

ONEIDA NATION PUBLIC MEETING NOTICE

Thursday, December 19, 2019, 12:15 pm

Norbert Hill Center-Business Committee Conference Room
N7210 Seminary Rd., Oneida, Wisconsin

Find Public Meeting Materials at

[Oneida-nsn.gov/government/register/public meetings](http://Oneida-nsn.gov/government/register/public%20meetings)

Send Public Comments to

LOC@oneidanation.org

Ask Questions here

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INDIAN PREFERENCE IN CONTRACTING LAW AMENDMENTS

The purpose of this law is to increase economic benefits for the Nation and members of the Nation by providing for the maximum utilization of Indian workers and businesses on projects of the Nation which occur on or near the Reservation.

The amendments to the Indian Preference in Contracting law will:

1. Update the definition of tribal corporation to include any corporation chartered and/or wholly owned by the Nation;
2. Raise the threshold for when Indian Preference applies to contracts from \$1,500 to \$3,000;
3. Redefine joint ventures and permit joint ventures to qualify for Indian Preference on a project-specific basis;
4. Set a new timeline for Indian Preference Office to review contracts; and
5. Clarify the Indian Preference Office's authority to develop a fine and penalty schedule for violations of this law, to be approved by the Oneida Business Committee by resolution.

PUBLIC COMMENTS PERIOD CLOSES MONDAY, DECEMBER 30, 2019

During the Public Comment Period, anyone may submit written comments. Comments may be submitted to the Oneida Nation Secretary's Office or the Legislative Reference Office in person, by U.S. mail, interoffice mail, or e-mail.

PROVIDING EFFECTIVE PUBLIC COMMENTS

Providing public comment is an important way to make your voice heard in decision making. Public comments can strengthen a decision or provide different perspectives. The Legislative Operating Committee wants to hear from you!



✓ READ THE PUBLIC MEETING MATERIALS: Before you provide comments familiarize yourself with the legislation. A public meeting packet is made for every public meeting and it includes 1) a notice with the date, time, location, 2) a draft of the proposed legislation, and 3) a plain language review of the legislation and its impact on the Oneida Nation.

✓ PREPARE YOUR COMMENTS: When you are familiar with the legislation, start to prepare comments. The LOC is responsible for reviewing every comment received. To get your message across effectively, frame your comment clearly and concisely. Here is an example of how to create an effective comment:

Least Effective Comment	More Effective Comment	Most Effective Comment
Indian preference is a great benefit for members of the Nation.	We should look at increasing the Indian Preference benefit that is applied to contracts.	In section 502.6-9 the Indian preference percentage discount of 5% that is applied to non-construction contracts should be increased to 8%.



Yukwat^nhas Ukwehu=w# Kayanl^hsla

AMENDMENTS TO INDIAN PREFERENCE IN CONTRACTING LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: Ernie Stevens III	SPONSOR: Ernie Stevens III	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	<ul style="list-style-type: none">▪ To update the definition of tribal corporation to include any corporation chartered and/or wholly owned by the Nation;▪ To raise the threshold to apply Indian Preference from one thousand five hundred dollars (\$1,500) to three-thousand dollars (\$3,000) for any contracts entered into by the Nation;▪ To permit joint ventures to qualify for Indian Preference on a project-specific basis;▪ Set a new timeline for Indian Preference Office to review contracts;▪ Clarify the Indian Preference Office's authority to develop a fine and penalty schedule for violations of this law, to be approved by the Oneida Business Committee by resolution.		
Purpose	To establish an Indian Preference Office and increase economic benefits for the Nation and members of the Nation by providing for the maximum utilization of Indian workers and businesses on projects of the Nation which occur on or near the Reservation [5 O.C. 502.1-1].		
Affected Entities	Indian Preference Office, Purchasing Department, Oneida Judiciary, Oneida Police Department, Oneida Licensing Department, Corporations chartered and/or wholly owned by the Nation, and any department or entity of the Nation that enters into projects or contracts greater than \$3,000.		
Related Legislation	Open Records and Open Meetings law, Vendor Licensing law, Personnel Policies and Procedures; Independent Contractor Policy, Travel and Expense Policy.		
Public Meeting	A public meeting has not yet been held.		
Fiscal Impact	A fiscal impact statement has not yet been requested.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. The Nation's Indian Preference in Contracting law was adopted on July 29, 1998 and most recently amended on March 27, 2013. The purpose of this law is to increase economic benefits for the Nation and members of the Nation by providing maximum utilization of Indian workers and businesses on projects of the Nation. The Nation's Indian Preference Office is responsible for monitoring and enforcing Indian Preference in contracting.
- B. This law was added to the LOC's Active file List on April 17, 2019 at the request of Councilmember Ernie Stevens III. The original intent of the amendments was to update the definition of "tribal entity." Since that time, a work group of representatives from relevant entities and departments have met to review the law. Many of the proposed amendments reflect the feedback and suggestions of this work group.

SECTION 3. CONSULTATION AND OUTREACH

- A. Representatives from the following departments or entities of the Nation participated in the development of this law and legislative analysis: Indian Preference Office, Purchasing Department, Law Office, Community and Economic Development Division, and Oneida ESC Group.
- B. The following laws of the Nation were reviewed in drafting this analysis: Open Meetings and Open Records law, Vendor Licensing law, Personnel Policies and Procedures, Independent Contractor Policy, Travel and Expense Policy, Layoff Policy, Furlough Policy, Oneida Nation Law Enforcement Ordinance.

SECTION 4. PROCESS

- A. Thus far, this law has followed the process set forth in the Legislative Procedures Act (LPA).
- B. The law was added to the Active Files List on April 17, 2019.
- C. At the time this legislative analysis was developed, the following work meetings had been held regarding developments of these amendments and legislative analysis:
- May 20, 2019 Work Meeting: LOC, Indian Preference, Purchasing, Oneida ESC Group.
 - June 5, 2019 Work Meeting: LOC.
 - June 6, 2019 Work Meeting: LOC.
 - July 25, 2019 Work Meeting: LOC, Law Office, Indian Preference, Purchasing.
 - September 26, 2019 Work Meeting: LOC, Indian Preference, Purchasing, Community Economic Development.
 - October 21, 2019 Work Meeting: Indian Preference, Community Economic Development.
 - October 24, 2019 Work Meeting: LOC.

SECTION 5. CONTENTS OF THE LEGISLATION

- A. **Definition of Tribal Corporation.** The Indian Preference law applies to tribal corporations to the extent that those corporations enter into contracts with the Oneida Nation [5 O.C. 502.6-1(b)]. Previously, the definition of tribal corporation was “a corporation chartered by the Oneida Tribe of Indians of Wisconsin pursuant to the Constitution and Bylaws of the Oneida Tribe.” This definition has been updated to “a corporation chartered and/or wholly owned by the Nation pursuant to the Constitution and Bylaws of the Oneida Nation” [5 O.C. 502.3-1(ee)].
- **Effect.** Some of the corporations owned by the Nation are chartered in other states. For example, Oneida ESC Group is incorporated in the state of Nevada, but wholly owned by the Oneida Nation. This updated definition clarifies that this law will apply to all of the Nation’s corporations regardless of where they are chartered, organized or incorporated.

Chart 1. List of Oneida Nation Corporations.

