

ONEIDA NATION PUBLIC MEETING NOTICE

WEDNESDAY, OCTOBER 15, 2025, 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](https://oneida-nsn.gov/government/register/public%20meetings)



Send Public Comments to

LOC@oneidanation.org

Ask Questions here

LOC@oneidanation.org

920-869-4417

INDEPENDENT CONTRACTORS LAW AMENDMENTS

The purpose of the Independent Contractors law is to require proper worker classification to ensure the Nation's compliance with tax regulations.

The Independent Contractors law amendments will:

- ♦ Clarify in the definitions what it means to qualify as an “employee” versus an “independent contractor.”
- ♦ Clarify in the definitions what it means to have the “scope of work,” including updated definitions of “deliverables” and “services.”
- ♦ Require the Nation to categorize all workers as either an “employee” or “independent contractor” according to guidance issued from the U.S. Department of Labor, the U.S. Internal Revenue Service and according to the Fair Labor Standards Act.
- ♦ Clarify the approval requirements for an independent contractor, including the contract, purchase order, vendor license, and tax identification number.
- ♦ Clarify “conflict of interest.” It will no longer be a conflict of interest for the Nation to hire an employee as an independent contractor if it is within a different division than the division in which the employee works, even if the work the employee would be providing as an independent contractor is substantially similar to the work they do as an employee.

Individuals may attend the public meeting for the proposed Independent Contractors law amendments in person at the Norbert Hill Center, or virtually through Microsoft Teams. If you wish to attend the public meeting through Microsoft Teams please contact LOC@oneidanation.org.

PUBLIC COMMENT PERIOD CLOSES WEDNESDAY, OCTOBER 22, 2025

During the public comment period, anyone may submit written comments, questions or input. 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.



For more information on the proposed Independent Contractor law amendments please review the public meeting packet at [oneida-nsn.gov/government/register/public meetings](https://oneida-nsn.gov/government/register/public%20meetings).



INDEPENDENT CONTRACTORS LAW AMENDMENTS LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

<i>Analysis by the Legislative Reference Office</i>	
Intent of the Legislation or Amendments	<ul style="list-style-type: none">▪ Rename the law from “Independent Contractor Policy” to “Independent Contractors.” [5 O.C. 503].▪ Clarify the purpose of this law is to require the Nation to properly classify its workers for compliance with tax regulations. [5 O.C. 503.1-1].▪ Clarify in the definitions what it means to be an “employee” versus an “independent contractor.” [5 O.C. 503.3-1(b); 503.3-1(d)].▪ Clarify in the definitions what it means to have the “scope of work,” including updated definitions of “deliverables” and “services.” [5 O.C. 503.3-1(f); 5 O.C. 503.3-1(a); 5 O.C. 503.3-1(g)].▪ Add in a requirement that the Nation must categorize all workers as either an employee or independent contractor according to guidance issued from the U.S Department of Labor, the U.S Internal Revenue Service and according to the Fair Labor Standards Act. [5 O.C. 503.4].▪ Clarify the approval requirements for an independent contractor; including, contract, purchase order, vendor license, and tax identification number. [5 O.C. 503.6].▪ Clarify what constitutes a conflict of interest. It will not be a conflict of interest for the Nation to hire an employee as an independent contractor if it is within a different division than the division in which the employee works, even if the work the employee would be providing as an independent contractor is substantially similar to the work they do as an employee. [5 O.C. 503.7].▪ Various grammatical changes and other minor changes throughout the law.
Purpose	The purpose of this law is to require proper worker classification to ensure the Nation’s compliance with tax regulations. [5 O.C. 503.1-1].
Affected Entities	The Nation’s Finance Department, Purchasing Department, Licensing Department, Risk Management Department, Oneida Law Office, all Oneida Nation employees, and all current and future independent contractors for the Nation.
Related Legislation	Oneida Vendor Licensing law, Conflict of Interest, Indian Preference in Contracting law, Fair Labor Standards Act.

