

# **TULALIP TRIBES**

## **TERO DEPARTMENT TRIBAL EMPLOYMENT RIGHTS OFFICE**



**TRIBAL EMPLOYMENT RIGHTS ORDINANCE #60  
&  
TRIBAL CONTRACTING ORDINANCE # 89**

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# TULALIP TERO

## Tribal Employment Rights Office

### Ordinance #60 & 89

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**THE TULALIP TRIBES OF WASHINGTON  
TRIBAL EMPLOYMENT RIGHTS ORDINANCE (TERO) No. 60  
AMENDED RESOLUTION 96-0136 ON 10/5/96**

WHEREAS, the Tulalip Tribes Board of Directors has the authority to require those employers subject to Ordinance No. 60 and applicable federal laws and guidelines, to give preference to Indians in hiring promotions, training and all other aspects of employment contracting and subcontracting and must comply with this Ordinance and the rules, regulations and orders of the TERO Commission.

With respect to each project/contract or subcontract of \$10,000 or more, operating within the exterior boundaries of the Tulalip Indian Reservation, the contractor shall pay a one time fee of 1.75% of the total project/contract cost, ie, equipment labor, materials and operations and any increase of the contract/project or subcontract amount. If the employer (regulated) initially enters into a contract/project or subcontract of less than \$10,000 but subsequently increases costs, as a result in the total contract/project or subcontract amount of \$10,000 or more, the fee shall apply to the total amount including increases.

**PURPOSE:** The Tulalip Board of Directors finds that employment discrimination against Indians persists on the Tulalip Indian Reservation despite a large number of Indian and non-Indian owned businesses employing skilled and non-skilled workers. The Board of Directors further finds that jobs in businesses and other economic opportunities on or near the Reservation are important resources to which Indians have unique preferential rights and therefore, to implement the unique employment rights of Indians, establishes a Tribal Employment Rights Commission and TERO Program to achieve its goals and policies.

**GOALS:** The Tulalip Tribes Board of Directors authorizes the appointed TERO Program Representative to impose up to 100% Indian hiring goals and timetables specifying the number of Indians the employer shall hire by craft and skill level.

**SECTION 1 GENERAL PROVISIONS**

1.1 **Name:** This Ordinance shall be known as the Tulalip “Tribal Employment Rights Ordinance” (TERO). This Ordinance repeals and replaces all prior Tulalip Tribal Employment Rights Ordinances (Ordinance #60) and any amendments, thereto.

**SECTION 2 DEFINITIONS**

2.1 **Board of Directors:** The term “Board of Directors” shall mean the governing body of the Tulalip Tribes of Washington.

2.2 **Chairperson:** The term “Chairperson” shall mean the Chairperson of the Tulalip Tribal Employment Rights Commission for the purpose of this Ordinance.

2.3 **Commission:** The term “Commission” shall mean the Tulalip Tribal Employment Rights Commission.

2.4 **Commissioner:** The term “Commissioner” shall mean a member of the Tulalip Tribal Employment Rights Commission.

- 2.5 **EEOC:** The term “EEOC” shall mean that the Equal Employment Opportunities Commission of the United States.
- 2.6 **Employer:** The term “Employer” (regulated employer) shall mean any person, company, contractor, subcontractor, or other entity located on or engaged in work on the Reservation, employing one or more persons. The term “Employer” excludes Federal, State, County, and Tribal Governmental Agencies, and Tribal Enterprises but expressly includes contractors and subcontractors of all governmental agencies.
- 2.7 **Engaged in Work on the Reservation:** An employer is “engaged” in work on the “reservation” if during any portion of a business enterprise or specific project, contract or subcontract, he/she or any of his/her employees spends any of their time performing work within the exterior boundaries of the Reservation.
- 2.8 **FEPC:** The term “FEPC” shall mean the Fair Employment Practices Commission of the United States.
- 2.9 **Tulalip TERO Representative(S):** The term “Tulalip Tribal Employment Rights Office TERO Representative” shall mean the person appointed by the Commission to carry out the daily enforcement of this Ordinance.
- 2.10 **Hiring Preference for Individual Indians:** the term “Hiring Preference for Individual Indians” shall mean a qualified Indian person must be hired before a qualified non-Indian person, whenever an opening is available.
- 2.11 **Contracting Preference for Indian-owned Businesses:** The term “Contracting preference for Indian-Owned business” shall mean that contracting and subcontracting preference shall be given to qualified Indian-Owned businesses.
- 2.12 **Indian:** The term “Indian” shall mean any person who is a member of a federally recognized Indian tribe, and recognized as an Indian by the United States, pursuant to its trust responsibility to American Indians.
- 2.13 **Indian-Owned Business:** The term “Indian-Owned Business” shall mean a business entity of which at least 51% of the business is owned, controlled, and managed by an Indian(s).
- 2.14 **Local Resident:** The term “Local Resident” shall mean a person who has been residing within or adjacent to the Tulalip Indian Reservation for at least six months prior to the date of hire.
- 2.15 **Located on the Reservation:** An employer is “Located on the Reservation” if during any portion of a business enterprise or specific project, engaged I contact, or subcontract, he/she maintains a temporary or permanent office or facility within the exterior boundaries of the Reservation.

- 2.16 **OFCCP**: The term “OFCCP” shall mean the Office of Federal Contract Compliance Programs of the United States.
- 2.17 **Religious Belief**: The term “Religious Belief” shall be defined according to the findings of the American Indian religious Freedom Act of 1978.
- 2.18 **Reservation**: The Term “Reservation” shall mean all lands and waters within the exterior boundaries of the Tulalip Indian Reservation or within the jurisdiction of the Tulalip Tribes.
- 2.19 **Responsive Bidder**: The term “Responsive Bidder” shall mean a party who submits a bid which meets the requisite specifications of the party letting the bid.
- 2.20 **Secretary**: The term “Secretary” shall mean the Secretary of the Interior or his/her duly authorized representative.
- 2.21 **Temporary Facility**: The term “Temporary Facility” shall mean a modular or housing type structure, or trailer located on the Reservation one day or more.
- 2.22 **Tribal Member**: The term “Tribal Member” and the term “Member” shall mean any person who is a duly enrolled member of the Tulalip Indian Tribe, unless the context clearly indicated otherwise.
- 2.23 **Preferred Employee**: The term “Preferred Employee” shall mean a person entitled to a preference in employment under this TERO Ordinance.
- 2.24 **Tribe**: the term “Tribe” or “Tribes” shall mean the Tulalip Tribes of Washington, unless the context clearly indicates otherwise.

### **SECTION 3 TULALIP TRIBAL EMPLOYMENT RIGHTS COMMISSION**

Tulalip Tribal Employment Rights Commission: Until other Commissioners are elected by the Tulalip Membership, the Tribes Board of Directors shall function as the Tribal Employment Rights Commission.

