joint Ventures.* Joint ventures shall not be certified as eligible for Indian preference even though one equal fifty percent (50%) partner is an Indian that shares in equal financial ownership, control and direct involvement with the venture.

57.6-10. *Brokers, Agents and Franchises.*

(a) *Brokers.* Brokers shall be certified as an Indian-owned business only if they are dealers who own, operate or maintain a store, warehouse or other establishment in which the commodities being supplied are bought, kept in stock and sold to the public in the usual course of business; provided that this requirement shall not apply where the applicant demonstrates that it is not customary and usual in the area of the trade in question for a broker to maintain an establishment and to keep commodities in stock.

(1) To qualify as an Indian-owned business, the broker shall provide conclusive evidence that the broker is an independent contractor and not an agent of a non-Indian owned business.

(2) The broker shall also provide proof that he owes no fiduciary responsibility nor has a fixed or permanent relationship to any one company. A broker shall hold himself out for employment to the public generally and that the employment is not that of being a special agent for a single client.

(b) *Agents.* Agents who are employees of a non-Indian-owned business or who merely represent a company, such as an insurance agent or real estate agent for a non-Indian-owned business, shall not be certified as an Indian-owned business.

(c) *Franchises.* A franchise may be certified as an Indian-owned business if the franchisee does not pay the franchisor a share or percentage of revenue or profits, but only compensates the franchisor through licensing, royalty and franchise fees as set out by contract, and/or for services provided, such as training and advising.

57.6-11. *Fronts are Prohibited*. Entities shall be disqualified from Indian preference eligibility in all situations where the entity operates as a front in order to unfairly take advantage of Indian preference granted under this law to Indian-owned businesses.

(a) The Office shall not certify entities that operate solely as fronts.

(b) No entity shall manipulate its business structure or misrepresent the roles of Indian individuals or entities in such a way as to become eligible for Indian preference in a manner inconsistent with the purpose and intent of this law.

(c) Examples of fronts include but are not limited to:

(1) Entities that represent that they are exercising management control of a Tribal project in order to qualify for Indian preference when in fact such management control is exercised by a non-Indian entity.

(2) Entities where Indians have senior management titles without the correlating responsibilities, control, or knowledge of operations; where the entity only qualifies for certification because an Indian holds that senior management role.

(3) Entities, not including legitimate brokers, that derive profit only by providing goods or services at an increased cost, where such goods or services could be acquired directly on the open market and/or from the entity's source without paying a marked-up cost.

(4) Any other situation where the Office determines that the application of Indian preference would in fact predominantly or substantially benefit non-Indians or non-Indian-owned businesses; or where Indians or Indian-owned businesses only benefit by assisting the non-Indian or non-Indian-owned business with receiving the contract.

57.7. Application of Indian Preference

57.7-1. *Application of Law.* Except where prohibited or limited by law or grant funding requirements, this law shall apply to all contracts over one thousand five hundred dollars ($1,500.00) that meet the requirements of (a) and/or (b) below.

(a) This law shall apply to:

(1) all contracts, subcontracts, and compliance agreements to which the Tribe is a party, and all contracts, subcontracts and compliance agreements that are entered into on behalf of, or for the benefit of the Tribe, whereby goods and services are provided on or near the Reservation.

(2) all subcontractors, employees, or other entities working with, for, on behalf of a party to a contract, subcontract or compliance agreement as identified in (1), in fulfilling such contract, subcontract, or compliance agreement

(b) *Tribal Corporations*. This law shall apply to Tribal corporations to the extent such corporations enter into contracts with the Tribe.

57.7-2. *Non-Applicability.*

(a) *Tribal Employees.* The standards set out in this law shall not apply to preference as applicable to Tribal employees hired through the Oneida Human Resources department or pursuant to an employment contract.

(b) *Internal Services and Tribal Enterprises.* The application of Indian preference shall be superseded in specific situations in accordance with the following:

(1) The Tribe shall exclusively utilize internal services and Tribal enterprises whenever an internal service of the Tribe or Tribal enterprise could or does provide the necessary goods and services in the ordinary course of business.