Enforcement	<p>The Independent Contractors law requires the Nation to classify all workers as either an employee or an independent contractor. [5 O.C. 503.4]. The law also requires the Oneida Law Office to review and approve the contract for services; making sure the Nation has not waived sovereign immunity, worker classification is correct, and the contract sufficiently protects the Nation, and describes the scope of work. [5 O.C. 503.5-3].</p> <p>The law further specifies the approval requirements for any independent contractor. [5 O.C. 503.6].</p>
Due Process	<p>The Independent Contractors law requires the Oneida Law Office, the Oneida Purchasing Department, and the Oneida Risk Management Department to assist an independent contractor in executing a contract, obtaining a vendor license, if necessary, verifying insurance, and submitting appropriate tax information. [5 O.C. 503.6].</p>
Public Meeting	<p>A public meeting has not yet been held.</p>
Fiscal Impact	<p>A fiscal impact statement prepared in accordance with the Legislative Procedures Act has not been requested.</p>

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. **Background.** The Independent Contractor Policy was originally adopted by the Oneida Business Committee on July 27, 1994, by motion. The Oneida Business Committee adopted emergency amendments on February 15, 1995, through resolution BC-2-15-95-A; on July 5, 1995, through resolution BC-7-5-95-B; on April 25, 2012, through resolution BC-04-25-12-E and extended those emergency amendments on October 10, 2012, through resolution BC-10-10-12-B. The Oneida Business Committee adopted amendments on February 27, 2013, through resolution BC-02-27-13-A.
- B. **Request for Amendments.** This item was added to the Active Files List on June 19, 2024, at the request of RaLinda Ninham-Lamberies, the Nation’s Chief Financial Officer to ensure the Nation is adequately reporting to the U.S Internal Revenue Service any independent contractor relationships. The sponsor of the Independent Contractors law amendments is Councilman Jonas Hill.

SECTION 3. CONSULTATION AND OUTREACH

- Representatives from the following departments participated in the development of the amendments to this Law:
 - Finance Department;
 - Purchasing Department;
 - Licensing Department;
 - Risk Management Department; and
 - Oneida Law Office.
- The following laws and policies of the Nation were reviewed in the drafting of this analysis:

- Vendor Licensing law [5 O.C. 506];
- Indian Preference in Contracting law; [5 O.C 502]; and
- Conflict of Interest law [2 O.C 217].
- The following laws and policies of the United States were reviewed in the drafting of this analysis:
 - The Fair Labor Standards Act [29 U.S.C §201-219];
 - United States Department of Labor guidance, “Employee or Independent Contractor Classification Under the Fair Labor Standards Act” [29 C.F.R 795]; and
 - United States Internal Revenue Service guidance. [IRS, Independent contractor (self-employed) or employee? (June 20, 2025, 10:00 AM), <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee>].

SECTION 4. PROCESS

- A. The amendments to this Law comply with the process set forth in the Legislative Procedures Act.
 - On June 19, 2024, the Legislative Operating Committee added this Law to its Active Files List for amendments this legislative term an appointed Councilman Jonas Hill as the sponsor.
 - On August 6, 2025, the Legislative Operating Committee approved the draft of the Independent Contractor Policy amendments and directed that a legislative analysis be developed.
- B. At the time this legislative analysis was developed the following work meetings had been held regarding the development of the amendments to this law:
 - September 16, 2024: LOC work meeting with the Finance Department, Indian Preference Department, Purchasing Department, and Licensing Department;
 - November 8, 2024: LOC work meeting with Finance Department and Purchasing Department;
 - January 23, 2025: LOC work meeting with Finance Department, Purchasing Department, and Licensing Department;
 - April 29, 2025: LOC work meeting with Finance Department, Indian Preference Department, Purchasing Department, and Licensing Department;
 - June 20, 2025: LOC work meeting with Finance Department, Indian Preference Department, Purchasing Department, and Licensing Department;
 - July 31, 2025: LOC work meeting with the Finance Department and Purchasing Department where the LOC informally approved the final draft.