- 3.1 **Appointment**: The Tulalip Tribal Employment Rights Commission shall be comprised of five (5) members elected by the Tulalip Membership.
- 3.2 **Terms of Office**: The Commission shall hold office for one, two, and three years, each term to be served during the term of office for each Board of Director, and shall expire at the same time their Board term expires, unless the Board of Directors appoints a TERO Commission, then the Commission shall hold office for one, two, and three years.
- 3.3 **Removal of Office**: A Commissioner may be removed by the Board of Directors as promulgated in the Tribes Constitution and bylaws, under “Removal of Office” or for just cause if the Commission is appointed.

- 3.4 **Vacancy and Interim Appointment:** Three Commissioners shall constitute a quorum to transact business.
- 3.5 **Chairperson:** The “Chairperson” of the Commission shall be elected by the Commission and shall have the authority to call a TERO Commission meeting.
- 3.6 **Duties of the Commission and TERO Representative:** The Commission and the TERO Representative shall administer the TERO Program of the Tulalip Indian Reservation in accordance with this TERO Ordinance and Bylaws.
- 3.7 **Powers of the Commission:** The Commission in its discretion shall have the power:
- (a) To hold hearings and to subpoena witnesses and documents in accordance with this TERO Ordinance; and
  - (b) To delegate authority to the Tulalip Tribal Employment Rights Representative; and
  - (c) To hear appeals from the actions of the Tribal Employment Rights Representative, for operations to flow smoothly.
  - (d) Promulgate regulations to ensure effective implementation of the TERO Ordinance, due process of the law and fair and equitable treatment under the law.
  - (e) Establish rules and regulations governing all activities of the Commission, and the TERO program, subject to the approval of the Commission.
  - (f) To approve the annual operating budget of the TERO Program.
  - (g) To approve a “special account” for funds generated from the TERO fees, to be deposited in the “special account” to be used for the TERO Program, unless otherwise authorized by the unanimous vote of the TERO Commission.
  - (h) To take such other actions as are necessary to achieve the purposes and objectives of the Tulalip Tribal Employment Rights Program established in this Ordinance and policies of the Commission.
  - (i) To adopt Bylaws with Board of Directors approval for efficient operations of the TERO Commission.
- 3.8 **Powers of the Tribal Employment Rights Office (TERO) Representatives:** The TERO Program Representatives appointed to carry out the daily enforcement of the Tribal Employment Rights Program shall have the power to:
- (a) Obtain funding from Federal, State, or other sources to supplement Commission appropriations.
  - (b) Impose up to 100% Indian hiring goals and timetables specifying the number of Indians the employer is hiring by craft and skill level.
  - (c) Require that (regulated) employers operating a business within the jurisdiction of the Tulalip Tribes to establish or participate in such job-related training programs as deemed necessary to increase the pool of Indians eligible for employment on the Tulalip Reservation.
  - (d) Establish and administer a Tribal hiring hall.
  - (e) Require that (regulated) employers hire non-Indians only after the Tribal hiring hall has certified that qualified Indians are not available to fill vacant job positions within a reasonable amount of time.

- (f) Prohibit (regulated) employers, from using job qualification criteria or personnel requirements that unreasonably bar Indians from employment. Commission regulations may adopt EEOC guidelines or may adopt additional requirements to eliminate barriers to Indian employment on and near the Tulalip Reservation.
- (g) Enter into agreements with unions and others to ensure union compliance with this Ordinance and a continued and progressive recruitment in apprenticeship and journeyman level programs.
- (h) Require employers to give preference to Tribal and other Indian Owned businesses in the award of contracts and subcontracts.
- (i) Establish referral services with counseling programs to assist preferred employees to retain employment.
- (j) Require employers to submit reports and certified payrolls and take all actions deemed necessary by the TERO Representative for the fair and vigorous implementation of this TERO Ordinance.
- (k) Enter into cooperation agreements with Federal employment rights agencies such as EEOC and OFCCP to eliminate discrimination against Indians both on and off the Reservation.
- (l) Take such actions as are necessary to achieve the purposes and objectives of the Tulalip Tribal Employment rights Program established in this TERO Ordinance.

**SECTION 4 TULALIP TRIBAL EMPLOYMENT RIGHTS PROGRAM**

4.1 **Order of Preference:** The following employment preference is established.

4.2 **In General:** Whenever an employer or union would be required by any provision of this Ordinance to give preference in hiring or contracting, such preference shall be given to the following persons in the following enumerated order:

- (a) Members of the Tulalip Tribe
- (b) Indian Spouses of members of the Tulalip Tribe who contribute to the support of a Tulalip household
- (c) Other Indians

4.3 **Exception:** Where prohibited by applicable Federal law and above order of preference set out in subsection 4.2 shall not apply. In such cases, preference shall be given in the following enumerated order:

- (a) Indians who are local residents
- (b) Other Indians

4.4 **Coverage:** All employers are required to give preference to Indian employees in hiring, promotion, training, and all other aspects of employment, contracting, or subcontracting, and must comply with the Ordinance, rules, regulations and orders of the TERO Representative and Commission.

The above requirements shall apply not only to an employer located or engaged in work while on the reservation or whose subcontractor is located on or engaged in work while on the Reservation, but also to any facilities of the employer located within a reasonable

commuting distance from the Reservation. Where an employer has already agreed in a contractor or other document to give preference to Indians employees, this Ordinance and the rules, regulations and others of the Commission and TERO Representative shall define the specific minimum obligations of the employer pursuant to such agreement.

- 4.5 **Implementation of Contracting and Subcontracting Preference:** There shall be a contracting and subcontracting preference of Indian-owned businesses on the Tulalip Indian Reservation. The contracting and subcontracting preference shall be manifested through giving bidding preference to Indian-owned businesses.
- 4.6 **Contracting and Subcontracting:** The preference requirements contained in this Ordinance shall be binding on all contractors and subcontractors, regardless of tier, and shall be deemed a part of all resulting subcontract specifications. The employer (regulated) shall have the initial and primary responsibility for ensuring that all contractors and subcontractors comply with these requirements, if they fail to comply.
- 4.7 **Certification:** An applicant seeking to qualify for preference in contracting and / or subcontracting shall submit proof of the applicant's Indian ownership which shall include, but no be limited to:
- (a) Certification by a Federally recognized Indian Tribe or the U.S. Bureau of Indian Affairs (BIA) that the application is a member of a Federally recognized Indian Tribe, therefore eligible to receive preference. The Tribes shall accept an original certification (not a copy) of a Federally Recognized Tribal government or the U.S. BIA that an individual is a tribal member. Such tribal or federal certification shall be the only acceptable evidence of Indian status. Applicants, contractors or subcontractors found to have negligently or willfully misrepresented their Indian status to a tribal agency or contractor shall receive disbarment from operations within the exterior boundaries of the Tulalip Indian Reservation for a period of 60 months, after a finding of such misrepresentation. The TERO Office shall give written notice to all Tribal agencies of the fact and duration of such disbarment from employment or contracting.
  - (b) The company name, address and telephone number.
  - (c) Proof of company degree of Indian ownership.
  - (d) If claiming 51% Indian ownership, the company needs to provide a detailed report on the non-Indian partner of the company.
  - (e) Incorporation documents or joint venture agreements or partnership agreements, which shall include documentation to identify the Indian company, and proof thereof.
  - (f) Copies of Insurance coverage and bonding capabilities.
  - (g) Organization Chart, including key personnel, identifying whether they are Indian on non-Indian.
  - (h) Evidence (including but not limited to stock ownership, structure, management, control, financing and salary or profit sharing arrangements of the enterprise) that the applicant enterprise or organization is at least 51% percent Indian-owned and that 51% of all profits will flow to the Indian owner(s) during all portions of the contract or subcontract term.

