

Request for Proposals for Photovoltaic System Design and Installation

Presented by: Quinault Indian Nation

Address: 1214 Aalis Drive, PO Box 70
Taholah, WA 98587

Project Location: 1655 Kla Ook Wa Drive, Taholah, WA 98587

Contact for questions: Faith Webster, Senior Planner
Faith.Webster@quinault.org

Date of Issue: 12/02/2022

Project Introduction

This Request for Proposals (RFP) is to solicit bids from photovoltaic (PV) system installers (Contractor) to design, supply, and install one 99-kW roof-mounted photovoltaic system and battery backup, if possible, for the Generations Building serving the Quinault Indian Nation in Taholah, WA (the Taholah Relocation Integrated Energy System).

A 99kW system was designed as part of a Bureau of Indian Affairs grant. The original design was a ground mounted system designed to be placed 350 ft from the structure, but the design has been shown to not meet standards. The design will be available to the selected contractor to review, however, the selected contractor will be asked to design a new roof mounted system. Conduit will need to be installed to the building as part of this project, as well as electrical panel modification to connect the array to the building. The maximum PV DC nameplate capacity of the project considered under this RFP shall be 99 kW DC. The Generations building currently has a diesel generator providing power back-up and the design will need to consider existing power configurations. The plans and schematics for the back-up generator will also be available upon request. Evaluating the current system and presenting the options for battery- back-up would be part of the design phase. It would be the selected contractor's responsibility to determine if the battery back-up is possible, and to make recommendations to QIN based on the findings.

The information presented in this RFP document has been assembled to facilitate bidding on a common PV system design that meets QIN's requirements. However, respondents are responsible for performing their own site evaluations– and requesting any additional material required for bidding. If desired, as site visit can be scheduled upon request.

In addition to the solar array/battery system installation, the project has a workforce development component. The selected solar contractor will work with and accommodate solar job skills trainings during the installation facilitated by Red Cloud Renewable, who was selected as the workforce development provider. The selected solar contractor will be expected to work with Red Cloud Renewable to provide opportunities for tribal members looking to job shadow and learn about solar installation. QIN community members and Red Cloud Renewable will be at the site during the installation.

Project General Requirements

- A. The contractor will be responsible for evaluating the current electrical system with diesel generator back-up and evaluate options for battery back-up
- B. The contractor will be responsible for designing and producing the complete PV system with battery backup design up to Grays Harbor PUD's transformer, procuring all required materials and installing all materials in compliance with applicable national and local codes. Additionally, the contractor will be responsible for site preparation, connection to Generations Building, and modification of electrical panels in the Generations Building.
- C. The contractor, in collaboration with QIN staff, will be responsible for securing all planning, electrical, and building permits required to complete the scope of work outlined in this RFP. Contractor will provide a proposed schedule in proposal.
- D. The contractor will provide structural engineering design and secure the necessary building and electrical permits required to complete the contractor's scope of work outlined in this RFP.
- E. The contractor shall generate an estimate of annual energy production of the system from the date of commissioning through 25 years of operation. These system performance estimates will be required as part of the RFP response and must include all assumed de-rate factors.
- F. The contractor will work with and accommodate solar job skills trainers from Red Cloud Renewable and Tribal members learning about solar installation.

- G. Contractor will provide Operations and Maintenance for two years following installation, including training QIN staff in operations and maintenance. This will include the following:
- Annual physical site inspections to confirm structural integrity and all equipment (e.g. modules, inverters, batteries, control systems, etc.) are operating properly, or as needed if the system malfunctions.
 - Review modules for dirt/debris. Contractor will clean modules if dirt/debris is identified during annual site inspection.
 - In the case there hasn't been a power outage, contractor will simulate an outage to ensure equipment, particularly the battery system, starts discharging as it is intended and converts back to charging once power is reestablished.

Existing Plans

Please contact Faith Webster, faith.webster@quinualt.org for a copy of any of the existing plans.

Contractor Requirements:

- A. Licensed contractor in Washington. Please provide Contractor license number.
- B. Contractor shall have staff assigned to this project with active NABCEP certifications.
- C. Insured — \$1,000,000 per occurrence, \$2,000,000 aggregate. Note: there is required insurance language naming QIN as co-insured.
- D. 100% Performance and Payment Bond

Services Requested from Contractor (Upon contract award)

- A. System Design — Contractor must submit the following design documents prior to system installation..
 - (1) Detailed Site Diagram showing:
 - a. Elevation and plan view of PV array location and/or 3-D rendering
 - b. Elevation of electrical equipment (inverter & disconnects) layout

(2) Shade Analysis – Contractor will be responsible for providing documentation confirming maximization of solar access and minimization of shading from nearby utility gear.

(3) Electrical Single-line diagram - Must include all information about major system components specifications and ratings, conductor size and type, conduit size, ratings of combiner boxes and series OCPD's, and type and ratings of facility electrical panel interconnection point.

(4) Wire Sizing Calculations – Ampacities of conductors shall be determined using NEC tables. Voltage drops for PV source, output and inverter output circuits shall be determined by hand calculations and limited to manufacturer recommendations or tolerances.

(5) PV Array Racking —Contractor will be responsible for generating the PV array racking design and attachment methodology. Contractor shall provide this information to QIN in a timely manner for approval, prior to obtaining any required permitting.

(6) Field Verification — Contractor must field verify design feasibility and/or all record documents and prepare own as-builts prior to commencing work in order to ensure proper system installation and adherence to contract timeline.

B. Project Documentation

- (1) Contractor will be responsible for maintaining accuracy of design documentation during project construction and will submit as-built documentation to QIN upon project completion.
- (2) Contractor will be responsible for generating a complete and detailed project construction schedule once all permits are secured. The project schedule will help the QIN understand the timing and duration of work and in which areas of the two sites the work will occur.

C. Procure materials

- (1) Contractor shall be responsible for procuring all system materials, whether or not specified in the system description, unless otherwise indicated above that it will be supplied by QIN or others.

- (2) All equipment will be manufactured in the United States, to the greatest extent practical.

D. PV System installation

- (1) Contractor shall be responsible for installing a grid-tied photovoltaic installation at the host site. The installation must be compliant with the current NEC and/or local authority having jurisdiction (AHJ). It is the installer's responsibility to ensure code compliance with the local authorities. The installation shall be executed according to the system design documentation. QIN must approve any design changes made in the field.
- (2) Contractor will provide adequate security, safety and protection of the site during the installation. This can include temporary fencing, protective barriers, traffic control, storage, and suitable housekeeping.

E. Interconnection

- (1) Contractor shall coordinate with QIN to confirm acceptable location for production meter and AC disconnect. It will be the responsibility of the Contractor to ensure that any and all other documentation necessary to meet permit and utility requirements is submitted to QIN and the AHJ.
- (2) It shall be the responsibility of the Contractor to ensure that the production meter has been installed if applicable, the net meter has been installed and the system has passed all required AHJ and utility inspections.

F. Electrical Permit

- (1) It will be the responsibility of the Contractor to obtain any and all electrical permits required.

G. Building Permit

- (1) It will be the responsibility of the Contractor to perform all structural engineering, submit all required applications with the QIN, Washington Labor and Industries and utility, and obtain the building permit. The Contractor will be responsible for any additional racking engineering required.

H. System Commissioning

- (1) Contractor shall submit a PV system commissioning protocol to confirm the system is operating as designed. Contractor will be responsible for completing the requisite

commissioning documentation to be approved by QIN prior to commissioning. The final PV system commissioning report shall be included in the project documentation.

(2) Minimum Documentation Includes:

- a. As Built Drawings
- b. Racking Torque Verifications
- c. Racking Visual Inspection
- d. Wiring Visual Inspection
- e. System Off Testing:
 - i. String Level Open Circuit Voltage and Polarity
 - ii. AC Voltage
- f. System On Testing:
 - i. String Level Max Power Voltage
 - ii. String Level Ampacity
 - iii. Inverter Level Production
- g. Data Monitoring
 - i. Registration Information
 - ii. Inverter serial numbers
 - iii. Confirmation of reporting and display

H. Operator's Manual

I. Final Walk through

- (1) Contractor shall schedule a tour of the completed and operating PV system with QIN.

J. System warranty

- (1) Contractor shall provide a minimum 5-year workmanship warranty.

- (2) 5 year parts and labor and pass through all the equipment warranties
- (3) Solar modules – 10-12 year limited product warranty and 25-year linear power warranty
- (4) Inverters – 10-year warranty
- (5) Racking – 10-year warranty
- (6) Control system – 10 year warranty

K. Monitoring

The QIN must monitor the system for 1 year and provide data to the Department of Energy. Contractor will assist the Tribe with respect to monitoring and reporting PV energy generation and, if applicable, the battery usage to the Department of Energy. Contractor will set up energy monitoring dashboard customization, including metric equivalencies for CO2 emissions reduction, and other metrics determined by the Quinault Indian Nation. These will include energy production data, energy storage system performance, and energy savings, including the amount, cost, and percentage of actual energy saved and displaced annually. The verification process leverages energy monitoring data from the system's monitoring dashboard, then confirms with utility billing data from Grays Harbor PUD. Contractor will procure and install monitoring system and train QIN staff how to use the monitoring system.

L. Operations and Maintenance

Contractor will provide Operations and Maintenance for two years following installation, including training QIN staff in operations and maintenance. This will include the following:

- Annual physical site inspections to confirm structural integrity and all equipment (e.g. modules, inverters, batteries, control systems, etc.) are operating properly, or as needed if the system malfunctions.
- Review modules for dirt/debris. Contractor will clean modules if dirt/debris is identified during annual site inspection.
- In the case there hasn't been a power outage, contractor will simulate an outage to ensure equipment, particularly the battery system, starts discharging as it is intended and converts back to charging once power is reestablished.

Please include this Operations and Maintenance cost as a separate item in your budget proposal.