SECTION 5. CONTENTS OF THE LEGISLATION

- A. **Purpose of the Law.** The proposed amendments to the Law clarify it is the purpose of this law to require the Nation to properly classify its workers for compliance with tax regulations. [5 O.C. 503.1-1].
 - *Effect.* The proposed amendments clarify that the Nation will classify all workers as either employees or independent contractors for compliance with Federal law and tax regulations.
- B. **Redefining “employee” and “independent contractor” and clarifying “Worker Classification.”** The proposed amendments require the Nation to follow Federal law and guidance issued from the U.S. Department of Labor and the U.S. Internal Revenue Service when classifying a worker as either an employee or an independent contractor. [5 O.C. 503.3-1(b); 503-1(d); 503.4].
 - *Effect.* The proposed amendments make clear that the Nation is required to follow Federal law and can use the most recent guidance from the U.S. Department of Labor and the U.S. Internal

- Revenue Service when classifying a worker as either an employee or an independent contractor. It is easier for the Nation to reference Federal law and guidance because it changes so often.
- C. **Clarifying the “Form of Contract.”** The proposed amendments clarify the requirements for the Nation to approve a contract with an independent contractor. The proposed amendments clarify that all contracts between the Nation and an independent contractor must meet the requirements of this law; which means all contracts: must not waive sovereign immunity; must accurately classify an independent contractor according to Federal law and Federal guidance; and must adequately protect the Nation’s assets. [5 O.C. 503.5].
- *Effect.* This proposed amendment clarifies that for an independent contractor to begin work for the Nation, the Nation and the independent contractor must execute a contract for services that meets the needs of Nation.
- D. **Redefining approval requirements.** The proposed amendments clarify the approval requirements between the Nation and an independent contractor. [5 O.C. 503.6].
- *Effect.* These proposed amendments clarify what is needed for the Nation to approve the work of an independent contractor; making it easier for the Nation and all independent contractors to identify what is needed.
- E. **Clarifying Conflict of Interest.** The proposed amendments clarify that even if the scope of work an independent contractor would provide is related to the work that the independent contract performs for the Nation as an employee, the Nation can still hire that employee as an independent contractor in a different division than the division in which that independent contractor works as an employee. [5 O.C. 503.7].
- *Effect.* This proposed amendment allows the Nation to contract with employees but still protects the Nation by requiring any employee that may be hired as an independent contractor, be hired in a different division from the division where that independent contractor works as an employee.
- F. **Other amendments.** Overall, a variety of other amendments and revisions were made to the law to address formatting, drafting style, and organization that did not affect the substance of the law.

SECTION 6. EXISTING LEGISLATION

- A. **Related legislation.** The following laws and policy of the Nation are related to the proposed amendments to this law:
- *Vendor Licensing.* The Vendor Licensing law is currently being amended by the Legislative Operating Committee. One proposed amendment is to change the purpose of the Vendor Licensing law. Currently, “[t]he purpose of the Vendor Licensing law is to regulate and license all vendors who provide a service for and do business with the Oneida Nation and provide revenue for the Nation by collecting fees from vendors for a license to perform a service for or do business with the Nation.” [5 O.C. 506.1-1]. The proposed amendments make the purpose of the Vendor Licensing law to regulate and license vendors who provide deliverables or services for and do business with the Oneida Nation and ensure the Nation’s safety, regulate compliance, minimize risk, and protect the Nation’s assets. [5 O.C. 506.1-1].
 - According to the Vendor Licensing law, any vendor that is not exempt from obtaining a vendor license must follow certain procedures. [5 O.C 506.5].

