

Title 5. Business – Chapter 503
INDEPENDENT CONTRACTORS POLICY

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503.1. Purpose and Policy

503.1-1. *Purpose.* The purpose of this law is to ensure proper classification of employees and independent contractors for federal labor and tax law purposes; ensure the use of contract forms approved by the Oneida Law Office and the Oneida Purchasing Department; ensure contracting with a current employee does not create a conflict of interest or unintended tax consequences; and ensure independent contractors have appropriate insurance coverages

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 resolutions BC-02-27-13-A and BC-01-28-26-E.

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 This law may be amended or repealed by the Oneida Business Committee or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.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

quantifiable goods and tangible or intangible products to be provided upon the completion of a project.

(b) “Employee” means an individual who qualifies as an employee of the Nation using relevant tests established by applicable Federal law and guidance issued from Federal agencies. “Employee” does not include elected or appointed officials. For purposes of this law, individuals employed by the Nation through an employment agreement or employment contract are employees of the Nation, not 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 qualifies as an independent contractor using relevant tests established by applicable Federal law and guidance issued from Federal agencies.

(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 on behalf of the Nation.

503.4 Worker Classification

503.4-1. The Nation shall classify an individual as either an employee or an independent contractor according to the Fair Labor Standards Act, Department of Labor regulations, the Internal Revenue Code, Treasury regulations, and the most current guidance from the Department of Labor and the Internal Revenue Service.

503.5. Form of Contract

503.5-1. The Oneida Law Office shall develop and maintain standard contract form(s) for primary use by the Nation.

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) appropriate approvals are required for waivers of the Nation’s sovereign immunity;
- (b) worker classification, according to the requirements of section 503.4 of this law, is accurate; and
- (c) the terms of the contract protect the Nation’s legal rights and assets and satisfy the requirements for formation of a valid contract.

503.5-4. At a minimum, the Oneida Purchasing Department shall verify:

- (a) the contractor holds a current vendor license;
- (b) tax forms and federal contractor status;
- (c) the content of the contract related to scope of work;
- (d) contract payments are accurately calculated and described; and
- (e) whether use of a master contract and task orders would be more efficient.

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 requirement to obtain a vendor license, the independent contractor shall have a vendor license in accordance with the Nation’s Vendor Licensing law prior to issuance of a purchase order.

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) The Nation's Risk Management Department is delegated rule making authority to determine what constitutes appropriate and adequate insurance coverage.

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

503.6-6. 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 of this law are met, the Nation is released of potential liability.

503.7. Dual Capacity

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 or by an employee-owned business entity is not related to the scope of work to be provided as an independent contractor;

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

(c) there is no relation between the wages paid to the individual as an employee or to an employee-owned business entity 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 general 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

Amended – BC-01-28-26-E