Tribal Corporation	
<i>Oneida Airport Hotel Corporation</i>	Chartered by Oneida Nation.
<i>Bay Bancorporation</i>	Incorporated under WI Business Corporation law. Wholly owned by Oneida Nation.
<i>Oneida ESC Group, LLC</i>	Limited liability company (LLC) organized under Nevada law. Wholly owned by Oneida Nation.
<i>Oneida Golf Course Enterprise Corporation</i>	Chartered by Oneida Nation.
<i>Oneida Seven Generations Corporation.</i>	Chartered by Oneida Nation. Currently in the process of being dissolved.

B. Joint Ventures. Joint ventures will now qualify for Indian Preference on a project-specific basis.

- *What is a Joint Venture?* A “joint venture” is a one-time grouping of two (2) or more entities in a business undertaking [5 O.C. 502.3-1(v)]. A joint venture is a short-term partnership where each party jointly undertakes a transaction for mutual profit. Each member of the joint venture contributes assets and shares risk [Cornell Law Legal Information Institute (LII)]. For example, two companies may form a joint venture to bid on a construction project that they otherwise would be unable to complete on their own.
- *Joint Ventures Now Eligible for Indian Preference.* Previously, joint ventures were not eligible to receive Indian Preference. These amendments will permit joint ventures to receive Indian Preference on a project-specific basis [5 O.C. 502.5-8]. In other words, the joint venture will only receive Indian Preference for the specific project they are bidding on. Because joint ventures are typically a short-term partnership, any future joint venture will need to reapply for Indian Preference each time they bid on a project.
- *Effect.* Entities that form joint ventures to bid on projects will now qualify for Indian Preference assuming they meet all other requirements of this law.

C. Threshold to Apply Indian Preference. Currently, the Indian Preference law applies to all of the Nation’s contracts over \$1,500 except where prohibited by law or grant funding requirements. These amendments raise this threshold. Now, the Indian Preference will only apply to the Nation’s contracts over \$3,000 [5 O.C. 502.6-1].

- *Justification.* This change was made at the recommendation of the Purchasing Department to match the Nation’s current procurement threshold. The Nation’s procurement policy requires three bids for any contract or purchase over \$3,000. Setting both the Indian Preference and three-bid thresholds at \$3,000 will make both policies easier to implement for the Nation. Purchasing also explained that most Indian Preference vendors bid on projects above \$3,000, such as construction projects. Therefore, Purchasing Department predicts that the higher threshold will have minimal impact on most Indian Preference vendors.
- *Effect.* Indian Preference will only apply to contracts greater than \$3,000. Any vendors bidding on projects between \$1,500 and \$2,999 will no longer receive Indian Preference.

D. New Timeline for Indian Preference Office to Review Contracts. The current Indian Preference law already requires that projects must be submitted to the Indian Preference Office for review before being posted or announced for bids. However, the current law does not include a timeframe for the Indian Preference office to complete this review.

- *New Timeline.* These amendments add a new timeline for when the Indian Preference office must complete this review. Now, the Indian Preference Office must complete their review within five (5) business days [5 O.C. 502.6-4]. The intent is to ensure that projects can be posted in a timely manner.

E. Fine and Penalty Schedule for Indian Preference Violations. The current Indian Preference law already authorizes the Indian Preference Office to develop and the Business Committee to approve a fine and penalty schedule for violations of this law. However, no fine and penalty schedule has been adopted.

- *Changes.* Previously, this law stated that fine amounts must be no less than \$100 and no more than \$1,000. These amendments remove this limitation. In addition, the amendments also specify that the fine amounts will be adopted by the Business Committee by resolution. [5 O.C. 502.9-5(a)(4)].

- F. *Minor Drafting Changes.*** Minor drafting changes have been made throughout the law, such as changing “Tribe” to “Nation” or moving the order of existing sections.

SECTION 6. EFFECT ON EXISTING LEGISLATION

- A. *References to the Other Laws of the Nation:*** The following laws of the Nation are referenced in this law. These amendments do not conflict with any of the referenced laws.

- *Open Records and Open Meetings law.* In accordance with the Nation’s laws and policies governing open records, general, non-proprietary and non-private information provided for the purposes of acquiring certification shall be considered open records and available for public inspection. [5 O.C. 502.5-7 and 502.9-3(c)(2)].
- *Personnel Policies and Procedures.* In the execution of employment duties and in accordance with the Nation’s laws and policies governing employment, employees of the Nation shall follow this law in following contracting and bidding procedures for the Nation or entities of the Nation [5 O.C. 502.6-7].
- *Vendor Licensing.* All contracts this law applies to must include reference to the Nation’s laws governing vendor licensing and provide the contracting parties with directions on how to access that document [5 O.C. 502.6-8(c)].

- B. *Other Laws that Reference Indian Preference in Contracting:*** The following laws of the Nation reference Indian Preference in Contracting. These amendments do not conflict with any of the referenced laws.

- *Independent Contractor Policy.* “It is... 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” [5 O.C. 503.1-2(b)].
- *Travel and Expense Policy.* In regard to business expenses, “Considerations should be given to patronizing tribally owned business and Indian Preference vendors certified by the Compliance division” [2 O.C. 219.9-4(f)].
- *Judiciary Canons of Judicial Conduct.* “Nothing in these canons shall be construed as prohibiting a Judge from affiliating with, using the facilities of, or attending events sponsored by organizations that support Native American issues, exercise tribal or Indian Preference...” [8 O.C. 802.3.2.2].

- C. *Other Laws that Reference Indian Preference in Hiring:*** The following laws of the Nation reference Indian Preference as it relates to the Nation’s hiring process. The standards set in this law do not apply to preference “as applicable to employees hired through the Nation’s HRD or pursuant to an employment contract” [5 O.C. 502.6-2(a)]. The Nation’s Indian preference in hiring process is located in Section III of the Nation’s Personnel Policies and Procedures. These amendments do not conflict with any of the referenced laws.

- *Layoff Policy.* “The Oneida Tribe recognizes Indian preference in the development of layoff SOPs. Indian preference as used in this policy shall mean a preference granted to retain the Oneida member employee when all other things being equal with non-member employees. Provided that, a manager may identify critical positions within the business unit which shall not be subject to Indian Preference” [2 O.C. 207.4-1].
- *Furlough Policy.* “Indian preference may not be used as a consideration in identifying employees to be furloughed” [2 O.C. 205.5-4].
- *Oneida Nation Law Enforcement Ordinance.* “The following positions shall be held only by members of the Oneida Tribe: Police Chief, Assistant Chief, Police Lieutenant or Sergeant,

Conservation Director, Assistant Conservation Director... All other positions and appointments shall be subject to the Indian Preference rules of the Oneida Tribe” [3 O.C. 301.5-3(d)].

SECTION 7. ENFORCEMENT AND ACCOUNTABILITY

A. *Enforcement.* The Nation’s Indian Preference Office is authorized to enforce this law [5 O.C. 502.4-1 502.9-5]. In addition, the Oneida Police Department is authorized to enforce orders issued by the Trial Court, such as cease-and-desist orders [5 O.C. 502.9-8].

SECTION 8. OTHER CONSIDERATIONS

A. *Fine and Penalty Schedule.* At the time this analysis was drafted, the Indian Preference Office is developing a fine and penalty schedule for consideration by the Oneida Business Committee. The LOC intends to bring a proposed fine and penalty resolution to the Business Committee at the time these amendments are up for adoption.

B. *Fiscal Impact.* A fiscal impact statement has not yet been requested.

- Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [1 O.C. 109.6-1].
- A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating Committee and may be prepared by any agency who may receive funding if the legislation is enacted; who may administer a program if the legislation is enacted; who may have financial information concerning the subject matter of the legislation; or by the Finance Office, upon request of the Legislative Operating Committee [1 O.C. 109.6-1(a and b)].