Project Site

RFP Response Due Date

Firms are solely responsible for all costs incurred in the preparation and submittal of the RFP. Respondents shall submit one (1) hard copy of their response to this RFP *and a Digital PDF* copy by January 27, 2023 at 4:30 PM. Send your submittals to:

99 kW Solar Array
Ms. Ryan Allen, Procurement Administrator
Quinault Indian Nation
PO Box 70
1214 Aalis Drive
Taholah, Washington 98587

PDFs are to be sent to bids@quinault.org and faith.webster@quinault.org

Submittals become the property of the QIN and will not be returned.

Proposals shall demonstrate that the firm(s) has the professional capability and availability to satisfactorily and timely complete all the tasks as described in the Scope of Work section of this RFP. Responses shall include:

1. The Prime Consultant firm legal name, address, telephone number and principal contact email address.
2. Contractor License Number, SAMS UEI number, and Proof of Insurance.
3. The principal assigned to this project, the project manager (if different) and a brief description of their qualifications (experience, professional registration, education) and list of projects and date of completion for projects similar in scope to this solar array with battery backup project and descriptions and photographs of similar projects completed by Contractor, specifically experience with PV system installations greater than 20 kW DC nameplate and preferably with battery backup.
4. The proposed work plan and schedule for activities to be performed.
5. Fee proposal must be based on a proposed scope of work created by the project team, work plan and schedule, hourly rates by design team members, anticipated hours by team member and anticipated reimbursable costs.

6. Describe how you establish the estimated cost of construction, life cycle costs and costs of operation and maintenance of the facility.
7. A minimum of three references that are knowledgeable regarding the firm's recent performance on projects. The references shall be for projects on which the Project Manager has performed.
8. Lump-sum (fixed price) bid for all services (including but not limited to labor, materials, taxes, transport, permitting and engineering) associated with the design and installation of permitted and operational PV system.
9. Company labor and material mark-up rates for potential change orders.
10. Specification sheets of major system components including racking components.
11. Detailed Single-Line Diagram (SLD) identifying:
 - (1) Make and model of all photovoltaic system components
 - (2) Make and model of all photovoltaic balance of system components
 - (3) Proposed locations of all system components
12. Proposed construction plan with timeline. We expect that the project will be installed in the spring or early summer of 2023.
13. Estimates of annual energy (kWh) production for the proposed PV system. Annual energy production estimates should detail energy production from commissioning through the next 25 years.

Evaluation Criteria and the Selection Process

The basis of the award will be to the respondent receiving the most points from a staff and Committee review based on the following criteria:

- Project understanding, scope of work, work plan and schedule (25 points)
- Qualifications/Experience of Project Manager, especially related to similar projects (30)
- Past performance/references (5 points)
- Cost proposal (40 points)

Preference will be given to inclusion of qualified Indian-owned firms per the QIN's Indian Preference Policy. Respondents must not have been suspended or debarred by the federal government. The Nation's Indian Preference Policy applies (attached). The determination of who is an Indian Contractor is made by the Tribal Employment Rights Office according to Quinault Tribal Code, Title 97. Indian Contractors must provide certification from the Tribal Employment Rights Office in order to be considered eligible for Indian Preference. **A TERO fee may be assessed.** The successful submitter will sign the attached Agreement with the Nation, obtain a Quinault Nation business license for all firms/subcontractors doing work on the Quinault Reservation, provide a W-9, and submit certifications of required insurance coverage.

Selection of the successful proposal shall, in part, be based upon the completeness of the submittal, the quality and price of the services, the reputation of the respondent, and the ability of the respondent to meet all deadlines for delivery of the item(s).

This RFP does not commit QIN to award a contract, to pay any costs incurred in preparation of a response to this invitation, or to procure or contract for services or supplies. Respondents will not offer any gratuities, favors or anything of monetary value to any employee, officer, or agent of the QIN for the purpose of influencing favorable disposition toward either their proposal or any other proposal submitted as a result of this RFP. The QIN reserves the right to accept or reject all or part of the proposal, or to decline the whole proposal, and to negotiate with the respondents to ensure QIN receives the appropriate deliverables within the required timeframe. A declaration of an apparent low cost or successful proposer does not constitute the award of the project. The award shall be made only after a thorough review of the proposal and approval by the Quinault Business Committee.

Proposals are due by January 27, 2023.

**STANDARDIZED
QUINAULT INDIAN NATION
INDEPENDENT CONTRACTOR AGREEMENT**

Program No. _____
Purchase Order No. _____
Resolution No. (if applicable) _____

This Standardized Quinault Indian Nation Independent Contractor Agreement (“**Agreement**”) is effective as of **insert month, day & year** (“**Effective Date**”) and is entered into by and between the Quinault Indian Nation, a federally-recognized Indian tribe with an address of P.O. Box 189, Taholah, WA 98587 (“**Nation**”) and **insert legal name of contractor** with its principal place of business at **insert applicable street address** (“**Contractor**”).

This Agreement will not be binding unless signed by a Quinault Business Committee Executive.

1. Services.

1.1. *Performance of Services.*

- (a) *General.* Contractor will perform for the Nation the services (“**Services**”) described in Exhibit A-1 and any such other Exhibits A-[n] (e.g., Exhibit A-2, Exhibit A-3, and so on) as may be agreed by the parties from time to time during the Term (as defined in Section 2 below) of this Agreement (each a “**Service Exhibit**”).
- (b) *Service Exhibits.* Each Service Exhibit will be in the form attached as Exhibit A (or such other form on which the parties may agree in writing). All Service Exhibits are incorporated into this Agreement.
- (c) *Changes to the Services/Service Exhibits.* Changes may be made to the Services description or Service Exhibit by mutual written agreement of the parties.
- (d) *Contract Officer.* The Nation’s Contract Officer for this Agreement is **_____**. The Nation may change its Contract Officer by written notice to Contractor. The Contractor’s Contract Officer for this Agreement is **_____**.
- (e) *Subcontracting.* Contractor will not subcontract the Services or any portion of the Services under this Agreement to any third party without the prior written consent of the Nation. Contractor will bind any subcontractor to the terms of this Agreement and Contractor is responsible for compliance with the terms of this Agreement notwithstanding the use of any approved subcontractors (if any).
- (f) *Submittal of Forms.* Contractor will provide the Nation with a completed W-9 and obtain a business license from the Nation, if applicable, within ten (10) business days of the execution of this Agreement.
- (g) *Observation by Contract Officer.* Upon the Nation’s request, Contractor will allow the Contract Officer to observe Contractor’s performance of any Services under this Agreement.
- (h) *Progress Reports.* Contractor will provide the Contract Officer with progress reports regarding Contractor’s performance of the Services, upon request.

- 1.2. *Work.* Contractor acknowledges and agrees that, if any Services provided under this Agreement include the preparation, development or delivery by Contractor of any software, reports, drawings, papers, memoranda, photographs, written presentations, or other material of any kind (and in any format *whatsoever*, including without limitation digital format), or of any ideas, concepts, designs, discoveries, or improvements (collectively and individually, “**Work**”), then Contractor will deliver all Work to the Nation pursuant to the timeframe specified in the relevant Service Exhibit (the “**Schedule**”).

1.3. *Acceptance Process.* The Nation will, within thirty (30) calendar days following delivery of a Work deliverable identified in the relevant Service Exhibit (or such other time frame on which the parties mutually agree), provide a written notice of acceptance or rejection to Contractor (such notice may be by email and failure by the Nation to issue written notice *within* the thirty- (30-) day time period will be deemed acceptance). Such acceptance or rejection will be based on whether the Work conforms to the description in the relevant Service Exhibit (subject to Section 3.2 below) and whether it was delivered pursuant to the applicable Schedule. If the Nation rejects the Work deliverable, Contractor will have thirty (30) calendar days following notice of rejection to provide the Nation with a conforming Work deliverable (“**Correction Period**”). If Contractor fails to correct the Work deliverable within the Correction Period, or if Contractor fails to deliver a Work deliverable within the date(s) specified in the Schedule, the Nation may in its discretion take any one of the following actions: (a) accept the non-conforming (or untimely delivered) Work deliverable (without waiving the right to reject future Work deliverables and without waiving the right to terminate this Agreement or the relevant Service Exhibit under Section 2 below for breaches associated with such Work deliverable), (b) extend the Correction Period, or (c) accept or reject (in the Nation’s sole discretion) the non-conforming (or untimely delivered) Work deliverable and terminate this Agreement or the relevant Service Exhibit on written notice. Contractor will refund to the Nation any amounts paid under this Agreement for any rejected Work deliverables, and the Nation will have no obligation to pay for any Work deliverable unless and until it is accepted.

2. **Term and Termination.**

2.1. *Term.* This Agreement will commence on the Effective Date and expire on **date**, unless earlier terminated as provided in this Section 2 (“**Term**”).

2.2. *Termination of Service Exhibits/Agreement.*

(a) *Without Cause.* The Nation may terminate any Service Exhibit or this Agreement (including all Service Exhibits) without cause by issuing Contractor a written termination notice at least ten (10) calendar days before such termination, provided that the Nation will pay Contractor for all Services performed under the terminated Service Exhibit or this Agreement (as the case may be) prior to such termination. Upon termination under this Section 2.2(a), Contractor will immediately cease performance of all Services under the terminated Service Exhibit or this Agreement (as the case may be).

(b) *For Cause.* In addition to the Nation’s rights of termination in Section 1.3 and 2.2(a) above, the Nation may terminate this Agreement or the relevant Service Exhibit under this Agreement (as the Nation may decide, in its sole discretion) by issuing thirty (30) calendar days prior written notice to Contractor of a material breach by Contractor of this Agreement or any Service Exhibit under this Agreement, if such breach remains uncured at the end of the thirty- (30-) day notice period.