- (i) A firm seeking assistance through the TERO Program to comply with contracting or subcontracting preference under this TERO Ordinance shall submit evidence sufficient to demonstrate to the satisfaction of the agency and/or the contractor, as appropriate; that the applicant has the technical, administrative, an financial capability, and/or the necessary license(s) and bond ability to perform contract work of the size and type involved, and within the time provided, under the proposed contract or subcontract. The agency is entitled to establish technical, administrative and financial qualifications for potential bidders so long as those qualifications are in writing and are reasonable qualifications that are necessary to the project or purpose of the contract or are standard in the industry.
- (j) Any other pertinent information required by the TERO Representative, tribal legal staff and/or Commission.

4.7.1 **Joint Ventures:**

No Indian/non-Indian joint venture shall be provided a preference under this Ordinance in contracting or subcontracting unless the Indian person or firm of the joint venture can successfully demonstrate that it had the capability to manage all the work on the project on its own and has entered into the joint venture because the non-Indian firm provides only limited backup capability such as bonding, specialized expertise, or capital.

4.7.2 **Certification Denied:**

A firm denied certification by the TERO Office may appeal the denial, within 20 days therefore, to the TERO Commission.

4.8 **Contracting and Subcontracting Compliance Plan:** A required contracting and subcontracting compliance plan shall indicate all contractors and subcontractors that will be entered into and the project dollar amounts thereof. If the entity had already selected a contractor or subcontractor to perform any contract or subcontract work, it shall list the name of that contractor or subcontractor and indicate whether or not it is a contractor or subcontractor certified as Indian Preference eligible the entity shall further indicate why each certified contractor or subcontractor, if any, registered with the TERO, that was technically qualified to perform the work was not selected. The plan shall also indicate how the entity intends to comply with the contracting and subcontracting provisions of this Ordinance when awarding all contractors and subcontractors not yet awarded at the time the plan was submitted.

4.9 **Tribal Hiring Hall:** The TERO Representative shall establish and administer a Tribal hiring hall to assist the employers in placing preferred employees in job positions. An employer may recruit and hire workers from whatever sources are available to them to achieve the same preference hiring goals, but is subject to inform the TERO Representative, except as provided in Section 4.7 the employer may not employ a non-local Indian or non-Indian until the employer has given the Tulalip Tribal Employment Rights Office 72 hours to locate and refer a qualified local or non-local Indian.

**4.10 Permanent and Key Employees:** Prior to commencing work on the Tulalip Indian Reservation a prospective employer and all contractors and subcontractors shall identify key, regular, permanent employees. Such key employees may be employed on the project whether or not they are local or non-Indian. A regular, permanent employee is one who is and had been on the employers' or contractors' annual payroll for a period of one year continuously in a supervisory capacity, or is an owner of the firm. An employee who is hired on a project by project basis shall not be considered a key employee.

A key employee is one who is in a top supervisory position or performs a critical function such that an employer would risk likely financial damage or loss if that task were assigned to a person unknown to the employer. The fact that an employee had worked for the employer on previous projects shall not qualify that employee as a regular, permanent employee provide that exceptions for superintendents and other key personnel who are not permanent, regular employees may be granted by the TERO Representative on a case by case basis. Any employer or contractor filling vacant employment positions in its organization immediately prior to undertaking work pursuant to a contract to take place on the Tulalip Indian Reservation shall set forth evidence acceptable to the TERO Representative, that its actions were not intended to circumvent these requirements. Upon its approval of each key or permanent regular employee requested by the employer, the TERO Representative shall approve that worker.

**4.11 Emergency Hire Provision:** Under extreme circumstances where an employee is needed to fill a vacancy during off business hours when the TERO is unavailable, the employer will be allowed to hire employees necessary to meet the emergency for a maximum of three days or until TERO can be notified of the circumstances and can approve the individual or dispatch another preferred Employee. Emergency hires will be limited by the TERO Representative and will be allowed on a case by case basis. Any abuse concerning this provision will result in sanctions as provided in Section 10 of the TERO Ordinance.

**4.12 Counseling and Support Programs:** The TERO Representative will coordinate with other programs and agencies for counseling and other support programs to assist preferred employees to retain employment. Every employer shall be required to cooperate with the TERO Representative regarding such counseling and support programs.

**4.13 Job Qualifications Personnel Requirements and Religious Accommodations:** An employer may not use any job qualification criteria or personnel requirements which serve as barriers to the employment of Indians which are not required by business necessity. If the employer fails to meet his burden, it will be required to eliminate the criterion or personnel requirements at issue. Employers shall also make reasonable accommodation to the religious beliefs and cultural traditions of Indian workers. In implementing these requirements, the Commission shall be guided by the principles established by the EEOC Guidelines, particularly 29 CFR parts 1604-1607 as amended. However, the Commission reserves the right to go beyond the EEOC principles in order to address employment barriers that are unique to Indians.

- 4.14 **Lay-Offs:** In all lay-offs and reductions in force, no preferred employee shall be terminated if a non-preferred employee worker in the same job classification is still employed; the non-preferred worker in the same job classification is still employed; the non-Indian worker must first be terminated if the Indian possesses the threshold qualifications for the job classification. If an employer lays off workers by crews, all qualified Indian workers shall be transferred to crews to be retained so long as non-Indians in the same job classifications are employed elsewhere on the job site.
- 4.15 **Promotion:** Every employer shall give Indians preferential consideration for all promotion opportunities and shall encourage Indians to seek such opportunities. For every supervisory position filled by a non-Indian, the employer shall file a report with the TERO Representative stating what efforts were made to inform Indian Workers about the position, what Indians, if any, applied for the position, and the reasons why each Indian was not hired for that position.
- 4.16 **Summer Students:** Every employer shall give Indian Students preferential consideration for summer student employment. The employer shall make every effort to promote after-school, summer and vacation employment for Indian students.

