

SPECIAL PROVISION

INDIAN PREFERENCE IN EMPLOYMENT ON FEDERAL-AID HIGHWAY PROJECTS ON AND NEAR INDIAN RESERVATIONS

January 1, 2011

PURPOSE

The purpose of this special provision is to outline the "Tribal Employment Rights Office (TERO) Indian Preference in Employment" requirements and procedures to be followed by The Confederated Tribes of the Umatilla Indian Reservation, the Oregon Department of Transportation, and all Contractors or subcontractors engaged in highway construction work that is under contract with the Oregon Department of Transportation on federal-aid highway projects that are located on and near the Umatilla Indian Reservation.

BACKGROUND

The United States Code (USC), Title 23, Section 140 was amended by the 1987 reauthorization of the Surface Transportation Assistance Act by adding paragraph (d) "Indian Employment and Contracting" concerning preferential employment of Indians living on or near a reservation on federal-aid projects and contracts on Indian reservation roads. It was further amended by Section 1026 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) to include "States may implement a preference for employment of Indians on projects carried out under this title near Indian reservations." As defined in the Tribal Employment Rights Office Code, Chapter I, Section 1.05, the term "Indian" means "any person enrolled in a federally recognized tribe and recognized by the United States pursuant to its trust responsibility to American Indians".

AUTHORITY

The Oregon Department of Transportation (State) acknowledges the inherent sovereign authority of The Confederated Tribes of the Umatilla Indian Reservation to promulgate and enforce the TERO Code within the boundaries of the Umatilla Indian Reservation and acknowledges Title 23, Section 140(d) of the USC.

The current TERO Code of the Confederated Tribes of the Umatilla Indian Reservation and its compliance requirements and procedures are incorporated herein and made part of this special provision.

APPLICABILITY

Eligible projects for Indian Employment preference consideration under this special provision are those projects which are on roads termed "Indian Reservation Road" according to USC Title 23, Section 101(d)(12) and on roads near the boundaries of reservations and other Indian lands. Roads "near" The Confederated Tribes of the Umatilla Indian Reservation (Tribes) are defined by mileposts as shown on Exhibit A attached to the Memorandum of Understanding.

ELIGIBLE EMPLOYEES

All Indians are eligible for Indian preference without regard to tribal affiliation or place of enrollment. However, recruiting efforts will be targeted toward those living on or near the Umatilla Indian Reservation.

Employers with collective bargaining agreements with a union are responsible for informing such unions of this requirement.

INDIAN PREFERENCE GOAL

The Indian Employment Preference goal is indicated in the project Special Provisions.

Classifications for Indian Preference goal consideration are:

- Carpenter
- Laborer
- Equipment Operator
- Cement Masons
- Truck Drivers
- Electricians
- Ironworkers

Classification shall be according to requirements for certified payrolls.

Goals will apply to total project work hours and will not be applied individually to the Contractor and subcontractors. Goals do not apply to number of persons employed at any given period of time.

These Indian employment goals are for the Contractor's work force who are other than core crew members. A Contractor's core crew is composed of full-time employed individuals necessary to satisfy his/her reasonable needs for supervisory or special experienced personnel to assure an efficient execution of the contract work. Indian employees of the Contractor shall be included in the core crew, regardless of job function, to avoid the unintended results of having a Contractor lay-off or terminate an Indian employee to hire another under this provision.

In setting these employment goals, consideration has been given to the availability of skilled and unskilled Indian workers, the type of work to be performed, the Contractor's employment requirements, the need for new hires, and unemployment rates prevailing among non-Indians. Consideration has also been given to the employment goals for minorities and women established for the area by the U.S. Department of Labor's Office of Federal Contract Compliance Programs pursuant to Chapter 41, Code of Federal Regulations, Part 60.4.

These goals may only be changed by the Oregon Department of Transportation after consultation with the Tribes and the Contractor, and after consideration of the good faith efforts of the Contractor together with the ability of the Tribes to refer workers in numbers and in time for the Contractor to meet the goals and to perform the work.

If the Tribes are unable to provide sufficient qualified or qualifiable applicants to meet the employment goal within 48 hours of the placement of a job order by the Contractor, the Contractor, ensuring nondiscrimination and providing equal employment opportunity, may recruit from other sources off the Umatilla Indian Reservation. The Contractor shall give full consideration to all qualified job applicants referred by the Tribes. The Contractor is not required to employ any applicant who, in the Contractor's opinion, is not qualified to perform the classification of work required.

FRINGE BENEFITS

All fringe benefits for Indian workers referred by the Tribal Employment Rights Office shall be paid in cash. Indian workers who are union members will have the option of fringe benefits in cash or paid into a bonafide plan or program. However, this does not change any agreements between Indian union members and their respective unions.

PRECONSTRUCTION CONFERENCE

The preconstruction conference will be the forum for finalizing all compliance agreements and requirements between the Tribes and the Contractor and subcontractor(s) and to answer any questions regarding Indian Preference and applicable special provisions.

MANDATORY TERO WORKSHOP

The Tribal Employment Rights Office of the Confederated Tribes of the Umatilla Indian Reservation agrees to conduct mandatory prebid quarterly TERO/MOU workshops, and shall issue certificates of completion to those Contractors who sign in, attend, and participate. Contractors must have a certificate in order to be eligible to bid on ODOT Contracts that require compliance with these TERO/MOU requirements. The certificate will be good for 3 years.

COMPLIANCE

The State will follow normal contract compliance procedures to effect compliance. The State may elect to invite the Tribes to assist their monitoring efforts in all or any part of its compliance process. The State will review the Contractor's employment practices and take appropriate enforcement actions when the goal is not reached after consideration of good faith efforts. See attached "ON-SITE WORKFORCE AFFIRMATIVE ACTION REQUIREMENTS FOR WOMEN AND MINORITIES ON FEDERAL AID CONTRACTS" or contact the Tribal Employment Rights Office for sanctions that may be imposed for failure to meet these goals.

COMPLIANCE FEE

The Contractor shall pay the compliance fee directly to the TERO before beginning work on the Reservation. Use the Contract Amount to calculate the compliance fee. See Section 3 of the Memorandum of Understanding for percentages.