2.3. *Effect of Termination.* Within ten (10) business days following expiration or termination of this Agreement (or the termination of any Service Exhibit), Contractor will (a) deliver to the Nation all tangible materials (including any and all copies) constituting, containing or embodying the Work, all of the Nation’s Materials provided under this Agreement and any other materials containing or disclosing QIN Confidential Information or Personal Information (collectively, “**Service Materials**”) that were provided under this Agreement (or the relevant Service Exhibit, in the case of termination of a Service Exhibit), and (b) irretrievably delete all such Service Materials described in (a) that Contractor possesses or controls in electronic or other form. At the Nation’s request, Contractor will provide the Nation with written certification, executed by an officer of Contractor, confirming that Contractor has complied with the foregoing (a) and (b). Sections 3 (for amounts due and owing upon expiration or termination), 4, 5, 6, 7, 9, 10, and 11 of this Agreement will survive expiration or any termination of this Agreement. With respect to the expiration or termination of a Service Exhibit only, this Section 2.3 shall apply only to those Service Materials relevant to the Service Exhibit that is expiring or being terminated.

3. **Payment and Recordkeeping.**

3.1. *General.* As full and complete consideration for the Services satisfactorily performed under a given Service Exhibit (including all Work delivered as a part of the Services and that the Nation accepts pursuant to Section 1.3 above), the Nation will pay Contractor the amounts set forth in the relevant Service Exhibit, NOT TO

EXCEED \$insert total agreement amount. All payment(s) will be made pursuant to the terms of this Agreement, including the terms of this Section 3.

3.2. *Satisfactory Performance.* The Nation will only pay for satisfactorily completed Services. The Nation will have no obligation to provide Contractor with any payment or other consideration for Work that the Nation rejects in accordance with Section 1.3. The Contract Officer, as identified in Section 1.1(d) above, will determine whether or not Contractor's performance of the Services is satisfactory according to this Agreement.

3.3. *Payment Terms.*

(a) *Retention.* The Nation will retain 10 percent from each progress payment under a given Service Exhibit until (i) all Services have been satisfactorily completed under the Service Exhibit and (ii) Contractor provides documentation showing that all Contractor supplier and/or subcontractor payments have been made in connection with such Service Exhibit, and (iii) if applicable, Contractor provides documentation to Contract Officer showing proof of payment of all obligations to the Washington State Department of Labor & Industries and Employment Security Department.

(b) *Invoicing.* Contractor will invoice the Nation for amounts due under Section 3.1, as they come due for each Service Exhibit. The Contract Officer must approve payment and the adequacy of documentation submitted by Contractor as required under Section 3.3(a) above within five (5) business days after receipt of a properly issued invoice from Contractor. Payment will be made within ten (10) business days after receipt by Finance. The Contractor agrees to waive any claims to payment under this Agreement for failure to submit timely invoices.

(c) Payment of an invoice without asserting a dispute is not a waiver of any claim or right to challenge the invoice.

3.4. *Expenses.* Contractor bears sole responsibility for all expenses it incurs in connection with the performance of all of its obligations under this Agreement, unless otherwise expressly stated in a given Service Exhibit.

3.5. *Taxes.* The Nation is exempt from Washington State sales and business and occupation taxes for work done on the Quinault Reservation or goods delivered to the Nation on the Quinault Reservation. With respect to the Washington State business and occupation tax, this tax may not be included in overhead charges to the Nation. See, Washington Administrative Code (WAC) 458-20-192.

3.6. *Recordkeeping.* Contractor will maintain accurate and adequate books and records related to all costs and expenses incurred by Contractor under this Agreement, in such detail as will properly reflect and document all net costs, direct and indirect, of Services provided, including labor, materials, equipment, supplies, and other costs of whatever nature, for which reimbursement is properly claimed under the provisions of the Agreement (if and as authorized under a given Service Exhibit) (such books and records, the "Records"). Contractor will make available at Contractor's office all such Records for examination by a designated representative of the Nation, at all reasonable times during the Term and for a period of three (3) years after the expiration or termination of this Agreement.

4. Intellectual Property.

4.1. *Work Made for Hire.* The Nation has specially ordered and commissioned any and all Work, and Contractor agrees that any and all Work is a "work made for hire" for copyright purposes and the Nation will own all copyrights in the Work.

4.2. *Assignment.* Contractor hereby assigns to the Nation, its successors and assigns, all rights, title and interest in and to the Work including, without limitation, the following:

(d) any copyrights and equivalent rights (under any U.S. law or foreign law) that Contractor may possess or acquire in the Work that do not qualify as a work made for hire, including all renewals and extensions of such rights that may be secured under the laws now or hereafter in force and effect in the United States or any other country;

- (e) all rights in and to any inventions, ideas, designs, concepts, techniques, discoveries, or improvements, whether or not patentable, embodied in the Work, but not limited to, all trade secrets, patent rights and equivalent rights in and to such inventions throughout the world, regardless of whether or not legal protection for the Work is sought;
- (f) all trademarks that Contractor develops as part of the Work; and
- (g) any documents, magnetically or optically encoded media, or other materials created by Contractor under this Agreement.

4.3. *Moral Rights.* To the maximum extent permitted by law, Contractor waives all moral rights in the Work.

4.4. *Additional Assistance.* At the Nation's expense, Contractor will execute and deliver such instruments and take such other action as may be requested by the Nation to perfect or protect the Nation's rights in the Work and to carry out the assignments contemplated in Sections 4.2 and 4.3. Contractor agrees to cooperate with the Nation in the filing and prosecution of any copyright, trademark or patent applications that the Nation may elect to file on the Work or inventions and designs relating to the Work.

4.5. *The Nation's Materials.* The Nation grants Contractor a limited, non-exclusive license to use, for the sole purpose of performing the Services under the relevant Service Exhibit, any software, reports, drawings, papers, memoranda, photographs, written materials, or other material of any kind (and in any format *whatsoever*, including without limitation digital format) (the "**Nation's Materials**"), that are provided by the Nation to Contractor under a Service Exhibit. Contractor will cease all use of any of the Nation's Materials upon the earlier of: the completion of the Services for which the particular Nation's Materials were provided, the expiration or termination of the relevant Service Exhibit, or the expiration or termination of this Agreement, at which point Contractor will return all of the Nation's Materials to the Nation. The Nation hereby reserves all rights not expressly granted in this Section 4.5 to the Nation's Materials and no additional rights are granted to Contractor in the Nation's Materials, whether by implication, estoppel or otherwise.

5. **Confidentiality.** Contractor agrees that at all times during the Term of this Agreement, and for five (5) years thereafter, Contractor will hold in strictest confidence, and will not use or disclose to any third party, any QIN Confidential Information. "**QIN Confidential Information**" means all non-public information that the Nation provides to Contractor, or that ought in good faith to be treated as confidential given the nature of the circumstances surrounding its disclosure, and includes without limitation the terms of this Agreement, future business plans, information regarding unreleased product or service offerings, marketing plans, the Nation's customers and suppliers, and information received from others that the Nation is obligated to treat as confidential. "**QIN Confidential Information**" does not include any information, however, that (a) was publicly available before it was disclosed to Contractor; (b) becomes publicly available after it is disclosed to Contractor under this Agreement, other than through a breach of this Agreement; (c) is or has been disclosed to Contractor by a third party who is not under an obligation to keep such information confidential; or (d) was developed independently by Contractor without use of the QIN Confidential Information.

6. **Representations and Warranties.**

Contractor represents, certifies, and warrants to the Nation that:

6.1. Contractor has full right and power to enter into and perform according to the terms of this Agreement, and nothing in this Agreement violates the terms of any agreement between Contractor and a third party;

6.2. (a) Contractor has not been debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities, or proposed for debarment or suspension, and certifies it is eligible to receive a federal award under federal procurement regulations;

(b) Contractor has not within a three-year period preceding this certification been convicted of or had a civil judgment rendered against it for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract (tribal, federal, state, or local); violation of

ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. THIS EXCLUSION OF DAMAGES SHALL APPLY REGARDLESS OF THE FORM OR CAUSE OF ACTION OR THE ALLEGED BASIS OF ANY CLAIM AND EVEN IF THE REMEDIES OTHERWISE PROVIDED UNDER THIS AGREEMENT, AT LAW OR IN EQUITY FAIL OF THEIR ESSENTIAL PURPOSE.

- 7.2. *Indemnification.* Contractor will indemnify, defend, and hold the Nation and its successors, officers, directors and employees harmless from any and all actions, causes of action, claims, demands, costs, liabilities, expenses and damages arising out of or in connection with any claim that: (a) as alleged, would constitute a breach of any Contractor representation or warranty set forth in Section 6 above, or (b) arises out of Contractor's negligent or willful misconduct.
- 7.3. *Procedure.* If any action is brought against the Nation for which Contractor is obligated to provide a defense under Section 7.2 above, the Nation will promptly notify Contractor in writing. The Nation will provide reasonable cooperation to Contractor, at Contractor's expense, in connection with the defense of any such action. Contractor will employ counsel reasonably acceptable to the Nation in defending any such action. The Nation has the right to employ separate counsel and participate in the defense of any claim, at the Nation's expense. Contractor will reimburse the Nation upon demand for any payments made or loss suffered by it at any time, based upon the judgment of any court of competent jurisdiction or pursuant to a bona fide settlement of claims covered by Contractor's indemnification obligation in Section 7.2. Neither party will settle any claim for which indemnification is sought under Section 7.2 without the other party's prior written consent, which consent will not be unreasonably withheld.
- 7.4. *Duty to Correct.* If the Work furnished hereunder is in any action held to be infringing and its use enjoined, Contractor, in addition to its obligations under Section 7.2 and 7.3, will promptly and at its expense:
- (a) procure for the Nation the right to continue use, sale, and marketing of the Work; or
 - (b) replace or modify the Work with a version of the Work that is non-infringing.

If (a) or (b) are not available to Contractor, Contractor will refund to the Nation all amounts paid to Contractor by the Nation hereunder.

