

## KEWEENAW BAY INDIAN COMMUNITY

### REQUEST FOR PROPOSALS

Proposals are requested by the Keweenaw Bay Indian Community (the "Community") from bidders (the "Bidder") for the services described below (the "Work"). The Community seeks to enter into a contract with an adequately qualified business enterprise (the "Contractor") to conduct the salvage Work.

#### PROJECT DESCRIPTION:

Two fishing vessels under the responsibility of KBIC are located along the mooring pier at South Entry along the Keweenaw Waterway. A salvage Contractor is needed to remove and scrap both vessels. One vessel, the "Kathy" is afloat and tied to the pier. The other vessel, the "Katherine" sunk to the bottom of the canal along the pier in an estimated 18 to 22 feet of water as of 2022. The vessels are "as-is, where-is"; KBIC makes no guarantees as to the condition of either vessel.

The Work location is managed by the United States Army Corps of Engineers (USACE) but is open to the public as a park and boat launch. A site visit is encouraged to understand the setting and limitations.

The Work includes, but is not necessarily limited to the following Scope of Work:

- All planning, administration, management, supervision, communications, and inspection necessary to assure that all work is conducted in accordance with the contract requirements and all applicable Federal, State, and Local laws and regulations.
- The Contractor shall provide minimum 48-hour notice to the Community of when they will arrive on-site to commence salvage operations so that the Community or their representative can observe the work as needed.
- The Contractor shall provide all labor, equipment, and materials necessary to safely remove both vessels and any associated debris from the Keweenaw Waterway without causing environmental contamination.
- The Contractor is responsible for containing contamination and any necessary cleanup. The Contractor shall be equipped with response materials in the event a leak occurs.
- Both vessels shall be transported to a Contractor-owned salvage facility and scrapped for recycling and disposal. No scrapping activities shall occur at the South Entry pier or park.
- The Contractor is responsible for all damages to government or private property resulting from the salvage operations. The Contractor shall have appropriate insurance to cover liability and damages.
- In no case shall the vessels be returned to a water body for use by the Contractor or a subsequent entity.
- The Contractor is responsible for identifying, removing, and containing all potential environmental contaminants and providing proof to the Community of proper waste characterization and disposal. Environmental contaminants may include but are not limited to oily bilge water, engine oils and lubricants, fuel, asbestos, lead paint, and the contents of electrical components. Proof of proper disposal is required to receive payment.
- Both vessels shall be removed from the Keweenaw Waterway and taken to a Contractor-owned salvage facility before November 30, 2023.
- Deliverables
  - Disposal and recycling documentation for both vessels and any identified environmental contaminants therein.

- Photo documentation of scrapping.

Refer to the vessel information in **Attachment A** for additional details.

## **PROPOSALS**

The proposal should include the following information:

- Proposed fee amount using the attached Bid Schedule.
- Contractor's qualifications and experience with references.
- Contractor's key personnel to be assigned to the Project with contact information.
- Certification of Indian Ownership, Minority Business Enterprise (MBE), and/or Women Business Enterprise (WBE) if applicable.

## **RESPONSE TO REQUEST FOR PROPOSALS**

Responses should be organized in the manner set forth below.

### **General Information about the Company**

Provide a general overview of the company, including the company's full name and address, services offered, any professional affiliations, and other such general information.

### **Company Experience and Qualifications**

Bidders must be able to demonstrate adequate experience, staffing, and equipment resources to satisfactorily complete the Work. Describe the Bidder's experience completing similar work. Describe recent projects, if any, of similar character and complexity to the Community's project described above, and provide references. Additional relevant experience may be included if appropriate. Provide in the proposal the Bidder's Experience Modification Rating (EMR). If the Bidder does not have an EMR, include an explanation. In addition, describe your company's working knowledge of the Community or other tribal communities.

### **Personnel**

Please provide an organizational chart, or description, with personnel included and identify the principal in charge that will perform the proposed work. Briefly describe the qualifications of the principal in charge and project personnel.

### **Approach to the Project**

Please explain your approach to addressing the scope of services for the Community. If the Bidder's proposal relies on the work of one or more subcontractors, the subcontractor(s) shall be identified in the proposal. Identify resources available to complete the project.

## **CONTRACT**

The form of contract will depend on the value of the Work. The successful respondent to this RFP will be required to execute the contract if awarded.

## **PROPOSAL ACCEPTANCE**

The Community reserves the right to accept and or reject any and all proposals, and to waive any and all informalities and or irregularities in the proposals submitted during the bidding process, to award the contract to a bidder who is not the lowest bidder, and to negotiate the terms of the contract with more than one bidder. This right of the Community may be exercised in the sole discretion of the Community.

## **PROPOSAL WITHDRAWAL**

Proposals for bids may not be withdrawn for a period of sixty (60) days after the time established for the receipt of proposals. Bidders may withdraw at any time prior to the time set for the receipt of proposals.

## **DEADLINE**

The Community will receive Bidders' proposals until **4:30pm EST on Friday, August 18, 2023.**

**One (1) electronic copy** of the proposal must be submitted to:

Dione Price  
Environmental Specialist  
Keweenaw Bay Indian Community Natural Resources Department  
14359 Pequaming Road  
L'Anse, Michigan 49946-8339  
Ph: (906) 524-5757 ext. 4217  
Fax: (906) 524-5748  
E-mail: [dprice@kbic-nsn.gov](mailto:dprice@kbic-nsn.gov)

Please submit all materials to the Community electronically by the deadline. All material submitted will become the property of the Community.

## **CONTACT PERSON**

General questions regarding the Scope of Work shall be directed in writing to Dione Price using the contact information provided above.

## **ADDITIONAL PROVISIONS**

### **Signature by Responsible Party**

All proposals must be signed with the company name and by a responsible officer or employee authorized to transact business on behalf of the company, partnership, or corporation.