- 106 ▪ To obtain a new vendor license a vendor must demonstrate adequate insurance
107 coverage, must complete a Cyber Security Risk Assessment and Technology
108 Assessment. [5 O.C 506.5-2; 5 O.C 506.5-3].
- 109 ▪ The proposed amendments to the Vendor Licensing law would no longer require
110 a vendor to pay a licensing fee. Currently, the law requires a fee for new vendor
111 license applications and renewal applications. [5 O.C 506.6].
- 112 ▪ The proposed amendments to the Independent Contractors law align with the
113 proposed amendments and the current version of the Vendor Licensing law by
114 incorporating the requirements of obtaining a vendor license into the requirements
115 of being contracted as an independent contractor for the Nation. [5 O.C 503.6].
- 116 ▪ *Indian Preference in Contracting.* The purpose of this law is to establish an Indian Preference
117 Office and increase economic benefits for the Nation and members of the Nation by providing
118 for the maximum utilization of Indian workers and businesses on projects of the Nation which
119 occur on or near the Reservation. [5 O.C. 502.1].
 - 120 ▪ This law expects the Nation to apply Indian preference fairly in all situations and
121 to ensure that all entities that execute contracts with the Nation utilize a labor force
122 of Indian workers and businesses. [5 O.C 502.1-2].
 - 123 ▪ The proposed amendments to the Independent Contractor Policy align with the
124 Indian Preference in Contracting law by still allowing the Nation to utilize Indian
125 preference in contracting but clarifying that even if there is only one independent
126 contractor available and even if that independent contractor qualifies for Indian
127 preference, the Nation still may not hire that independent contractor to perform the
128 same work in the same division in which that independent contractor already works
129 for the Nation as an employee. [5 O.C. 503.7-1(b)(2)].
- 130 ▪ *Conflict of Interest.* The Conflict of Interest law is currently being amended by the
131 Legislative Operating Committee. Currently, “[t]he purpose of this law is for the Nation to
132 ensure that all employees, contractors, elected officials, political appointees, appointed and
133 elected members and all others who may have access to information or materials that are
134 confidential or may be used by competitors of the Nation’s enterprises or interests be subject
135 to specific limitations to which such information and materials may be used in order to
136 protect the interests of the Nation.” [2 O.C. 217.1-1]. The proposed amendments clarify who
137 this law applies to and makes the purpose of the Conflict of Interest law to “ensure that all
138 employees or contractors who have access to information or materials that are confidential or
139 may be used by competitors of the Nation’s enterprises or interests be subject to specific
140 limitations to which such information and materials may be used in order to protect the
141 interests of the Nation.” [2 O.C. 217.1-1].
 - 142 ▪ According to the Conflict of Interest law there is a presumed conflict of interest
143 any time an employee of the Nation seeks to contract with the Nation. [2 O.C.
144 217.5-1].
 - 145 ▪ The Conflict of Interest law prohibits an employee from contracting with the
146 Nation as an independent contractor within the same scope for which they are
147 employed by the Nation. [2 O.C. 217.5-4(a)].

- The Conflict of Interest law further prohibits an employee from contracting with the Nation as an independent contractor within the same divisional budget for which the employee is employed by the Nation. [2 O.C. 217.5-4(b)].
- However, the Legislative Operating Committee is currently amending the Conflict of Interest law to remove this prohibition and allow the Nation to hire employees as independent contractors within the same scope for which they are employed as an employee but only if it is within a different division. [2 O.C. 217.5-4(a)].
- The proposed amendments to the Independent Contractors law align with the proposed amendments to the Conflict of Interest law and reflect the Nation’s desire to allow employees to work for the Nation as independent contractors while still protecting the Nation and avoiding conflicts of interest. [2 O.C. 217.5-4(a); 217.5-4(b)].

SECTION 7. ENFORCEMENT AND ACCOUNTABILITY

- A. The proposed amendments make it clearer the Nation is responsible for properly classifying its workers and what Federal guidance the Nation should follow to properly classify its workers. [5 O.C. 503.4].
- B. The proposed amendments clarify all information the Nation must obtain in order to properly contract with an independent contractor. [5 O.C. 503.6].
- C. The proposed amendments require the Nation to properly classify a worker as an independent contractor, properly execute a contract for scope of work, and meet all approval requirements before an independent begins working for the Nation. [5 O. C. 503.5; 503.5-6].
- D. The proposed amendments, in conjunction with the proposed amendments to the Conflict of Interest law, clarify that there will be no conflict of interest for the Nation to hire an employee as an independent contractor in a different division from the division in which the employee works, even if the contracted scope of work is similar to the work the employee does for the Nation. [5 O.C. 503.7-1(b)(2)].

