



TO: Legislative Operating Committee (LOC)  
FROM: Clorissa N. Santiago, Legislative Reference Office, Staff Attorney *CNS*  
DATE: February 19, 2020  
RE: Indian Preference in Contracting Law Amendments: Public Meeting Comment Review

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On December 19, 2019, a public meeting was held regarding the proposed amendments to the Indian Preference in Contracting law ("the Law"). The public comment period was then held open until December 30, 2019. On February 5, 2020, the Legislative Operating Committee reviewed and considered all public comments that were received.

This memorandum is submitted as the Legislative Operating Committee's review of the oral and written comments received within the public meeting and public comment period.

#### Comments 1 through 2 – Purpose of the Law:

##### 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.

**Jeffrey S. House (written):** Thank you Chairman Jordan and Vice-Chairman Metoxen and members of the Legislative Operating Committee for allowing me to comment on the drafted amendments to the Indian Preference in Contracting law. I join you today as a representative of Oneida ESC group, a tribal corporation that is 100% owned by the Oneida Nation. I would like to begin my comments by highlighting the purpose of the law in Section 502.1-1; which 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. These two drivers: "Increase economic benefits for the Nation" and "maximum utilization of Indian workers and businesses," I believe are the core objectives of the law and cannot be over emphasized.

The Oneida Nation has a greater than \$740 million impact on Brown and Outagamie Counties and is responsible for more the 5,460 jobs according to a St. Norbert College Study conducted in 2018. That equates to \$89 million in government revenue, of which \$33.4 million is for state and local government. I believe the purpose of the Law is to keep as much of impact on the Oneida Nation reservation.

**Jeffrey S. House (oral):** Uhh thank you Councilwoman Webster and Chairman Jordan for allowing me to provide this testimony. I join you today as a representative of Oneida ESC group, a tribal corporation that is one hundred percent (100%) owned by the Oneida Nation.

Thank you Jenny for reading the purpose of the Law, that's my first, or I would like to give my comments by highlighting the purpose of the Law. As you have stated, which 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. These two drivers: "Increase economic benefits for the Nation" and "maximum utilization of Indian workers and businesses," I believe are the core objectives of the law and cannot be over emphasized.

The Oneida Nation has a greater than seven hundred and forty million dollar (\$740,000.000) impact on Brown and Outagamie Counties and is responsible for more than five thousand four hundred and sixty (5,460) jobs according to a St. Norbert College Study conducted in 2018. That equates to eighty-nine million dollars (\$89,000,000) in government revenue, of which thirty-three point four million (\$33,400,000) is for state and local government. I believe the purpose of the Law is to keep as much of impact on the Oneida Nation Reservation.

### ***Response***

The commenter highlights the purpose of the Law, and provides some statistics on the Nation's economic impact on Brown and Outagamie Counties.

As there are no suggestions being requested, or questions asked by this comment, there is no revision to the Law recommended based on this comment.

### ***LOC Consideration***

The Legislative Operating Committee determined no revision to the Law was necessary based on these comments as the commenter is providing background information.

## **Comment 3 – Jurisdiction of the Nation:**

### **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.

### **502.3. 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.

(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.

## **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

**Eric McLester (written):** I am providing written comments in support of the proposed changes to the Indian Preference Law. As the Agent for the Oneida Golf Enterprise, I am in full support of the purpose of the law which 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." I would recommend that these economic benefits not be limited to just on or near the Reservation, and that wording similar to the "Joint Ventures" definition, be included that allows for economic development on a "project-specific basis" for projects off Reservation.

### ***Response***

The commenter expresses that the Law should apply to projects off and not near the Reservation.

The Law provides that Indian preference shall be applied to all contracts, subcontracts, and compliance agreements to which the Nation is a party, or the agreements are entered into on behalf of the Nation, whereby goods and services are provided on or near the Reservation. [5 O.C. 502.1-1, 502.6-1(a)(1)]. The Law defines "Reservation" as 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. [5 O.C. 502.3-1(bb)].

The definition of Reservation in this Law is consistent with the Constitution and Bylaws of the Oneida Nation which provides that the jurisdiction of the Nation extends to the territory within the present confines of the Oneida Reservation and to such other lands as may be hereafter added thereto within or without said boundary lines under any law of the United States, except as otherwise provided by law. [Constitution and Bylaws of the Oneida Nation, Article I]. Simply speaking, jurisdiction is the power of a government to affect persons, property, and circumstances within its territory.

The application of this Law is specific to projects which occur on or near the Reservation because this is the territory where the Nation has jurisdiction, and the Nation only has the authority to affect persons, property, and circumstances within its territory.

Since the applicability of this Law is consistent with the territorial jurisdiction of the Nation, there is no revision to the Law recommended based on this comment.

### ***LOC Consideration***

The Legislative Operating Committee determined there was no revision to the Law needed based on this comment since an explanation on the Nation's territorial jurisdiction was provided.

#### **Comment 4 – Definition of Joint Venture:**

##### **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.**

(v) “Joint venture” means a one-time grouping of two (2) or more entities in a business undertaking.

##### **502.5. Certification of Entities**

**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.

**Eric McLester (written):** The language referring to Joint Ventures speaks to these ventures being one-time or short-term partnerships but there are times when long term ventures make good business sense. I would recommend language be added that long term joint ventures can be considered on a project, specific basis if it makes good business sense to do so. The Tribe should be open to every sound business opportunity and not limit or restrict new ventures.