Title 5. Business - Chapter 502

~~INDIAN PREFERENCE IN CONTRACTING~~

Yukwatánhas Ukwéhu·wé Kayanláhsla

Laws concerning the hiring of the Oneida People

~~502.1. Purpose and Policy
502.2. Adoption, Amendment, Conflicts
502.3. Definitions
502.4. Jurisdiction
502.5. Indian Preference Office
502.6. Certification of Entities
502.7. Application of Indian Preference
502.8. Skills Bank and Qualified Trades Workers
502.9. Compliance Agreements
502.10. Office Investigations and Enforcement~~

INDIAN PREFERENCE IN CONTRACTING

502.1. Purpose and Policy
502.2. Adoption, Amendment, Conflicts
502.3. Definitions
502.4. Jurisdiction
502.5. Certification of Entities

502.6. Application of Indian Preference to Contracts
502.7. Compliance Agreements
502.8. Skills Bank and Qualified Trades Workers
502.9. Investigations and Enforcement

502.1. Purpose and Policy

502.1-1. *Purpose.* The purpose of this law is to establish an Indian Preference Office and increase economic benefits for the ~~Tribe~~Nation and ~~Tribal~~ members of the Nation by providing for the maximum utilization of Indian workers and businesses on ~~Tribal~~ projects of the Nation which occur on or near the Reservation.

502.1-2. *Policy.* It is the policy of the ~~Tribe~~:

- (a) ~~To~~Nation 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~~to undertake reasonable efforts to ensure that all entities that enter into contracts with or on behalf of the ~~Tribe~~Nation 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.

502.2. Adoption, Amendment, Conflicts

502.2-1. This law is adopted by the Oneida Business Committee by Resolution BC-03-27-13-B and ~~shall be effective immediately~~amended by resolution BC- - - -.

502.2-2. This law may be amended ~~pursuant to the procedures set out in Tribal law~~or repealed by the Oneida Business Committee ~~and/or the Oneida~~ General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

502.2-3. 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.

502.2-4. 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~~

502.2-5. This law is adopted under authority of the Constitution of the Oneida ~~Tribe of Indians of Wisconsin.~~

~~502.2-6. Adoption and enforcement of this law does not waive the sovereign immunity of the Oneida Tribe of Indians of Wisconsin~~Nation.

502.3. Definitions

502.3-1. 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)~~ (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)~~ (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)~~ (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)~~ (d) “Broker” means an intermediary; an independent contractor employed to negotiate business between a buyer and seller for compensation.

(e) “Business day” means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.

~~(f)~~ (f) “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.

~~(g) Certified entity. See Entity, Certified entity~~

~~(h) “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.~~

~~(i) “Construction contract” means any contract issued to build, repair or remodel structures, and includes subcontracts and other construction agreements.~~

~~(j) “Contractor” means one who enters into a contract.~~

~~(k) “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.~~

~~(l) “Days” means calendar days, except as otherwise provided.~~

~~(m) “Employee” means any person that performs services and/or labor for an employer in exchange for compensation.~~

~~(n) “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.~~

~~(o) “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.~~

~~(p)~~ (g) “Certified entity” means an entity that has received certification as an Indian-owned business from the Indian Preference Office.

~~“(h) “Compliance agreement” means a binding agreement, negotiated between the Indian Preference Office and a contractor identifying specific Indian preference-related requirements for a project.~~

~~(i) “Construction contract” means any contract issued to build, repair, or remodel structures, and includes subcontracts and other construction agreements.~~

~~(j) “Contractor” means one who enters into a contract.~~

~~(k) “Core work crew” means the minimum amount of the contractor’s key employees, who perform 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, that are essential to start up and continue work on a project.~~

~~(l) “Employee” means any person that performs services and/or labor for an employer in exchange for compensation.~~

~~(m) “Employer” means any entity—means, except the Nation, 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) “Enterprise” means any internal operation owned and operated by the Nation that generates revenues through its core business functions, including but not limited to, Oneida Gaming, Oneida Retail, and Oneida Printing.~~

~~(o) “Entity” means any person, sole proprietor, partnership, corporation, franchise, governmental body, 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 Tribal employment and contract activities within the jurisdiction of the Nation.~~

~~(2) (p) “Entities of the Nation” means all programs, departments, boards, committees, commissions and similar business units of the Nation, but shall not mean Tribal corporations, such as Oneida Seven Generations Corporation or Oneida Tribal Integrated Enterprises.~~

~~(q) “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.~~

~~(r) “Indian” means an enrolled member of any federally-recognized Indian tribe.~~

~~(s) “Indian-owned business” means an entity which is majority owned and managed by an Indian.~~

~~(t) “Indian preference” means preference for Indians, regardless of tribal affiliation, in all aspects of employment and contracting.~~

~~(u) “Internal service” means any service provided for free or at cost for the TribeNation 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.~~

~~(v) “Joint venture” means an entity that is fifty percent (50%) owned and managed by an Indian.~~

~~(w) “Key employee” means a one who performs a critical function such that an employer would risk likely financial damage-time grouping of two (2) or less if that task were assigned to a person unfamiliar with and/or untrained more entities in the employer’s procedures and routines a business undertaking.~~

~~(x) “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.~~

~~(y) “Office(x) “Nation” means the Indian Preference Office or its designee.~~

~~(z) “Oneida” means the Oneida Tribe of Indians of Wisconsin Nation.~~

125 ~~“Outsource(y) “Non-construction contract” means to obtain goods or any contract other~~
 126 ~~than a service from a third party, instead of having~~ construction contract, and includes
 127 subcontracts and other agreements.

128 ~~(y) (z) “Project” means any effort whereby the Nation or an entity of the Nation contracts~~
 129 ~~for labor and/or goods or services be provided from within the Tribe by a Tribal entity or~~
 130 ~~Tribal enterprise that will support or benefit any aspect of the Nation’s government,~~
 131 holdings, infrastructure, workplace, economy or community.

132 ~~(z) (aa)~~ “Qualified trades worker” means a skilled worker qualified to perform
 133 services for the trade in which the person is trained, and includes general laborers.

134 ~~(aa) (bb)~~ “Reservation” means all the lands within the exterior boundaries of the
 135 Reservation of the Oneida Tribe of Indians of Wisconsin Nation, as created pursuant to the
 136 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal
 137 law.

138 ~~(bb) “Skills Bank” means the services provided by the Office, whereby listings of qualified~~
 139 ~~trades workers are maintained and made available for those required to comply with this~~
 140 ~~law.~~

141 ~~(ee) (cc)~~ “Subcontractor” means a trade contractor, who is awarded a contract for the
 142 supply of services pursuant to a construction agreement, or a junior or secondary contractor
 143 who performs some or all of the prime contractor’s contractual obligations.

144 ~~(dd) “Trade contractor” means an entity that is awarded a contract for the supply of services~~
 145 ~~pursuant to a construction agreement, including all entities that enter into any subcontracts.~~

146 ~~(ee) “Tribal” or “Tribe” means the Oneida Tribe of Indians of Wisconsin.~~

147 ~~(dd) “Trial Court” means the Trial Court of the Oneida Nation Judiciary, which is the~~
 148 ~~judicial system that was established by Oneida General Tribal Council resolution GTC-01-~~
 149 ~~07-13-B, and then later authorized to administer the judicial authorities and responsibilities~~
 150 ~~of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.~~

151 ~~(ff) (ee)~~ “Tribal corporation” means a corporation chartered and/or wholly owned by the
 152 Oneida Tribe of Indians of Wisconsin Nation pursuant to the Constitution and Bylaws of
 153 the Oneida Tribe. Nation.