## **Conflict of Interest**

The bidders must disclose any interest of the company or its employees, either direct or indirect, that would conflict in any manner or degree with the performance of the services in connection with this project. Bidders must also disclose any affiliation with the Community by the company or any member thereof.

## **Verbal Agreement**

No verbal agreement or conversation with any elected or appointed official, agent, or employee of the Community, either before, during, or after the submittal of this proposal, shall affect or modify any of the terms or obligations herein contained, nor shall such verbal agreement or conversation entitle the selected contractor to any additional compensation or consideration under the terms of this Request for Proposals.

## **Changes**

The Community may request changes in the scope of services.

## **Anti-Discrimination**

The selected Contractor shall not discriminate against any person or applicant for employment because of race, color, creed, religion, sex, national origin or ancestry, age, material status, physical or mental disability, or political beliefs or affiliations.

## **NOTICE REGARDING INDIAN PREFERENCE**

**Employers and contractors must comply with all rules, regulations, and guidelines of the Community's Tribal Employment Rights Ordinance (TERO) which sets forth specific obligations of the employer regarding Indian preference. All employers and contractors shall sign and submit a compliance plan for approval by the TERO Director. A copy of TERO and additional information is provided in Attachment B.**

For more Information contact:  
Debra Picciano, TERO Director  
Office of Tribal Employment  
Rights 16429 Bear Town Road  
Baraga, Michigan 49908  
Phone: (906) 353-4167  
Fax: (906) 353-7540  
E-Mail: [tero@kbic-nsn.gov](mailto:tero@kbic-nsn.gov)

## **BID SCHEDULE**

COMPANY NAME	TELEPHONE NUMBER and E-MAIL ADDRESS
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**BID SCHEDULE**

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The Contractor will complete the Work and accept as full payment, for the Work items listed, the following Unit Prices and/or Item Bid Prices, as applicable:

Bid Item No.	Bid Quantity	Description (Bidder to write price in Words)	Item Bid Price (+\$) or Credit (-\$)
1	1 Lump Sum	Remove and Scrap/Recycle the Kathy	\$
2	1 Lump Sum	Remove and Scrap/Recycle the Katherine	\$
<b>TOTAL</b>			<b>\$</b>

Addenda: Contractor acknowledges receipt of Addenda: No. \_\_\_ dated: \_\_\_\_\_, No. \_\_\_ dated: \_\_\_\_\_

**Bid** (Sum of Item Bid Prices for all Bid Items):

\_\_\_\_\_ Dollars \$ \_\_\_\_\_  
 (use words) (in figures)

**Contractor's Signature and Title**

**Date**

\_\_\_\_\_

\_\_\_\_\_

**Witness' Signature**

**Date**

\_\_\_\_\_

\_\_\_\_\_

**ATTACHMENT A**  
**VESSEL INFORMATION**

## F/V Katherine

Location: North Entry Canal, Chassell Status: Sunk 2018

Type: Fishing vessel

Length: 28.3 ft

Weight: 11 GRT

Year Built 1950

Hull Material: Steel

Facing North, approximately 150' south of the north end of the breakwall. F/V Kathy is in the background. Photo shows a hole in the ice. F/V Katherine could not be seen in the water.



Facing South, showing the hole in the ice. F/V Dawn is tied up in the background.





F/V Kathy

Location: North Entry Canal, Chassell Status: Afloat, but not mechanically sound Type:

Fishing vessel

Length: 43.0 ft

Breadth: 13.0 ft

Depth 7.2 ft

Weight: 23 GRT

Year Built 1968

Hull Material: Steel



**ATTACHMENT B**

**TERO**



Keweenaw Bay Indian Community  
Tribal Employment Rights (TERO/EEO)  
Debra L. Picciano, Director  
Tribal Center, 16429 Beartown Road, Baraga, MI 49908  
(906) 353-4167 Fax 353-6166



## **NOTICE TO EMPLOYERS**

### **Tribal Law: Tribal Employment Rights Ordinance**

**TO: All existing and future employers, contractors, and subcontractors, located or engaging in commercial business or employment activity on or near the L'Anse Federal Indian Reservation.**

**NOTICE IS HEREBY GIVEN** that you are required to comply with the Tribal Employment Rights Ordinance of the Keweenaw Bay Indian Community which requires Indian hiring preference in all construction employment, other employment, training and contractors on the L'Anse Federal Indian Reservation.

**BE ADVISED** that Section 105 of the TERO requires construction contractors with a contract of \$100,000 or more to make a one-time deposit with Keweenaw Bay Indian Community of one-half of one percent (0.5%) of the total amount of the contract.

**BE ADVISED** that Section 106 of the TERO provides that any employer who fails to comply with the laws, rules, regulations, or guidelines of the Keweenaw Bay Indian Community, or who fails to obtain the necessary agreements from its signatory unions shall be subject to sanctions which shall include but are not limited to:

- 1) Denial of the right to commence business within the jurisdiction of the Tribe;
- 2) Fines;
- 3) Suspension of the employers operations;
- 4) Denial of the right to conduct any further business within the jurisdiction of the Tribe;
- 5) Payment of back pay or other relief to correct any harm done to aggrieved Indians;
- 6) The summary removal of employees hired in violation of the Keweenaw Bay Indian Community employment rights requirements.

All employers and future employers, contractors, and subcontractors who are performing or intending to perform work on the L'Anse Federal Indian Reservation must contact the **Keweenaw Bay Indian Community TERO Director** to develop compliance plans. Copies of the TERO and Enforcement Guidelines are available at the office of the Keweenaw Bay Indian Community TERO/EEO at the location referred to below.