8. **Insurance Coverage.** Contractor will obtain and maintain the following insurance and will name the Nation as an additional insured and provide the Nation written proof of the same within ten (10) business days of the execution of this Agreement. Contractor will promptly provide written notification to the Nation of any changes regarding insurance.
- (a) *General Liability.* Contractor will maintain General Liability Insurance in the amount of one million dollars (\$1,000,000) each occurrence and one million dollars (\$1,000,000) aggregate.
 - (b) *Automobile liability.* Contractor will maintain automobile liability insurance covering owned, hired, and non-owned vehicles used on the Quinault Indian Reservation. The policy shall provide for coverage of two hundred thousand dollars (\$200,000) per person and five hundred thousand dollars (\$500,000) per accident for bodily injury and five hundred thousand dollars (\$500,000) property damage, or five hundred thousand dollars (\$500,000) Combined Single Limit per occurrence.
 - (c) *Workers' compensation and disability benefits insurance.* Contractor will pay applicable Washington State Department of Labor and Industries insurance and Washington State Employment Security taxes.
 - (d) *Professional Liability.* If the Services require Contractor to provide a professional service to the Nation, Contractor will maintain professional liability insurance in the amount of one million dollars (\$1,000,000) each occurrence and one million dollars (\$1,000,000) aggregate.
9. **Notices.** Any notices given under this Agreement will be delivered either by messenger or overnight delivery service, or sent by facsimile with a confirmation sent via certified or registered mail, postage prepaid and return receipt requested, and shall be deemed to have been given on the day when received by the party to whom the notice is given.

	Quinault Indian Nation Contact Person	Contractor Contact Person
Name, Title		Insert name & title
Party	Quinault Indian Nation	Insert contractor name as stated in the preamble
Address	P.O. Box 189	Insert street address (NOT a PO box)
City, State, Zip	Taholah, WA 98587	Insert city, state & zip code
Phone		Insert phone #
Facsimile		Insert fax #
Copy to:		Insert additional copyee name or N/A

10. Sovereign Immunity.

10.1. *Limited Waiver.* Provided that all of the following conditions are met, the Nation grants to Contractor a limited waiver of its sovereign immunity to be sued under an explicit provision of this Agreement, unless the Nation is otherwise protected from a claim under the Federal Tort Claims Act:

- (a) The claim is made by Contractor, and not by any other party, whether an individual or an entity of any kind. The right to sue shall not be transferable.
- (b) The claim alleges a default by the Nation of one or more specific duties owed to Contractor that are expressly assumed by the Nation under the terms of this Agreement. No suit shall be had for any other reason.
- (c) The claim seeks either:
 - i. specific performance by the Nation to bring the Nation into compliance with the obligations or duties expressly assumed by the Nation in this Agreement, provided that the cost of performance does not exceed the original cost of the Agreement; or
 - ii. payment of a monetary judgment arising from a default of an explicit duty owed by the Nation to Contractor under the terms of this Agreement, which shall not exceed the original cost of the Agreement and shall be limited to payment from the Nation’s insurance, and not from any other source, asset or property of the Nation.
- (d) The claim is brought in the Quinault Tribal Court.

10.2. Other than as expressly set forth in Section 10.1 above, no other provision in this Agreement shall be deemed a waiver by the Nation of its sovereign immunity in any form, regardless of the terms used or material directly or indirectly referenced.

11. Miscellaneous.

11.1. *Relationship of the Parties.* Contractor is an independent contractor for the Nation. Nothing in this Agreement creates an employer-employee, agency, joint venture, employment or partnership relationship. Neither party may make representations on behalf of or otherwise bind the other party. Contractor is responsible for all of Contractor’s federal and state taxes, withholding, social security, insurance, and other benefits.

11.2. *Assignment.* Contractor will not assign this Agreement, or any rights or obligations hereunder, whether by operation of contract, law or otherwise, without the prior written consent of the Nation. Any attempted assignment in violation of this Section 11.2 is void, and the Nation may terminate this Agreement on written notice in the event of such an attempted assignment.

11.3. *Waiver/Severability.* No provision of this Agreement will be deemed waived unless the waiver is in writing and signed by the waiving party, and no such waiver will constitute a waiver of any other provision(s) or of the same provision on another occasion. If any term of this Agreement is found by a court of competent jurisdiction to be in whole or in part unenforceable, then such unenforceable term or portion thereof will be

deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the allocation of risk among the parties reflected in the original provision, and the remainder of this Agreement will continue in effect.

11.4. *Dispute Resolution.*

- (a) *Informal Resolution/Mediation.* The Contract Officer shall attempt to resolve conflicts and disputes at the earliest opportunity. If the parties are unable to resolve disputes on an informal basis through their representatives, the parties will engage in mediation in good faith, with each party equally sharing the costs of mediation. Mediation involves each side of a dispute sitting down with an impartial person, the mediator, to attempt to reach a voluntary settlement. Mediation involves no formal court procedures or rules of evidence, and the mediator will not have the power to render a binding decision or force an agreement on the parties.
- (b) *Commencement of Mediation.* Either party may commence mediation by providing to the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate with one another in selecting either a certified mediator or a mediation services company, and in scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs.
- (c) *Confidentiality.* All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator and any mediation service employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.
- (d) The negotiation and execution of this Agreement is deemed by the parties to have occurred within the Quinault Indian Reservation and any interpretation hereof shall be in accordance with the laws of the Quinault Indian Nation or applicable federal law. All actions arising under this Agreement or reasonably related to this Agreement shall be litigated in the Quinault Tribal Court. If the Nation must enforce its rights under this Agreement in court, Contractor shall be liable for reasonable attorney's fees and costs if the Nation is the prevailing party.

11.5. *Entire Agreement.* This Agreement constitutes the entire agreement between parties with respect to its subject matter, and it merges all prior and contemporaneous communications regarding such subject matter. It may not be modified except by a written agreement signed by duly authorized representatives of Contractor and the Nation.

IN WITNESS WHEREOF, the Nation and Contractor agree to the terms and conditions set forth in this Agreement as of the Effective Date, provided that: this Agreement will not be binding unless signed by a Quinault Business Committee Executive.

CONTRACTOR	QUINAULT INDIAN NATION
By: _____	Contract Officer: _____
Printed Name: _____	Division Director: _____
Title: _____	APPROVED AS TO FORM by Office of Attorney General: _____
Date: _____	Grants and Contracts: _____
	QBC Executive: _____

SERVICE EXHIBIT A- [] TO THE STANDARDIZED QUINULT INDIAN NATION INDEPENDENT CONTRACTOR AGREEMENT

This Service Exhibit A-## (“Service Exhibit”) to the Standardized Quinault Indian Nation Independent Contractor Agreement is entered into by and between Quinault Indian Nation (the “Nation”) and insert legal name of contractor (“Contractor”) on insert Work start date (“Service Exhibit Effective Date”) under the Standardized Quinault Indian Nation Independent Contractor Agreement between the parties with an Effective Date as of insert main agreement Effective Date (“Agreement”). Capitalized terms not otherwise defined in this Service Exhibit will have the same meaning as set forth in the Agreement.

1. Description of the Services to be Performed by Contractor.

Insert a detailed description of the Services to be performed.

2. Timeline for Performance of the Services/Delivery of the Work.

Contractor will complete and deliver all Services to the Nation, including providing all Work deliverables identified in the table below (each a “Deliverable”), in accordance with the following Schedule.

Work Deliverable	Due Date
A. “Deliverable 1”: Describe deliverable.	Insert date
B. “Deliverable 2”: Describe deliverable.	Insert date
C. “Deliverable 3”: Describe deliverable.	Insert date

3. Payment.

As complete and final consideration for the Services performed in accordance with this Service Exhibit (including all Work provided under this Service Exhibit and accepted by the Nation under Section 1.3 of the Agreement), the Nation will pay Contractor as follows:

At a rate of \$____.00 per hour, for a maximum of ____ hours, with a corresponding amount not to exceed \$____.00 US Dollars, on acceptance of the Work by the Nation pursuant to Section 1.3 of the Agreement.

OR

[Use of the following language presumes Deliverables are defined per the table in Section 2 above] A total of \$____.00 in the aggregate, on acceptance of each of the following Work Deliverable by the Nation pursuant to Section 1.3 of the Agreement, which shall be paid in the following installments:

Work Deliverable/	Payment Amount
A. Deliverable 1.	\$_____
B. Deliverable 2.	\$_____
C. Deliverable 3.	\$_____

4. Service Exhibit Term. This Service Exhibit is entered into by the parties as of the Service Exhibit Effective Date and will continue through date, unless terminated earlier as provided in the Agreement (“Service Exhibit Term”).

Quinault Indian Nation Tribal Employment Rights Office Bidders Packet Construction Projects

- Compliance Plan & Agreement
- TERO Compliance Requirements
- Job Request Form
- TERO Classifications and Wage Rates
- Candidate Evaluation Form & Performance Evaluation Form
- Question & Answers



QIN TERO forms and information can be found on our website at:

www.quinaultindiannation.com

Click on departments then click TERO

**Quinault Indian Nation
Tribal Employment Rights Office**

Notice

The Quinault Indian Nation has a Tribal Employment Rights Ordinance (Title 97) in effect covering Indian Preference, Indian Employment, Training, Contracting and Sub-Contracting. All bidders must contact the Quinault Indian Nation Tribal Employment Rights Office to obtain all relevant information before bidding. The successful bidder must notify our TERO office in person before any work commences.

Every Employer with a Construction Contract, in the sum of \$10,000.00 or more, or more than one Contract in a 12-month period and the aggregate sum of those contracts is \$10,000.00 or more, shall pay a one-time fee of 1.75 percent of the total amount of each Contract. Such fee shall be paid by the Employer prior to commencing work On or Near the Reservation.

Any Employer that does not submit an acceptable Compliance Plan may be denied the right to commence or continue business within the boundaries of the Quinault Indian Nation Reservation as defined in Title 97.

Bidders are required to contact the TERO office for information concerning TERO requirements in the following areas:

- Wage Rates
- Indian Sub-Contracting
- Indian Employment
- Indian Training Opportunities

Please contact the TERO office should you have any questions or visit our website at www.quinaultindiannation.com for copies of Title 97 related information, forms and documents.

Evelyne Kalama
TERO Manager
360.276.8215 x4805

Cell: 360.324.9177

Email: ekalama@quinault.org

Tara Perez
TERO Compliance Officer
360.276.8215 x4806

Cell: 360.590.0566

Email: Tara.perez@quinault.org

All TERO Ext. 4800

TERO@quinault.org

Tribal Employment Rights Office

Quinault Indian Nation TERO
P.O Box 189 Taholah, WA 98587
Phone: 360-276-8211 Ext. 4800
TERO Manager Ext. 4805
ekalama@quinault.org
TERO Compliance Officer Ext. 4806
tara.perez@quinault.org
TERO Admin Assistant Ext. 4807
Tashina.Bryson@quinault.org

COMPLIANCE PLAN & AGREEMENT

Note: All Contractors/Subcontractors must meet with the TERO office.