**SECTION 5 TERO TAXES:** The TERO Representative shall assess employers a TERO tax to provide revenue for operation of the TERO Program as follows:

- 5.1 **Taxes:** With respect to each project/contract or subcontract of \$10,000.00 or more, operating within the exterior boundaries of the Tulalip Indian Reservation, the contractor shall pay a one time tax of 1.75% of the total project/contract costs, i.e., equipment, labor, materials and operations and any increase of the contract/project or subcontract amount. If the employer (regulated) initially enters into a contract/project or subcontract of less than \$10,000.00, but subsequently increases costs, as a result in the total contract/project or subcontract amount of \$10,000.00 or more, the tax shall apply to the total amount including increases.
- 5.2 **TERO Tax Payment:** The TERO tax provided for in the TERO Ordinance shall be paid by the contractor/employer or subcontractor, prior to commencing work on the Reservation. However, where good cause is shown, the TERO Representative may authorize the contractor/employer or subcontractor to pay the tax in installments over a course of the contract.

The checks are to be made payable to “Tulalip Tribes TERO addressed to the 11224 34<sup>th</sup> Ave NE, Tulalip, WA 98271

- 5.3 **Delinquent Fees:** If the employer fails to pay the tax by the day of commencing work on the Reservation, interest shall begin accruing on that date at a rate of 12% per annum, compounded daily. Further, as soon as possible following the day on which the contractor commences work, the TERO Representative shall send notice to the employer by registered mail, informing the employer that the payment is overdue and of the consequences that will result if the fee is not paid immediately.

5.4 **Non-Payment of Taxes:** If the tax is not paid by the fifteenth (15) day after the employer commenced work, the TERO Representative shall file a formal charge of non-compliance, and shall schedule a Commission hearing to be held within five (5) days or as soon thereafter as the Commission can meet, and shall provide formal notice to the employer of the scheduled hearing.

At the hearing, to be held whether or not the employer attends, the Commission shall determine whether the contractor has failed to comply. If the Commission finds there had been non-compliance, it shall:

- (a) Impose penalties of up to 10% of the amount due; and
- (b) Petition the Tribal Court to enforce the decision of the Commission through confiscation proceedings as provided in this Ordinance, where the TERO Representative or Commission has reasonable cause to believe that an employer will flee the jurisdiction before the procedures provided for this Ordinance, notwithstanding the above procedures. The employer shall be made a party to any court proceedings involving claims against the employer/contractor.

5.5 **Payment Plan:** The TERO Representative in his/her discretion, may, upon receipt of a written request, authorize an employer to pay the required tax installments over the course of the project or contract, when:

- (a) The total annual tax exceeds \$10,000.00 or
- (b) The contractor demonstrates hardship or other good cause

5.5.1 **Payment Plan Authorization:** The decision whether to authorize an alternative arrangement, which, if allowed, shall be in writing, shall rest solely with the discretion of the TERO Representative.

5.6 **Interest:** The contractor shall pay interest, at 12% per annum, compounded daily on all amounts paid after the day the contractor commences work on the Reservation, when paying under this alternative arrangement. The TERO Representative is authorized to terminate any alternative payment arrangement under this subsection and to declare such taxes immediately due and payable on the day following the date on which any installment payment is not timely made.

5.7 **Increase of Taxes:** The tax collected from the employer pursuant to this section shall be increase in accordance with any increase in the contract amount as follows:

- (a) The contractor shall be liable for the payment of taxes on each contract amount increase to the same extent the employer is liable for payment of the fee on the original contract amount. Tax payments attributable to contract are notified of the allowance of such increase. Interest on unpaid fees due under this section (5.5) shall be computed in the same manner as interest on unpaid fees that are attributable to the original contract amount under section 5.1;
- (b) The TERO Representative may authorize the contractor to pay the fee required under this section (5.5) as provided in section 5.4

**SECTION 6 REPORTS AND MONITORING:** Employers/Contractors shall submit their reports, certified payrolls and other information requested by the TERO Representative. The TERO Representative shall have the right to make on-site inspections during regular working hours in order to monitor any employer's compliance with this Ordinance and rules, regulations and orders of the TERO Ordinance. The TERO Representative shall have the right to speak to workers and conduct an investigation on the job site. All information collected by the TERO Representative shall be kept confidential unless disclosure is required during a hearing or appeal as provided in sections 8,9,10 and 11.

**SECTION 7 UNIONS:** An employer, contractor or subcontractor having a collective bargaining agreement with one or more labor unions must obtain written agreement from said unions indicating that they will comply with this Ordinance, and the rules, regulations and orders of the TERO Representative. Until such agreement is filed with the TERO Representative, the employer may not commence work on the Tulalip Reservation.

7.1 **Contents of Union Agreements:** Every union agreement with an employer must be filed with the TERO Representative and must provide:

- (a) Preferred Employee Preference: The union shall give absolute preference to preferred employees in job referrals regardless of which union referral list they are on.
- (b) Cooperation with the TERO Representative: The union shall cooperate with the TERO Representative in all respects.
- (c) Registration: The union shall establish a mechanism allowing preferred employees to register for job referral list by telephone or mail or in person, coordinating efforts through the TERO Representative.
- (d) Training Programs: The union shall establish entry apprenticeship programs, advanced apprenticeship program and a journey level upgrade.
- (e) "Blanketing-In" Preferred Employees: The union shall "Blanket-In" all preferred employees who qualify for journey level status and wish to join the union.
- (f) Temporary Work Permits: The union shall grant temporary work permits to preferred employees who do not wish to join the union.
- (g) Special Provisions: The union shall provide special provisions for American Indians through negotiations with the TERO Representative.

**SECTION 8 HEARINGS:**

8.1 **Notice:** If a hearing is requested by the TERO Representative, an individual, an employer, or union pursuant to this section, a written notice of the hearing shall be given to all parties concerned by certified mail not less than thirty (30) days before the hearing. The notice shall contain a brief statement of the reason for the hearing, shall be designed reasonable to notify all concerned parties of the nature of the hearing and the evidence to be presented, and shall advise such parties of their right to be present at the hearing, to present testimony of witnesses and other evidence, to be presented by council at their own expense, and that the TERO Representative may be represented by general counsel for the Tribe.