### **KBIC Tribal Employment Rights Office**

Debra L. Picciano, TERO Director  
16429 Beartown Road  
Baraga, Michigan 49908  
(906) 353-4167

E-mail: [debbie.picciano@kbic-nsn.gov](mailto:debbie.picciano@kbic-nsn.gov)



# KEWEE NAW BAY I N D I A N C O M M U N I T Y

OFFICE OF TRIBAL EMPLOYMENT RIGHT S/EQUAL EMPLOYMENT OPPORTUNITY  
16429 BEARTOWN ROAD • BARAGA, MICHIGAN • 49908  
PHONE: 906-353-4167 • • FAX: 906-353-6166

## TERO COMPLIANCE PLAN & AGREEMENT:

\_\_\_\_\_ **Main Contractor**      \_\_\_\_\_ **Sub Contractor**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact person: \_\_\_\_\_ Title: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Cell: \_\_\_\_\_ Office: \_\_\_\_\_

Project Name: \_\_\_\_\_ Project No: \_\_\_\_\_

Location: \_\_\_\_\_

Project Owner: \_\_\_\_\_ Phone: \_\_\_\_\_

Project Funding Agency: \_\_\_\_\_

Funding Agency Contact: \_\_\_\_\_

Project Cost: \_\_\_\_\_ TERO Compliance Deposit \_\_\_\_\_ Total: \_\_\_\_\_

Project Start Date: \_\_\_\_\_ Completion Date: \_\_\_\_\_

Pre-Construction Meeting Date: \_\_\_\_\_ Sub-

Contractor Meeting (Place, Days, and Times): \_\_\_\_\_

### §105 A. Compliance Deposit:

1. Every covered construction contract or with a contract of \$100,000 or more shall make a one-time deposit of **one half of one percent (0.5%) of the total amount of contract.** The TERO compliance deposit shall be paid by the contractor/employer prior to commencing work on the Reservation. The deposit may be paid in installments. The checks are to be made payable to KBIC TERO and addressed to:

**KBIC TERO**  
**16429 Beartown Road**  
**Baraga, MI 49908**

### Please indicate below the TERO fee payment arrangements:

\_\_\_\_\_ Lump Sum                                      \_\_\_\_\_ Approved Installment Payment Plan

**Compliance Deposit Paid by:**      \_\_\_\_\_ Main Contractor                      \_\_\_\_\_ Sub Contractor

**Provide a numerical hiring goals and timetables that specify the number of Indians the employer will hire by craft or skill level or specify a set percentage of hiring goals by craft or skill level:**

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List all permanent key employees you are requesting for the project(s). A key employee is defined as: “an employee that is by business necessity, essential to the successful operation of the project and one without whom the project or the business would suffer substantial financial or time loss”.

**KEY EMPLOYEES**

Name	Job Title	Rate Of Pay	Length of Employment	Attach Proof TRIBAL (Y/N)

**JOB ORDER:** If the TERO Jobs Skills Bank has qualified persons, they are required to receive preference in hiring to comply with the TERO law.

Job Title	Number Of Positions	Rate Of Pay	Date From To

License Required: \_\_\_\_\_ CDL: \_\_\_\_\_ UA: \_\_\_\_\_  
 Skills/Experience: \_\_\_\_\_  
 Foreman to Contact/Cell: \_\_\_\_\_

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**Do you or your sub-contractor have a collective bargaining agreement with one or more unions?**

YES                       NO

If yes, please attach a written agreement from said unions indicating that they (Union) will comply with Indian Preference requirements.

**LIST OF SUBCONTRACTORS: All Subcontractors need a Compliance Plan**

TERO Certified Business that are qualified and come within required percentage as stated in the TERO Guidelines of the low bid will be provided negotiated preference.

Company	Contact Person	Phone#	Native (Y/N)

**Attach additional sheets if needed**

**What wage scale will be used (please explain or submit wage scale)?**

\_\_\_\_\_

**Tribal Employment Rights Ordinance Received:**

YES                       NO                       Received prior to project

**Understanding and Acceptance**

I understand that Certified Payroll shall be submitted on a timely manner for each contractor/subcontractor to the TERO Office on a monthly basis or as agreed upon.

On behalf of \_\_\_\_\_, I hereby certify that I have received and understand the Keweenaw Bay Indian Community Tribal Employment Rights Ordinance (TERO) and Guidelines as set forth in this TERO Compliance Plan and Agreement, and hereby agree to accept the responsibility of compliance with the described obligations and requirements.

\_\_\_\_\_  
**Printed Name**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Authorized Signature for Employer/Contractor/Sub Contractor**

\_\_\_\_\_  
**Date**

**Notice To Proceed:**

The attached TERO Compliance Plan and Agreement has been received, reviewed and is fully acceptable. On behalf of the Keweenaw Bay Indian Community TERO, authorization to begin work on the above described project is hereby granted.

\_\_\_\_\_  
**Debra L. Picciano, TERO Director**

\_\_\_\_\_  
**Date**



# KEWEENAW BAY INDIAN COMMUNITY

OFFICE OF TRIBAL EMPLOYMENT RIGHTS/EQUAL EMPLOYMENT OPPORTUNITY  
107 BEARTOWN ROAD • BARAGA, MICHIGAN • 49908  
PHONE: 906-353-4167 • CELL: 906-395-0276 • FAX: 906-353-7540

## TRIBAL EMPLOYMENT RIGHTS ORDINANCE KB-1983-01

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AN ORDINANCE of the Keweenaw Bay Indian Community adopted under the authority delegated to the Tribal Council by the Constitution and Bylaws of the Keweenaw Bay Indian Community to establish an employment rights program and office and enact laws to increase the employment of Indian people.

History: 1983, Tribal Employment Rights Ordinance, Eff. Feb. 5, 1983.

Popular Name: TERO Ordinance

### § 101. Purpose and Intent

**A.** Like land, water and minerals, jobs in private employment on or near the L'Anse Indian Reservation are an important resource for Indian people, and Indians must use their rights to obtain their rightful share of such jobs as they become available.