(2) If an internal service or Tribal enterprise is unable to fulfill some or all of the requirements of a contract, then the provisions of this law shall apply to any outsourcing conducted by the internal service or Tribal enterprise.

57.7-3. In soliciting bids, the entity offering the contract shall indicate that Indian preference shall be applied in accordance with this law.

57.7-4. All parties to a contract to which this law applies shall recognize that any operations are taking place within a unique cultural setting within the community of the Tribe. Every contractor shall make reasonable accommodations to the customs and beliefs of all Indian workers so as to promote rather than hinder the employment of Indians.

(a) If an Indian worker wishes to attend any traditional cultural activities or ceremonies, the worker shall provide reasonable advance notice to the contractor in requesting such time off.

(b) Where attendance at traditional cultural activities or ceremonies requires a worker to take time off from a regularly scheduled shift or workday, such time may be paid or unpaid, at the discretion of the employer or as established by contract or compliance agreement.

57.7-5. *Tribal Employees.* In the execution of employment duties and in accordance with the Tribe's Personnel Policies and Procedures, Tribal employees shall follow this law in following contracting and bidding procedures for the Tribe or Tribal entities.

57.7-6. *Contracts and Attachments.* All contracts this law applies to shall:

(a) Stipulate that compliance with this law is required, and that violation of any portion of this law or applicable compliance agreement may be deemed a material and substantial breach of contract, enforceable:

(1) As set forth by the terms of the original contract for a breach of contract; and

(2) In accordance with the provisions of this law.

(b) Reference this law, and shall contain an Acknowledgment Clause, whereby the contractor shall agree to the following:

(1) The contractor has read and understands the provisions of this law.

(2) The contractor understands how this law affects the contractor's rights and responsibilities.

(3) The contractor agrees that the provisions of this law shall govern the performance of the parties.

(c) Reference Chapter 56 of the Oneida Code of Laws, Oneida Vendor Licensing, and provide the contracting parties with directions on how to access that document.

57.7-7. In the event that a dispute may arise regarding this law or a compliance agreement, all affected parties shall cooperate in good faith with the Office toward a mutually satisfactory resolution.

57.7-8. After the appropriate discount has been subtracted from preferred bids, the following shall be used to determine which bidder is awarded the contract:

(a) If a bid from a certified entity is less than the total of the apparent low bid after Indian preference is applied, then the contract shall be awarded to the certified entity.

(b) If none of the certified entity bids are less than the total of the apparent low bid after the Indian preference discount is applied, the contract shall be awarded to the lowest responsible bidder.

57.7-9. *Applying Indian Preference to Non-Construction Contracts*. Where more than one (1) bid is received for a non-construction contract, an Indian preference percentage discount of five percent (5%) shall be applied to all bids received from certified Indian-owned businesses.

57.7-10. *Applying Indian Preference to Construction Contracts*. Where more than one (1) bid is received for a construction contract, the discount applied to bids from certified Indian-owned businesses shall be:

(a) ten percent (10%) of the first $50,000 segment of a bid.

(b) plus nine percent (9%) of the next $50,000 segment of a bid.

(c) plus eight percent (8%) of the next $100,000 segment of a bid.

(d) plus seven percent (7%) of the next $100,000 segment of a bid.

(e) plus six percent (6%) of the next $100,000 segment of a bid.

(f) plus five percent (5%) of the next $100,000 segment of a bid.

(g) plus four percent (4%) of the next $500,000 segment of a bid.

(h) plus two percent (2%) of the next $1,000,000 segment of a bid.

(i) plus one percent (1%) of any amount over $2,000,000.

57.7-11. Bid shopping is prohibited.

57.8. Skills Bank and Qualified Trades Workers

57.8-1. The Office shall establish and administer a Skills Bank to assist with providing Indians and first generation descendants with employment opportunities. The goal of the Tribe is to achieve one hundred percent (100%) participation of qualified trades workers on Tribal projects.

57.8-2. The Skills Bank shall be the exclusive referral source under this law, representing the official compilation of qualified trades workers eligible for Indian preference in accordance with this law. Skills Bank listings shall include the names and qualifications of the qualified trades workers.

57.8-3. The Office shall regularly update the Skills Bank listings.