#### ***Response***

The commenter discusses the language referring to joint ventures and states that long term joint ventures should also be considered in addition to one-time or short-term joint ventures.

The Law provides that joint ventures seeking certification as an Indian-owned business are required to submit documentation of the business arrangements of the joint venture in addition to the required documentation for certification. [5 O.C. 502.5-8]. Joint ventures are a one (1) time grouping of two (2) or more entities in a business undertaking. [5 O.C. 502.3-1(v)]. Joint ventures typically occur when two (2) or more parties agree to pool their resources for the purpose of accomplishing a specific task or project. The Law then clarifies that certification for a joint venture shall be issued on a project specific basis. [5 O.C. 502.5-8(a)]. The Law does not specify any requirements as to whether joint ventures are short term business groupings or long-term business groupings, instead it is all dependent on the term of the project for which the two (2) entities are applying for certification on.

It was the intent of the Legislative Operating Committee that revising the Law to allow for joint ventures of Indian-owned business would provide more opportunities for Indian-owned businesses. Therefore, there is no revision to the Law recommended based on this comment.

#### ***LOC Consideration***

The Legislative Operating Committee determined that there was no revision to the Law needed based on this comment as the Law does not specify any requirements as to the length of joint ventures. The Legislative Operating Committee is hopeful that revising the Law to allow for joint ventures of Indian-owned business will provide more opportunities for Indian-owned businesses.

#### **Comments 5 through 6 – Support for Definition of Tribal Corporation:**

##### **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.**

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

**Jeffrey S. House (written):** Thank you for including the language, “wholly owned,” to the definition of Tribal Corporation in Section 502.3-1(ee). Entities such as Oneida ESC Group are now defined in the Law other than as an entity with all other non-Oneida and non-Indian businesses and companies.

**Jeffrey S. House (oral):** Thank you for including the language, “wholly owned,” to the definition of Tribal Corporation in Section 502.3-1(ee). Entities such as Oneida ESC Group are now defined in the Law other than as an entity with all other non-Oneida and non-Indian businesses and companies.

##### ***Response***

The commenter expresses gratitude to the Legislative Operating Committee for expanding the definition of Tribal Corporations to include corporations that are wholly owned by the Nation in addition to those corporations that are chartered by the Nation, as this clarifies that the Oneida ESC Group is a Tribal Corporation under the Law.

There is no revision to the Law recommended based on this comment.

##### ***LOC Consideration***

The Legislative Operating Committee determined there was no revision to the Law needed based on these comments. The Legislative Operating Committee thanks the commenter for expressing his support and gratitude for the revised definition of Tribal corporation.

#### **Comment 7 – Concern with Definition of Tribal Corporation:**

##### **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.**

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



**Eric McLester (written):** Regarding the Definition of Tribal Corporation, the requirement that "a corporation chartered and/or wholly owned by the Nation pursuant to the Constitution and Bylaws of the Oneida Nation" is again limiting to a Corporations success. Why would you limit any Tribal investment, joint venture, partnership, etc, to only those wholly owned by the Tribe? I would recommend the Tribe support any business venture the Tribe has a stake in to be given preference.

### ***Response***

The commenter provides that the definition of “Tribal corporation” under the Law is limiting the success of a Tribal corporation by requiring that a Tribal corporation be wholly owned by the Nation.

The Law defines a “Tribal corporation” as 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*)]. To be considered a Tribal corporation, the corporation can be chartered by the Nation, wholly owned by the Nation, or both. So even if a corporation is not wholly owned by the Nation, but it was chartered by the Nation, that would still make it a Tribal corporation.

It is important to remember though that in terms of the application of this Law, a Tribal corporation does not automatically receive Indian preference because it was chartered or is wholly owned by the Nation. Instead, just like any other business or corporation, the Tribal corporation must still meet the criteria to be certified as an Indian-owned business. The Law provides that in order to seek certification as an Indian-owned business, the following criteria shall be met by the applicant entity:

- There is Indian financial ownership, control and management of at least fifty-one percent (51%) of the entity.
  - 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.
  - 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.
  - Indian Management is established where an Indian owner(s) is directly involved in the entity’s management, this can be shown where 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 at least one (1) Indian owner is responsible for the oversight of operations, even though the daily operations are conducted by non-owner employees.
- 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.

- 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.  
[5 O.C. 502.5-1(a)-(c)].

Therefore, as long as a Tribal corporation can meet the criteria for certification as an Indian-owned business provided for in section 502.5-1 of the Law, the Tribal corporation would be eligible for Indian preference. There is no revision to the Law recommended based on this comment.

### *LOC Consideration*

The Legislative Operating Committee determined that there was no revision to the Law needed based on this comment based on the fact that as long as a Tribal corporation can meet the criteria for certification as an Indian-owned business provided for in section 502.5-1 of the Law, the Tribal corporation would be eligible for Indian preference.

### **Comments 8 through 9 – Certification Renewal:**

#### **502.5. Certification of Entities**

**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.

**Jeffrey S. House (written):** In Section 502.5-7 regarding Certification Renewal. I would recommend Tribal Corporations be exempt for annual renewals. The previous paragraph, Section 502.5-5(a) requires that Certified entities shall report change of ownership within 10 days and therefore would require re-certification at that point. We see no benefit for Tribal Corporations to have to repeatedly re-certify when they are 100% owned by the Oneida Nation and for the Indian Preference Office to spend time, energy, and money for a renewal process that is guaranteed.