Any covered entity not submitting a completed compliance plan will be denied the right to commence work on the Quinault Reservation. A compliance plan should be submitted at least 72 hours prior to starting project. All Contractors are required to submit a copy of the contract with the compliance plan to TERO.

[Failure to comply with the TERO Ordinance may result in civil penalties.](#)

[Please send the completed Compliance Plan & Agreement at pages 3-8 to \[TERO@quinault.org\]\(mailto:TERO@quinault.org\).](#)

Historically, Quinault Tribal members and other Indians have suffered discrimination in employment on and near the Quinault Reservation by being excluded from the employment market and experiencing discrimination when employed by private sector employers. As a result, Indians have suffered poverty and high unemployment rates, lost opportunities to learn needed skills or to participate in job training programs, lost opportunities for permanent/full time employment, and were not paid equal wage for equal work. To eliminate discrimination and insure that tribal members and other Indians on the Quinault Reservation will have preference in employment and training opportunities, the Quinault Nation established a Tribal Employment Rights Ordinance (TERO), Title 97 of the Quinault Tribal Code.

Project Information

Project Name _____ Project No _____

Location _____

Project Owner _____

Project Architect _____ Phone: _____

Project Funding Agency: _____

Funding Agency Contact: _____ Phone _____

Project Start Date: _____

Project Completion Date: _____

Contractor Information

Check all that apply: Prime Contractor Sub Contractor Union Non-Union

Company _____

Complete Address _____

Contact Person _____

Title _____

Phone: _____ Fax: _____ Cell: _____

Email: _____

Insurance Company: _____

Policy: _____

Scope of work performed: _____

Construction Schedule/Business Plan: _____

Work Commencement Date: _____

Work Completion Date: _____

Contract Amount: _____ TERO Fee 1.75%: _____

This agreement shall be for the life of this specific project, This compliance plan serves as an invoice – payment must be paid prior to commencing work on the reservation.

Identification of Key Personnel

A Key Employee is defined as 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.

Name	Position/Classification	Licensed Yes/No	Hourly Rate	Length with Company

ALL SUPERVISORY KEY PERSONNEL LISTED ABOVE ARE REQUIRED TO ATTEND THE TERO PRE-CONSTRUCTION MEETING, WHICH WILL BE HELD PRIOR TO THE BEGINNING OF WORK ON THE PROJECT IDENTIFIED ON THIS COMPLIANCE PLAN.

Employment Rights Fee

Every Employer with a construction contract in the amount of \$10,000 or more, or more than one contract in a 12 month period and the aggregate sum of those contracts is \$10,000 or more, shall pay a one-time fee of 1.75% of the total amount of each contract. Such fee shall be paid by the Employer prior to commencing work on the Reservation.

Identification of Sub-Contractors

It shall be the Prime/General Contractor’s responsibility to provide copies of this TERO Compliance Plan and Agreement form to all their subcontractors and suppliers. All Subcontractors must secure an approved TERO Compliance Plan and Agreement **prior** to the commencement of any portion of work activity they will be involved in. The Prime and all subcontractors are required to attend a TERO Pre-Construction meeting prior to the beginning of work.

Company Name	Phone	Scope of Work	Estimated Start Date

Manpower Requests

Provide a preliminary estimate of workers (in addition to permanent and key employees) that your company will require for completing the work on this project. List classification/skill, number needed, starting date, and pay rate. A TERO Dispatch form and follow up call to TERO at least forty-eight (48) hours prior to identified “start date” is required.

Attach a copy of Personnel Manual and Company application to be used in selection process.

Skill/Qualification	Start Date	No	Pay Rate	Special Instruction

Training and Salary

The Employer agrees that all local Indian employees will receive adequate training for the position for which they are hired. All native employees will be evaluated and paid in accordance with a training plan set forth between the contractor and TERO.

All contractors shall compensate their Employees at a rate not less than the approved Quinault Construction wage scale specified for their trade or the prevailing wage scale per Contract requirements. If the company is signatory to a Construction trade union, the current union pay scale with fringe benefits of that trade will be paid, in cash, unless otherwise specified through any other compliance plan or Contract; provided, that it is not less than the Quinault Construction wage scale.

Emergency Replacement Workers

Employers operating during hours when the TERO office is closed (i.e. weekends, holidays, etc.) who are in need of workers to fill a vacancy will be authorized to place an emergency worker to fill the vacancy. This emergency placement shall be allowed for no longer than seventy-two (72) hours. The TERO will be notified of such hires immediately upon the next working day and the position will be filled by TERO worker(s) unless none are available. The TERO Office hours are between 8 AM-4:30 PM Mon-Fri

Notify TERO by email or call our cell phones listed.

Termination/Layoff

No TERO workers shall be terminated except for cause as provided in the contractor’s personnel policies.

No TERO worker, who can perform the work required, shall be terminated through layoff or reduction in force while a non-Indian or non-local Indian employee in the same craft is still employed. If employees are laid off by crews, classifications or other categories, qualified TERO workers shall be transferred to crews or positions that will be retained.

Enforcement

The TERO Manager or Compliance Officer has the right to make on-site inspections and conduct compliance investigations at all sites where employment is taking place under the provisions of this compliance plan.

Employers ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites in all facilities at which the employees are assigned to work. The Employers shall specifically ensure that all supervisors are aware of and carry out the Employers obligations under the TERO ordinance.

The Employer agrees to comply with all rules and regulations set forth in the TERO Ordinance. This agreement is affirmed in writing by the appropriate company officer.

TERO Pre-Construction Meeting

A TERO Pre-Construction meeting is required to provide each contractor and their supervisory personnel orientation on the TERO requirements and procedures. The meeting must occur prior to the project start date. The Prime/General Contractor shall be responsible for contacting TERO to schedule the meeting and for providing notification of meeting date and time to their subcontractors.

Meeting Date	Location	Time

TERO Personnel _____

TERO Understanding and Acceptance

Quinault Nation Tribal Employment Rights Office

Understanding & Acceptance

On behalf of _____, I hereby certify that I have received and understand the Quinault Nation Tribal Employment Rights Office (TERO) requirements set forth in this TERO Compliance Plan and Agreement, and hereby agree to accept the responsibility of compliance with the described obligations and requirements.

Dated this _____ day of _____, 20_____.

Project: _____ Project No. _____

Contractor: _____ Sub-Contractor: _____

Address: _____

Phone: _____ Fax: _____

Printed Name: _____ Title: _____

Signature: _____ Date: _____

TERO ATTEST

On behalf of the Quinault Nation TERO, I hereby attest to the conditions set forth in this TERO Compliance Plan and Agreement, and will enforce this agreement through the powers vested in me by the Quinault TERO Commission and the Quinault Nation Employment Rights Ordinance (TERO) Title 97.

Signature _____ Date _____
TERO Compliance Officer or Representative

NOTICE TO PROCEED

The attached TERO Compliance Plan and Agreement has been received and is fully acceptable. On behalf of the Quinault Nation TERO, authorization to begin work on the above-described project is hereby granted.

Signature _____ Date _____
TERO Compliance Officer or Representative

ATTACHMENT A

* * * * *

DESCRIPTION OF TERO COMPLIANCE REQUIREMENTS

DESCRIPTION OF TERO COMPLIANCE REQUIREMENTS

The Quinault Indian Nation Tribal Employment Rights Program is authorized by Title 97 of the Quinault Tribal Code. Title 97 establishes the Tribal Employment Rights Office and the requirements for compliance.

1. **EMPLOYMENT REQUIREMENTS.** The intent of TERO is to achieve employment and training opportunities for the local Indian workforce. Pursuant to Title 97, Indian preference will be required on all employment and training opportunities. All Permanent and Key Employees, who will be utilized on this project, must be identified in this TERO Compliance Plan by name and title, with a complete description of duties each will be performing on this project.

A. **Key Employee** is defined as 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. Any claims that the employee possesses a “specialized skill” in order to be designated a key employee shall require written proof, including resume of work history, certificates, licenses, etc. *A complete description of duties for each “key employee” listed must be attached to this TERO Compliance Plan.* TERO will review the information submitted and determine whether the employee is in fact a key employee.

B. **Hiring.** The Employer agrees to utilize the TERO Hiring Hall to fill their manpower request, and must provide a minimum of seventy two (72) hours’ notice and a job description on the manpower needs to the TERO office. The TERO staff will attempt to accommodate the Employer in the timeliest manner, matching the specified needs with a TERO referral that meets the minimum of qualifications. TERO will certify in writing when a qualified TERO referral is not available.

C. **TERO Dispatching.** All TERO referrals or “Dispatches” will be made from Hiring Hall listings of Local Indian Workforces. The hiring hall lists contain names of unemployed Indian workers who have indicated that they are available for work and their skill level. Once a name is taken from the Hiring Hall List, the individual’s name will be provided to the Employer. If that worker possesses the minimum threshold of qualification, then they are referred for the opportunity. All TERO referrals will report to work with a TERO Referral form in hand, unless a copy has been faxed/ mailed/hand-delivered prior to the referral’s first day of work. The Employer shall contact TERO regarding any worker who reports to the job site without a TERO Referral Form in hand. *(See Attachment B).*

D. **TERO Job Request.** This form provides a space for the Employer to give a brief job summary, including company name, address, and phone number, position title/classification, start date, start time, rate of pay anticipated length of employment, tools required, who to see, etc. The TERO referral of “dispatch” shall sign the pay rate offered. All dispatch forms shall require dates and signatures of the Employer and a TERO Representative. Unsigned forms will be considered invalid. Employers should review the dispatch form and discuss it with the referral/worker his/her first day of work. Any revisions

to the work opportunity, identified on the original dispatch form, regarding position/title, duties, rate of pay, etc. must be reported to TERO prior to any revisions taking place. (See Attachment B).