- 8.2 **TERO Representative Complaint Procedure:** If the TERO Representative believes that an employer, contractor, subcontractor, or union has failed to comply with the TERO Ordinance or any rules, regulations, or orders of the Commission and TERO Representative, (s) he may file a complaint and notify such party of the alleged violations. The TERO Representative will attempt to achieve an informal settlement of the matter, but if an informal settlement cannot be achieved, the TERO Representative may receive a hearing upon the matter pursuant the Section 8.1.
- 8.3 **Individual Complaint Procedure:** If any Indian believes that an employer has failed to comply with this Ordinance or rules, regulation, or orders of the Commission and TERO Representative, or believes (s)he has been discriminated against by an employer because of being an Indian, (s)he may file a compliant with the TERO Representative specifying the alleged violation. Upon receipt of the complaint, the TERO Representative shall investigate and attempt to achieve an informal settlement of the matter. If an informal settlement cannot be achieved, the individual or TERO Representative may receive a hearing upon the matter pursuant to Section 8.1.
- 8.4 **Retaliation:** If an employer fires, lays off, penalizes or otherwise retaliates in any manner towards any preferred employee who utilizes the individual complaint procedure provided herein or exercises any right provide herein, the employer shall be subject to penalties provided in Section 10 of this Ordinance.
- 8.5 **Employer or Union Complaint Procedure:** If an employer or union believes that any provisions of this Ordinance or any rule, regulation or order of the TERO Representative are illegal or erroneous, they may file a complaint with the TERO Representative specifying the alleged illegality or error. Upon receipt of the compliant, the TERO Representative shall investigate and attempt to achieve an informal settlement of the matter. If an informal settlement cannot be achieved, the employer, union, or TERO Representative may receive a hearing upon the matter pursuant to Section 8.1.
- 8.6 **Hearing Procedure:** Hearings shall be governed by the following rules of procedure:
- (a) All parties may present testimony of witness and other evidence and may be represented by counsel at their own expense
  - (b) The Commission may have the advice and assistance, at the hearing, of general counsel for the Tribe
  - (c) The Chairperson of the Commission, or the designated person in his/her absence, shall preside. No formal rules of evidence of procedure need be followed but the Chairperson shall proceed to ascertain the facts in a reasonable and orderly fashion.
  - (d) Any matter to be proven must be proven to the satisfaction of the Commission by a preponderance of the evidence.
  - (e) The hearing may be continued at the discretion of the Commission.
  - (f) At the final close of the hearing, the Commission may take immediate action or take the matter under advisement.
  - (g) The Commission shall notify all parties within ten (10) working days after its decision in the matter.

**SECTION 9 JUDICIAL PROCEDURE GENERALLY-NOTICE:** Any cases filed pursuant or union who violates this Ordinance shall be considered civil actions governed by the Tulalip Law and Order Code; provided, that in case of any conflict between the provision of this Ordinance and the provisions of the Law and Order Code, the express provisions of this Ordinance shall control. Any required notice shall be deemed received three (3) days after deposit of such notice as certified mail at the United States Post Office.

**SECTION 10 SANCTIONS FOR VIOLATION:** An employer, contractor, subcontractor or union who violates this Ordinance or rules, regulations, or orders of the TERO Representative, shall be subject to sanctions for such violation. Such sanctions shall be remedial in nature and shall be designed and intended to compel compliance, prevent future violation, or compensate injured parties and shall include, but not be limited to:

- (a) Denial of right to commence or continue business inside the Tulalip Indian Reservation
- (b) Suspension of all operations inside the Reservation
- (c) Payment of back pay and damages to compensate any injured party
- (d) An order to summarily remove employees hired in violation of this TERO Ordinance
- (e) Imposition of monetary civil fines
- (f) Prohibition from engaging in any further operations on the Reservation
- (g) An order requiring employment, promotion and training of Indians injured by the violation
- (h) An order requiring changes in procedures and policies necessary to eliminate the violation
- (i) An order making any other provisions deemed by the Commission and TERO specialist necessary to alleviate, eliminate or compensate for any violation
- (j) The maximum civil fine which may be imposed is \$500.00 for each violation. Each day during which a violation exists shall constitute a separate violation

**SECTION 11 APPEALS:** Any party to a hearing shall have the right to appeal any decision of the Commission to the Tulalip Tribal Court, which shall review the facts de novo (a whole new hearing over again), and the proceedings shall be on record.

**SECTION 12 THE TRAINING PROGRAMS:** The Tulalip Tribes shall establish training programs, as funding permits, to prepare preferred employees for job opportunities development pursuant to this Ordinance and the Tulalip Tribal Employment Rights Program. The Tulalip TERO Representative shall coordinate with unions, and other agencies.

**SECTION 13 COMPLIANCE PLANS:** As of the effective date of this Ordinance, no new employer may commence work on the Tulalip Reservation until it has consulted with the Tulalip TERO Representative, negotiated and signed a Compliance Plan approved by the TERO Representative for meeting its obligations under this Ordinance.

**SECTION 14 SEVERABILITY:** If any provisions of this Ordinance or its application to any person or circumstances are held invalid, the remainder of the Ordinance, or other application of the provision to other persons or circumstances is not affected.

**SECTION 15 PUBLICATION OF ORDINANCE:** The TERO Representative shall notify the prime contractor and employers of this Ordinance and their obligation to comply. All bid announcements issued by any Tribal, Federal, State or other private or public entity shall contain a statement that the successful bidder will be obligated to comply with this Ordinance and all rules and regulations and orders of the Commission and TERO Representative.

The TERO Representative shall provide a copy of this Ordinance to every employer operating on the Reservation and any amendments or revision thereto, by request of the employer.

This TERO Ordinance No. 60 as amended, replaced and supersedes any and all prior TERO Ordinances and was approved and adopted by Resolution No. 96-0136 dated October 5, 1996, and shall be effective from the date of its approval by the Secretary.

**THE TULALIP TRIBES OF WASHINGTON  
TRIBAL EMPLOYMENT RIGHTS ORDINANCE (TERO) No. 89  
INDIAN PREFERENCE IN CONTRACTING**

**89.1.01.1      PREAMBLE AND LEGISLATIVE SUMMARY**

A. This ordinance establishes a procedure for purchasing goods and services for the Tulalip Tribes. It also provides Indian preference in contracting goods and services. This section 89.1.01. Is not considered an enforceable part of the Ordinance but is a summary of some important parts of the Ordinance.

**B. Important Points**

- 1) All tribal managers in giving contracts for goods or services will be required to use a competitive bidding process.
- 2) Indian firms, certified (on a tribal list) by TERO officer, will be given preference in contracting with the Tribes.
- 3) To be certified, Indian firms must be 60% Indian owned and must be technically and financially capable of performing the requested contract.
- 4) Indian preference is based on a point system, allowing Indian firms, coming close to the lowest responsible bid to get the contract.
- 5) Where there are least two potential responsive Indian bidders, an “Indian firm only” bid program can be set up.
- 6) Managers (or tribal purchasing department) who do not use this process to purchase goods and services or without an acceptable reason can be disciplined.
- 7) Certified Indian business can recover lost profits from the tribal departments if they are not given preference.
- 8) Contracts using federal money must use federal Indian preference regulations when those contracts or federal law require federal preference rules rather than tribal.
- 9) Tribal agencies can avoid the process only in very unusual and well-documented situations. If any agency decides not to use the process, the agency must always write a report on why it did not use the process. If a report is insufficient, the manager may be disciplined.
- 10) An active tribal purchasing department is necessary under this Ordinance.