154 ~~(gg) “Tribal enterprise” means any internal operation owned and operated by the Tribe that~~
 155 ~~generates revenues through its core business functions, including but not limited to: Oneida~~
 156 ~~Gaming, Oneida Retail, Oneida Farm, and Oneida Printing.~~

157 ~~(hh) Tribal entity. See Entity, Tribal entity.~~

158 ~~(ii) “Tribal project” means any effort whereby the Tribe or a Tribal entity contracts for~~
 159 ~~labor and/or goods or services that will support or benefit any aspect of the Tribal~~
 160 ~~government, holdings, infrastructure, workplace, economy or community.~~

162 **502.4. Jurisdiction**

163 502.4-1. The Indian Preference Office shall ~~have authority over matters relating to the~~
 164 ~~interpretation~~ implement, monitor, and enforcement of ~~enforce~~ this law ~~as set out within this~~
 165 ~~law and other applicable laws and policies relating to Indian preference.~~

166 502.4-2. The ~~Tribe’s judicial system~~ Trial Court shall have ~~exclusive~~ jurisdiction over all ~~other~~
 167 ~~matters relating~~ related to the interpretation and enforcement of this law.

168 502.4-23. The Indian Preference Office and ~~the Tribe’s judicial system~~ Trial Court shall have
 169 jurisdiction over all parties to any contract, subcontract, or compliance agreement to which this
 170 law applies, as well as jurisdiction over all subcontractors, employees, or other entities working
 171 with, for, or on behalf of such a party in fulfilling such contract, subcontract or compliance
 172 agreement.

502.5. Indian Preference Office

~~502.5-1. 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.~~

~~502.5-2. The Office shall have the following duties, along with other responsibilities as may be listed throughout this law.~~

(a) Certification of Entities-

~~502.5-1. (1) Verify information provided by entities seeking~~*Criteria for Certification as an Indian-Owned Business. In order to seek* ~~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~~

219 this law, a compliance agreement, or regulations or policies issued pursuant to this
220 law.

221 (6) Establish a schedule of fines in accordance with 502.10-3, and impose such
222 fines in accordance with 502.10-4.

223 ~~502.5-3. Records.~~ Any records created and maintained by the Office shall be made available in
224 accordance with applicable Tribal and federal law.

225 ~~502.5-4.~~ Within the scope of authority defined in this law, the Office may enter into cooperative
226 agreements with federal and state agencies, subject to the approval of the Oneida Business
227 Committee.

228 ~~502.5-5.~~ Prior to the posting or announcement of a contract for any Tribal project, the
229 specifications for such project shall be submitted to the Office.

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

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

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

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

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

245 **502.6. Certification of Entities**

246 ~~502.6-1.~~ Applicants seeking certification of an Indian-owned business shall submit a completed
247 and signed application to the Office, along with any documentation required under the following
248 criteria shall be met by 502.6-4.

249 ~~502.6-2.~~ The Office may interview the applicant(s) and/or request additional information as may
250 be necessary to make a determination regarding certification. entity:

251 ~~502.6-3.~~ Within thirty (30) days of receiving the application and any additional requested
252 information, the Office shall inform the applicant of a determination to:

253 ~~(a) grant the certification; or~~

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

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

263 ~~502.6-4.~~ Certification may be granted to entities that qualify in accordance with the criteria listed
264 in this law. In order to receive certification, an applicant entity shall provide proof of:

265 ~~(a)~~ (a) There is Indian financial ownership, control and management of at least fifty-one
266 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~~Nation, members of the Nation 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~~Nation, member of the Nation 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~~(b) The entity can demonstrate 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~~The entity can provide 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.

502.5-2. Application. The applicant entity shall submit a completed and signed application to the Indian Preference Office, along with any documentation proving the entity meets the criteria for certification of an Indian-owned business.

(a) Upon receiving an application, the Indian Preference Office may interview the applicant and/or request additional information as may be necessary to make a determination regarding certification.

502.5-3. Certification Determination. Within thirty (30) days of receiving the application and any additional requested information, the Indian Preference Office shall inform the applicant of a determination to:

(a) grant the certification;

(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 Indian Preference Office for reasonable and just cause.

(1) During the probationary period, the applicant shall satisfy any conditions imposed by the Indian Preference Office.

(2) The Indian Preference Office shall monitor the activities of the applicant, and may request and receive such information as necessary to ensure compliance with this law.

(3) The Indian Preference Office shall either grant or deny full certification at the end of the probationary period, or upon petition by the applicant, whichever occurs first.

502.5-4. Once an applicant entity has been granted certification, the Indian Preference 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.

502.6-5-5. Notification Requirements. A certified entity shall report the following to the Indian Preference 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, Nation; ~~and/or~~
 - (3) alter the status of the qualifications of the entity.

502.5-6-7. 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 Indian Preference 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.

502.6-8-7. Open Records. In accordance with the Open Records ~~Nation's laws~~ and Open Meetings ~~law~~ policies governing open records, 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 ~~Nation~~.

502.6-9-8. Joint Ventures. ~~Joint~~ All joint ventures ~~shall not be certified~~ seeking certification 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-owned business shall submit documentation of the business arrangements of the joint venture in addition to the required documentation for certification.~~

- (a) Certification for a joint venture shall be issued on a project specific basis.

502.6-10-9. 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 or herself 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.

~~502.6-11~~5-10. *Fronts are Prohibited.* Entities shall be disqualified from certification as an Indian preference-eligibility-owned business 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 Indian Preference 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-; and/or

(4) Any other situation where the Indian Preference 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.

502.76. Application of Indian Preference to Contracts

~~502.76-1~~. *Application of the Law.* Except where prohibited or limited by law or grant funding requirements, this law shall apply to all contracts over ~~one~~three thousand ~~five hundred~~ dollars (\$~~1,500.00~~3,000) 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 TribeNation is a party, and all contracts, subcontracts and compliance agreements that are entered into on behalf of, or for the benefit of the TribeNation, whereby goods and services are provided on or near the Reservation-; and

(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 TribeNation.

502.76-2. Non-Applicability of the Law.

(a) ~~Tribal~~Indian Preference in Hiring of Employees- of the Nation. The standards set out in this law shall not apply to preference as applicable to ~~Tribal~~ employees hired through

the ~~Oneida~~Nation's Human Resources ~~department~~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~~Nation shall exclusively utilize internal services and ~~Tribal~~ enterprises whenever an internal service of the ~~Tribe~~Nation 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.

502.6-3. Contract Specifications Review. Prior to the posting or announcement of a contract for any project of the Nation, the specifications for such project shall be submitted to the Indian Preference Office.

(a) Within five (5) business days of receiving the specifications of the project the Indian Preference Office shall, with experts identified from other entities of the Nation, review the specifications, including bidding requirements, to ensure that there are no unnecessary and/or unjustifiable restrictions that may:

~~502.7-3.~~(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; and/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 Indian Preference Office may require that specific portions of a contract be outsourced to internal services, 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 project.

502.6-4. In soliciting bids, the entity offering the contract shall indicate that Indian preference shall be applied in accordance with this law.

~~502.7-4.~~6-5. Cooperative Agreements. Within the scope of authority defined in this law, the Indian Preference Office may enter into cooperative agreements with federal and state agencies, subject to the approval of the Oneida Business Committee.

502.6-6. Cultural Setting of Contracts. 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.~~Nation. 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.