E. **Local Indian Workforce** is defined as any member of a federally recognized tribe who resides either within the exterior boundaries of the Quinault Indian Reservation or within 60 miles of the Reservation.

F. **Hiring Hall**. The main TERO Hiring Hall is located at the Taholah Administration Building at 1214 Aalis St. Taholah, WA 98587.

G. **Training**. All training opportunities or Training Special Provisions (TSP) requirements must be identified prior to the commencement of work activity on this project. Training opportunities shall be filed through the same process described under Section C “Hiring”, and through coordination with the TERO Employment and Training Program components to locate individual(s) who may already be in an apprenticeship program for which the opportunity will exist.

H. **Layoff**. TERO referred workers will have priority in all work opportunities. In the event that a lay-off becomes necessary, a TERO worker with skills, and in some cases key employee, will be retained. Daily TERO monitoring and a review of weekly certified payroll reports will be made to assure that opportunities are not being eliminated by revising the duties of Key Personnel or Employees.

I. **Disciplinary Action**. Employers must report any disciplinary action taken against a TERO referred worker in written form, providing name, date of incident(s), individual(s) involved, names of witnesses, location of incident, etc. Any disciplinary action taken against a TERO worker will be kept on record at TERO.

J. **Termination**. Employers must discuss termination of an Indian worker with TERO prior to final action. In instances of deliberate acts of safety violation, damage to property, or act of violence, the Employer shall have the right to dismiss the employee immediately. Failure to provide TERO with a notice of impending termination for other matters may result in a violation of this agreement.

K. **Employer Policies**. The Employer must submit a copy of its employee policies prior to the commencement of work activity for TERO review and approval. In case of any conflict or dispute between company policies and with the TERO requirements, Title 97 will govern. An Employer may be required to demonstrate that a challenged employment practice is job-related for the position in question and consistent with business necessity.

L. **Drug Testing**. Employment must be offered prior to requiring a “pre-employment” drug test. The TERO must be notified and provided a copy of the Employer’s pre-employment drug testing policies. Documentation must be provided that all permanent and key employees have complied with the drug testing requirements prior to the commencement of their work activity on this project. It is the contractor’s responsibility to do drug testing.

2. **WAGE RATES/FRINGE BENEFITS/PAYROLL REPORTS**

A. **Wages and Fringe Benefits.** The prime contractor and their subcontractor(s) must submit a table of wages to be paid. All contractors shall compensate their employees at a rate not less than the approved Quinault Construction wage scale specified for their trade or the prevailing wage scale per contract requirements. TERO referrals must receive pay equal to the Employer's permanent employees and waived workers performing the same duties/job descriptions. If the company is signatory to a construction trade union, the current union pay scale with fringe benefits of that trade will be paid, in cash, unless otherwise specified through any other compliance plan or contract; provided, that it is not less than the Quinault Construction wage scale. TERO referrals will receive all fringe benefits in cash, unless the worker is a union member. TERO referrals will not be required to join a union to procure or retain employment. Each worker must receive a paycheck with an explanation of workweek, payroll number, regular and over-time hours, and all deductions taken.

B. **Certified Payroll Reports.** All contractors and subcontractors must submit a bi-weekly- certified payroll report. Certified payroll reports submitted to the contracting agency will not satisfy this requirement. Payroll reports must contain the name, address, social security number, classification/title, hourly rate, over-time rate, number of regular and over-time hours worked that pay period and deductions for each worker the employee has on the project. Failure to submit certified payroll reports on a weekly/timely basis will constitute grounds for a "violation" and possible sanctions against the Employer.

C. **Payroll Deductions.** No payroll deductions indirectly or directly will be taken from the full wages earned, other than tax withholding and permissible deductions outlined in the United States Federal Labor and Standards Act (FLSA) and this TERO Agreement, so long as the deduction does not take the employee below federal minimum wage for the workweek.

D. **Pay Day Schedules.** TERO workers will receive their pay on the same day as the Employer's permanent and key employees. All employees must receive their paycheck for the previous week's work hours no later than the close of the workday every Thursday or Friday; whichever may be the last working day of the week for the Employer.

E. **Distribution of Payroll.** Payroll checks must not be distributed to anyone other than the worker for whom the check is made out to, unless the worker has given written permission to release their check to specifically named individual.

3. **CONTRACTING AND SUBCONTRACTING.**

A. The General Contractor and Subcontractor shall give preference to Quinault TERO Certified Native American Owned (NAOB), all subcontracting opportunities on this project. A list of Quinault Native American Owned Businesses is available from TERO. TERO NAOBs are subject to the same terms of this agreement and are required to submit a Compliance Plan and Agreement for TERO approval prior to the start of work activity.

B. **Notification of Subcontracting Opportunity.** Contractors bidding on projects on or near the Quinault Reservation must provide notification to TERO providing the name of the Project, project owner, funding source, location and listing of subcontract opportunities. Once it has been determined that the project is located on or near the Quinault Reservation, contractors must provide copies of “notice of subcontracting opportunity” forms, by email, mail, or fax transmission. If you do not wish to use the attached form, provide copies of letters notifying NAOBs of the opportunity and attach U.S. Post Office certified mail receipts. Notification must be made in good faith, providing adequate information about scope of work opportunity and time-line for response. (*See Attachment D – Notice of Subcontracting Opportunity*).

C. **Response to Notice of Subcontracting Opportunity.** Once the deadline for responses to the “Notification of Subcontracting Opportunity” has elapsed, the Contractor will provide TERO with a written explanation of the responses and the decision on the subcontract award. TERO will retain a copy in the project file.

4. **RELIGIOUS ACCOMMODATION.** Employer agrees to make reasonable accommodation to the religious beliefs of Indian workers. TERO will assist the Employer in identifying “reasonable accommodation.”

5. **TERO FEE.** A TERO Fee will be assessed at **1.75%** of the total contract award amount for contracts totaling \$10,000 or more. No fees shall be passed on to the contracting entity, including but not limited to as a change order or as part of the bid or Contract amount.

Change Orders must be reported to TERO immediately upon approval from the funding/contracting agency. Adjustments to the TERO Fee amount will be made accordingly. If the change orders are not reported that is considered a violation.

6. **PROJECT MONITORING.** TERO shall have the right to make on-site inspections during regular working hours in order to monitor a contractor’s compliance. TERO also has the authority to inspect and copy all relevant records of a contractor, of the contractor’s signatory unions or subcontracts, to speak with workers on the contractor’s or subcontractor’s job site and to engage in similar investigatory inspection activities. Any potential violation will be documented and processed pursuant to the procedures provided in Title 97. Continuous violation may result in sanctions against the Employer as provided in Title 97.

7. **COMPLAINTS.**

A. **On-The-Job Incidents.** TERO referrals are advised to make complaints for incidents occurring on the job through the procedures outlined in the Employer policies prior to filing a complaint with TERO. The Employer must provide notice to TERO once a complaint is filed and provide information on the action taken to resolve the matter and final disposition of the matter once it is settled.

B. **Discrimination.** If a TERO referred worker feels they have been discriminated against because they are Indian, they may file a complaint with TERO. The complaint must be employment related.

C. **Complaint Investigation.** TERO will investigate complaints on-site pursuant to the procedures provided in Title 97.

8. **FAILURE TO COMPLETE COMPLIANCE PLAN.** Failure to complete this compliance plan thoroughly and submit prior to the commencement of work on the above described project, will be construed as a refusal to comply and may result in a "Notice of Violation." The Quinault TERO will make every effort to work cooperatively with the Employer named on this agreement. However, when willful disregard for these requirements are evident, the sanctions afforded will be utilized to the fullest extent of the law.

ATTACHMENT B

* * * * *

Job Request Form

&

EMPLOYEE DISPOSITION FORM

TERO Dispatch Form
TRIBAL EMPLOYMENT RIGHTS OFFICE

Project: _____

Location: _____

DISPATCH INFORMATION & JOB SUMMARY (TO BE COMPLETED BY EMPLOYER)

Company Name: _____

Address: _____

Phone: _____ Fax: _____ Cell: _____

Classification/Title: _____

Hourly Pay Rate: \$ _____

Start Date: _____ Time: _____ AM _____ PM Job Length _____

Whom to Report to: _____ Title: _____

Brief Job Summary: _____

Tools/Equipment required: _____

Employer will provide the following: _____

Employer Signature: _____ Date: _____

UNDERSTANDING AND ACCEPTANCE (TO BE COMPLETED BY DISPATCHING WORKER)

I have reviewed and understand that I am being dispatched to the above named company for the stated job classification/title, at no less than the hourly rate stated. I understand that TERO does not issue payroll for the above named company, and questions regarding pay, paydays or any discrepancy of pay related matters, I must first attempt to resolve the matter with my Employer. If issues cannot be resolved TERO will intervene upon receipt of a written complaint. I further understand that it is my responsibility to carry proper identification and proof of citizenship with me when I report to work for employer tax purposes. I also understand that it is not TERO'S responsibility to provide my proof of enrollment or any other identification required.

_____ I HEREBY ACCEPT THIS JOB DISPATCH

_____ I DECLINE THIS DISPATCH

Dispatch Signature: _____ Date: _____

TERO Official _____ Date: _____

Would you rehire this employee? ___ Yes ___ No ___ Not Sure

RATE THIS EMPLOYEE, ON A SCALE OF 1-10, ON THE FOLLOWING:

Attendance	
Knowledge of skills required for the job/classification for which they were referred	
Knowledge of proper use of tools or equipment required for this position	
Used time productively	
Ability to work cooperatively with others	
Attitude	
Other:	

AUTHORIZED EMPLOYER REPRESENTATIVE

I understand that the information provided above will be taken in the strictest of confidentiality, and is to be used to assist TERO in assessing the level of skill and training needs of TERO referred workers.

