



## **GENERAL REQUIREMENTS FOR Tribal Employment Rights Office & SWO TAX Office**

**Sisseton-Wahpeton Oyate Indian Preference Law Known as TERO Chapter 59**

**&**

**Business License Ordinance Chapter 53 and Tax Ordinance Chapter 67**

### **GENERAL**

In accordance with Chapter 59, Tribal Employment Rights Law, and Chapter 53, Business License Ordinance, there are certain requirements which SWO TERO and SWO Tax offices may impose regarding license fees, Use tax, Excise tax, TERO fee, wage rates, Indian contracting/subcontracting, Indian employment and Indian training. Strict compliance is expected and will be enforced pursuant to the procedures set forth in these laws. **Before completing a bid on a construction project on Tribal lands, you should contact the Tribal Tax Office in regards to any taxes that may apply.**

#### **A. BUSINESS LICENSE FEE**

1. Any Employer who wishes to engage in or transact business for the Sisseton-Wahpeton Oyate or its enterprises shall submit a completed application to the Tribal Tax Office for review and approval. Fees are \$50.00 per year for tribal members and \$100.00 for non-members. This fee is not pro-rated. No work shall begin until a business license has been issued by the Tax Revenue Office.

#### **B. EXCISE TAX 2%**

1. 67-02-02 Contractor's Excise Tax : There is imposed a Contractor's Excise Tax upon the gross receipts of all prime contractors and subcontractors engaged in realty improvement contacts within the jurisdiction of the Tribe, at the rate of two percent (2%).

#### **C. USE TAX 5.5%**

1. 67-03-02 For the privilege of using, storing, distributing or consuming within the jurisdiction of the Tribe tangible personal property, consisting of goods, wares, merchandise, propane, building materials and equipment purchased for use, storage, distribution or consumption within the jurisdiction, a use tax is imposed of 5.5% on the purchase price of the tangible personal property.

#### **D. TERO FEE 4%**

Pursuant to Title 7 of the TERO Law, the prime contractor shall pay a fee of four percent (4%) of the total amount of the contract.

#### **E. WAGE RATES**

1. The Sisseton-Wahpeton Oyate has adopted a wage rate consistent with prevailing rates in this area for all construction occurring on our reservation. A copy of these rates are a part of these specifications.

## F. INDIAN PREFERENCE IN CONTRACTING AND SUBCONTRACTING

1. Preference in awarding all contracts and subcontracts for supplies, services, labor and materials, will be given to qualified entities certified by the TERO Commission as 51% or more Indian owned and controlled. A compliance plan must be submitted and approved by the TERO Office before any work can begin. The TERO Commission has established 70% as the minimum number of Indians each employer must employ aside from core crew employees.

## G. INDIAN PREFERENCE IN EMPLOYMENT

1. All employers, for all employment occurring within our reservation or by its entities, are required to give preference to qualified Indians in all hiring, promotion, training and all other aspects of employment. As established by Tribal Law, first preference shall be given to enrolled members of the Tribe, second to Indians who are married to enrolled members of the Tribe, and third, to local Indians. If Federal law supersedes these requirements, preference shall be given to any local Indian.

## H. INDIAN TRAINING

1. Special emphasis shall be placed on recruiting and training Tribal members for every employment position. Employers may be required by the Commission to participate in training programs to assist Indians to become qualified in various job classifications.

## I. TRIBAL JURISDICTION

1. All disputes arising out of the performance of the Work shall be submitted to binding arbitration pursuant to the rules and regulations of the American Arbitration Association. Enforcement of the arbitrator's award shall be had in the Sisseton-Wahpeton Oyate Tribal Court, which shall have exclusive jurisdiction. Any other dispute arising out of or related to this contract shall be heard in the Sisseton-Wahpeton Oyate Tribal Court, and said court shall have exclusive and original jurisdiction over all such claims. Further, Contractor consents to, and shall obtain the consent of its employees-, to the civil and criminal jurisdiction of the Tribe, however, the Tribe agrees that all non-Tribal members who consent to such criminal jurisdiction of the Tribe, shall be afforded the protection of full Bill of Rights contained in the United States Constitution, except that the Tribe shall not be required to provide legal counsel for indigent persons.