SECTION 8. OTHER CONSIDERATIONS

Fiscal Impact. Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [1 O.C. 109.6-1]. Oneida Business Committee resolution BC-10-28-20-A titled, “*Further Interpretation of ‘Fiscal Impact Statement’ in the Legislative Procedures Act,*” provides further clarification on who the Legislative Operating Committee may direct to complete a fiscal impact statement at various stages of the legislative process, as well as timeframes for completing the fiscal impact statement.

- **Conclusion.** The Legislative Operating Committee has not yet directed that a fiscal impact be completed.

Title 5. Business – Chapter 503-
INDEPENDENT ~~CONTRACTOR POLICY~~ CONTRACTORS

503.1. Purpose and Policy
503.2. Adoption, Amendment, Repeal
503.3. Definitions
~~503.4. Application~~

~~503.45.~~ Worker Classification
~~503.56~~ Form of Contract
~~503.67~~ Approval Requirements
~~503.7~~ Conflict of Interest

503.1. Purpose and Policy

503.1-1. *Purpose.* The purpose of this ~~Independent Contractor Policy~~ law is to require proper worker classification to ensure the Nation's compliance with tax regulations. ~~regulate the hiring of persons to complete work in order to minimize the costs of Independent Contractors.~~

503.1-2. *Policy.*

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

(b) It is further the policy of the ~~Tribe~~ Nation that the order of preference, as set out in the ~~Tribe's~~ Nation's Indian Preference Law, be used in the selection of independent contractors and in accordance with this law.

503.2. Adoption, Amendment, Repeal

503.2-1. This ~~policy~~ law was adopted by ~~motion of~~ the Oneida Business Committee by motion on July 27, 1994, and ~~was~~ amended by resolution BC-02-27-13-A.

503.2-2. This ~~policy~~ law may be amended ~~pursuant to the procedures set out in Tribal law or repealed~~ by the Oneida Business Committee or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

503.2-3. Should a provision of this ~~policy~~ law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this ~~policy~~ law which are considered to have legal force without the invalid portions.

503.2-4. In the event of a conflict between a provision of this ~~policy~~ law and a provision of another ~~policy~~ law, the provisions of this ~~policy~~ law shall control.

503.2-5. This ~~policy~~ law is adopted under authority of the Constitution of the Oneida ~~Tribe of Indians of Wisconsin~~ Nation.

503.3. Definitions

503.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Deliverable” means quantifiable goods and tangible or intangible products to be provided upon the completion of a project. ~~an object with specified content and format and must be adequately described as to final content.~~

(b) “Employee” means any individual who would qualify as an ‘employee’ of the Nation according to the Fair Labor Standards Act and the most current guidance issued from the U.S. Department of Labor and the U.S. Internal Revenue Service. ~~is employed by the Tribe and is subject to the direction and control of the Tribe with respect to the material details of the work performed, or who has the status of an employee under the usual common law rules applicable to determining the employer-employee relationship.~~ “Employee” includes;

~~but is not limited to, individuals employed by any program or enterprise of the Tribe, but~~
does not include elected or appointed officials ~~or individuals employed by a Tribally~~
~~Chartered Corporation~~. For purposes of this ~~policy law~~, individuals employed under an
employment contract as a limited term employee are employees of the ~~Tribe~~ Nation, not
consulted ~~independent contractors.~~~~ants.~~

(c) “Employee-owned business entity” means a ~~for-profit~~ business which is majority
owned and managed by an individual who is employed as an employee by the ~~Tribe.~~
Nation. ~~An e~~Employee-owned business entity includes, but is not limited to, a partnership,
corporation, or limited liability company.