~~502.6-7-5. ~~Tribal~~ Employees.~~of the Nation. In the execution of employment duties and in accordance with the ~~Tribe's Personnel Policies~~Nation's laws and ~~Procedures, Tribal policies~~

governing employment, employees of the Nation shall follow this law in following contracting and bidding procedures for the ~~Tribal~~Nation or ~~Tribal~~entities of the Nation.

(a) The Indian Preference Office shall establish a training process for entities of the Nation that do contracting or bidding as a regular function of their duties.

~~502.7-6-8.~~ *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~~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-; and

(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~~Nation's laws governing vendor licensing, and provide the contracting parties with directions on how to access that document.

502.6-9. 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.

502.6-10. 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:

~~502.7-7. 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.~~

(a) ten percent (10%) of the first fifty thousand dollar (\$50,000) segment of a bid;

(b) plus nine percent (9%) of the next fifty thousand dollar (\$50,000) segment of a bid;

(c) plus eight percent (8%) of the next one hundred thousand dollar (\$100,000) segment of a bid;

(d) plus seven percent (7%) of the next one hundred thousand dollar (\$100,000) segment of a bid;

(e) plus six percent (6%) of the next one hundred thousand dollar (\$100,000) segment of a bid;

(f) plus five percent (5%) of the next one hundred thousand dollar (\$100,000) segment of a bid;

(g) plus four percent (4%) of the next five hundred thousand dollar (\$500,000) segment of a bid;

(h) plus two percent (2%) of the next one million dollar (\$1,000,000) segment of a bid; and

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

~~502.7-8-11.~~ *Awarding the Contract.* 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.

~~502.7-9. 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.~~

~~502.7-10. 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.~~

~~502.7-11. Bid shopping is prohibited.~~

~~502.8. Skills Bank and Qualified Trades Workers~~

~~502.8-1. The 6-12. Monitoring the Contract. Once a contract is awarded to an entity, the Indian Preference Office shall establish~~perform the following monitoring duties:

- ~~(a) Perform on-site inspections to verify compliance with this law;~~
- ~~(b) Require and administer a Skills Bank~~review weekly workforce reports;
- ~~(c) Provide training to assist with providing Indians and first generation descendants~~certified entities with employment opportunities. The goalunderstanding their rights and abilities under this law; and
- ~~(d) Receive feedback from contractors regarding the performance of the Tribe is to achieve one hundred percent (100%) participation of any certified entity or qualified trades workers on Tribal projects~~worker.

~~502.8-2. 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.~~

~~502.8-3. The Office shall regularly update the Skills Bank listings.~~

~~502.8-4. Entities required to fill positions in accordance with 502.6-13. In the event that a dispute may arise regarding this law and/or a compliance agreement under 502.9, all affected parties shall contact~~cooperate in good faith with the Indian Preference Office prior to the commencement of any worktoward a mutually satisfactory resolution.

~~(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 502.8-4(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 502.8-4.~~

~~502.8-5. 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.~~

~~502.8-6. 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.~~

~~502.8-7. 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.~~

~~(e) 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.~~

~~502.8-8. 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.~~

502.9.

502.7. Compliance Agreements

~~502.9-1. 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 Indian Preference Office to negotiate and execute a compliance agreement. All contractors and subcontractors shall comply with the terms of any compliance agreement executed in accordance with this law.

502.7-2. Contents of a Compliance Agreement. A compliance agreement shall include, but is not limited to, the following information:

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

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

~~502.7-3. 502.9-2. Term of a Compliance Agreement.~~ 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.

~~502.9-3-4.~~ Unless prior written consent of the Indian Preference 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.

~~502.9-4-5.~~ Limited Waivers. The Indian Preference 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.

502.8. Skills Bank and Qualified Trades Workers

502.8-1. The Indian Preference Office shall establish and administer a Skills Bank to assist with providing Indians and first-generation descendants with employment opportunities. The goal of the Nation is to achieve one hundred percent (100%) participation of qualified trades workers on projects.

(a) The Indian Preference Office shall 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.

(b) The Indian Preference Office shall cooperate with other programs of the Nation to provide counseling and support to assist Indians in retaining employment.

502.8-2. 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.

~~502.10-~~ The Indian Preference Office shall regularly update the Skills Bank listings.

502.8-3. Entities required to fill positions in accordance with this law and/or a compliance agreement under section 502.7, shall contact the Indian Preference 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 Nation;

(2) First generation descendants of the Nation; and then

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

(b) If a law or grant funding requirement prohibits the hiring of qualified trades workers in accordance with section 502.8-3(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 by the Indian Preference Office.

502.8-4. 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 Nation;

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

(c) proof of a driver's license, including any endorsements, if applicable;

(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;

(2) credentials and certifications; and

(3) information related to penalties or punitive actions taken by any licensing body within the past ten (10) years.

502.8-5. 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.

~~502.8-6. 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 Indian Preference 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 Indian Preference 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.

502.8-7. 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 Indian Preference Office, they may be employed on the 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 project, the Indian Preference 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 Indian Preference 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.

502.9. Investigations and Enforcement

502.109-1. ~~Office Investigations~~ Any Complaints. An individual or entity may file a written complaint with the Indian Preference Office if aggrieved by a perceived an act of noncompliance non-compliance with:

(a) this law;

(b) a compliance agreement; and/or

(c) any standard operating procedure issued pursuant to this law, who wishes to complain shall file a written complaint with the Office.

502.9-2. Contents of the Complaint. A complaint shall provide such include information that will reasonably enable the Indian Preference Office to understand the general nature of the complaint

and carry out an investigation. ~~Wherever possible, the complainant shall provide the Office with, such as~~ evidence of any discriminatory practices, alleged misconduct, or other ~~noncompliance~~non-compliance.

~~(a) 502.9-3. Complaint Investigation.~~ Upon receipt of a complaint or after witnessing ~~noncompliance~~non-compliance with this law while conducting its monitoring duties, the Indian Preference 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)~~(a) In conducting an investigation, ~~the~~ to determine if the complaint has merit, the Indian Preference Office shall be authorized to:

(1) inspect and copy all relevant records;

(2) interview and ~~shall have the right to~~ speak to workers; and ~~to~~

(3) conduct inspections of the job site(s).

~~(3b)~~ Information collected during an Indian Preference 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.~~ a law of the Nation.

~~(b1)~~ Any report or recommendation prepared by the Indian Preference Office for use at a hearing shall be promptly released to the complainant and alleged violator.

~~(c)~~ If, after conducting the Indian Preference 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 Nation or community, the Indian Preference Office shall immediately refer the complaint or information to the appropriate department or authority of the Nation for investigation under.

(1) The referral of a complaint does not prohibit the Indian Preference Office from its independent investigation of such complaint or information for purposes of ensuring compliance with this section, the law.

(2) The Indian Preference Office shall have the authority to review the results of any other investigation conducted by another department or authority of the Nation in accordance with the Nation's laws and policies governing open records.

502.9-4. Alleged Violation Has No Merit. If the Indian Preference Office determines that the alleged violation has no merit, the Indian Preference Office shall notify all parties in writing that the ~~issue will~~complaint shall be closed. A

(a) The complainant may appeal file a complaint to contest this decision to with the Tribe's judicial systemNation's Trial Court within ten (10) business days after issuance of such notice.

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

(2c) 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 502.10-4 and/or 502.10-5, 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~~ Indian Preference Office's investigation, the ~~Tribe's judicial system~~ Trial Court determines the alleged violation has no merit, the ~~Tribe's judicial system~~ Trial Court shall notify all parties in writing that the ~~issue~~ matter will be ~~closed~~ dismissed and no further appeals of the matter will be accepted.