**B.** Indians have unique and special employment rights, and the Keweenaw Bay Indian Tribal government has the inherent sovereign power to pass laws to implement and enforce those special rights on behalf of Indians.

**C.** Indians are also entitled to the protection of the laws that the Federal government has adopted to combat employment discrimination; Tribal governments can and should play a role in the enforcement of those laws.

**D.** The Keweenaw Bay Indian Community believes that it is important to establish an employment rights program and office, to use the aforementioned laws and powers to increase employment of, and to eradicate discrimination against, Indian people.

Citation History: Formerly §101 of the Keweenaw Bay Indian Community Tribal Employment Rights Ordinance, enacted on February 5, 1983.

**§ 102. Employment Rights Office**

**A.** The Keweenaw Bay Tribal Council does hereby establish the Keweenaw Bay Indian Tribal Employment Rights Office (hereinafter called TERO) as an independent office of the Tribe, reporting to the Tribal Chairman.

**B.** The Director of TERO shall be appointed by the Tribal Council. The Keweenaw Bay Tribal Business Committee shall have the authority to hire staff.

**C.** The TERO Director shall have the authority to expend funds appropriated by the Tribal Council, and to obtain and expend funding from federal, state or other sources to carry out the purposes of TERO.

**D.** TERO shall have the authority to issue rules, regulations and guidelines to implement the employment rights requirements imposed by this Ordinance, and to hold hearings, subpoena witnesses and documents, to require employers to submit reports, and to take such other actions as are necessary for the fair and vigorous implementation of this Ordinance.

**§ 103. Employment Requirements**

**A.** All employers operating within the jurisdiction of the Keweenaw Bay Indian Community are hereby required to give preference to Indians in hiring, promotion, training, and all other aspects of employment. Said employers shall comply with all rules, regulations and guidelines of TERO which set forth specific obligations of the employer regarding Indian preference.

**B.** Any covered employer who has a collective bargaining agreement with one or more unions shall obtain written agreement(s) from said union(s) stating that the union shall comply with the Indian preference laws, rules, regulations and guidelines of the Keweenaw Bay Indian Community. Such agreement(s) shall be subject to the approval of TERO.

**§ 104. Implementation Authority of TERO.**

**A.** The following actions may be taken hereunder by TERO to implement the above Employment Requirements:

1. Impose numerical hiring goals and timetables that specify the minimum number of Indians an employer must hire, by craft or skill level.

2. Require covered employers to establish or participate in such training programs as TERO determines necessary, to increase the pool of qualified Indians on the L'Anse Indian Reservation as quickly as possible.

3. Coordinate, in conjunction with the Tribal Personnel Office, the establishment of a tribal hiring hall, and impose a requirement that no covered employer may hire a non-Indian until the tribal hiring hall has certified that no qualified Indian is available to fill the vacancy.

4. Prohibit covered employers from using qualification criteria or other personnel requirements that serve as barriers to Indian employment, unless the employer can demonstrate that such criteria or requirements are absolutely required by business necessity. In developing regulations to implement this requirement, TERO shall adopt Equal Employment Opportunity Commission (EEOC) guidelines on these matters to the extent that they are appropriate. TERO shall have the right to impose its own requirements in addition to or in lieu of EEOC guidelines. However, TERO is not authorized to impose this requirement until one year from the effective date of this Ordinance.

5. To enter into agreements with unions to insure union compliance with this Ordinance. Such agreements shall in no way constitute recognition or endorsement of any union.

6. Take such other actions as are necessary to achieve the purposes and objectives of this Ordinance. However, the implementation of any activities or requirements that constitute a significant new component to this program, beyond those listed in subparagraphs of this Section, shall be subject to the prior approval of the Tribal Council.

**B.** TERO is authorized to enter into cooperative relationships with federal employment rights agencies, such as EEOC and OFCCP, to eliminate discrimination against Indians on and off the Keweenaw Bay Indian Reservation.

**§ 105 Compliance Deposits; Forfeiture**

**A.** A compliance deposit, to encourage cooperation by employers, is hereby imposed as follows:

1. Every covered construction contractor with a contract of \$100,000 or more shall make a one-time deposit of one-half (½) of one percent (1%) of the total amount of the contract. The deposit may be paid in installments, as follows:

a. 50% at the project starting date;

b. 25% at the project starting date plus thirty (30) days, (or at project completion, if sooner);



c. 25% at the project starting date plus sixty (60) days, (or at project completion, if sooner).

2. Every covered employer, other than construction contractors, with twenty or more employees or gross sales of \$100,000 or more, shall make an annual deposit of one-half (½) of one percent (1%) of the annual payroll of that employer. This requirement shall not apply to educational, health, governmental, and non-profit employers.

**B.** The above required deposits shall be paid to the Tribal government and shall be placed in a special account to be used as outlined in the following subparagraph C. The Billings Manager shall be responsible for collecting said deposits and is authorized to establish such rules and regulations as are necessary to insure a fair and timely collection process. An employer or contractor who fails to pay the required deposit shall be subject to the sanctions provided for in Section 6, herein.

**C.** Forfeiture of Compliance Deposits, or portions thereof, shall be required for the following occurrences of verified non-compliance as defined by TERO Guidelines for Enforcement:

- 1) First occasion of verified non-compliance ten percent (10%) forfeiture.
2. Second occasion of verified non-compliance twenty percent (20%) forfeiture.
3. Third occasion of verified non-compliance forty percent (40%) forfeiture.

**D.** Forfeiture of Compliance Deposits as prescribed in subparagraph C above shall be considered as one of seven (7) optional sanctions available to TERO to assure compliance with Tribal employment policies and practices. At the discretion of the Director, any other(s) of the seven (7) sanctions may be used in addition to or in lieu of the above forfeiture(s) at any time after the first occasion of verified non-compliance.