**Jeffrey S. House (oral):** In Section 502.5-7 regarding Certification Renewal. I would recommend Tribal Corporations be exempt for annual renewals. The previous paragraph, Section 502.5-5(a) requires that Certified entities shall report change of ownership within ten (10) days and therefore would require re-certification at that point. We see no benefit for Tribal Corporations to have to repeatedly re-certify when they are one hundred percent (100%) owned by the Oneida Nation and for the Indian Preference Office to spend time, energy, and money for a renewal process that is guaranteed.

### ***Response***

The commenter requests that Tribal Corporations be exempt from the requirement to renew its Indian-owned business certification on an annual basis, due to the fact that the Law already requires a certified entity to notify the Indian Preference Office of any changes in the ownership or control status of the entity.

The certification that an entity is an Indian owned business, and therefore is eligible for Indian preference under the Law, is granted on an annual basis. [5 O.C. 502.5-6]. In order to prevent a lapse in certification, a certified entity must renew its certification by providing the Indian Preference Office a renewal application and annual reporting form. [5 O.C. 502.5-6(a)]. In addition to the certification renewal requirements required by the Law, a certified entity is required to notify the Indian Preference Office within ten (10) business days of any of the following occurrences:

- changes in the ownership or control status of the entity;
- suspension, revocation, lapse or loss of any licensing, certification, insurance, bonding, or credit lines; and/or
- any other changes that could:
  - affect an entity's eligibility for certification;
  - affect the financial liability of any entity, contracting party or the Nation; and/or
  - alter the status of the qualifications of the entity.

[5 O.C. 502.5-5(a)-(c)].

Whether to require a Tribal Corporation, or any certified entity, to renew its Indian-owned business certification on an annual basis, or simply be required to follow the notification requirements found in section 502.5-5 of the Law, is a policy consideration for the Legislative Operating Committee. Requiring annual renewals of certification ensures that the Indian Preference Office maintains up to date information on the certified entity to ensure that the certified entity continues to meet the criteria to be certified as an Indian-owned business. Eliminating the requirement to renew certification on an annual basis, and instead relying on the notification requirements of section 502.5-5 may eliminate some time and effort spent by the Indian Preference Office in processing renewal applications and promote greater efficiency.

The Legislative Operating Committee may make one of the following determinations:

1. The Law should remain as currently drafted. Certification as an Indian-owned business shall be renewed on an annual basis by all certified entities, and all certified entities are required to follow the notification requirements provided in section 502.5-5 of the Law.



2. The Law should be revised so that Tribal Corporations are exempt from the requirement to renew certification on an annual basis, due to the fact that the requirements to follow the notification requirements of section 502.5-5 should be sufficient to ensure that the Indian Preference Office is notified of all relevant events that may occur. If the Legislative Operating Committee makes this determination then the following revision is recommended:

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.

(c) *Exemption for Tribal Corporations.* Tribal corporations shall be exempt from the requirement to renew certification on an annual basis. Certification for a Tribal corporation is granted until such a time that the Indian Preference Office is made aware that there have been changes that may affect the certification status of a Tribal corporation in accordance with the notification requirements of section 502.5-5.

(1) When a Tribal corporation complies with the notification requirements of section 502.5-5 the Tribal corporation shall also apply for renewal of its certification.

(A) The Indian Preference Office shall provide the Tribal corporation with a renewal application and annual reporting form.

(B) The Tribal corporation shall return the renewal application and annual reporting form to the Indian Preference Office within (X) days.

3. The Law should be revised to eliminate the requirement to renew certification on an annual basis, and instead certification as an Indian-owned business should remain current until the Indian Preference Office is noticed that the status of the certified entity has changed in accordance with the notification requirements of section 502.5-5 of the Law. If the Legislative Operating Committee makes this determination then the following revision is recommended:

502.5-6. *Certification Renewal.* Certification is granted ~~on an annual basis and shall lapse after one (1) year unless renewed.~~ until such a time that the Indian Preference Office is made aware that there have been changes that may affect the certification status of a certified entity in accordance with the notification requirements of section 502.5-5.

(a) When an entity complies with the notification requirements of section 502.5-5 the entity shall also ~~Te~~ apply for a renewal of its certification.

(1) The Indian Preference Office shall provide the ~~each~~ certified entity ~~shall complete and return with~~ a renewal application and

annual reporting form, ~~so that the Indian Preference Office may update its records.~~

(2) The certified entity shall return the renewal application and annual reporting form to the Indian Preference Office within \_\_ (X) days.

~~(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.~~

### **LOC Consideration**

The Legislative Operating Committee determined that the Law should be revised so that Tribal corporations are exempt from the requirement to renew certification on an annual basis, due to the fact that the requirements to follow the notification requirements of section 502.5-5 should be sufficient to ensure that the Indian Preference Office is notified of all relevant events that may occur.

The Legislative Operating Committee determined that the following revision should be made to the Law:

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.

(c) *Exemption for Tribal Corporations.* Tribal corporations shall be exempt from the requirement to renew certification on an annual basis. Certification for a Tribal corporation is granted until such a time that the Indian Preference Office is made aware that there have been changes that may affect the certification status of a Tribal corporation in accordance with the notification requirements of section 502.5-5.

(1) When a Tribal corporation complies with the notification requirements of section 502.5-5 the Tribal corporation shall also apply for renewal of its certification.

(A) The Indian Preference Office shall provide the Tribal corporation with a renewal application and annual reporting form.

(B) The Tribal corporation shall return the renewal application and annual reporting form to the Indian Preference Office ten (10) days.

