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## **INDIAN OWNED BUSINESS REQUIREMENTS POLICY**

### **I. PURPOSE**

The Oneida Nation recognizes the need to maximize economic benefit derived by the increased construction on the Oneida Reservation and desires to achieve this purpose by affording “Indian-Owned Businesses” the maximum opportunity to supply materials and services in the direct and indirect performance of all contracts and executed construction agreements, consistent with contractual standards and specifications.

### **II. GOAL**

The goal of the Oneida Nation is to achieve the target objective of one hundred percent (100%) participation of Indian-Owned Businesses in construction within the boundaries of the Oneida Reservation. This goal will be achieved by the “Indian-Owned Business Policy.”

### **III. DEFINITIONS**

“Indian-Owned Business” - A for profit business which is majority-owned, managed and 51% minimal share of the net profits distributed to “American Indians” and is certified as Indian Preference eligible by the Compliance Division of the Oneida Nation in Wisconsin.

### **IV. AUTHORITY**

The Oneida Compliance Division has the authority and power to monitor Construction Manager/General Contractor, as well as all Trade Contractors, regardless of tier, to insure maximum use of “Indian-Owned Business” for services and/or supplies and materials in accordance with the following conditions, requirements and procedures with target objectives of one hundred percent (100%) participation of “Indian-Owned Business” for the duration of the construction contract.

### **V. CONDITION OF TRADE CONTRACTS**

Each Trade Contractor, as a condition to the receipt of every construction contract of any type, will commit itself to the maximum use of “Indian-Owned Business” in procurement of services and/or supplies and materials.

### **VI. PROVISIONS**

The following is understood to enlist the maximum use of “Indian-Owned Business” under this contract:

- A. For the purposes of use of services and/or supplies and materials on the project, the Oneida Compliance Officer and each Trade Contractor, regardless of tier, will monitor the use of services and/or supplies and materials procured from “Indian-Owned Business” for achievement of the goal of utilization of all qualified and available “Indian-Owned Business”, with target objectives of one hundred percent (100%) participation
- B. An “Indian-Owned Business” is not required to be affiliated with organized labor.

- C. Preference for project business opportunities will be given to the following “Indian-Owned Business” who is certified by the Oneida Compliance Division
1. Indian Individuals (sole proprietor)
  2. Indian Partnerships
  3. Indian Corporations
  4. Joint ventures that utilize qualified “Indian-Owned Business”
- D. Preference requires that all bidders must include documentation showing solicitation to at least one available “Indian-Owned Business” with their bid and specific written documentation as to how participation by “Indian-Owned Business” will be achieved at the time of the post-bid interview.
- E. Participation as well as Preference shall be required on each segment of the project including, but not limited to:
1. Construction (supply labor and materials)
  2. Construction Supplies (supply materials)
  3. Professional Services
- F. The Preference percentage is based on a sliding scale inversely to the contract amount. The lowest apparent bid is compared to the lowest qualified “Indian-Owned Business” bid:
1. If the “Indian-Owned Business” bid amount is less than the total of the apparent low bid, adding in the Preference adjustment, then Preference is invoked and the contract is awarded to the “Indian-Owned Business.”
  2. If none of the “Indian-Owned Business” bids fall within the Preference range, the contract then goes to the lowest responsible bidder.
- G. If the Owner approves alterations or additions to the work, and an “Indian-Owned Business” is affected, the Trade Contractor will involve the affected “Indian-Owned Business” in all changes to the Trade Contractor’s work in a manner consistent with the original contract.
- H. A trade Contractor can only count towards “Indian-Owned Business” participation, those dollars which are expended with Indian-owned businesses who have been certified by the Oneida Compliance Division.
- J. The objective of maximum participation of “Indian-Owned Business” under this contract may be achieved by one, or a combination of, the methods described below:
1. Joint Venture Agreement - The Trade Contractor may utilize an “Indian-Owned Business” with a Joint Venture Agreement for the construction or professional services required on the project. The

Joint Venture Agreement must be pre-approved/certified by the Oneida Compliance Division.