**E.** After completion for the covered project, the Tribal government shall refund to the employer any remaining balance of the Compliance Deposit, upon certification by the TERO Director that such balance is due and payable.

#### **§ 106 Sanctions for Non-Compliance**

**A.** Any employer who fails to comply with the laws, rules, regulations, or guidelines on employment rights of the Keweenaw Bay Indian Community, or who fails to obtain the necessary agreements from its signatory unions, shall be subject to sanctions which shall include but are not limited to:

- 1) denial of the right to commence business within the jurisdiction of the Tribe;
- 2) fines;
- 3) suspension of the employer's operation;
- 4) termination of the employer's operation;
- 5) denial of the right to conduct any further business within the jurisdiction of the Tribe;
- 6) payment of backpay or other relief to correct any harm done to aggrieve Indians; and
- 7) the summary removal of employees hired in violation of the L'Anse Reservation employment rights requirements.

**B.** Sanctions shall be imposed by the Business Committee, after allowing the employer an opportunity to present evidence showing why he or she did not violate the requirements or why he or she should not be sanctioned. An employer shall have the right to appeal to the Tribal Court any decision made by the Business Committee that imposes sanctions on him or her.

#### **§ 107 Agency and Office Coordination**

**A.** All reservation employment and training functions, including the Bureau of Indian Affairs Employment Assistance Program, shall devote such of their resources as are necessary to prepare Indians for the job opportunities to be opened up by the Tribal Employment Rights Program.

**B.** The Director of TERO shall coordinate with the Director of the Tribal Personnel Office in the following:

1. Identification of job openings, both actual and potential, and definitions of skill levels and training requirements necessary to qualify Indian workers.
2. Development, in consultation with the Director of Education and the appropriate staff agencies, of training plans and programs to meet the identified job requirements.
3. Development of current lists of available qualified workers for the various job categories.

**C.** The Tribal Personnel Office shall be responsible to develop and maintain a current skills bank, or inventory of unemployed Indian workers on the Reservation. The Tribal Economic Development Office shall coordinate closely with the Tribal Personnel Office and TERO in identifying actual and potential job opportunities resulting from economic development projects and activities.

**ENFORCEMENT GUIDELINES  
FOR THE KEWEENAW BAY INDIAN COMMUNITY  
TRIBAL EMPLOYMENT RIGHTS ORDINANCE (TERO)**

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## **ENFORCEMENT GUIDELINES FOR THE TRIBAL EMPLOYMENT RIGHTS ORDINANCE**

The following Guidelines are issued pursuant to the authority granted to the Keweenaw Bay Indian Tribal Employment Rights Office (hereinafter referred to as TERO) by the Keweenaw Bay Indian Community Tribal Employment Rights Ordinance. This Ordinance requires the preferential employment of Indians by all employers operating within the jurisdiction of the Keweenaw Bay Indian Community.

### **1. Coverage**

These Guidelines shall be binding on all existing and future employers operating within the jurisdiction of the Keweenaw Bay Indian Community, L'Anse Reservation, Michigan (hereinafter referred to as the "Reservation").

"Employer" means any person, company, contractor, or other entity that is located within the jurisdiction of the Keweenaw Bay Indian Community, and includes any contractor or governmental agency, if that contractor is engaged in work within the jurisdiction of the Keweenaw Bay Indian Community.

An Employer is engaged in work within the jurisdiction of the Keweenaw Bay Indian Community if its employees spend a majority of their time performing work within the jurisdiction of the Tribe on a continuing basis. TERO shall have the right to phase in these requirements by employer classifications; for example, first year: construction contractors; second year: manufacturers, etc.

### **2. Publication**

The obligation of employers to comply with Tribal Employment Rights requirements shall be made known to all existing and future employers. All bid announcements issued by any Tribal, federal, state or other public or private entity shall contain a statement that the successful bidder shall be obligated to comply with these Guidelines and that a bidder may contact TERO to obtain additional information.

Those agencies or other entities responsible for issuing business permits within the Tribe's jurisdiction, or otherwise engaged in activities involving contact with prospective employers within the Tribe's jurisdiction, shall be responsible for informing such prospective employers of their obligations under these Guidelines.

Within one month of the effective date of these Guidelines, TERO shall send copies of the Guidelines to every employer presently operating within the Tribe's jurisdiction. It shall be the responsibility of TERO to send copies of any amendments or revisions of the Guidelines to all covered employers.

### **3. Specific Indian Preference Obligations of Covered Employers**

#### **A. Minimum numerical goals and timetables for the employment of Indians**

TERO shall establish the minimum number of Indian persons that each employer must employ on its workforce during any year that its employees work within the Tribe's jurisdiction, for that employer to be in compliance with its Indian preference obligation.

The numerical goals shall be set for each craft, skill area, job classification, etc., used by the employer and shall include administrative, supervisory, professional and clerical categories.

The goals shall be expressed in terms of manhours of Indian employment as a percentage of the total manhours worked on the employer's workforce in that job classification; for example, no less than fifty percent (50%) of all carpenter manhours shall be worked by Indian carpenters. The goals shall be realistic and shall be based on surveys of the available Indian manhour pool and of projected employment opportunities.

For new employers, goals shall be established for the entire workforce. The employer shall meet with TERO at the earliest date possible before the employer actually begins work; for example, immediately after a bid is accepted and a contract signed.

The employer shall provide TERO with a precise list of the number and kinds of employees it projects it will need, including any and all job descriptions used by the employer. TERO shall then set specific goals and timetables for the employer after considering any special factors or circumstances that the employer wishes to present.

The employer shall incorporate the goals into its plan for complying with the Guidelines, as provided for in Paragraph 5 herein, and shall agree in writing to meet these goals. An employer who fails to provide such a written statement will not be permitted to commence work within the Tribe's jurisdiction. For existing employers within the Tribe's jurisdiction, the goals shall be a percentage of the new employees projected to be employed during the forthcoming year by that employer, commencing from the date of the first meeting between the employer and TERO. The existing employer shall agree to said goals in writing and they shall be incorporated into the plan, as provided for in Paragraph 5 herein.