(d) “Independent contractor” means an individual who would qualify as an ‘independent
contractor’ for the Nation according to the Fair Labor Standards Act and the most current
guidance issued from the U.S. Department of Labor and the U.S. Internal Revenue Service.
~~receives payments for services or deliverables, and who receives any tax reporting form~~
~~other than a W-2 at the end of a taxable year.~~

(e) “Nation” means the Oneida Nation.

(f) “Scope of work” means the total deliverables or services to be performed by an
independent contractor upon completion of the work the independent contractor was hired
to complete.

(g) “Service” means an action performed by an independent contractor and must be
adequately described as to the actions that will be taken and the final result of those actions
taken. ~~(f) “Tribal” or “Tribe” means the Oneida Tribe of Indians of Wisconsin.~~

503.4 Worker Classification

503.4-1. The Nation must classify a worker as either an employee or an independent contractor
according to the Fair Labor Standards Act and should use the most current guidance issued from
the U.S. Department of Labor and the U.S. Internal Revenue Service.

503.56. Form of Contract

503.56-1. All contracts with the ~~Tribe~~Nation shall be in a ~~the~~ format approved by the Oneida Law
Office. All departments, programs, enterprises, and other agencies of the ~~Tribe~~Nation shall use
Oneida Law Office-approved contracts.

503.56-2. All contracts shall be reviewed and approved by the Oneida Law Office and the Oneida
Purchasing Department. An approved purchase order is required prior to execution of a contract.
~~before being executed.~~

503.56-3. At a minimum, the Oneida Law Office ~~review~~ shall verify ~~consist of the following:~~ (a)
~~verification that:~~

(a) sovereign immunity has not been waived;

~~verification that Independent Contractor~~

(b) worker classification, according to the most recent guidance from the U.S Department
of Labor and the U.S. Internal Revenue Service, is accurate; and ~~status has not been~~
~~violated; and verification that~~

(c) the content of the contract meets the legal needs for the protection of ~~Tribal~~the Nation’s
assets; and adequately ~~describ~~es ~~the scope of work,~~ payment, and other
similar items.

503.6.7. Approval Requirements

503.6-1. *Contract*. The Oneida Law Office and the Oneida Purchasing Department must review and approve a contract according to the requirements of section 503.5 of this law.

503.6-2. *Purchase Order*. The Oneida Purchasing Department issues a purchase order based on the approved contract in accordance with the Oneida Nation procurement sign-off authority.

503.6-3. *Vendor License*. Unless an independent contractor is exempted from the requirements of obtaining a vendor license, the independent contractor will be issued a vendor license, subject to any other requirements of the Nation's Vendor Licensing law.

503.6-4. *Insurance*. Before the independent contractor performs any work, the independent contractor must demonstrate proof of appropriate and adequate insurance coverage.

(a) What constitutes appropriate and adequate insurance coverage will be determined by the Nation's Risk Management Department and will be based upon the scope of work.

503.6-5. *Tax Identification*. Before an independent contractor begins work, they are required to submit tax identification information to the Nation through one of following:

(a) Employer Identification Number.

(b) Social Security Number. If an independent contractor operates a sole proprietorship, their default tax identification number may be their social security number.

(c) Taxpayer Identification Number. If an independent contractor operates a sole proprietorship and is not eligible for a social security number.

503.6-6. *Release of liability*. An independent contractor may not begin work until a contract is executed according to the requirements of section 503.5 of this law and all other approval requirements of section 503.6 are met. If an independent contractor begins work before the requirements of section 503.5 and 503.6 are met, the Nation is released of potential liability.