## J. APPLICABLE LAWS

1. This Agreement and all rights and obligation hereunder, including matters of construction, validity and performance, shall be governed first by substantive Tribal Laws and Ordinances where applicable, and where Tribal Law is inapplicable, this Agreement shall be governed secondly by Federal laws to the extent applicable.

## **SISSETON-WAHPETON OYATE, CHAPTER 59. TRIBAL EMPLOYMENT RIGHTS LAW**

The contractor/employer must agree to comply with all rules and regulations as set forth in Chapter 59 of the Tribal Employment Rights Law. This agreement will be affirmed in writing and will be signed and dated by the appropriate company officer.

## **TERO COMPLIANCE PLAN**

The contractor/employer must submit an acceptable written compliance agreement to the TERO Office a minimum of five (5) days prior to commencing any work activities on the reservation. The compliance agreement will contain the name, address and telephone number of the contractor/employer, the name of the project, contract number, dollar amount, starting/completion dates and the name of the funding agency.

## **APPOINTMENT OF A COMPANY LIASION OFFICER/Project Mgr.**

The contractor/employer must designate a responsible company official to monitor all employment, training, and contracting-related activities and ensure compliance with the TERO law.

## **INDIAN PREFERENCE IN HIRING**

The contractor/employer must give preference to qualified Indian applicants (Indians who can perform the required work) for all new positions, job vacancies, and negotiated positions. The order of preference shall be as follows:

- A. On all projects or contracts where federal/state dollars are being used, Indians who are residents of the reservation will be given first priority. Local Indians will receive second priority, and all other Indians will receive third priority. Federal contractors shall not, however, discriminate against Indians on the basis of religion, sex, or tribal affiliation.

## **PROMOTIONS AND SUMMER YOUTH**

The contractor/employee shall provide preferential consideration for all promotional and summer youth opportunities and shall actively encourage Indians to take advantage of such opportunities.

## **LAYOFFS AND TERMINATIONS**

No Indian employee who can perform the work required and who is in a other than core crew position shall be terminated through a layoff or reduction in force while a non-Indian employee in the same job is still employed.

## **MINIMUM GOALS AND TIMETABLES**

Contractor/Employers shall be required to hire and maintain a minimum of 70% Indian preference employees for each craft or skill. If a sufficient number of qualified Indians is available, the TERO Officer may set the preference requirement for all (100%) positions, less the employer's core crew. Core crew is defined as ..." A member of a contractor's or subcontractor's crew who is a regular, permanent employee and is in a supervisory or other key position such that the employer would face a serious financial loss if that position were filled by a person who had not previously worked for that contractor or subcontractor; provided, that the core crew shall not exceed (30%) of the total number of employees employed by the contractor or subcontractor on the contract work."

## **TERO HIRING HALL AND RECRUITMENT EFFORTS**

The contractor/employer is required to contact the TERO Office for recruiting and placement services. The TERO Office shall be given a minimum of forty-eight (48) hours to furnish a qualified referral. The contractor/employer must provide the TERO Office with a written list of his/her projected workforce needs, job classifications, openings, hiring policies, experience, skills needed, and screening procedures to be used in the selection process.

## **PERSONNEL PRACTICE AND JOB QUALIFICATIONS**

Contractors/employers are prohibited from using job qualifications, criteria, or other personnel requirements that have a discriminatory effect on Indians and act as barriers to employment unless such criteria or requirements are required by business necessity. The contractor/employer shall be responsible for showing that such criteria or requirements are required by business necessity.

## **TRAINING**

The contractor/employer may be required to develop on-the-job training "opportunities and/or participate in tribal or local training programs, including upgrading programs and apprenticeship or other trainee programs relevant to the employer's needs.

## **CONTRACTOR AND SUBCONTRACTOR PREFERENCE**

Indian preference in contracting and subcontracting is required on all covered projects. An Indian business, contractor, or subcontractor must be certified by the TERO Office as a 51% owned, operated, and controlled Indian firm. All employers, including contractors and subcontractors, are required to submit an acceptable Indian preference subcontracting compliance plan to the TERO Office a minimum of five (5) days prior to commencing work activities on the project. The contractor/employer must maintain a record of all solicitations of offers for subcontract from Indian firms and/or steps taken to locate an acceptable Indian firm. NOTE: Compliance by subcontractors or suppliers is the ultimate responsibility of the prime contractor or employer.