89.1.01.2 **GENERAL**

- A. This Ordinance specifies the methods and procedures all agencies and instrumentalities of the Tulalip Tribes of the Tulalip Reservation (Tribes) must follow to provide preference of qualified Indian-owned enterprises or organizations when contracting; and all contractors with the Tribes, or a tribal agency, when subcontracting. For purposes of this section “tribal governing body” means the Tulalip Board of Directors. Tulalip Ordinance 60, the Tribal Employment Rights Ordinance, is not applicable to the Tribes or its agencies and instrumentalities. However, the TERO Commission, created by Ordinance 60, shall assist in enforcing this purchasing ordinance as set out below. This Ordinance, except as provided herein, shall apply to all oral or written contracts to provide goods or services entered into, or proposed to be entered into, by any agency of the Tribes. This Ordinance shall supersede all prior conflicting tribal statues resolutions.
- B. In order to obtain compliance with this Ordinance, all agencies and instrumentalities of the Tribes shall be required to obtain competitive bids or competitive responses to request for bids or proposals for purchase of goods to services when the value of goods or services to be purchased exceeds one thousand five hundred dollars. Tribal agencies may use this Ordinance for purchases of goods or services valued at less than one thousand five hundred dollars. This Ordinance shall not be interpreted to in any way prevent any agency from rejecting any bid or proposal on the ground that he bid or proposal is unresponsive or for any other reason which is not inconsistent with this Ordinance.

**C. Definitions and Requirements**

- 1) “Agency” shall mean the contracting party or tribal party offering the contract, and the party responsible for compliance with this Ordinance. An “agency” may be a natural person, a legal person, an artificial person, or a political subdivision. In addition, “agency” for purposes of this Ordinance shall mean any and all arms, agencies, departments, enterprises, organizations, instrumentalities, corporations, or other entities or the Tribes; provided that where the contracting party is the Tulalip Board of Directors of the Tulalip Tribal Courts, this Ordinance shall apply only to contracts where the Boards of Court have specifically directed in writing that the procedures and requirements of this Ordinance shall apply.
- 2) “Certified firm” shall mean a firm certified as Indian owned according to the criteria and procedures in this Ordinance.
- 3) “Commission” shall mean the Tulalip Employment Rights Commission as defined in the Tribal Employment Rights Ordinance of the Tulalip Tribes of the Tulalip Reservation.
- 4) “Indian” shall mean an enrolled member of the Tulalip Tribes or of an Indian tribe recognized as a tribal government by the United States. Applicant(s) for Indian preference will be required to provide certification from a tribe of BIA agency for the tribe for which enrollment is claimed.

- 5) “Indian tribe” shall mean an Indian Tribe, band or nation or other organized group or community; including any Alaska Native Village or regional or Village Corporation as defined in or established according to the Alaska Native Claims Settlement Act; recognized as such by the United States.
- 6) “Joint Venture” shall mean an association of two or more persons or firms to carry out a single or limited number of business enterprises for profit, for which purpose they combine their property, money, effects, skills, and knowledge.
- 7) “Preference” shall mean the process of providing advantage, or limiting bidding or requests for proposals, to certified Indian firms to provide a means by which certified firms receive contracts.
- 8) “Qualified Indian- owned enterprise or organization” shall mean an enterprise or organization which: (a) certified as Indian owned under this Ordinance; and (b) is, as determined under criteria established and published to the public by the agency or contractor, technically, administratively, and financially capable, and/or possess the necessary license, and/or is bondable to perform the work of the size and type involved, and within the time provided, under the proposed contract or subcontract.
- 9) “Reasonable price” shall mean the price at or below which the agency will accept a bid or proposal to contract. An agency may use any lawful process it chooses for determining what constitutes a reasonable price including, but not limited to: competitive, open or closed bidding, or the establishment of a prototype cost ceiling before bidding or negotiations commence. An agency may reject a bid by qualified Indian-owned enterprises or organizations and other firms on the basis of price. No agency may reject a bid or proposal for a specific project or contract by a qualified Indian-owned enterprise or organization on the grounds that the price is not reasonable and subsequently contracts with a non-Indian owned firm at a price the same or higher than that contained in the rejected bid.
- 10) “Responsive bid” shall mean at a minimum that the bid shall comply with all bid requirements stated in writing and shall be at a reasonable price.
- 11) “Technically qualified” shall mean the practical, technical administrative and financial ability of a firm to perform or provide by itself; or if permitted. Through subcontracts, the services or goods specifically set out in the bid or request for proposal package. An agency shall have the discretion to determine technical, administrative and financial qualifications of contractors and subcontractors. If an agency or contractor determines that a certified firm is not technically qualified, the agency must provide to each certified firm it rejects in written reasons for the rejection.
  - a) If an agency or contractor determines that certified Indian owned firms lack the qualifications to perform all the work required under a contract of

subcontract; the agency, divide the work required into smaller portions so that certified Indian-owned firms can qualify for a portions of the work.

- b) If a certified Indian-owned firm is disqualified on the ground that it is technically unqualified and believed that the disqualification was the result of an incorrect decision or an improper effort by an agency or contractor to circumvent its preference responsibilities under this Ordinance, the certified Indian-owned firm may file a complaint with the TERO Commission.
  - c) Any complaint shall be filed under 89.1.08 within 20 days after the firm was notified of its disqualification. The burden shall be on the complaining, certified Indian owned firm to demonstrate that is technically qualified, and that its disqualification was the result of an effort to circumvent obligations established by the Ordinance.
- 12) “TERO” or “TERO Commission “shall mean the Tulalip Employment Rights Commission as defined in the Tribal Employment Rights Ordinance of the Tulalip Tribes of the Reservation.
  - 13) “ TERO office: shall mean the administrative office which enforces the Tribal Employment Rights Ordinance
  - 14) “Tribal Court” shall mean the Tulalip Tribal Court.

**D) Responsibility for Compliance**

- 1) Agencies, except as set out in this Ordinance are responsible for compliance with this Ordinance. In addition to the agencies, all entities and persons engaged directly or indirectly in contracting with an agency shall be responsible for compliance with this Ordinance when subcontracting.
- 2) Agencies shall be responsible for compliance by all of their contractors. No contractor shall be permitted to commence work on the Reservation until it has demonstrated compliance with the subcontract preference requirements.
- 3) The agency awarding a contract shall comply with the requirement that preference be given in the award of such contract and shall be responsible for insuring that the contractor complies with the requirement that preference be given in selection of subcontractors.
- 4) When the agency is an Indian Housing Authority it shall comply where necessary with the Department of Housing and Urban Development’s Indian preference.
- 5) The tribes shall not be liable for any losses incurred by a contractor who is not permitted to commence work on the reservation because the contractor had entered into a subcontract and had failed to comply with the subcontracting preference requirement.