Employer Representative: _____ Date; _____

Please Return to:

Quinault TERO
P.O Box 189
Taholah, WA 98587
PH: (360) 276-8211 ext.4806
FX: (360) 276-4191

Date Received by TERO Representative: _____
TERO Official: _____

NOTICE OF SUBCONTRACTING OPPORTUNITY

Date: _____

Project Name: _____

Location: _____

Project Owner: _____

Project Architect: _____

Project Funding Agency: _____

Funding Agency Contact: _____

CONTRACTOR INFORMATION

Name: _____ Contract #: _____

Address: _____

Phone: _____ Fax: _____ Email: _____

This form is a requirement for bids on the above-described project located on the Quinault Indian Reservation. The Quinault Tribal Employment Rights Office (TERO) referred our company to your company, and we look forward to receiving a bid. If you would take a moment and fill out the following item(s), it would assist this company in fulfilling its obligation to provide subcontracting opportunities for Quinault Nation TERO Native American Owned Businesses.

Bid opening Date is ____/____/____ and this company will welcome bid until ____/____/____.

Time: _____ AM _____ PM Thank you for your time and response.

Please note the division (i.e. framing, drywall, trucking, site prep, etc.) that your company would be interested in bidding on: _____

Authorized Signature of Prime Contractor: _____

RESPONSE FROM TERO CERTIFIED NATIVE AMERICAN OWNED BUSINESSES

Upon notification of this opportunity, our company requested, received or were given the opportunity to review description of work to be bid on:

____ Yes ____ No If yes, date received: ____/____/____

____ Our company has DECLINED the opportunity to bid on the above named division/project.

____ Our company BID and were given the opportunity to negotiate for the above division. Comments:

TERO CERTIFIED NATIVE AMERICAN OWNED BUSINESS INFORMATION

Company Name: _____ CIB # _____

Owner Name/Contract: _____ Title: _____

Address: _____

Insurance/Bonding Company: _____

Phone: _____ Fax: _____ Cell/Email: _____

CC: QIN TERO U.S. Postal Fax Hand Delivered Other

ATTACHMENT C

* * * * *

Prevailing Wage

TERO CLASSIFICATIONS AND RATES

Building Construction

Trade	Job Classification	TERO Min.	TERO Mid.	TERO Max.
Asbestos Workers		\$16.43	\$24.85	\$32.87
Carpenter		\$19.16	\$28.75	\$38.33
Brush Cutter/Chain Saw/Grubbing		\$16.43	\$24.65	\$32.87
Cement Mason		\$19.63	\$29.45	\$39.26
Drywall Applicator		\$20.34	\$30.51	\$40.68
Drywall Taper		\$20.34	\$30.51	\$40.68
Electricians		\$21.96	\$32.95	\$43.93
Flaggers		\$15.92	\$23.83	\$31.84
General Laborer		\$15.87	\$23.41	\$30.95
Heavy Equipment Operator		\$20.50	\$30.75	\$41.01
Iron Worker		\$23.09	\$34.64	\$46.19
Landscaper		\$12.81	\$14.41	\$16.01
Painter		\$12.40	\$18.60	\$24.80
Pipe Layer		\$16.79	\$25.19	\$33.59
Plumber Pipe Fitter		\$22.48	\$35.31	\$44.96
Roofer		\$12.00	\$15.61	\$19.21
Traffic Control Supervisors	TCS	\$16.94	\$25.42	\$33.89
Tree Trimmer		\$14.92	\$22.39	\$29.85
Tree Trimmer Ground person		\$11.25	\$16.88	\$22.50
Tree Trimmer Operator		\$16.41	\$24.62	\$32.83
Tree Trimmer Sprayer		\$15.82	\$23.74	\$31.65
Tree Trimmer Supervisor		\$16.70	\$25.05	\$33.40
Truck Driver Class A		\$18.13	\$27.20	\$36.26
Truck Driver Class B		\$17.98	\$26.97	\$35.96

All construction projects conducted on or near the Quinault Indian Nation will utilize the wage list provided, unless the project is a federal project using federal dollars then Davis Bacon wages will apply. Union contracts will pay union scale wages plus fringe benefits. The wage scale is the least amount that can be paid to the TERO Clients for the positions listed. The funding source will determine the wages used. Please contact the TERO office if you have any questions. Wages will be adjusted when needed.

Quinault Indian Nation
Tribal Employment Rights Office (TERO)
PO Box 189
Taholah, WA 98587

email: ekalama@quinault.org

or Tara.perez@quinault.org

TERO@quinault.org

All TERO forms, documents and information can be

Contractor

Date

Tribal Employment Rights Manager

Date

Tribal Employment Rights Commission

Date

Quinault TERO Hiring Hall Procedures

Quinault Indian Nation
Tribal Employment Rights Office
HIRING HALL PROCEDURES

I. Labor Pool

In order to be considered in the Quinault Indian Nation labor pool, applicants must adhere to the following:

A. Application Process:

1. Must be 18 years of age.
2. Complete a TERO application and any other applicable supplemental forms. These forms must be updated annually (October 1st) or if any changes occur in the data on the application or supplemental.
3. Submit any of the following (if applicable) to be placed into your file:
 - a. Resume
 - b. Copy of enrollment card with enrollment number and Tribal affiliation; or if a supporter of a Quinault family submit a completed “Verification of Supporting Quinault” form
 - c. Any certificate, license, degree or additional information that may apply to the type of employment you are seeking
 - d. A copy of your drivers or any special license (i.e. bus, truck, etc.)
 - e. Union affiliation and status (if you are a member)
 - f. Any other applicable information

B. Sign In Process:

1. The TERO office maintains three sign in books located as follows:
 - a. One in Taholah at the Admin Building directly outside the TERO office doors.
 - b. One in Queets at the Admin Building
 - c. One at the TANF office in Hoquiam
2. In order for the TERO office to know that you are available and looking for employment, you need to sign in at either the Taholah, Hoquiam or Queets site on a monthly basis (or on a/ weekly basis depending on the busy season). You may do this in two ways:
 - a. By coming in and signing the books
 - b. By phoning or emailing a TERO staff member and requesting they sign you in
3. Be sure to let us know when you call in what type of work you are seeking. Also, if you do not provide a way for the TERO office to reach you, you will not be considered

for employment.

II. Referral/Placement Process:

A. Notification of Opening:

When the TERO staff is notified of a job opening, potential candidates will be selected from the labor pool. Names will be compiled from those who have a current application on file and who have signed or phoned in within the past month under the requested job classification. (Note: because some jobs are recurring in nature, an Employer may request a specific employee for the position so please keep your status active otherwise you will not be eligible for a referral from TERO). After this step, a list of available individuals will be prepared.

B. Pre-Screening Process:

1. The files of all individuals on the list will be reviewed to see that they meet the minimum qualifications for the position.
2. The TERO office will then check the tribal enrollment status and create a priority listing according to the following tier (It is up to the person applying for work to get the proper enrollment documentation to TERO):
 - a. Federally funded Employers:
 - i. Local Indians
 - ii. Indian who are not local Indians
 - b. Non-Federally funded Employers:
 - i. Enrolled Quinaults
 - ii. Supporters of Quinault families as defined in Title 97
 - iii. Other Indians
3. The TERO office checks previous placement history. Anyone who had previously been referred by TERO and had been terminated with cause, had failed to show up for an interview without notice or who has a poor performance record and who has failed to provide the TERO office with an adequate reason for their action will be placed on a low priority status or on a no-rehire list for a specific period of time depending on the type of action involved. This time period will range anywhere from 1-3 months. Some reasons for a low priority status include but are not limited to:
 - a. Being under the influence of intoxicants or chemicals while on duty
 - b. Failure to report to work and notify the Employer without good reason
 - c. Failure to show up for an interview without notification or good reason
 - d. Providing TERO with false information
 - e. Insubordination
 - f. Deliberate or careless conduct endangering the safety of self or fellow workers
 - g. Theft or intentional destruction of Employer property
 - h. Excessive absenteeism and/or tardiness
 - i. Poor work performance

4. Some Employers request that we pre-screen for specific skills at which time we will develop a pre-screening questionnaire based on the qualification criteria set forth. Also an Employer may request that all potential employees be required to submit to a drug test before employment. We will advertise within the job announcement of such special requirements.

C. Referrals:

After TERO makes a recommendation to prospective Employers based on the above pre-screening process, the first priority list will be provided to the Employer for selection or to set up interviews.

The Employer then notifies the TERO office of individuals selected for employment or interviews. The TERO office then contacts the individuals and completes a referral card with one copy for the employee to take to the Employer and one copy for the TERO files.

The above procedures are general procedures and may vary depending on the Employer and at the discretion of the TERO office. It is important to note that any employee that is placed with an Employer and does a good job generally is requested back by the Employer for rehire.

Quinault Indian Nation
Tribal Employment Rights Office
TERO Candidate Evaluation Form

Candidate Name: _____

Position: _____

Interviewer Name: _____

Interview Date: _____

Rating Scale (1-5): {Circle one choice only, enter NA under Comments if question not applicable}
1=Unsatisfactory, 2=Below Average, 3=Average, 4=Above Average, 5=Outstanding

						Comments
Related Education/Training/Certification	1	2	3	4	5	
Communication Skills	1	2	3	4	5	
Technical Ability	1	2	3	4	5	
Practical Application	1	2	3	4	5	
Overall Understanding	1	2	3	4	5	
Professional Appearance	1	2	3	4	5	
Direct Answers	1	2	3	4	5	
Writing Ability	1	2	3	4	5	
Clarity of Ideas	1	2	3	4	5	
Problem Solving	1	2	3	4	5	
Accountable	1	2	3	4	5	
Likes Challenges Offered	1	2	3	4	5	
Working with Others	1	2	3	4	5	
Team Player	1	2	3	4	5	
Motivated to Work	1	2	3	4	5	
Fit for Project/Position	1	2	3	4	5	
Overall Rating:	1	2	3	4	5	

Comments:

Reviewer Signature: _____

Date Signed: _____

Quinault Indian Nation
Tribal Employment Rights Office

TERO EMPLOYEE PERFORMANCE REVIEW			
Employee Name:		Date Hired:	
Job Title:		Reviewer:	
Date of Review:		Next Review:	<input type="checkbox"/> 30 Days <input type="checkbox"/> 90 Days <input type="checkbox"/> 1 Year

Performance Evaluation	Excellent	Good	Fair	Poor	Comments
Job Knowledge	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Productivity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Work Quality	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Technical Skills	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Work Consistency	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Enthusiasm	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Cooperation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Attitude	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Initiative	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Work Relations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Creativity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Punctuality	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Attendance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Dependability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Communication Skills	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Leadership Ability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Overall Rating	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Development Opportunities

Reviewer's Comments

By signing this form you are confirming this evaluation is true to the best of your knowledge as a representative of the business listed below and is for the sole purpose of following up on a job referral from the Quinault Indian Nation TERO Department and Title 97 compliance.