The Legislative Operating Committee made this decision after a discussion on whether a Tribal corporation should be required to renew its certification as an Indian-owned business on an annual basis. The Legislative Operating Committee discussed the benefits of requiring annual renewal of certification, which includes ensuring that the Indian Preference Office maintains the most up to

date information on the Tribal corporation to ensure that it continues to meet the criteria for certification. But ultimately the efficiency of relaying on the notification requirements of section 502.5-5, and saving time and effort by no longer requiring annual certification renewal from Tribal corporations, which should be held to a higher standard of expectations for sharing information with the Indian Preference Office than other Indian-owned businesses, is what led the Legislative Operating Committee to this decision on revising the Law.

#### Comments 10 through 11 – Joint Ventures:

##### **502.5. Certification of Entities**

**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.

**Jeffrey S. House (written):** We agree and applaud the Committee for Section 502.5-8 in regards in Joint Ventures. We believe allowing joint ventures to be certified as Indian Owned, assuming each JV meets the certification criteria, is a good opportunity for tribally owned businesses, enterprises, and tribal corporations to increase competitive strength on a case-by-case basis.

**Jeffrey S. House (oral):** We agree and applaud the Committee for Section 502.5-8 in regards in Joint Ventures. We believe allowing joint ventures to be certified as Indian Owned, assuming each JV meets the certification criteria, is a good opportunity for tribally owned businesses, enterprises, and tribal corporations to increase competitive strength on a case-by-case basis.

#### *Response*

The commenter commends the Legislative Operating Committee for revising the Law to allow joint ventures of Indian-owned businesses. The Legislative Operating Committee was hopeful that this revision to the Law would provide more opportunities for Indian-owned businesses.

There is no revision to the Law recommended based on this comment.

#### *LOC Consideration*

The Legislative Operating Committee determined there was no revision to the Law needed based on these comments. The Legislative Operating Committee thanks the commenter for expressing his support for this provision of the Law.

#### Comments 12 through 14 – Exclusive Utilization of Corporations:

##### **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.

(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.

(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.

## **502.6. Application of Indian Preference to Contracts**

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

(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.

**Jeffrey S. House (written):** Section 502.6-2(b)(1) states the Nation shall exclusively utilize 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. We feel this should include Tribal Corporations. At the very least, include the phrase “may include Tribal Corporations.” If the purpose of the Oneida Indian Preference in Contracting is maximum utilization of Indian businesses, why wouldn’t the Nation include language for Tribal corporations? The Nation receives the distribution of profits, the Nation earns the economic benefit of a growing company, and more of the economic impact of the Oneida Nation remains within the Oneida Nation.

The Indian Preference in Contracting Law initially included Tribal Preference for corporations but it was removed with the amendments to the law adopted by OBC Resolution 3-26-13-A.

**Jeffrey S. House (oral):** Section 502.6-2(b)(1) states the Nation shall exclusively utilize 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. We feel this should include Tribal Corporations. At the very least, include the phrase “may include Tribal Corporations.” If the purpose of the Oneida Indian Preference in Contracting is maximum utilization of Indian businesses, why wouldn’t the Nation include language for Tribal corporations? The Nation receives the distribution of profits, the Nation earns the economic benefit of a growing company, and more of the economic impact of the Oneida Nation remains within the Oneida Nation. The Indian Preference in Contracting Law initially included Tribal Preference for corporations but it was removed with the amendments to the law adopted by OBC Resolution 03-26-13-A.

**Eric McLester (written):** Where ever possible and when allowable by contracting rules and laws, Tribal Corporations should be given sole source preference so that the businesses are supported, and revenue and resources are invested back into Tribal investments, regardless if they are 1%

owned or wholly owned businesses. It makes good sense to re-invest and support any business the Tribe has a vested interest in seeing succeed.

### ***Response***

The commenters state that the Law should require the Nation to exclusively utilize Tribal corporations if the Tribal corporation could or does provide the necessary goods and services in the ordinary course of business. The first commenter alludes that if the purpose of the Law is to maximize the utilization of Indian businesses, then why would the Nation not exclusively utilize corporations as it is the Nation that earns an economic benefit from the corporation. The first commenter also provides that the Law initially included Tribal preference for corporations but it was moved with amendments to the Law adopted in 2013.

Indian preference is required to be applied to all contracts, subcontracts, or compliance agreements over three thousand dollars (\$3,000), except where prohibited or limited by law or grant funding requirements, where the Nation is a party, or the contract is entered into on behalf of, or for the benefit of the Nation, whereby goods and services are provided on or near the Reservation. [5 O.C. 502.6-1].

The Law then goes on to state that Indian preference is not applied in situations where an internal service or enterprise of the Nation could or does provide the necessary goods and services in the ordinary course of business. [5 O.C. 502.6-2(b)]. In the case where an internal service or enterprise of the Nation could or does provide the necessary goods and services in the ordinary course of business, the Nation shall exclusively utilize the internal service or enterprise. [5 O.C. 502.6-2(b)(1)]. But if an internal service or enterprise is unable to fulfill some or all of the requirements of a contract, then Indian preference under this Law shall apply to any outsourcing conducted by the internal service or enterprise. [5 O.C. 502.6-2(b)(2)]. An internal service is any service provided for free or at cost for the Nation and includes but is not limited to such services as advocacy or representation, mail delivery and pick up, grant writing or assistance, tourism initiatives, Human Resource assistance and technical support. [5 O.C. 502.3-1(u)]. An enterprise is 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. [5 O.C. 502.3-1(n)].