~~502.10-2. 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.~~

~~502.10-3. 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.~~

~~502.10-4.(d) If, after~~ an reviewing the Indian Preference Office's investigation ~~under~~ 502.10-1, the ~~Office reasonably believes~~ Trial Court determines that there is sufficient evidence of a genuine and material issue of ~~noncompliance~~ non-compliance, the Trial Court shall order the Indian Preference Office to take action in accordance with section 502.9-5.
502.9-5. Alleged Violation Has Merit. If the Indian Preference Office determines that the alleged violation has merit and there is sufficient evidence of a genuine and material issue of non-compliance, the Indian Preference Office may take action to resolve the complaint.

(a) The Indian Preference Office may take any of the following actions to resolve the complaint:

~~(a1)~~ Attempt to reach an informal or formal resolution of the alleged ~~noncompliance~~ non-compliance;

(A) 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 Trial Court.

~~(b2)~~ Issue a ~~Notice~~ notice of ~~Noncompliance~~ non-compliance to the entity by certified mail-;

(A) The ~~Notice~~ 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.

(e3) 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;

(A) 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.

(B) 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:~~

(C) Where a certified entity loses certification:

(i) 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

(2i) the Indian Preference 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.

(d4) Issue a fine;

(A) The Indian Preference Office shall be delegated authority to develop a fine and penalty schedule that may be imposed upon any person or entity violating provisions of this law. The fine and penalty schedule shall be adopted by the Oneida Business Committee through resolution.

(B) No fines as established or penalties may be assessed against the Nation, the Indian Preference Office, or other department of the Nation, or employees engaged in their official duties under 502.10-3 this law.

(e5) Re-negotiate a compliance agreement with the contractor to include additional opportunities for qualified trades workers or certified entities; and/or

(f6) Request the appropriate entity withdraw any licensing issued by the TribeNation.

(b) An individual or entity may contest an action taken by the Indian Preference Office by filing a complaint with the Trial Court within ten (10) business days after the date of issuance of the Indian Preference Office's decision.

502.10-5-9-6. Additional Enforcement Measures. If the Indian Preference Office is unable to facilitate a satisfactory resolution, and a ~~Notice~~notice of ~~Noncompliance~~non-compliance or action against a certified entity's certification has not resulted in a successful resolution, the Indian Preference Office may file an action with the ~~Tribe's judicial system~~Trial Court, 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; and/or

(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~~Trial Court, including but not limited to filing fees, attorney fees, and/or costs incurred by the Indian Preference Office in bringing an

action. Provided that, no money damages may be claimed in any suit against the ~~Tribe~~Nation, the Indian Preference Office or other ~~Tribal~~departments of the Nation, or ~~Tribal~~officials of the Nation or employees engaged in their official duties under this law; ~~and/or~~

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

~~502.10-6-7.~~ Although relief granted by the ~~Tribe's judicial system under 502.10-5~~Trial Court may benefit an individual qualified trades worker, certified Indian preference entity, or other individual or entity, neither the Indian Preference Office nor the ~~Tribe~~Nation represents those individuals and/or entities in any action for non-compliance with this law.

~~502.10-7-8.~~ *Cease-and-Desist Orders.* The Oneida ~~Tribal~~ Police ~~are~~Department is 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~~Trial Court. Such orders shall require a decree or order to render them enforceable. The Oneida ~~Tribal~~ Police Department shall not be civilly liable for enforcing such orders so long as the ~~Commission~~Trial Court signs the order.

~~502.10-8. 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.~~

502.9-9. 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.

End.

Adopted BC-03-27-13-B

Amended BC- - - -

Title 5. Business - Chapter 502
Yukwatʼnhas Ukwéhu·wé Kayanlʼhsla
Laws concerning the hiring of the Oneida People
INDIAN PREFERENCE IN CONTRACTING

502.1. Purpose and Policy
502.2. Adoption, Amendment, Conflicts
502.3. Definitions
502.4. Jurisdiction
502.5. Certification of Entities

502.6. Application of Indian Preference to Contracts
502.7. Compliance Agreements
502.8. Skills Bank and Qualified Trades Workers
502.9. Investigations and Enforcement

502.1. Purpose and Policy

502.1-1. *Purpose.* The purpose of this law is to establish an Indian Preference Office and increase economic benefits for the Nation and members of the Nation by providing for the maximum utilization of Indian workers and businesses on projects of the Nation which occur on or near the Reservation.

502.1-2. *Policy.* It is the policy of the Nation 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 to undertake reasonable efforts to ensure that all entities that enter into contracts with or on behalf of the Nation 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.

502.2. Adoption, Amendment, Conflicts

502.2-1. This law is adopted by the Oneida Business Committee by Resolution BC-03-27-13-B and amended by resolution BC-__-__-__-__.

502.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

502.2-3. 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.

502.2-4. 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.

502.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

502.3. Definitions

502.3-1. 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) “Business day” means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.
- (f) “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.
- (g) “Certified entity” means an entity that has received certification as an Indian-owned business from the Indian Preference Office.
- (h) “Compliance agreement” means a binding agreement, negotiated between the Indian Preference Office and a contractor identifying specific Indian preference-related requirements for a project.
- (i) “Construction contract” means any contract issued to build, repair, or remodel structures, and includes subcontracts and other construction agreements.
- (j) “Contractor” means one who enters into a contract.
- (k) “Core work crew” means the minimum amount of the contractor’s key employees, who perform 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, that are essential to start up and continue work on a project.
- (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 Nation, 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) “Enterprise” means any internal operation owned and operated by the Nation that generates revenues through its core business functions, including but not limited to, Oneida Gaming, Oneida Retail, and Oneida Printing.
- (o) “Entity” means any person, sole proprietor, partnership, corporation, franchise, governmental body, 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 Nation.
- (p) “Entities of the Nation” means all programs, departments, boards, committees, commissions and similar business units of the Nation, but shall not mean Tribal corporations.
- (q) “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.
- (r) “Indian” means an enrolled member of any federally-recognized Indian tribe.
- (s) “Indian-owned business” means an entity which is majority owned and managed by an Indian.
- (t) “Indian preference” means preference for Indians, regardless of tribal affiliation, in all aspects of employment and contracting.
- (u) “Internal service” means any service provided for free or at cost for the Nation 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.
- (v) “Joint venture” means a one-time grouping of two (2) or more entities in a business undertaking.

(w) “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.

(x) “Nation” means the Oneida Nation.

(y) “Non-construction contract” means any contract other than a construction contract, and includes subcontracts and other agreements.

(z) “Project” means any effort whereby the Nation or an entity of the Nation contracts for labor and/or goods or services that will support or benefit any aspect of the Nation’s government, holdings, infrastructure, workplace, economy or community.

(aa) “Qualified trades worker” means a skilled worker qualified to perform services for the trade in which the person is trained, and includes general laborers.

(bb) “Reservation” means all the lands within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.

(cc) “Subcontractor” means a trade contractor, who is awarded a contract for the supply of services pursuant to a construction agreement, or a junior or secondary contractor who performs some or all of the prime contractor’s contractual obligations.

(dd) “Trial Court” means the Trial Court of the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B, and then later authorized to administer the judicial authorities and responsibilities of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.

(ee) “Tribal corporation” means a corporation chartered and/or wholly owned by the Nation pursuant to the Constitution and Bylaws of the Oneida Nation.

502.4. Jurisdiction

502.4-1. The Indian Preference Office shall implement, monitor, and enforce this law and other applicable laws and policies relating to Indian preference.