2. Negotiated Contract - The Trade Contractor may utilize an “Indian-Owned Business” as a subcontractor on a negotiated contract basis.
3. Competitive Bidding - The Trade Contractor may utilize an “Indian-Owned Business,” as a subcontractor who has submitted the lowest responsible bid. Should an “Indian-Owned Business” come within the established Preference percentages of the lowest responsible bid, the Owner retains the right to invite such “Indian-Owned Business” to participate in the construction project at the actual additional cost incurred.
4. Solicitation & Documentation - In the event that the Trade Contractor anticipates that it will be unable to meet the objectives of this agreement by any of the three (3) methods listed above, then the Trade Contractor is required to solicit the involvement of “Indian-Owned Business” by certified letters, as described below, allowing those businesses adequate time to develop and submit bid proposals. A list of current Indian-owned businesses is maintained by the Oneida Compliance Division.
  - a. Solicitation Letters - Each Trade Contractor will send letters by certified mail to a minimum of six (6) Indian-owned businesses in order to ascertain their interests and availability to participate as either Trade Contractor and/or vendor for services and/or supplies and materials. In the event that mail solicitation is not feasible due to time constraints, bidders may solicit proposals from that business by facsimile, confirmed by certified mail. Documentation will include copies of all certified letters and documentation of other efforts to solicit bids from “Indian-Owned Business” and such copies must be submitted to the Oneida Compliance Division upon request.
  - b. Response - If the certified letters do not result in responses from fifty percent (50%) of those Indian-owned businesses to which letters were sent, the Trade Contractor must solicit responses by telephone or personal interview until responses are received from at least fifty percent (50%). A “response” for the purpose of this section will include a proposal by the Trade Contractor along with the “Indian-Owned Business” for a: (1) joint venture; (2) negotiated contract; (3) competitive bid; or (4) a written reply by same “Indian-Owned Business,” that no proposal will be submitted.

- K. Compliance with “Indian-Owned Business” requirement are:
1. Monitored by the Oneida Compliance Officer who will be the sole contact between the Construction Manager/General Contractor or Trade Contractors, regardless of tier, and the “Indian-Owned Business” utilized pursuant to this policy.
  2. Reports by all Trade Contractors, regardless of tier, to the Construction Manager/General Contractor at the time and /or interval requested below for the duration of project involvement, in the following format and/or procedures:
    - a. Letters of Intent - When an “Indian-Owned Business” is utilized, the Trade Contractor will be required to submit copies of executed letters of intent to the Construction Manager/General Contractor. Such letter will set forth the type and scope of the work to be performed by the “Indian-Owned Business” along with the estimated dollar amount of the contract. Copies of such letters must be submitted to the Oneida Compliance Division upon request.
    - b. Utilization of Indian-Owned Business Form - The Trade Contractor must complete the “Utilization of Indian-Owned Business Form” (Attachment III), which includes the total dollar amount of “Indian-Owned Business” involvement.
    - c. Monthly Reports - The Trade Contractor must submit monthly, “The Indian-Owned Business” Report (Attachment IV), with each payment request to enable the Construction Manager/General Contractor to monitor and enforce the “Indian-Owned Business” policy as well as any lower tier Trade Contractor commitments, showing the work category, description of work, “Indian-Owned Business” Sub-Contractors/Supplier’s name and contact person, contract amount, percentage completed and amount paid to date.
- M. In the event that a dispute may arise concerning “Indian-Owned Business” regarding, but not limited to the following:
1. the Compliance obligations of the Construction Manager/General Contractor or specific Trade Contractor; or
  2. qualification or performance of an “Indian-Owned Business;” or
  3. contract, wages, certification or interpretations of this policy.

The Construction Manager/General Contractor of specific Trade Contractor, will cooperate in good faith with the Oneida Compliance Officer toward a mutually satisfactory resolution of the dispute.

N. The “Indian-Owned Business” requirements, after thorough review by the Oneida Compliance Division, may be waived for a specific Trade Contractor. The Oneida Compliance Officer will weigh the following circumstances in the request to waive the “Indian-Owned Business” requirements:

1. where services and/or materials and supplies are available from only a single source, as documented to the satisfaction of the Oneida Compliance Officer, that there are reasonable grounds for non-compliance with the requirements of this policy; or
2. where an emergency requires the immediate procurement of services and/or materials and supplies, provided that the proposed source of the materials, supplies or service, is currently pre-qualified to do business with the Oneida Nation and does not have a prior breach of “Rider I” requirements; or
3. where the Trade Contractor has made a significant and documented good faith effort to achieve compliance or can demonstrate to the satisfaction of the Oneida Compliance Officer that compliance is not practical for reasons other than pricing.

If the Trade Contractor waiver is deemed justified as reasonable by the Oneida Compliance Officer, the Trade Contractor will be required to implement a written work plan with the assistance and approval of the Oneida Compliance Officer as to how the “Indian-Owned Business” requirements will be met by methods other than previously described in this document.

O. All firms requiring further clarification of the “Indian-Owned Business” requirement and/or assistance in complying with this policy should contact the Compliance Division Officer for the Oneida Nation in Wisconsin.

## **VII. BREACH OF POLICY**

Failure to follow this “Indian-Owned Business” policy will be considered a breach of contract and will be enforceable as set forth by the terms of the original construction contract for a breach of contract