57.8-4. Entities required to fill positions in accordance with this law and/or a compliance agreement under 57.9, shall contact the Office prior to the commencement of any work.

(a) Except where prohibited by law or grant funding requirements, the entity shall hire qualified trades workers from the Skills Bank in the following order of priority:

(1) Members of the Oneida Tribe.

(2) First generation descendants of Oneida Tribal members.

(3) Members of other federally-recognized Indian tribes.

(b) If a law or grant funding requirements prohibit the hiring of qualified trades workers in accordance with 57.8-4(a), qualified trades workers shall be hired in accordance with the requirements of said law or grant.

(c) If the necessary labor cannot be acquired from the Skills Bank, then a limited waiver may be granted in accordance with 57.8-4.

57.8-5. In order to be added to the Skills Bank, an applicant shall submit a completed application and documentation of the following:

(a) proof of enrollment or proof that the individual is a first generation descendant of the Oneida Tribe.

(b) education; including degrees, diplomas, apprenticeships, internships or continuing education training related to the field.

(c) if applicable, proof of a driver license, including any endorsements.

(d) if the worker is seeking to be listed as a qualified trades worker for a specific trade, then the worker shall provide specific information related to that trade, including:

(1) past and current licensing, credentials and certifications, including information related to penalties or punitive actions taken by any licensing body within the past ten (10) years; and

(2) any required or possessed insurance and/or bonding.

57.8-6. Placing an applicant in the Skills Bank as a qualified trades worker confers recognition that he or she is eligible to receive Indian preference in accordance with this law. A qualified trades worker shall be qualified for Indian preference for employment for a particular skill or trade if he or she meets the minimum qualifications for a particular skill or trade.

57.8-7. *Wage and Hour Standards, Layoffs and Terminations, Call-Backs, Promotions, Unions.*

(a) Every contractor utilizing qualified trades workers shall ensure that such workers receive equal compensation, including overtime pay, and shall have equal work standards, that are provided to other employees. Contractors that hire qualified trades workers in order to comply with this law, but do not utilize those workers in a manner similar to other employees are not maintaining equal work standards.

(b) In making any layoffs or terminations, all contractors shall notify the Office prior to laying off or terminating a qualified trades worker.

(1) No qualified trades worker with at least minimum qualifications for the job classification shall be terminated or laid off so long as a non-Indian employee in the same craft with similar skills remains employed. If the contractor lays off by crews, qualified trades workers shall be transferred to any crew that will be retained, as long as there are non-Indian employees in the same craft employed elsewhere under the same contract.

(2) No contractor shall terminate or lay off any qualified trades worker pursuant to this law, without documented good cause. The contractor shall promptly replace the qualified trades worker with another qualified trades worker.

(3) When a contractor begins to call back laid-off employees, that contractor shall notify the Office and shall call back qualified trades workers before bringing back other employees.

(c) Qualified trades workers and certified entities shall not be required to affiliate with organized labor for employment under this law. The mere absence of affiliation with organized labor shall not disqualify a qualified trades worker from employment or contracting where that worker is otherwise qualified. A qualified trades worker shall not be guaranteed to receive the benefits of a union contract, other than wage scales, unless the worker elects to join the union.

57.8-8. *Construction Contracts: Core Work Crew.* As a condition of a construction contract award, the contractor shall identify its core work crew, including those core work crew employees utilized by known subcontractors. If such employees are approved by the Office, they may be employed on the Tribal project without regard to Indian preference. Provided that, core work crew employees shall at no time displace qualified trades workers and/or potential qualified trades workers by performing work outside their trade or skill.

(a) For the purposes of employment on a Tribal project, the Office and the contractor, and any subcontractor, shall negotiate the designated members of the contractor's core work crew.

(b) Any contractor that fills vacant positions immediately prior to undertaking work pursuant to a contract to which this section applies shall provide evidence acceptable to the Office that such actions were not intended to circumvent the provisions of this law.

(c) A contractor shall not use extraneous qualification criteria or other personnel requirements that prevent qualified trades workers from being employed, unless the contractor is able to demonstrate that such criteria or requirements are required by regulatory compliance.