502.4-2. The Trial Court shall have jurisdiction over all matters related to the interpretation and enforcement of this law.

502.4-3. The Indian Preference Office and Trial Court 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.

502.5. Certification of Entities

502.5-1. *Criteria for Certification as an Indian-Owned Business.* In order to seek certification as an Indian-owned business the following criteria shall be met by the applicant entity:

(a) There is 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 Nation, members of the Nation 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 Nation, member of the Nation 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) The entity can demonstrate 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) The entity can provide 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.

502.5-2. *Application.* The applicant entity shall submit a completed and signed application to the Indian Preference Office, along with any documentation proving the entity meets the criteria for certification of an Indian-owned business.

(a) Upon receiving an application, the Indian Preference Office may interview the applicant and/or request additional information as may be necessary to make a determination regarding certification.

502.5-3. *Certification Determination.* Within thirty (30) days of receiving the application and any additional requested information, the Indian Preference Office shall inform the applicant of a determination to:

(a) grant the certification;

(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 Indian Preference Office for reasonable and just cause.

(1) During the probationary period, the applicant shall satisfy any conditions imposed by the Indian Preference Office.

(2) The Indian Preference Office shall monitor the activities of the applicant, and may request and receive such information as necessary to ensure compliance with this law.

(3) The Indian Preference Office shall either grant or deny full certification at the end of the probationary period, or upon petition by the applicant, whichever occurs first.

502.5-4. Once an applicant entity has been granted certification, the Indian Preference 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.

502.5-5. *Notification Requirements.* A certified entity shall report the following to the Indian Preference Office within ten (10) business days of such an occurrence:

- (a) changes in the ownership or control status of the entity;
- (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 Nation; and/or
 - (3) alter the status of the qualifications of the entity.

502.5-6. *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 Indian Preference 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.

502.5-7. *Open Records.* In accordance with the Nation's laws and policies governing open records, 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 that, all information given for purposes of receiving certification, including financial information, is subject to internal audit of the Nation.

502.5-8. *Joint Ventures.* All joint ventures seeking certification as an Indian-owned business shall submit documentation of the business arrangements of the joint venture in addition to the required documentation for certification.

(a) Certification for a joint venture shall be issued on a project specific basis.

502.5-9. *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 or herself 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.

502.5-10. *Fronts are Prohibited.* Entities shall be disqualified from certification as an Indian-owned business 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 Indian Preference 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 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; and/or

(4) Any other situation where the Indian Preference 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.

502.6. Application of Indian Preference to Contracts

502.6-1. *Application of the Law.* Except where prohibited or limited by law or grant funding requirements, this law shall apply to all contracts over three thousand dollars (\$3,000) 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 Nation is a party, and all contracts, subcontracts and compliance agreements that are entered into on behalf of, or for the benefit of the Nation, whereby goods and services are provided on or near the Reservation; and

(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 Nation.

502.6-2. *Non-Applicability of the Law.*

(a) *Indian Preference in Hiring of Employees of the Nation.* The standards set out in this law shall not apply to preference as applicable to employees hired through the Nation's Human Resources Department or pursuant to an employment contract.

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

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

(2) If an internal service or 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 enterprise.

502.6-3. *Contract Specifications Review.* Prior to the posting or announcement of a contract for any project of the Nation, the specifications for such project shall be submitted to the Indian Preference Office.

(a) Within five (5) business days of receiving the specifications of the project the Indian Preference Office shall, with experts identified from other entities of the Nation, review the specifications, including bidding requirements, to ensure that there are no unnecessary and/or 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; and/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 Indian Preference Office may require that specific portions of a contract be outsourced to internal services, 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 project.

502.6-4. In soliciting bids, the entity offering the contract shall indicate that Indian preference shall be applied in accordance with this law.

502.6-5. *Cooperative Agreements.* Within the scope of authority defined in this law, the Indian Preference Office may enter into cooperative agreements with federal and state agencies, subject to the approval of the Oneida Business Committee.

502.6-6. *Cultural Setting of Contracts.* 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 Nation. 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.

502.6-7. *Employees of the Nation.* In the execution of employment duties and in accordance with the Nation's laws and policies governing employment, employees of the Nation shall follow this law in following contracting and bidding procedures for the Nation or entities of the Nation.

(a) The Indian Preference Office shall establish a training process for entities of the Nation that do contracting or bidding as a regular function of their duties.

502.6-8. *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

- 321 (2) In accordance with the provisions of this law.
322 (b) Reference this law, and shall contain an acknowledgment clause, whereby the
323 contractor shall agree to the following:
324 (1) The contractor has read and understands the provisions of this law;
325 (2) The contractor understands how this law affects the contractor's rights and
326 responsibilities; and
327 (3) The contractor agrees that the provisions of this law shall govern the
328 performance of the parties.
329 (c) Reference the Nation's laws governing vendor licensing, and provide the contracting
330 parties with directions on how to access that document.

331 502.6-9. *Applying Indian Preference to Non-Construction Contracts.* Where more than one (1)
332 bid is received for a non-construction contract, an Indian preference percentage discount of five
333 percent (5%) shall be applied to all bids received from certified Indian-owned businesses.

334 502.6-10. *Applying Indian Preference to Construction Contracts.* Where more than one (1) bid
335 is received for a construction contract, the discount applied to bids from certified Indian-owned
336 businesses shall be:

- 337 (a) ten percent (10%) of the first fifty thousand dollar (\$50,000) segment of a bid;
338 (b) plus nine percent (9%) of the next fifty thousand dollar (\$50,000) segment of a bid;
339 (c) plus eight percent (8%) of the next one hundred thousand dollar (\$100,000) segment
340 of a bid;
341 (d) plus seven percent (7%) of the next one hundred thousand dollar (\$100,000) segment
342 of a bid;
343 (e) plus six percent (6%) of the next one hundred thousand dollar (\$100,000) segment of
344 a bid;
345 (f) plus five percent (5%) of the next one hundred thousand dollar (\$100,000) segment of
346 a bid;
347 (g) plus four percent (4%) of the next five hundred thousand dollar (\$500,000) segment
348 of a bid;
349 (h) plus two percent (2%) of the next one million dollar (\$1,000,000) segment of a bid;
350 and
351 (i) plus one percent (1%) of any amount over two million dollars (\$2,000,000).

352 502.6-11. *Awarding the Contract.* After the appropriate discount has been subtracted from
353 preferred bids, the following shall be used to determine which bidder is awarded the contract:

- 354 (a) If a bid from a certified entity is less than the total of the apparent low bid after
355 Indian preference is applied, then the contract shall be awarded to the certified entity.
356 (b) If none of the certified entity bids are less than the total of the apparent low bid after
357 the Indian preference discount is applied, the contract shall be awarded to the lowest
358 responsible bidder.
359 (c) Bid shopping is prohibited.

360 502.6-12. *Monitoring the Contract.* Once a contract is awarded to an entity, the Indian
361 Preference Office shall perform the following monitoring duties:

- 362 (a) Perform on-site inspections to verify compliance with this law;
363 (b) Require and review weekly workforce reports;
364 (c) Provide training to assist certified entities with understanding their rights and abilities
365 under this law; and
366 (d) Receive feedback from contractors regarding the performance of any certified entity
367 or qualified trades worker.

502.6-13. 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 Indian Preference Office toward a mutually satisfactory resolution.