**89.1.01.3      CERTIFICATION**

- A. An applicant seeking to qualify for preference in contracting and/or subcontracting shall submit proof of the applicant's Indian ownership to the TERO office of the Tulalip Tribes. The TERO office shall provide written certification of Indian ownership to applicants who qualify under this Ordinance. Proof of Indian ownership shall include, but shall not be limited to:
- 1) Certification by a federally recognized Indian Tribe or the U.S. Bureau of Indian Affairs that the applicant is a member of a federally recognized Indian tribe and therefore eligible to receive preference. The Tribes shall accept an original certification (not a copy) of a federally recognized tribal government or the U.S. BIA that an individual is a tribal member. Such tribal or federal certification shall be the only acceptable evidence of Indian status. Applicants, or contractors or subcontractors found to have negligently or willfully misrepresented their Indian status to a tribal agency or contractor shall not be allowed to contract with any tribal agency or contractor for 60 months after finding such misrepresentation. The TERO office shall give written notice to all tribal agencies of the fact and duration of such disbarment from contracting.
  - 2) Evidence (including but not limited to stock ownership, structure, management, control, financing and salary or profit sharing arrangements of the enterprise) that the applicant enterprise or organization is at least 60 percent Indian owned and that at least 60 percent of all profits will flow to the Indian owners(s) during all portions of the contract or subcontract term.
- B. No Indian/non Indian joint venture shall be provided a preference under Ordinance in contracting or subcontracting unless the Indian person or firm of the joint venture can successfully demonstrate that it has the capability to manage all the work on the project on its own and has entered into the joint venture because the non-Indian firm provides only limited backup capability such as bonding, specialized expertise or capital.
- C. A firm denied certification by the TERO office may appeal the denial within 20 days thereof to the TERO Commission, pursuant to 89.1.018 (D),(E), and (F).
- D. A firm seeking a contracting or a subcontracting preference under this section Ordinance shall submit evidence sufficient to demonstrate to the satisfaction of the agency and/or the contractor, as the appropriate; that the applicant has the technical, administrative, and financial capability; and/or the necessary license(s) and bond ability; to perform contract work of the size and type involved, and within the time provided, under the proposed contract or subcontract. The agency is entitled to establish technical, administrative and financial qualifications for potential bidders so long as those qualifications are in writing and are reasonable qualifications that are necessary to the project or purpose of the contract or are standard in the industry.
- E. A tribal agency may state in its solicitation that bidders or persons and Entities submitting proposals, must submit evidence of certification as an Indian contractor and entitlement to

preferences provided for in this Ordinance, within a specified time period before a scheduled bid opening.

- F. The TERO office shall review the status of all certified Indian contractors on at least an annual basis. If the TERO office, an agency or a contractor determines that an applicant is ineligible for Indian preference, the TERO office the agency, or the contractor shall so notify the applicant in writing as set out in this Ordinance.
- G. No contractor or subcontractor shall qualify for preference if Indian ownership in, or control of, the business is less than 60% at any time during the bidding stage, the proposal stage, or the performance of the contract.

**89.1.04.1.1.1 INDIAN PREFERENCE**

As described in this Ordinance, the Tribes require that a preference in contracting and subcontracting with tribal agencies must be given to certified, qualified Indian-owned enterprises and organizations as defined in this Ordinance; provided, that certified, qualified Indian owned enterprises or organizations owned by members of the Tulalip Tribes shall be given preference over other Indian owned enterprises and organizations when (1) a majority of the funds used to pay the contract or subcontract are derived from Tulalip tribal resources and (2) the bid or proposal price offered by the certified enterprise owned by a Tulalip tribal member is not greater than that price offered by other certified Indian owned enterprises for the same contract or proposal.

**89.1.04.1.2 INDIAN PREFERENCE IN THE AWARD OF CONTRACTS AND SUBCONTRACTS**

- (A) Preference in the award of contracts and subcontracts that are let under an Invitation for Bids (IFB) process (e.g., conventional bid construction contracts, material supply contracts) shall be provided as follows:
  - (1) The IFB may be restricted to qualified Indian-owned enterprises and organizations. The IFB should, however, not be so restricted unless the agency has a reasonable expectation that two or more qualified Indian-owned enterprises or organizations are likely to submit responsive bids, award shall be made to the qualified enterprise or organization with the lowest bid. If fewer than the minimum required number of qualified Indian enterprises or organizations submit responsive bids, the agency shall reject all bids, and shall re-advertise the IFB. In unusual circumstances and where only a single qualified Indian-owned enterprise bidder has submitted a bid, agencies may accept that one bid or negotiate a reasonable price with the single qualified Indian-owned enterprise bidder; e.g., the agency determines that the single bid received is at an unusually favorable price, or the agency determines that delays caused by re-advertising would subject the project to higher costs.
  - (2) If the Tribal agency or contractor prefers not to restricted the IFB as described in paragraph 89.1.05 (A) (1) above, or if an insufficient number of qualified Indian-owned enterprises or organizations submit responsive bids in response to an IFB under paragraph 89.1.05 (A) (1), the agency or contractor may advertise

for bids inviting responses from technically qualified non-Indian enterprises as well as qualified Indian-owned enterprises. Award shall be made to the qualified Indian-owned enterprise with the lowest responsive bid if that bid is within budgetary limits established for the specific project or activity for which bids are being taken and no more than “X” higher than the bid prices of the lowest responsive bid from any qualified bidder. “X” is determined as follows:

When the lowest responsive bid is:

X=lesser of less than \$100,000.....10% of that bid, or \$9000

When the lowest responsive bid is:

At least \$100,000,

But less than 200,000.....9% of that bid, or \$16,000

At least \$200,000,

But less than \$300,000.....8% of that bid, or \$21,500

At least \$300,000,

But less than \$400,000.....7% of that bid, or 25,000

At least \$400,000,

But less than \$500,000.....6% of that bid, or \$27,000

At least \$500,000,

But less than \$1 million.....5% of that bid, or \$45,000

At least \$1 million,

But less than \$2million.....4 % of that bid, or \$72,000

At least \$2 million,

But less than \$ 4million.....3% of that bid, or \$108,000

At least 4 million,

But less that 7 million.....2% of that bid, or \$126,000

\$7 million or more.....1.5% of the lowest responsive bid, with no dollar limit.

- (3) The offer of a price or bid below a contractor’s cost of performing the contract, producing the product or providing the services shall not be considered a lowest bid.
- (4) If no responsive bid by a qualified Indian-owned enterprise or organization is within the stated range of the total bid price of the lowest responsive bid, award shall be made to the bidder with the lowest bid.

(B) Preference in the award of contracts and subcontractors that are let under a Request for Proposals (RFP) process shall be provided as follows:

- (1) The RFP may be restricted to qualified Indian-owned economic enterprises and organizations. The RFP should, however, not be so restricted unless the agency has a reasonable expectation that the required minimum number of two qualified Indian-owned enterprises or organizations are likely to submit responsive proposals. If two or more qualified Indian-owned enterprises or organizations submit responsive proposals at a reasonable price as determined by the agency, award shall be made to the qualified enterprise or organization

with the best proposal based on a rating system as set out below. If fewer than the minimum required number of qualified Indian-owned enterprises or organizations submit responsive proposals, the tribal agency shall reject all proposals and shall re-advertise the RFP. The agency shall develop the particulars concerning the RFP, including a rating system that provides for the assignment of points for the relative merits of submitted proposals. The RFP shall identify all rated factors, including price or cost, and any significant sub factors that will be considered in awarding the contract, and shall state the relative importance the agency places on each evaluation factor and sub factor.