503.7. Conflict of Interest

503.7-1. The ~~Tribe~~Nation may ~~hire an individual who is also~~contract with an employee or an employee-owned business entity ~~of the Tribe~~ as an independent contractor, if:

(a) all requirements of section 503.6 of this law are met;

(b) the work ~~services~~ performed by the individual as an employee ~~of the Tribe are not related to the services~~ is not related to the scope of work to be provided ~~by the individual~~ as an independent contractor;

(1) even if the employee qualifies for Indian preference as an independent contractor; and even if the employee were the only independent contractor who would qualify for Indian preference, this requirement still applies;

(2) if the work performed by the employee does relate to the scope of work the employee or the employee-owned business entity would provide the Nation as an independent contractor, the Nation may still contract with that employee or employee-owned business entity as long as the Nation contracts with that employee or employee-owned business entity as an independent contractor in a different division than the division in which the employee works;

(c) there is no relation between the wages paid to the individual as an employee ~~of the Tribe~~ and the compensation received by the individual for the ~~scope of work services~~ to be provided as an independent contractor;

(d) the individual is engaged in an independent trade, business, or profession that is traditionally pursued by an independent contractor, ~~and the scope of work services~~ to be provided by the individual as an independent contractor relates to such trade, business, or

profession, and the Nation has no significant investment in that business entity; and ~~(d) the individual offers services as an Independent Contractor in such trade, business or profession to the general public.~~

(e) the individual offers services or deliverables as an independent contractor in such trade, business, or profession to the public.

~~503.7 6. The Tribe may engage an employee-owned business entity as an independent contractor if the following conditions are met:~~

~~(a) the employee-owned business entity has a valid Tax Identification Number which is different than the employee's Social Security number.~~

~~(b) the Tribe has no right to direct or control the employees of the employee-owned business entity; and~~

~~(c) all payments for independent contractor services are made directly to the employee-owned business entity, not to an individual.~~

End.

Adopted - 7-27-94, motion

Adopted - BC-2-15-95-A, Emergency Action [Article VII \(503.7-\)](#)

Adopted - BC-7-5-95-B, Emergency Action [Article VII \(503.7-\)](#)

Emergency Amended – BC-04-25-12-E-

Emergency Extension Amended – BC-10-10-12-B-

Amended – BC-02-27-13-A

Title 5. Business – Chapter 503 INDEPENDENT CONTRACTORS

503.1. Purpose and Policy
503.2. Adoption, Amendment, Repeal
503.3. Definitions
503.4. Worker Classification

503.5 Form of Contract
503.6 Approval Requirements
503.7 Conflict of Interest

503.1. Purpose and Policy

503.1-1. *Purpose.* The purpose of this law is to require proper worker classification to ensure the Nation's compliance with tax regulations.

503.1-2. *Policy.*

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

(b) It is further the policy of the Nation that the order of preference, as set out in the Nation's Indian Preference Law, be used in the selection of independent contractors and in accordance with this law.

503.2. Adoption, Amendment, Repeal

503.2-1. This law was adopted by the Oneida Business Committee by motion on July 27, 1994, and amended by resolution BC-02-27-13-A.

503.2-2. This law may be amended or repealed by the Oneida Business Committee or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

503.2-3. 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.

503.2-4. 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.

503.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

503.3. Definitions

503.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Deliverable" means quantifiable goods and tangible or intangible products to be provided upon the completion of a project.

(b) "Employee" means any individual who would qualify as an 'employee' of the Nation according to the Fair Labor Standards Act and the most current guidance issued from the U.S. Department of Labor and the U.S. Internal Revenue Service. "Employee" does not include elected or appointed officials. For purposes of this law, individuals employed under an employment contract as a limited term employee are employees of the Nation, not consulted independent contractors.

(c) "Employee-owned business entity" means a business which is majority owned and managed by an individual who is employed as an employee by the Nation. An employee-owned business entity includes, but is not limited to, a partnership, corporation, or limited liability company.

(d) “Independent contractor” means an individual who would qualify as an ‘independent contractor’ for the Nation according to the Fair Labor Standards Act and the most current guidance issued from the U.S. Department of Labor and the U.S. Internal Revenue Service.

(e) “Nation” means the Oneida Nation.

(f) “Scope of work” means the total deliverables or services to be performed by an independent contractor upon completion of the work the independent contractor was hired to complete.

(g) “Service” means an action performed by an independent contractor and must be adequately described as to the actions that will be taken and the final result of those actions.

