

Independent Contractor Policy

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Article I. Purpose and Policy

1-1. *Purpose.* The purpose of this Independent Contractor Policy is to regulate the hiring of persons to complete work in order to minimize the costs of Independent Contractors.

1-2. *Policy.*

(a) It is the policy of the Tribe to utilize Native American businesses to complete work that the Tribe is unable to complete through use of its own employees. All programs, enterprises, and government agencies are encouraged to seek within their own employees those with expertise in any matter before going to Independent Contractors.

(b) It is further the policy of the Tribe that the order of preference, as set out in the Tribe's Indian Preference Law, be used in the selection of Independent Contractors:

Article II. Adoption, Amendment, Repeal

2-1. This policy was adopted by motion of the Oneida Business Committee on July 27, 1994 and was amended by resolution BC-02-27-13-A.

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

2-3. Should a provision of this policy or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this policy which are considered to have legal force without the invalid portions.

2-4. In the event of a conflict between a provision of this policy and a provision of another policy, the provisions of this policy shall control.

2-5. This policy is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

Article III. Definitions

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) "Deliverable" means an object with specified content and format and must be adequately described as to final content.

(b) "Employee" means any individual who is employed by the Tribe and is subject to the direction and control of the Tribe with respect to the material details of the work performed, or who has the status of an employee under the usual common law rules applicable to determining the employer-employee relationship. "Employee" includes, but is not limited to, individuals employed by any program or enterprise of the Tribe, but does not include elected or appointed officials or individuals employed by a Tribally Chartered Corporation. For purposes of this policy, individuals employed under an employment contract as a limited term employee are employees of the Tribe, not consultants.

(c) "Employee-owned Business Entity" means a for-profit business which is majority owned and managed by an individual who is employed by the Tribe. Employee-owned Business Entity includes, but is not limited to, a partnership, corporation or limited liability company.

- (d) “Independent Contractor” means an individual who receives payments for services or deliverables, and who receives any tax reporting form other than a W-2 at the end of a taxable year.
- (e) “Service” means an action performed by an Independent Contractor and must be adequately described as to the actions that will be taken and final result of the actions taken.
- (f) “Tribal” or “Tribe” means the Oneida Tribe of Indians of Wisconsin.

Article IV. Form of Contract

- 4-1. All contracts with the Tribe shall be in the format approved by the Oneida Law Office. All departments, programs, enterprises and other agencies of the Tribe shall use Oneida Law Office approved contracts.
- 4-2. All contracts shall be reviewed and approved by the Oneida Law Office before being executed.
- 4-3. At a minimum, the Oneida Law Office review shall consist of the following:
 - (a) verification that sovereign immunity has not been waived;
 - (b) verification that Independent Contractor status has not been violated; and
 - (c) verification that the content of the contract meets the legal needs for the protection of Tribal assets, description of services, payment and other similar items.

Article V. Approval Requirements

- 5-1. The Tribe may hire an individual who is also an employee of the Tribe as an Independent Contractor, if:
 - (a) the services performed by the individual as an employee of the Tribe are not related to the services to be provided by the individual as an Independent Contractor;
 - (b) there is no relation between the wages paid to the individual as an employee of the Tribe and the compensation received by the individual for the services to be provided as an Independent Contractor;
 - (c) the individual is engaged in an independent trade, business or profession that is traditionally pursued by Independent Contractors and the services to be provided by the individual as an Independent Contractor relate to such trade, business or profession; and
 - (d) the individual offers services as an Independent Contractor in such trade, business or profession to the general public.
- 5-2. The Tribe may engage an Employee-owned Business Entity as an Independent Contractor if the following conditions are met:
 - (a) the Employee-owned Business Entity has a valid Tax Identification Number which is different than the employee’s Social Security Number;
 - (b) the Tribe has no right to direct or control the employees of the Employee-owned Business Entity; and
 - (c) all payments for Independent Contractor services are made directly to the Employee-owned Business Entity, not to an individual.

End.

Adopted - 7-27-94, motion
Adopted - BC-2-15-95-A, Emergency Action Article VII
Adopted - BC-7-5-95-B, Emergency Action Article VII
Emergency Amended – BC-04-25-12-E
Emergency Extension Amended – BC-10-10-12-B
Amended – BC-02-27-13-A