- (2) If the agency prefers not to restrict the RFP solicitation as described in paragraph 89.1.05(B) (1), or if an insufficient number of qualified, Indian-owned enterprises or organization satisfactory respond under that procedure, the agency or contractor may issue an RFP inviting responses from technically qualified non Indian as well as qualified Indian-owned enterprises. The agency shall develop the particulars concerning the RFP, including a rating system that provides for the assignment of points for the relative merits of submitted proposals. The RFP shall identify all factors, including price or cost, and any significant sub factors that will be considered in awarding the contract, and shall state the relative importance the tribal agencies places on each evaluation factor and sub factor. Notification that Indian Preference is applicable to this procurement shall be included in the RFP solicitations.
- (3) If the RFP invites responses from technically qualified non Indian enterprises, an agency shall set aside a minimum of 15% of the total number of available rating points for the provision of Indian preference to qualified Indian owned enterprises or organizations in the award of contracts and subcontracts. The percentage or number of points set aside for preference and the method for allocating these points shall be specified in the RFP.
- (4) An agency shall require that contractors responding to an RFP by using the same point system, and that contractor set aside a minimum of 15% of the available rating points for the provision of Indian preference to qualified Indian owned enterprises or organizations in subcontracting. The RFP shall explain the criteria to be used by the contractor in evaluating proposals submitted by subcontractors.

(C) Pre Certifications of Firms: Any firm or person wishing to bid or submit a proposal for any contract to be awarded by an agency or contractor may submit its proof of qualifications for Indian preference to the TERO office. Any firm or person may submit its qualifications to the TERO office in order to be pre-qualified as a Certified at any time, even if there is no IFB or IFP in which it is interested in bidding on. The pre qualifications application shall be reviewed by the TERO office and if the firm qualifies as Indian owned a certification shall be granted by the TERO office. An agency or contractor may request that the TERO office review the qualifications of any certified firm at any time.

**89.1.01.4 PREFERENCE NOT FEASIBLE**

Agencies shall, in the conduct of their own operations, adhere to the preference requirements in this Ordinance. Where the provision of preference is determined by an agency not to be feasible, the agency shall: (1) document in writing its determination and the basis for its findings; (2) shall maintain for three years the documentation in its files for TERO's review; and (3) provide TERO office with a copy of the determination within 20 days of its issuance. The written determination shall be public information. The TERO Office, or an Indian contractor, or subcontractor affected by the determination may oppose or contest the determination under this Ordinance.

**89.1.01.5 OTHER PREFERENCE PROVISIONS**

- (A) When both tribal and federal funds are used for a project, the work to be accomplished with the funds should be separately identified and, where required by contract or federal law, federal Indian preference regulations, if any must be applied to the work financed by federal funds. If the funds cannot be separated, federal Indian preference regulations, if any will apply to the total project.
- (B) Each agency and contractor shall be responsible for enforcing and monitoring Indian preference implementation in subcontracting, employment, and training by its contractors and subcontractors. Should incidents of noncompliance be found to exist, the agency or contractor shall take appropriate remedial action. A finding by the TERO commission that the agency or contractor has not provided adequate monitoring or enforcement of Indian preference may result in a determination by the TERO commission that the agency is in breach of this Ordinance. Such a finding shall constitute grounds for the TERO Commission to impose remedies or sanctions under this Ordinance.
- (C) Preference in contracting, subcontracting, employment, and training applies not only on-site, on the Reservation, or within the tribal territorial or agency jurisdiction, but also to contact with firms that operate outside this jurisdiction (e.g., employment in modular or manufactured housing construction facilities) and deliver goods or services for use on the Reservation.

**89.1.01.6 REVIEW PROCEDURES FOR COMPLAINTS ALLEGING INADEQUATE OR INAPPROPRIATE PROVISIONS OF PREFERENCE**

- (A) Each complaint shall be in writing, signed and filed with the agency or contractor.
- (B) A complaint must be filed with the agency or contractor no later than 20 days from the date of the action (or omission) upon which the complaint is based.
- (C) Upon receipt of a complaint, the agency or contractor shall promptly stamp the date and time of receipt upon the complaint, acknowledge its receipt in writing to the complainant within five days and shall either meet, or communicate by mail or telephone, with the complaining party in an effort to resolve the matter. In all cases, but especially where the complaint indicates that expeditious action is required to preserve the rights of the complaining party, the agency or contractor shall endeavor to resolve the matter as expeditiously as possible. If noncompliance with Indian preference requirements is found

to exist, the agency or contractor shall take appropriate steps to remedy the noncompliance and to amend its procedures so as to be in compliance. If the matter is not resolved to the satisfaction of the complaining party within 15 days following the agency's receipt of a complaint, the complaining party may file a written complaint with the TERO Commission. Complaints filed with TERO Commission must be received by the Commission within sixty days after the action (or omission) on which the complaint is based.

- (D) Upon receipt of a written complaint, the agency or contractor shall provide a written report to the TERO Commission setting forth all relevant facts, including, but not limited to the date the complaint was filed with the agency, the name of the complainant the nature of the complaint, including the manner in which Indian preference was or was not provided; and actions taken by the agency or contractor shall provide its report and all relevant documents concerning the complaint to the TERO Commission within the ten days after receipt of TERO's notice to the agency or contractor that complaint has been filed.
- (E) Upon receipt of the agency's or contractor's report, the TERO Commission will determine whether the actions taken by the agency or contractor comply with Indian preference requirements under this Ordinance. The Commission may order a hearing on the complaint. Notification of the TERO Commission's determination shall be provided to the agency and to the complaining party, in writing, no later than 30 days following the TERO Commission's receipt of the complaint. If the complaining party's alleged injury will occur during this 30 day period, the TERO Commission will make a good faith effort to make its determination before the occurrence of such injury (e.g., contract award). There shall be no appeal to the Tribal Court from a finding of the TERO Commissions under this Ordinance.
- (F) Where the TERO Commission determines on the bases of the facts provided by the agency or contractor and on the basis of other available information that there has been non compliance with Indian preference requirements, the TERO Commission shall, in addition to other penalties provided in this Ordinance, instruct the agency or contractor to take appropriate steps to remedy the noncompliance and to amend its procedures so as to be in compliance.

#### **89.1.01.7      SANCTION**

If after a hearing, provided for in this Ordinance and upon the determination that the complaint is valid, the TERO Commission shall impose such sanctions on an agency or contractor as are provided here and elsewhere in this Ordinance. Such sanctions shall be money damages to be paid by the contractor or agency to the complainant up to the amount of profit the complaining contractor or subcontractor might reasonably have expected to receive under the specific circumstances of the complaint, and may include reasonable costs of filing and prosecuting the complaint. The commission shall assess the reasonable costs of defending the complaint against an unsuccessful complaining party. There shall be no appeal to the Tribal court from the imposition of money damages sanctions or costs.

Where a manager, director, supervisor, or chief operating officer of a tribal agency is found to be in willful non compliance with the provisions of this statue, that willful noncompliance shall be grounds for disciplinary action against the manager, and willful noncompliance shall be considered a major offense under the Human Resources Ordinance 84 of the Tribes.