For new and existing employers, the goals shall be reviewed by TERO no less than once a year and shall be revised as necessary to reflect changes in the number of potential Indian employees available or changes in the employer's hiring plans.

Each employer shall submit monthly reports to TERO on a form provided by TERO, indicating the number of Indians on its workforce, monthly hires, terminations, percentage of monthly manhours worked by its Indian employees, and such other information as requested by TERO. An employer who fails to submit monthly reports in a timely manner shall be subject to sanctions as provided in the Ordinance or in these Guidelines.

Each employer shall meet its minimum goals for the employment of Indians or shall demonstrate that it has made a reasonable and good faith effort to do so.

TERO shall have the right to issue a notice of non-compliance at any time when, based on reports submitted by the employer, site visits, or other evidence, TERO has reason to believe that the employer is not meeting, or is not making a reasonable and good faith effort to meet its goals. Upon receipt of such notice, an employer shall be entitled to a hearing as provided in Paragraph 7 herein. The burden of proof shall be on TERO to demonstrate that an employer has failed to meet its goals or is not making a reasonable and good faith effort to do so. The burden of proof then shifts to the employer.

*It shall be no excuse that the union or unions with which the employer has a collective bargaining agreement providing for exclusive referral, failed to refer Indians.*

An employer who is found to be in non-compliance because it failed or is failing to meet its goals or is unable to demonstrate that it has made a reasonable and good faith effort to do so, shall be subject to the sanctions provided for in the Ordinance or in Paragraph 8 herein.

#### **B. Training**

All employers, as requested by TERO, shall participate in training programs to assist Indians in becoming qualified in the various job descriptions and classifications used by the employer.

Employers engaged in construction shall employ the maximum number of trainees and apprentices possible. In no case shall the number be less than the minimum ratio of trainees to fully-qualified workers, as established by the Department of Labor, and generally the number shall be greater.

For all other employers, the ratio of trainees to fully-qualified workers shall be established after discussions with the employer.

All trainees or apprentices shall be Indian.

Employers with collective bargaining agreements with unions shall be required to obtain written agreements from their respective unions whereby the unions will agree to establish advanced apprenticeship and journey upgrade programs.

#### **C. Unions**

Employers who have collective bargaining agreements with unions shall be required to obtain written agreement from all signatory unions, said agreement stating that the union will comply with the Keweenaw Bay Indian Community employment preference requirements before the employer will be permitted to commence work within the Tribe's jurisdiction. Said agreements between the employer and its signatory unions shall be subject to the approval of TERO. The respective unions must agree: to give absolute employment preference to Indians in their job referral system, regardless on which referral list the respective individual Indian's name may be listed, for example, A, B, or C; to cooperate with the Tribal hiring hall, Tribal personnel office, or other pertinent hiring agency; to establish a procedural mechanism allowing Indians to retain their place on the union lists without requiring them to travel great distances on a regular basis, for example, telephone or mail registration/ reregistration, union sub-office on the Reservation, etc.; to establish advanced apprenticeship and journeyman upgrade programs; to indenture and refer only Indian apprentices to the employer; to  $\pi$ blanket in<sup>ll</sup> to the union all Indians who qualify for journeyman status (and who wish to join a union); to grant temporary work permits to those who do not wish to join the union; and to meet such other requirements as TERO may deem necessary to insure Indian employment preference pursuant to the Ordinance and these Guidelines. The model Union Agreement provided at the end of these Guidelines is hereby incorporated herein by this reference.

#### **D. Job Qualification and Personnel Requirements**

An employer shall not use job qualification criteria or personnel requirements which serve as barriers to the employment of Indians or which are not required by business necessity.

An employer shall furnish TERO with copies of all application forms and interview forms, testing devices, and any and all other documents used for the purpose of hiring employees, including any and all documents used for the purpose of determining promotions, transfers, demotions or terminations, or otherwise affecting the employee's status with the employer.

The burden of proof shall be on TERO to demonstrate that job qualification criteria or personnel requirements are or may be barriers to Indian employment. The burden of proof shall then shift to the employer to demonstrate that said criteria or requirements are required by business necessity. If the employer fails to meet this burden of proof, it will be required to eliminate any and all criteria or requirements determined to be barriers to Indian employment.

Employers shall make reasonable accommodation for the Indian employee regarding the employee's cultural or religious beliefs, and TERO shall make a reasonable effort to counsel the Indian employee regarding his or her duties as an employee, or to provide or seek counseling services for said employee, as appropriate.

TERO shall be guided by the principles established by EEOC Guidelines, particularly 29CFR, Parts 1604 through 1607; however, TERO retains the right to implement any and all other requirements, under the law, deemed necessary to address employment barriers considered unique to Indian people or to this Reservation. When TERO and the employer are unable to reach an agreement on matters set forth in this paragraph, a hearing shall be held as provided in Paragraph 7 herein. The Business Committee shall make a determination on the issues and shall order such action or actions as deemed necessary to bring the employer into compliance with the requirements contained in said paragraph. The employer may appeal the Business Committee's decision under the procedures set forth in Paragraph 9 herein.

#### **E. Tribal Hiring Hall**

The employer may recruit and hire workers from whatever sources are available to him or her, and by whatever process he or she so chooses, provided, however, that he or she may not hire a non-Indian until he or she has given TERO a reasonable time to locate a qualified Indian. For the purpose of this section, a "reasonable time" shall be defined as follows:

1. For construction jobs, TERO shall have 48 hours to locate, and an additional 12 hours to refer, a qualified Indian, commencing from the time the employer communicates his or her request to the TERO office.
2. For all other types of employment, TERO shall have five (5) working days, commencing from the day the employer's request is communicated to the TERO office.