502.7. Compliance Agreements

502.7-1. *Compliance Agreements.* Once a bid has been accepted, but before work commences on any portion of a contract or subcontract, each contractor shall meet with the Indian Preference Office to negotiate and execute a compliance agreement. All contractors and subcontractors shall comply with the terms of any compliance agreement executed in accordance with this law.

502.7-2. *Contents of a Compliance Agreement.* A compliance agreement shall include, but is not limited to, the following information:

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

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

502.7-3. *Term of a Compliance Agreement.* 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.

502.7-4. Unless prior written consent of the Indian Preference 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.

502.7-5. *Limited Waivers.* The Indian Preference 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.

502.8. Skills Bank and Qualified Trades Workers

502.8-1. The Indian Preference Office shall establish and administer a Skills Bank to assist with providing Indians and first-generation descendants with employment opportunities. The goal of the Nation is to achieve one hundred percent (100%) participation of qualified trades workers on projects.

(a) The Indian Preference Office shall 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.

(b) The Indian Preference Office shall cooperate with other programs of the Nation to provide counseling and support to assist Indians in retaining employment.

502.8-2. 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. The Indian Preference Office shall regularly update the Skills Bank listings.

502.8-3. Entities required to fill positions in accordance with this law and/or a compliance agreement under section 502.7, shall contact the Indian Preference 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 Nation;
- (2) First generation descendants of the Nation; and then
- (3) Members of other federally-recognized Indian tribes.

(b) If a law or grant funding requirement prohibits the hiring of qualified trades workers in accordance with section 502.8-3(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 by the Indian Preference Office.

502.8-4. 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 Nation;
- (b) education; including degrees, diplomas, apprenticeships, internships or continuing education training related to the field;
- (c) proof of a driver's license, including any endorsements, if applicable;
- (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;
 - (2) credentials and certifications; and
 - (3) information related to penalties or punitive actions taken by any licensing body within the past ten (10) years.

502.8-5. 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.

502.8-6. *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 Indian Preference 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 Indian Preference 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.

502.8-7. *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 Indian Preference Office, they may be employed on the 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 project, the Indian Preference 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 Indian Preference 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.

502.9. Investigations and Enforcement

502.9-1. *Complaints.* An individual or entity may file a written complaint with the Indian Preference Office if aggrieved by an act of non-compliance with:

(a) this law;

(b) a compliance agreement; and/or

(c) any standard operating procedure issued pursuant to this law.

502.9-2. *Contents of the Complaint.* A complaint shall include information that will reasonably enable the Indian Preference Office to understand the general nature of the complaint and carry out an investigation, such as evidence of any discriminatory practices, alleged misconduct, or other non-compliance.

502.9-3. *Complaint Investigation.* Upon receipt of a complaint or after witnessing non-compliance with this law while conducting its monitoring duties, the Indian Preference Office shall conduct an investigation.

(a) In conducting an investigation to determine if the complaint has merit, the Indian Preference Office shall be authorized to:

(1) inspect and copy all relevant records;

(2) interview and speak to workers; and

(3) conduct inspections of the job site.

(b) Information collected during an Indian Preference Office investigation shall be kept confidential unless disclosure is necessary or required as part of any judicial or administrative proceeding or in accordance with a law of the Nation.

(1) Any report or recommendation prepared by the Indian Preference Office for use at a hearing shall be promptly released to the complainant and alleged violator.

(c) If the Indian Preference 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 Nation or community, the Indian Preference Office shall immediately refer the complaint or information to the appropriate department or authority of the Nation for investigation.

(1) The referral of a complaint does not prohibit the Indian Preference Office from its independent investigation of such complaint or information for purposes of ensuring compliance with this law.

(2) The Indian Preference Office shall have the authority to review the results of any other investigation conducted by another department or authority of the Nation in accordance with the Nation's laws and policies governing open records.

502.9-4. *Alleged Violation Has No Merit.* If the Indian Preference Office determines that the alleged violation has no merit, the Indian Preference Office shall notify all parties in writing that the complaint shall be closed.

(a) The complainant may file a complaint to contest this decision with the Nation's Trial Court within ten (10) business days after issuance of such notice.

(b) The Trial Court shall then conduct an in-camera inspection of the investigation completed by the Indian Preference Office. During an in-camera inspection only a judge may review the information obtained by the Indian Preference Office during the investigation as this information is confidential and disclosure is not necessary.

(c) If after reviewing the Indian Preference Office's investigation, the Trial Court determines the alleged violation has no merit, the Trial Court shall notify all parties in writing that the matter will be dismissed and no further appeals of the matter will be accepted.

(d) If after reviewing the Indian Preference Office's investigation the Trial Court determines that there is sufficient evidence of a genuine and material issue of non-compliance, the Trial Court shall order the Indian Preference Office to take action in accordance with section 502.9-5.

502.9-5. *Alleged Violation Has Merit.* If the Indian Preference Office determines that the alleged violation has merit and there is sufficient evidence of a genuine and material issue of non-compliance, the Indian Preference Office may take action to resolve the complaint.

(a) The Indian Preference Office may take any of the following actions to resolve the complaint:

(1) Attempt to reach an informal or formal resolution of the alleged non-compliance;

(A) 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 Trial Court.

(2) Issue a notice of non-compliance to the entity by certified mail;

(A) 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.

(3) 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;

(A) Once certification is revoked, an entity shall not be eligible to apply for re-certification until one (1) year has passed from the effective date of the revocation.

(B) At any time that certification is suspended, revoked, or has lapsed, a formerly certified entity shall not qualify for Indian preference.

(C) Where a certified entity loses certification:

(i) 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

(ii) the Indian Preference 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.

(4) Issue a fine;

(A) The Indian Preference Office shall be delegated authority to develop a fine and penalty schedule that may be imposed upon any person or entity violating provisions of this law. The fine and penalty schedule shall be adopted by the Oneida Business Committee through resolution.

(B) No fines or penalties may be assessed against the Nation, the Indian Preference Office, or other department of the Nation, or employees engaged in their official duties under this law.

(5) Re-negotiate a compliance agreement with the contractor to include additional opportunities for qualified trades workers or certified entities; and/or

(6) Request the appropriate entity withdraw any licensing issued by the Nation.

(b) An individual or entity may contest an action taken by the Indian Preference Office by filing a complaint with the Trial Court within ten (10) business days after the date of issuance of the Indian Preference Office's decision.

502.9-6. *Additional Enforcement Measures.* If the Indian Preference Office is unable to facilitate a satisfactory resolution, and a notice of non-compliance or action against a certified entity's certification has not resulted in a successful resolution, the Indian Preference Office may file an action with the Trial Court, 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; and/or

(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 Trial Court, including but not limited to filing fees, attorney fees, and/or costs incurred by the Indian Preference Office in bringing an action. Provided that, no money damages may be claimed in any suit against the Nation, the Indian Preference Office or other departments of the Nation, or officials of the Nation or employees engaged in their official duties under this law; and/or

(d) Any other action the Trial Court deems lawful, equitable, and necessary to ensure compliance with this law and to alleviate or remedy any harm caused by non-compliance.

502.9-7. Although relief granted by the Trial Court may benefit an individual qualified trades worker, certified Indian preference entity, or other individual or entity, neither the Indian

Preference Office nor the Nation represents those individuals and/or entities in any action for non-compliance with this law.

502.9-8. *Cease-and-Desist Orders.* The Oneida Police Department is 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 Trial Court. Such orders shall require a decree or order to render them enforceable. The Oneida Police Department shall not be civilly liable for enforcing such orders so long as the Trial Court signs the order.

502.9-9. *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.

End.

Adopted BC-03-27-13-B

Amended BC-__-__-__-__