Reviewer's Signature Business Name Date

Quinault Indian Nation
Tribal Employment Rights Office
Tribal Employment Rights Ordinance

Questions & Answers

The following presents a listing of some of the most common inquiries made about Indian Preference and Tribal Employment Rights Offices (TEROs)

1. WHAT IS TERO?

There are two (2) main elements of TERO:

- A. Conceptual—TERO is a sovereignty based, self-help, and systematic approach to Indian and economic self-reliance or self-determination.
- B. Programmatic—TERO is also a Tribal enforcement and compliance program that monitors employers to ensure optimal benefits are attained from Federal and Tribal employment laws, regulations, policies and procedures.

2. WHAT IS THE PURPOSE OF TERO?

To access more employment & training opportunities for Native Americans, and to provide more business & economic opportunities for businesses owned by Native Americans.

3. WHAT IS THE LEGAL BASIS FOR TERO?

A tribe's authority to enact and enforce an Indian employment preference is grounded in its inherent sovereign powers of self-government. This legal doctrine is the most basic principal of Indian laws and is supported by a host of Supreme Court decisions. These decisions have held that "Inherent sovereign powers derive from the principle that certain powers do not necessarily come from delegated powers granted by express acts of Congress, but are inherent powers of a limited sovereign which have never been extinguished. Tribes have a basic relationship with the federal government as sovereign powers. This is recognized in both treaties and federal statutes. The sovereignty of tribes has been limited from time to time by treaties and federal legislation; however, what has not been expressly limited remains within tribal sovereignty." One important area in which the inherent powers of tribes clearly apply is in the right of tribes to regulate and tax all commerce activity within the jurisdictional boundaries of their reservations. A full and accurate explanation of tribal sovereignty is found in Felix S. Cohen's Handbook of Federal Indian Law.

4. WHAT ARE THE BASIC REQUIREMENTS OF TERO?

All employers operating within tribal jurisdiction are required to provide Indian Preference in employment, training, contracting, subcontracting and all other aspects of employment. Below are six (6) major provisions found in most TERO Ordinances that employers must agree to:

- A. Submit an acceptable compliance plan detailing employer workforce needs and the steps to be taken to ensure Indian Preference.
- B. Utilize the TERO Hiring Hall for all referrals and consider Indian applicants before interviewing or hiring non-Indian workers.

- C. Agree to hire no less than a specific number of Indians in each job classification and cooperate with tribal training programs to hire a certain amount of trainees.
- D. Eliminate all extraneous job qualification criteria or personnel requirements, which may act as a barrier to Indian employment. TEROs are guided by EEOC guidelines for verifying legitimate Bona-Fide Occupational Qualifications (BFOQs).
- E. Agree to acknowledge and respect tribal religious beliefs and cultural differences and to cooperate with the TERO to provide reasonable accommodation.
- F. Tribes have found the most effective means by which they can ensure Indian Preference compliance is through the endeavors of their own TERO enforcement programs. The success of TERO programs can be directly attributed to the fact that these programs embody all of the critical elements listed above. Since TEROs are the core of an effective tribal employment rights effort, a close examination of TERO is necessary.

5. WHAT IS THE EXTENT OF TERO JURISDICTION?

To the extent of what is legally described or defined by treaty or legislation which is the exterior boundaries of the reservation, including ceded territories and lands where jurisdiction has not been extinguished.

6. IS THERE A DIFFERENCE BETWEEN TRIBAL & INDIAN PREFERENCE?

Yes, with jurisdiction on tribal projects which are funded, owned, and operated by the tribe (i.e. Tribal Enterprises), tribes can require tribal preference. This is permissible under the federal law because tribes are exempt from Title VII of the Civil Rights Act, Executive Order 11246 and most other employment rights legislation.

- A. Indian Preference is permissible under some federal laws i.e. Indian Staff Determination Act, Buy Indian Act and under most federal laws.
- B. **Executive Order 11246 Provides:** “Contractors or subcontractors extending such a preference shall not, however, discriminate among Indians on the basis of religion, sex, or tribal affiliation and the use of such a preference shall not excuse a contractor from complying with other requirements contained in this chapter.”

7. ARE TERO FEES LEGAL?

Yes, tribal authority to impose fees is equal to that of any government. Licenses, fees and, in some cases, taxation are a valuable sources for financing tribal government operations. TERO Programs have the unique characteristics of being able to generate their own operating income and contribute to the tribal general fund.

- A. Employers can realize substantial savings since tribal taxes pre-empt state and other local taxation on reservation projects often to the benefit of the employer. The average TERO fee is 2.5% substantially lower than most states.
- B. The TERO has the responsibility to ensure the due process of the employer under the tribal ordinance and that only qualified and screened referrals are made to the employer.

8. WILL TERO FEES INCREASE THE COST OF THE PROJECT?

No. The Quinault TERO fee is 1.75%, which is much lower than the state taxes that the contractor might otherwise pay.

A. The Federal Highway Administration (FHWA) allows a 1% flow through for highway contractors, which means they can pass up to 1% of their tribal tax/fee burden on to the agency. This provides another incentive to support TERO. The remaining amounts are the contractors' responsibility and like other federal, state, county and local taxes/fees, must come out of the contractors' pocket.

9. IS INDIAN PREFERENCE “REVERSE DISCRIMINATION?”

No, there is no such thing as reverse discrimination; simply stated, discrimination is discrimination no matter who does it to whom. Indian preference is defined as a “political preference, not a racial one” which exists because of the nation-to-nation relationship America has always enjoyed with tribes since Columbian times. TEROs do not violate any U.S. Equal Protection Laws.

A. In *Morton v. Mancari*, the court held that “the preference as applied, granted to Indians not as a discrete racial group, but rather as members of quasi-sovereign tribal entities.” Subsequently, the Indian preference classification is not racially, but politically based and as such does not violate Title VII or any other federal employment law.

10. ARE THERE ANY EXEMPTIONS TO TERO REQUIREMENTS?

Yes, there are several exemptions. Direct employment by federal/state governments, schools, churches and some non-profits are not covered by the TERO. Some tribes also exempt themselves from TERO coverage. It is important to note, however, that any contract or sub-contract let by any of these entities is covered by TERO.

11. WILL TERO INTERRUPT MY DAILY BUSINESS OPERATIONS?

No, since TEROs are pro-active, TERO and employer sign the compliance agreements before the commencement of work, which prevents disputes. Most TERO ordinances provide for compliance and enforcement visits to the worksites during normal business hours but not to the detriment of operations. TEROs sanctioning employers for violations may shut down operations but only in severe disputes and in accordance with the applicable law.

12. WHAT SANCTIONS DO EMPLOYERS FACE FOR VIOLATIONS OF TERO?

Violation of TERO requirements may result in severe sanctions. If tribes determine that employers willfully and intentionally breached TERO requirements they may:

- A. Deny such a party the right to commence or continue business on the reservation.
- B. Impose a civil fine on such party (at Quinault, the range is \$100 to \$1000 per violation per day, depending on the size of the contract).
- C. Terminate or suspend such party's operation and deny them the rights to conduct further business on the reservation.
- D. Order such party to dismiss any illegally hired non-Indians, take action to ensure future compliance and to make back payment of any lost wages be paid to aggrieved Indians.

13. ARE EMPLOYERS PROTECTED AGAINST UNFAIR TERO VIOLATION CHARGES?

Yes, the first level of protection comes from the TERO enforcement officer who handles the charge. These officers are trained to deal with facts and merits of the case before taking action. The TERO Commission provides a second level of protection by hearing grievances and again weighing the

facts and merits of the case before making determinations. Beyond the TERO Commission, grievants can seek relief in the tribal and federal courts.

14. CAN SANCTIONS IMPOSED BY THE TERO COMMISSION BE APPEALED?

Yes. Sanctions imposed by the TERO Commission can be appealed in tribal court. Appeals of tribal court decisions can be made to the federal court system.

A. It is important to note that only one (1) appeal to a TERO Commission and tribal court has ever been appealed to the federal court. The case ended at the Ninth Circuit Court of Appeals , which upheld the TERO Commission and the tribal court decisions.

15. HOW HAVE VARIOUS FEDERAL, STATE, AND OTHER AGENCIES VIEWED TERO AND INDIAN PREFERENCE IN THEIR OPERATIONS?

When TEROs first appeared in the late seventies there was opposition from some and indifferences from others. Over the years a great deal of progress has been made, some by direct legal action but most through pro-active, non-adversarial, synergistic effort. The results are Indian preference and TERO provision, policies and procedures figure prominently in the following:

- The Civil Rights Handbook
- The Job Training and Partnership Act
- The Small Business Administration 8(a) Program
- Public Law 93-638, The Indian Education Assistance & Self Determination Act of 1974
- HUD Regulations
- BIA Acquisitions Assistance Agreement 84-1
- EEOC/TERO Contracts
- Department of Commerce
- Economic Development Administration
- OFCCP Indian Employment Initiative
- FHWA ISTEA “Indians in Highway Construction Initiative”
- US DOL/BAT Notice 84-1
- Indian Education Impact and Programs under PL 81-815 (construction) and PL 91-874 (OPS/Admin)

16. DO TERO REFERRALS GET SPECIAL TREATMENT ON THE JOB?

No, TERO referrals should be treated like any other qualified employee with the same performance expectations and requirements. Special treatment of preference category employees serves only to isolate them and set them up for disparate or discriminatory treatment.