TERO may consider waiving these time period requirements upon a showing that said time periods impose an undue burden on the employer.

An employer who has a collective bargaining agreement with a union or unions shall not be required to follow this procedure, provided said union(s) agree to place on their referral lists all individuals called into them by the TERO office, pursuant to the Model Union Agreement incorporated herein.

If a union fails to meet its obligations herein, TERO reserves the right to require the employer to accept Indian referrals from sources other than the union.

Any non-Indian worker found to be employed in a job which was not first cleared through this hiring hall procedure shall be subject to summary removal from the job by TERO, and the employer shall be subject to a fine for each violation, pursuant to the Ordinance and these Guide-lines. The employer shall be entitled to a hearing and appeal, if appropriate, pursuant to the provisions of Paragraphs 7 and 9 herein.

#### **F. Layoffs**

An employer engaged in reducing its work force or otherwise laying off personnel shall not terminate an Indian worker if a non-Indian worker in the same craft is still employed. The non-Indian worker shall be terminated first as long as the Indian worker meets minimum qualifications for the job.

An employer engaged in reducing its work force or otherwise laying off personnel on a crew, shift, or other multiple-employee basis shall transfer qualified Indians to crews, shifts, etc., that will be retained, as long as there are non-Indians in the same craft employed elsewhere on the job site or employment location.

#### **G. Promotion**

The employer shall give Indians preferential consideration for all promotion opportunities and shall encourage its Indians employees to seek such opportunities.

For each supervisory or managerial position filled by a non-Indian, the employer shall file a report with TERO disclosing the names and addresses of all Indians that applied for the position, including reasons why they were not given the job and what efforts were made to inform Indian employees of the position.

#### **H. Summer Students**

Indians shall be given preference in the hiring for all positions classified as summer student help or otherwise referred to as student help.

The employer shall make a reasonable and good faith effort to promote after-school, summer, and vacation employment for Indian youth.

**I. Indian Preference In Hiring Employees**

The contactor/employer must give preference to qualified Indian applicants, for all new positions, job vacancies and negotiated positions. Order of preference shall be as follows:

1. In all projects or contracts where federal/state dollars are being used, the following order of preference applies:
  - a. Keweenaw Bay Indian Community Members;
  - b. Indians Enrolled in Other Federally Recognized Tribes.
2. Preference requirements in projects funded by the community, the following order of preference applies:
  - a. Keweenaw Bay Indian Community members;
  - b. KBIC descendents;
  - c. Indians Enrolled in Other Federally Recognized Tribes;
  - d. Spouses of Community members;
  - e. All Indians.

**J. Indian Preference in Contracting and Subcontracting**

1. Employers shall give preference in the award of contracts and subcontracts to Tribal Organizations and/or Indian Owned Economic Enterprises. All Indian Owned Economic Enterprise contractors or subcontractors must be certified by the TERO office as being 51% owned, operated and Indian controlled. The contractor/employer must maintain a record of all solicitation of offers for subcontracts from Indian preference firms and/or steps taken to locate an acceptable Indian Preference firm. Compliance by subcontractors or suppliers is the ultimate responsibility of the prime contractor or employer.

**A.** Tribal Organizations shall mean "...the recognized governing body of any Indian Tribe; any legally established organization of Indians which is controlled, sanctioned or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of it's activities..."

**B.** Certified Indian Owned Economic Enterprise shall mean, "...any Indian Owned...commercial, industrial or business activity established or organized for the purpose of profit: Provided, that such Indian Ownership shall constitute not less than 51 percent on the enterprise..."

2. Indian contract preference as provided for in this section shall apply to:

- a. All contracts and subcontracts, which are funded by the community;
- b. All contracts and subcontracts, which are federally funded.
- c. All subcontracts on direct federal contracts which are for the benefit of Indians and which therefore are covered by section 7 (B) of the Indian Self-Discrimination Act (P.L 93-638, 25 U.S.C 450e b).

3. Each employer/contractor shall comply with the following order of preference when awarding prime contracts or subcontracts:

- a. Tribal Organizations;
- b. Certified Indian Owned Economic Enterprises;
- c. All Others.

4. The Tribal Organization or the Certified Indian Owned Economic Enterprises shall be awarded the contract and/or subcontract provided that Tribal Organization or the Certified Indian Owned Economic Enterprises bid is the lowest responsive big or within the "Bid Percent" specified below of the lowest responsive bid when the bid is:

<u>AT LEAST</u>	<u>but LESS THAN</u>	<u>BID PERCENT</u>
\$000,000	\$100,000	10%
100,000	200,000	9%
200,000	300,000	8%
300,000	400,000	7%
400,000	500,000	6%
500,000	\$1 million	5%
\$1 million	\$2 million	4%
\$2 million	\$3 million	3%
\$4 million	\$7 million	2%
\$7 million AND OVER 1.5% of lowest responsive bid, with no dollar limit		

*Modifications to the enforcement Guidelines for Tribal Employment Rights Ordinance, Section 3.I. and Section 3.J. authorized by the Keweenaw Bay Tribal Council on the 13<sup>th</sup> day of October, 2003. Modification to Section 3.I. was authorized by the Keweenaw Bay Tribal Council on the 19<sup>th</sup> day of May 2005.*

#### **4. Subcontractors**

The Indian preferential employment requirements and obligations contained in the Ordinance and these Guidelines shall be binding on all subcontractors, regardless of their position with their employer-contractor, and shall be deemed a part of all resulting subcontract specifications.

The employer-contractor shall have the initial and primary responsibility of informing all subcontractors of the requirements and obligations contained in the Ordinance and set forth in these Guidelines, and for insuring that all subcontractors comply with said requirements and obligations.

TERO reserves the right to impose sanctions on the employer-contractor, as well as the subcontractor, in the event the subcontractor fails to comply.