503.4 Worker Classification

503.4-1. The Nation must classify a worker as either an employee or an independent contractor according to the Fair Labor Standards Act and should use the most current guidance issued from the U.S. Department of Labor and the U.S. Internal Revenue Service.

503.5. Form of Contract

503.5-1. All contracts with the Nation shall be in a format approved by the Oneida Law Office. All departments, programs, enterprises, and other agencies of the Nation shall use Oneida Law Office-approved contracts.

503.5-2. All contracts shall be reviewed and approved by the Oneida Law Office and the Oneida Purchasing Department. An approved purchase order is required prior to execution of a contract.

503.5-3. At a minimum, the Oneida Law Office shall verify:

(a) sovereign immunity has not been waived;

(b) worker classification, according to the most recent guidance from the U.S Department of Labor and the U.S. Internal Revenue Service, is accurate; and

(c) the content of the contract meets the legal needs for the protection of the Nation’s assets and adequately describes the scope of work, payment, and other similar items.

503.6. Approval Requirements

503.6-1. *Contract*. The Oneida Law Office and the Oneida Purchasing Department must review and approve a contract according to the requirements of section 503.5 of this law.

503.6-2. *Purchase Order*. The Oneida Purchasing Department issues a purchase order based on the approved contract in accordance with the Oneida Nation procurement sign-off authority.

503.6-3. *Vendor License*. Unless an independent contractor is exempted from the requirements of obtaining a vendor license, the independent contractor will be issued a vendor license, subject to any other requirements of the Nation’s Vendor Licensing law.

503.6-4. *Insurance*. Before the independent contractor performs any work, the independent contractor must demonstrate proof of appropriate and adequate insurance coverage.

(a) What constitutes appropriate and adequate insurance coverage will be determined by the Nation’s Risk Management Department and will be based upon the scope of work.

503.6-5. *Tax Identification*. Before an independent contractor begins work, they are required to submit tax identification information to the Nation through one of following:

(a) Employer Identification Number.

(b) Social Security Number. If an independent contractor operates a sole proprietorship, their default tax identification number may be their social security number.

(c) Taxpayer Identification Number. If an independent contractor operates a sole proprietorship and is not eligible for a social security number.

503.6-6. *Release of liability*. An independent contractor may not begin work until a contract is executed according to the requirements of section 503.5 of this law and all other approval requirements of section 503.6 are met. If an independent contractor begins work before the requirements of section 503.5 and 503.6 are met, the Nation is released of potential liability.

503.7. Conflict of Interest

503.7-1. The Nation may contract with an employee or an employee-owned business entity as an independent contractor if

- (a) all requirements of section 503.6 of this law are met;
- (b) the work performed by the individual as an employee is not related to the scope of work to be provided as an independent contractor;
 - (1) even if the employee qualifies for Indian preference as an independent contractor; and even if the employee were the only independent contractor who would qualify for Indian preference, this requirement still applies;
 - (2) if the work performed by the employee does relate to the scope of work the employee or the employee-owned business entity would provide the Nation as an independent contractor, the Nation may still contract with that employee or employee-owned business entity as long as the Nation contracts with that employee or employee-owned business entity as an independent contractor in a different division than the division in which the employee works;
- (c) there is no relation between the wages paid to the individual as an employee and the compensation received by the individual for the scope of work to be provided as an independent contractor;
- (d) the individual is engaged in an independent trade, business, or profession that is traditionally pursued by an independent contractor, the scope of work to be provided by the individual as an independent contractor relates to such trade, business, or profession, and the Nation has no significant investment in that business entity; and
- (e) the individual offers services or deliverables as an independent contractor in such trade, business, or profession to the public.

End.

Adopted - 7-27-94, motion
Adopted - BC-2-15-95-A, Emergency Action Article VII (503.7)
Adopted - BC-7-5-95-B, Emergency Action Article VII (503.7)
Emergency Amended – BC-04-25-12-E
Emergency Extension Amended – BC-10-10-12-B
Amended – BC-02-27-13-A