### *59-03-07 Bidding Procedure for Covered Employers*

Covered employers must seek competitive bidding on all contracts, subcontracts, purchase of goods, vendors, services, procurement, or grants in an amount of \$1,000.00 or more and provide Indian preference as required by this Ordinance. The covered employer shall publish a request for bids in the Sota Iya Ye Yapi and with the TERO Office. However, a certified, covered employer is not required to place an advertisement in the Sota Iya Ye Yapi if the certified, covered employer employs 10 or fewer employees and instead contacts the TERO office for a list of potential contractors and/or subcontractors.

## **UNION COMPLIANCE**

All employers, contractors, or subcontractors who have a collective bargaining agreement with any union must file a written agreement stating that the union will comply with the provisions, rules, regulations, and orders of the TERO law. Failure by an employer to file a union compliance agreement with the TERO Office will constitute non-compliance.

## **OBLIGATIONS OF COVERED EMPLOYER**

REPORTS: The contractor/employer shall submit the following reports to the TERO Office on a weekly or monthly basis:

- A. New Hires
- B. Wage, Certified Payroll, and Hour Reports
- C. Promotions
- D. Terminations/Layoffs & Disciplinary Action Taken
- E. Any other information specified by the Director and reasonably necessary in monitoring the specific project.

## **ON-SITE INSPECTIONS**

The TERO Director of his/her designee shall have 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 agreement. Except in unusual circumstances, inspections will take place during regular working hours.

## **EMPLOYMENT RIGHTS FEE**

Pursuant to Title 7 of the TERO Law, the prime contractor shall pay a fee of four percent (4%) of the total amount of the contract. The fee shall also apply to increases in the contract due to change

orders. Fees are payable at the time the compliance plan is negotiated and before work commences on the project. Fees for any change orders are due and shall be paid on the date the contractor is notified of the allowance for such an increase. In contracts where the TERO fee exceeds ten thousand dollars (\$10,000.), the contractor may be allowed to pay the fee in installments payable over the life of the contract. Please note that any fee paid in installments shall be subject to interest charges at the prime interest rate provided in the TERO law. Any contractor who fails to pay the fee imposed shall be subject to the remedial actions provided for in the TERO law.

### **WORK ENVIRONMENT AND NON-SEGREGATED FACILITIES**

The contractor/employer must ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites and all facilities the employees are assigned to work. In construction, the contractor, where possible, will assign two or more females to construction projects. The contractor shall specifically ensure that all superintendents, foremen, and other on-site supervisory personnel are aware of and carry out the contractor's obligations under the TERO law. The contractor/employer must publicize and disseminate their Indian preference policy by providing notice of the policy to their employees, referral sources, subcontractors, suppliers, unions and training programs. Methods for dissemination should include: advertising in the news media, poster (placed at project sites), notices on company bulletin boards, newsletters, and notices on employment applications.

### **COMPLIANCE WITH ALL OTHER LAWS**

The contractor/employer acknowledges that he/she is aware of other Tribal regulations that may affect this contract, including, but not limited to, Tribal Use Tax and Business License requirements.

### **Contact Information**

TERO office, DelRay D. German, Director (605)698-8263 Email [DelRayG@swo-nsn.gov](mailto:DelRayG@swo-nsn.gov)

TERO Compliance Officer II, Dustin Kirk (605)698-8266 [TERO.Compliance2@swo-nsn.gov](mailto:TERO.Compliance2@swo-nsn.gov)

Tax & Business License office, Marc Beaudreau Director (605)698-8415 [marcbeaudreau@swo-nsn.gov](mailto:marcbeaudreau@swo-nsn.gov)

Tax & Business Licensing contact, Linda Thompson (605)698-8416 [LindaT@swo-nsn.gov](mailto:LindaT@swo-nsn.gov)

Tax Compliance Officer, Mark Keoke (605)698-8417 [CompOfficer@swo-nsn.gov](mailto:CompOfficer@swo-nsn.gov)