#### **5. Compliance Plans**

From the effective date of these Guidelines, no new employer may commence work within the jurisdiction of the Tribe until it has met with TERO and developed an acceptable plan for meeting its obligations under the Ordinance or these Guidelines.

Within six (6) months of the effective date of these Guidelines, every employer already operating within the Tribe's jurisdiction or otherwise engaged in employment within the Tribe's jurisdiction, shall have met with TERO and developed an acceptable plan for meeting its obligations under the Ordinance and these Guidelines.

#### **6. Reporting and On-Site Inspection**

Employers shall submit reports and such other information as requested by TERO.

TERO personnel shall have the right to make on-site inspections during regular working hours in order to monitor an employer's compliance with the Ordinance and these Guidelines.

TERO personnel shall have the right to inspect and copy all relevant records of any employer, of the employer's signatory unions, and of subcontractors; to speak with workers on the job site or employment location; and to engage in any further investigatory activity deemed necessary to promote the purposes of the Ordinance and these Guidelines.

All information disclosed to TERO or otherwise secured by TERO shall be kept confidential, unless disclosure is required pursuant to the procedures set forth in Paragraphs 7, 9 and 10 herein.

#### **7. Compliance and Hearing Procedures**

If the Director of TERO believes, or has reason to believe, that an employer subject to the requirements and obligations set forth in the Ordinance and these Guidelines has failed to comply with said requirements and obligations, the Director shall so notify the employer in writing, setting forth in detail the nature of the alleged violation or violations, and the date and time for a hearing before the Business Committee.

Hearing procedures shall comply with the requirements of due process of law, but shall not be bound by formal rules of evidence. The Business Committee shall have the right to subpoena witnesses and present evidence in the Tribe's behalf, to put witnesses under oath, to subpoena documents, and to take other steps to insure a complete and fair hearing on the issues.

The employer shall have the right to call witnesses and to present evidence for the purpose of demonstrating that the employer has made a reasonable and good faith effort to comply with the Ordinance and these Guidelines, or has complied with the requirements and obligations set forth therein, and therefore should not be subject to the imposition of sanctions.

On the basis of the evidence presented at the hearing and information secured by TERO, the Business Committee shall determine whether or not the employer has complied with its requirements and obligations, or has made a reasonable and good faith effort to do so. If the Business Committee determines that the employer is out of compliance, or has not made a reasonable and good faith effort to comply, the Business Committee shall impose one or more sanctions, as provided in the Ordinance and Paragraph 8 herein, and shall order the employer to take such corrective action as deemed necessary to remedy any resulting harm done to the Tribe or to individual Indians through the employer's failure to comply or to make a reasonable and good faith effort to comply.

TERO shall send written notice to the employer of the decision made by the Business Committee.

#### **8. Sanctions**

In the event an employer is found to be out of compliance with the requirements and obligations set forth in the Ordinance and these Guidelines, the Business Committee shall impose any or all of the following sanctions after considering any mitigating factors; for example, the employer's efforts to comply and to remedy any harm done by

its failure to comply:

- A. Denial of the right to commence business within the Tribe's jurisdiction;
- B. Imposition of monetary fines;
- C. Suspension of the employer's operation until corrective action is taken or a plan for corrective action is developed;
- D. Termination of the employer's operation;
- E. Denial of the right to engage in any further business within the Tribe's jurisdiction;
- F. Impose payment of backpay or such other and further relief, including but not limited to providing employment, promotions and training for individual Indians who were harmed by the employers actions or failures to act;
- G. Summary removal of employees hired in violation of the Ordinance and these Guidelines;
- H. Require the employer to make any and all changes in its procedures or policies deemed necessary to insure compliance with the requirements and obligations set forth in the Ordinance and these Guidelines;
- I. Such other and further sanctions as deemed necessary to prevent other violations and to insure compliance herein.

### **9. Appeals**

An employer shall have the right to appeal any decision of the Business Committee of the Keweenaw Bay Tribal Court.

An appeal must be filed within ten (10) days after receipt of notice of the Business Committee's decision. The Business Committee shall represent the interests of the Tribe during appeal.

### **10. Individual, Group, Class Complaint Procedure**

Any Indian, group of Indians, or representatives of a class of Indians, who believe or have reason to believe that an employer has failed to comply with the Ordinance or these Guidelines, or who believe or have reason to believe that they have been discriminated against by an employer, as herein defined, because they are Indian, may file a complaint with TERO. Persons may file whether or not they can show that they were personally harmed by the employer's actions.

Upon receipt of any complaint, TERO shall conduct an investigation of the matters set forth in the complaint and the circumstances surrounding the allegations contained therein, and shall attempt to achieve an informal settlement of the dispute.

If voluntary conciliation and settlement cannot be achieved, the Business Committee shall hold a hearing on the matter, shall make a determination, and shall order such relief as is necessary to provide an appropriate remedy for any Indian, group of Indians, or class of Indians harmed by the employer's actions or failure to act, by non-compliance, or by the employer's discriminatory behavior.

This decision shall be in writing and shall be sent to all parties involved. Either party shall have the right to appeal the decision of the Business Committee.

In all matters pertaining to the procedures set forth in this paragraph, including the appeal procedure, the requirements and procedural devices set forth in Paragraphs 7 and 9 shall apply.

### **11. Purpose**

It is the express purpose and intent of these Guidelines to insure that preferential employment treatment is accorded the Indian people, pursuant to the Keweenaw Bay Indian Tribal Ordinance and nothing contained herein shall be construed or defined in a manner contrary thereto. All ambiguities shall be resolved in favor of the aforementioned stated purpose and intent.

### **12. Amendments and Revisions**

The Tribal Council reserves the right to amend or revise these Guidelines from time to time within the scope of its authority, and as further authorized by the Keweenaw Bay Tribal Council.

*In Full Force and Effect Beginning the 2nd Day of February, 1982*