57.9. Compliance Agreements

57.9-1. *Compliance Agreements.* All contractors and subcontractors shall comply with the terms of any compliance agreement executed in accordance with this law. Once a bid has been accepted, but before work commences on any portion of a contract or subcontract, each contractor shall meet with the Office to negotiate and execute a compliance agreement.

57.9-2. Where a contract lasts for more than one (1) year, compliance agreements shall be reviewed annually and revised as necessary to reflect changes in hiring plans or the number of certified entities available.

57.9-3. Unless prior written consent of the Office has been received, a contractor shall not deviate from an executed compliance agreement by adding or removing any subcontracts, subcontractors or positions filled by qualified trades workers or certified entities, or by filling a vacancy with a non-qualified trades worker or a non-certified entity.

57.9-4. *Limited Waivers.* The Office shall establish standard operating procedures to provide for emergency conditions and situations whereby a limited waiver of compliance may be authorized, in situations where a contractor has made a significant and documented good faith effort to achieve compliance, or can demonstrate that compliance is not practical for reasons other than pricing.

57.10. Office Investigations and Enforcement

57.10-1. *Office Investigations* Any individual or entity aggrieved by a perceived act of noncompliance with this law, a compliance agreement, or any standard operating procedure issued pursuant to this law, who wishes to complain shall file a written complaint with the Office. A complaint shall provide such information that will reasonably enable the Office to understand the general nature of the complaint and carry out an investigation. Wherever

possible, the complainant shall provide the Office with evidence of any discriminatory practices, alleged misconduct or other noncompliance.

(a) Upon receipt of a complaint or after witnessing noncompliance with this law while conducting its monitoring duties, the Office shall conduct an investigation.

(1) If the Office receives a complaint or information that an entity is operating in a manner that is harmful to the health, safety, or welfare of the Tribe or community, the Office shall immediately refer the complaint or information to the appropriate Tribal department or authority for investigation. The Office may also independently investigate such complaint or information for purposes of ensuring compliance with this law, and shall have the authority to review the results of any other investigation conducted by another Tribal department or authority in accordance with the Open Records and Open Meetings Law.

(2) In conducting an investigation, the Office shall be authorized to inspect and copy all relevant records and shall have the right to speak to workers and to conduct inspections of the job site(s).

(3) Information collected during an Office investigation shall be kept confidential unless disclosure is necessary or required as part of any judicial or administrative proceeding or in accordance with Tribal law. Provided that, any report or recommendation prepared by the Office for use at a hearing shall be promptly released to the complainant and alleged violator.

(b) If, after conducting an investigation under this section, the Office determines that the alleged violation has no merit, the Office shall notify all parties in writing that the issue will be closed. A complainant may appeal this decision to the Tribe's judicial system within ten (10) business days after issuance of such notice.

(1) The complainant's appeal may only request the Tribe's judicial system conduct an in-camera inspection of the investigation completed by the Office. During an in-camera inspection, only a judge(s) may review the information obtained by the Office during the investigation, as this information is confidential and disclosure is not necessary.

(2) If, after reviewing the Office's investigation, the Tribe's judicial system determines that there is sufficient evidence of a genuine and material issue of noncompliance, the Tribe's judicial system shall order the Office to take action in accordance with 57.10-4 and/or 57.10-5, as if the Office's original investigation had determined that sufficient evidence of a genuine and material issue of noncompliance existed.

(3) If, after reviewing the Office's investigation, the Tribe's judicial system determines the alleged violation has no merit, the Tribe's judicial system shall notify all parties in writing that the issue will be closed and no further appeals of the matter will be accepted.

57.10-2. *Retaliatory Action Prohibited.* No entity shall punish, terminate, harass or take any other adverse personnel or hiring action in retaliation for a party's exercise of Indian preference rights under this law. However, this section shall not prohibit action that can be reasonably justified as taken in good faith based on documented employee performance.

57.10-3. *Fines and Fees.*

(a) The Office shall establish, and the Oneida Business Committee shall approve:

(1) a schedule of fines that may be imposed upon any person or entity violating provisions of this law. Each offense shall result in a fine of no less than one hundred dollars ($100) nor more than one thousand dollars ($1,000); and a

separate offense shall be deemed committed on each day during which a violation occurs or continues.