When discussing the application of Indian preference, it is important to remember that it is ultimately the Nation that is a party to the contract and responsible for expending the funds for the contract. So even if the Nation receives a portion of the distribution of the profits from a Tribal corporation's business, the Nation still has to expend the funds to pay the initial contract. The exclusive utilization of internal services and enterprises when the internal service or enterprise could or does provide the necessary goods and services can be attributed to the fact that the internal service is providing the good or service for free or at cost for the Nation, and the Nation has direct control over the internal service or enterprise as they are both internal operations of the Nation. Internal services and enterprises can be distinguished from Tribal corporations based on the fact that Tribal corporations are not providing a good or service to the Nation for free or at no cost, and the Nation does not have direct control over the actions of the Tribal corporations.



It is also important to remember that the purpose of the Law is to provide for the maximum utilization of Indian workers and businesses on projects of the Nation. [5 O.C. 502.1-1]. It is the maximum utilization of Indian workers and businesses, not the exclusive utilization of Indian workers and businesses, that this Law aims to provide. The requirement for the exclusive utilization of Tribal corporations could potentially block the utilization of any other privately owned Indian business from contracting with the Nation where a Tribal corporation could provide the good or service. This could also serve as a deterrent for members of the Nation and other Indians that might otherwise consider starting or expanding a business in the same areas as a Tribal corporation. The goal of the Law is not to simply drive business to corporations of the Nation. The use of Indian workers and businesses is maximized in this Law through the application of an Indian preference percentage discount that is applied to contract bids that provides the Indian-owned business an advantage while still promoting competitive bidding. [5 O.C. 502.6-9, 502.6-10].

Additionally, although the comment is incorrect in the statement that the Law initially included preference for corporations but it was removed with the amendments to the law adopted by the Oneida Business Committee through resolution BC-03-27-13-B, it is important to note that sole source contracting for Oneida and Indian-owned businesses was a policy that was pursued by the Nation nearly ten (10) years ago and was ultimately unsuccessful.

The Oneida Business Committee adopted resolution BC-11-24-10-C titled, “*Sole Source Contracting for Oneida and Indian-owned Businesses*” for the purpose of requiring that except where prohibited by law or grant funding requirements, all Tribal departments, programs, and entities shall exclusively utilize Oneida businesses first, and then certified Indian-owned businesses, unless none were available and qualified to fulfill a contract. An Oneida business was defined as a business which is certified by the Indian Preference Department as eligible for receiving Indian preference, where such business is majority-owned by the Nation or by one or more members of the Nation. This resolution required that where exactly one (1) Oneida business is available and qualified to meet contract requirements then the contract shall be sole sourced to that business. The resolution also addressed when there were two (2) or more Oneida businesses, as well as situations involving Indian-owned businesses when there were no Oneida businesses available, and provided reporting requirements for the Oneida Purchasing Department, requirements for the negotiation of contracts, and disciplinary procedures for those employees who did not follow the policy.

Less than two (2) years later, the Oneida Business Committee took action to rescind resolution BC-11-24-10-C through the adoption of resolution BC-05-23-12-B titled, “*Rescinding Resolution BC-11-24-10-C Regarding Sole Source Contracting for Oneida and Indian-owned Businesses.*” This resolution highlighted that although resolution BC-11-24-10-C was adopted for the purposes of strengthening and supporting the Indian Preference law, reconsideration of the sole source requirement was needed for the best interests of the Nation. This resolution provided that although the sole source requirement brought needed attention to the bidding process and created a needed awareness of businesses owned and operated by members of the Nation, it also brought much needed attention to bid results and the ability to obtain market priced bids. Resolution BC-05-23-12-B concluded with the statement that any positive outcomes of the sole source requirement were undermined by long term negative effects of being able to obtain competitive market bidding and the bidding process such that rescinding resolution BC-11-24-10-C was a necessary action.

Since the purpose of this Law is the maximum utilization, not the exclusive utilization, of Indian workers and businesses, and the Law purposefully intends not to provide exclusive utilization, or sole sourcing, to Oneida or Indian owned businesses based on its prior negative effects on the Nation, and in an effort to encourage competitive bidding, there is no revision to the Law recommended based on this comment.

### ***LOC Consideration***

The Legislative Operating Committee determined there was no revision to the Law needed based on these comments. The Legislative Operating Committee reiterates that the purpose of this Law is the maximum utilization, not the exclusive utilization, of Indian workers and businesses. The Law purposefully intends not to provide exclusive utilization, or sole sourcing, to any Oneida or Indian owned businesses – which has occurred in the past with negative effects. Instead, the Law provides an advantage to Oneida or Indian owned businesses through the Indian preference percentage discount that is applied to contract bids, which still encourages competitive bidding to occur without sacrificing an Indian preference advantage.

### **Comments 15 through 16 – Indian Preference References in Federal Law:**

**Jeffrey S. House (oral):** Interestingly, the Office of Native American Programs issued guidance for the Native American Housing Assistance and Self-Determination Reauthorization Act, or NAHASDA, of 2008 with regards to regulatory changes relating to Indian Preference and tribal preference.

A notice issue on July 11, 2013, just three months after the OBC resolution, outlined Indian Preference and tribal preference. The guidance, which is now Title 25 of the United States Code, Chapter 14 Subchapter II Sec. 450e (2) - Wage and Labor Standards, states that preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 1452 of this title. Indian-owned economic enterprise, as defined by section 1452, means any Indian owned as defined by the Secretary of the Interior commercial, industrial, or business activity established or organized for the purpose of profit: Provided, that such Indian ownership shall constitute not less than fifty-one (51) per centum of the enterprise.