(2) a schedule of penalty fees that may be imposed upon any person or entity on all amounts due on monetary judgments not paid within at least thirty (30) days of the initial judgment.

(b) No fines or penalty fees may be assessed against the Tribe, the Office or other Tribal departments, or employees engaged in their official duties under this law.

57.10-4. If, after an investigation under 57.10-1, the Office reasonably believes that there is sufficient evidence of a genuine and material issue of noncompliance, the Office may take any of the following actions:

(a) Attempt to reach an informal or formal resolution of the alleged noncompliance. If a formal resolution is reached, any agreement shall be in writing and signed by all parties. The issue shall then remain in abeyance for the term of the contract during which time all parties shall comply with the terms of the written agreement. Breach of the terms of the written agreement may be a cause of action for litigation before the Tribe's judicial system.

(b) Issue a Notice of Noncompliance to the entity by certified mail. The Notice shall state the specific violation(s) alleged, the requirements that must be met to ensure compliance with this law, and shall provide a reasonable amount of time, not to exceed thirty (30) days, wherein the entity shall provide evidence that it has taken the steps necessary to come into compliance.

(c) Place the entity's certification in probationary status for a period not to exceed six (6) months; or suspend, revoke, or deny renewal of the entity's certification. Once certification is revoked, an entity shall not be eligible to re-apply for re-certification until one (1) year has passed from the effective date of the revocation. At any time that certification is suspended, revoked, or has lapsed, a formerly certified entity shall not qualify for Indian preference. Where a certified entity loses certification:

(1) the contractor may be required to replace that entity with another certified entity if the work has not begun or performance under a contract has not commenced, unless replacement is impossible or would cause undue hardship; or

(2) the Office may authorize the contractor to continue to utilize that entity without regard to Indian preference if work has already begun or performance under a contract has commenced.

(d) Issue fines as established under 57.10-3.

(e) Re-negotiate a compliance agreement with the contractor to include additional opportunities for qualified trades workers or certified entities.

(f) Request the appropriate entity withdraw any licensing issued by the Tribe.

57.10-5. If the Office is unable to facilitate a satisfactory resolution, and a Notice of Noncompliance or action against a certified entity's certification has not resulted in a successful resolution, the Office may file an action with the Tribe's judicial system, seeking appropriate relief, including but not limited to:

(a) An injunction.

(b) Specific performance, including but not limited to:

(1) reinstatement of a qualified trades worker at the previous wage.

(2) immediate removal of employees hired in violation of this law.

(3) employment, promotion or additional training for Indian preference-eligible parties injured by a violation.

(c) Payment of back pay, damages, and/or costs associated with the enforcement of an order issued by the Tribe's judicial system, including but not limited to filing fees, attorney fees, and/or costs incurred by the Office in bringing an action. Provided that, no money damages may be claimed in any suit against the Tribe, the Office or other Tribal departments, or Tribal officials or employees engaged in their official duties under this law.

(d) Other action the Tribe's judicial system deems lawful, equitable and necessary to ensure compliance with this law and to alleviate or remedy any harm caused by noncompliance.

57.10-6. Although relief granted by the Tribe's judicial system under 57.10-5 may benefit an individual qualified trades worker, certified Indian preference entity or other individual or entity, neither the Office nor the Tribe represents those individuals and/or entities in any action for non-compliance with this law.

57.10-7. *Cease-and-Desist Orders.* The Oneida Tribal Police are hereby expressly authorized and directed to enforce such cease-and-desist or related orders as may from time to time be properly issued by the Tribe's judicial system. Such orders shall require a decree or order to render them enforceable. The Oneida Tribal Police shall not be civilly liable for enforcing such orders so long as the Commission signs the order.

57.10-8. *Appeals.*

(a) Any appeal from an action taken by the Office shall be filed with the Tribe's judicial system within ten (10) business days after the date of issuance of the Office's decision. Any decision not appealed within the required time frame shall become final.

(b) Except as otherwise stated in this law, a party may appeal orders, rulings and judgments of the Tribe's judicial system in accordance with the applicable rules of appellate procedure.

End.

Adopted BC-03-27-13-B