The guidance on Tribal Preference further states that when an Indian Tribe has adopted a tribal preference law, regulation, or ordinance governing preference in employment and contracting, that Tribal Preference law will govern any preferences in employment and contracting under the Indian Housing Block Grant program. 25 USC 4111 (k) states: “notwithstanding any other provision of law, with respect to any grant or portion of a grant made on behalf of an Indian tribe under this chapter that is intended to benefit a Indian tribe, the tribal employment and contract preference laws, including regulations and tribal ordinance, adopted by the Indian tribe shall receive the benefit \apply with respect to the administration of the grant or portion of a grant.”

That’s it, good thing I submitted them.

**Jeffrey S. House (written):** Interestingly, the Office of Native American Programs (ONAP) issued guidance for the Native American Housing Assistance and Self-Determination Reauthorization Act (NAHASDA) of 2008 with regards to regulatory changes relating to Indian Preference and tribal preference. A notice issue on July 11, 2013, just three months after the OBC resolution, outlined Indian Preference and tribal preference. The guidance, which is now Title 25 of the United States Code, Chapter 14 Subchapter II Sec. 450e (2) - Wage and Labor Standards, states that “preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 1452 of this title.” Indian-owned economic enterprise, as defined by section 1452, means any Indian owned (as defined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit: Provided, that such Indian ownership shall constitute not less than 51 per centum of the enterprise. The guidance on Tribal Preference further states that when an Indian Tribe has adopted a tribal preference law, regulation, or ordinance governing preference in employment and contracting, that Tribal Preference law will govern any preferences in employment and contracting under the Indian Housing Block Grant program. 25 USC 4111 (k) states: “notwithstanding any other provision of law, with respect to any grant (or portion of a grant) made on behalf of an Indian tribe under this chapter that is intended to benefit 1 Indian tribe, the tribal employment and contract preference laws (including regulations and tribal ordinances) adopted by the Indian tribe that receives the benefit shall apply with respect to the administration of the grant (or portion of a grant).”

Another example is 25 CFR Part 170.910 under the Tribal Transportation Program (TTP), which states: “Indian organizations and Indian-owned economic enterprises are entitled to a preference, to the greatest extent feasible, in the award of contracts, subcontracts, and sub-grants for all work performed under the TTP.” Included in this testimony is attachment A, a letter from the Department of Interior, Bureau of Indian Affairs, Branch of Road Tony Saccoman to Chairman Tehassi Hill stating “It is allowable under the Tribal Transportation Program (TTP) laws and regulations (FAST Act and 25 CFR Part 170), for Tribes to complete engineering and construction work with qualified in-house Tribal employees and/or Tribal-owned companies without implementing the formal solicitation/bid process for those services or activities.”

This is allowed in many US Federal Acquisition Regulations (FAR), Code of Federal Regulations (CFR), and related federal laws. For example, in 13 CFR part 124 – 8a, the US Small Business Administration allows contracting officers to sole-source work to small disadvantaged businesses, woman-owned businesses, veteran and service disabled veteran-owned businesses up to \$9.9 million without justification and up to \$22 million with justification.

There is additional language in Public Law 93-638 using the same language and these are just a few examples. The point is the USC, FARs, and other federally mandated procurement regulations provide for preference for tribal economic enterprises and tribally owned corporations and so too should the Oneida Nation.

### ***Response***

The commenter provides information on various references to Indian preference and tribal preference within the federal laws and regulations. The commenter states that the federal regulations provide for preference for tribal economic enterprises and tribally owned corporations and so too should the Oneida Nation.

The Nation does indeed provide a preference to Indian-owned businesses, including Tribal corporations, through the Indian Preference in Contracting law. The Constitution and Bylaws of the Oneida Nation provides for the Oneida Nation's sovereignty, and ability to promulgate and enforce its own laws and ordinances. [Article IV, Section 1(f)]. The Legislative Procedures Act, adopted by the General Tribal Council in 2013, further provides a process for the development and adoption of laws of the Nation. [1 O.C. 109.1-1].

Through this Law certified Indian-owned businesses are given preference through the use of an Indian preference percentage discount on contract bids. [5 O.C. 502.6-9, 502.6-10]. When more than one (1) bid is received on a contract, the specific Indian preference discount is applied based on whether the contract is a construction contract or non-construction contract, and the specific dollar amount of the contract. [5 O.C. 502.6-9, 502.6-10]. After the appropriate Indian preference discount has been subtracted from bids from certified Indian-owned businesses, 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. [5 O.C. 502.6-11(a)].

Since the Nation does in fact provide preference to Indian-owned businesses, including Tribal corporations, through the use of this Law, there is no revision to the Law recommended based on this comment.

### ***LOC Consideration***

The Legislative Operating Committee appreciated the background and information on how federal policies and regulations incorporate Indian preference and tribal preference, but determined that no revision to the Law was needed based on these comments.

### **Comment 17 – Applying Indian Preference to Contract Bids:**

#### **502.6. Application of Indian Preference to Contracts**

**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:

- (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

**Jeffrey S. House (written):** Although not contained in the law, we are aware that the Indian Preference Office uses a scoring formula when evaluating qualified bidders. Tribal Corporations should receive maximum allowable points for all construction and non-construction contracts. Also, the law should define the qualifiers used in the scoring system.

### ***Response***

The commenter provides that he is aware that although not contained in the Law, the Indian Preference Office uses a scoring formula when evaluating qualified bidders. The commenter then states that the Law should define the qualifiers used in the scoring system, and that Tribal corporations should receive the maximum allowable points for all construction and non-construction contracts.

The Law sets forth various criteria for the certification of an Indian-owned business. [5 O.C. 502.5-1(a)-(c)]. Once an entity has been certified as an Indian-owned business, the entity is eligible for an Indian preference percentage discount to be applied to its bids on both construction and non-construction contracts. [5 O.C. 502.6-9, 502.6-10]. The amount of the Indian preference percentage discount to be applied is set forth by the Law, and is dependent on whether the contract is a construction or non-construction contract, and the specific dollar amount of the bid. [5 O.C. 502.6-9, 502.6-10]. Under the Law, as long as an entity is certified as an Indian-owned business, then the entity should be receiving the Indian preference percentage discount that is provided by the Law for the specific contract type and dollar amount. The Law does not qualify the amount of Indian preference percentage discount that is applied to a certified entity's bid to be based on any additional scoring.

It is important to note that Indian preference is just one aspect of a greater overall scoring system for evaluating contract bids.

Therefore, the Legislative Operating Committee should consider communicating with the Indian Preference Office to ensure that the Law is being applied correctly in terms of how an Indian preference percentage discount is currently being applied to contract bids of certified entities. But since the Law is already clear on how preference is applied to contract bids, there is no revision to the Law recommended based on this comment.

### ***LOC Consideration***



The Legislative Operating Committee determined that there was no revision to the Law needed based on this comment since the Law is clear on how Indian preference should be applied to contract bids. The Legislative Operating Committee decided that communication will be sent to the Indian Preference Office to ensure that the Law is being complied with correctly in terms of how an Indian preference percentage discount is currently being applied to contract bids of certified entities.

## **Comment 18 – Compliance Agreements:**

### **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.

### **502.8. Skills Bank and Qualified Trades Workers**

**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.**

**Jeffrey S. House (written):** We fully support the purpose of the law “of maximum utilization of Indian workers.” The Compliance Agreement in Section 502.7-2, (a) states that the agreement shall include “Negotiate Numerical hiring goals and time tables that specify the minimum number of Indians that must be utilized per contract dollar.” The Indian Preference Law should recognize that business and contractors may have nontrade qualifications, such as possession of a valid non-probationary driver’s license, passing a background check, and passing a drug screen. The Oneida Nation includes such language for its employees.

### ***Response***

The commenter mentions that a compliance agreement is required to include numerical hiring goals and timetables that specify the minimum number of Indians that must be utilized per contract dollar, but wants to Law to recognize that businesses and contractors may have additional non-trade qualifications.

Once a bid is accepted, but before work commences on a project, the Law requires that each contractor meet with the Indian Preference Office to negotiate and execute a compliance agreement. [5 O.C. 502.7-1]. The compliance agreement is required to include the numerical hiring goals and timetables that specify the minimum number of Indians that must be utilized per contract dollar, as well as what the compensation of qualified trades workers would be. [5 O.C. 502.7-2]. This is required because it is a goal of the Nation to achieve one hundred percent (100%) participation of qualified trades workers on projects. [5 O.C. 502.8-1].

The Indian Preference Office is tasked with the responsibility of establishing and administering a Skills Bank representing the official compilation of qualified trades workers eligible for Indian preference which serves as the exclusive referral source under this list. [5 O.C. 502.8-1, 502.8-2]. The Skills Bank lists the names and qualifications of the qualified trades workers. [5 O.C. 502.8-2]. When a certified entity is required to fill positions in accordance with this Law, like when required to in order to comply with numerical hiring goals of a compliance agreement, the certified entity shall hire qualified trades workers from the Skills Bank. [5 O.C. 502.8-3].

The Law then goes on to provide that placing an applicant in the Skills Bank as a qualified trades worker confers recognition that he or she is eligible to receive Indian preference. [5 O.C. 502.8-5]. But a qualified trades worker shall only 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. [5 O.C. 502.8-5]. This provision takes in account that businesses and contractors have additional minimum non-trade qualifications that would need to be met by a qualified trades worker.

Since the Law already provides that a qualified trades worker is only qualified for Indian preference for employment if he or she meets the minimum qualifications for a particular skill or trade, there is no revision to the Law recommended based on this comment.

### ***LOC Consideration***

The Legislative Operating Committee determined that there is no revision to the Law needed based on this comment since the Law already provides that a qualified trades worker is only qualified for Indian preference for employment if he or she meets the minimum qualifications for a particular skill or trade.

## **Comment 19 – Qualifications of Qualified Trades Workers :**

### **502.8. Skills Bank and Qualified Trades Workers**

**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.**

**Jeffrey S. House (written):** We note that Section 8-4 (c) includes the proof of a driver's license but it should also state that the applicant should possess a valid non-probationary driver's license. Section 502.8-4 should also provide that the contractor may have additional non-trade related qualification such as passing a background check and drug screen.

### ***Response***

The commenter states that the requirement of section 502.8-4(c) that an applicant submit proof of a driver's license, including any endorsements, if applicable, should instead require a non-probationary driver's license. The commenter also states that this section of the Law should provide that the contractor may have additional non-trade related qualifications.

Section 502.8-4 of the Law provides what documentation an applicant is required to provide in addition to an application in order to be added to the Nation's Skills Bank. Documentation that is required to be provided by an applicant includes:

- proof of enrollment or proof that the individual is a first-generation descendant of the Nation;
  - education; including degrees, diplomas, apprenticeships, internships or continuing education training related to the field;
  - proof of a driver's license, including any endorsements, if applicable;
  - 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:
    - past and current licensing;
    - credentials and certifications; and
    - information related to penalties or punitive actions taken by any licensing body within the past ten (10) years.
- [5 O.C. 502.8-4(a)-(d)].

Since section 502.8-4 reflect the Nation's requirements for the documentation an applicant for the Skills Bank is required to submit, and does not reflect the specific qualifications to be hired by a business or contractor as a qualified trades worker, it would be unnecessary to include a statement that the contractor may have additional non-trade related qualifications in this provision of the Law.

The Law does clarify that placing an applicant in the Skills Bank as a qualified trades worker confers recognition that he or she is eligible to receive Indian preference, but a qualified trades worker shall only 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. [5 O.C. 502.8-5]. This provision takes in account that businesses and contractors have additional minimum non-trade qualifications that would need to be met by a qualified trades worker.

Additionally, the commenter provides no explanation as to why a valid non-probationary driver's license should be specified in section 502.8-4(c) of the Law instead of its current language of a driver's license, which already implies the necessity of its validity.

Since the purpose of this provision of the Law is to provide the documentation that is required to be submitted by an applicant for the Skills Bank, and the Law later clarifies that placement in the Skills Bank means the qualified trades worker is eligible to receive Indian preference but is not eligible for employment unless he or she meets the minimum qualifications for the skill or trade, there is no revision to the Law recommended based on this comment.

### ***LOC Consideration***

The Legislative Operating Committee determined that there is no revision to the Law needed based on this comment since the Law already provides that a qualified trades worker is only qualified for Indian preference for employment if he or she meets the minimum qualifications for a particular skill or trade.

### **Comment 20 – Oneida ESC Group's Willingness to Follow Law:**

**Jeffrey S. House (written):** Oneida ESC Group is proud to follow the Indian Preference in Contracting Law. We work diligently in hiring qualified Indian talent, and working with Native American owned companies, particularly Oneida-owned businesses. We have a strong record of complying with Indian Preference in Contracting Law and working with the Indian Preference Office and we look forward to hiring more qualified trade workers who are Oneida.

### ***Response***

The commenter states that the Oneida ESC Group will comply with the Law. There is no revision to the Law recommended based on this comment.

### ***LOC Consideration***

The Legislative Operating Committee determined that there is no revision to the Law needed based on this comment.

### **Comments 21 through 22 – Additional Preference for Tribal Corporations:**

**Jeffrey S. House (written):** Without adoption of some of these recommend changes, the law provides little effective preference for Tribal Corporations when the Nation is within its rights and obligations. Other than Indian Preference to Construction Contracts discount found in Section 502.6-10, there are no other preferences given to Tribal Corporations.

Tribal Corporations are valuable assets to the long-term economic strength of the Nation. Prudent, effective preferences that will increase the proper use of these assets will strengthen the Nation's economic stability and will empower Tribal Corporations to grow and increase the economic benefits for the Nation—a core objective of the Section 502.1-1.

Because the Nation invests in these business and corporations, the Nation should utilize them to their fullest capacity to maximize the economic benefits and return on the Nation's investments. Thank you.

**Eric McLester (written):** The law should support and drive business back to the corporations the Tribe has created to allow for those businesses to be as successful as possible.

Thank you for the opportunity to provide feedback on the amendments to the Indian Preference Law.

### ***Response***

Both commenters express the belief that Tribal corporations should be given more preference under the Law, and that business should be driven to the Tribal corporations so that they may be successful.

The purpose of the 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. [5 O.C. 502.1-1]. The policy of the Nation is 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. [5 O.C. 502.1-1].

It is not the intent or purpose of this Law to treat Tribal corporations differently than other Indian-owned businesses or workers. The goal of this Law is the maximum, not exclusive, utilization of Indian businesses and workers. It is the policy that Indian preference provisions are applied fairly in all situations.

The commenter states that “*the law provides little effective preference for Tribal Corporations*” and that “*Other than Indian Preference to Construction Contracts discount found in Section 502.6-10, there are no other preferences given to Tribal Corporations.*” This comment fails to acknowledge that Tribal corporations are being provided the full extent of preferences that are provided by this Law, the same preferences that are provided to any certified Indian-owned



business. The sole preference that is provided to certified Indian-owned business under this Law is in fact the Indian preference percentage discounts on contracts. [5 O.C. 502.6-9, 502.6-10].

The response to Comments twelve (12) through fourteen (14) in this memorandum provides a more in-depth response to the request to exclusively utilize Tribal corporations. The request to increase business and profits of Tribal corporations through providing additional preferences not available to other Indian owned businesses or through the exclusive use of Tribal corporations is not consistent with the intent of this Law. The Indian preference percentage discounts on contracts that is provided by this Law allocates a preference to Indian-owned businesses while still encouraging competitive bids and good work ethic amongst the companies, which ensures that the Nation is getting the best price and service for the project. Therefore, there is no revision to the Law recommended based on this comment.

### ***LOC Consideration***

The Legislative Operating Committee determined that there is no revision to the Law needed based on these comments. The Legislative Operating Committee reiterates that the purpose of this Law is the maximum utilization, not the exclusive utilization, of Indian workers and businesses. The Indian preference percentage discounts on contracts that is provided by this Law allocates a preference to Indian-owned businesses while still encouraging competitive bids and good work ethic amongst the companies, which ensures that the Nation is getting the best price and service for the project.