

Shoshone-Bannock Tribes

TERO CONTRACTOR PACKET

NOTICE:

This information is only a portion of the 2008 TERO Ordinance
TERO-08-S1

SECTION 103

PURPOSES.

The purposes of the TERO Ordinance include, but are not necessarily limited to:

- A. To ensure that no covered employer discriminates against any Tribal member or Indian in any aspect of employment, including but not limited to, hiring, promotion, demotion, transfer, change in work status, lay-offs, and termination from employment.
- B. To require that all covered employers give preference to qualified Indians in all aspects of employment, including but not limited to, hiring, promotion, demotion, transfer, changes in work status, lay-offs, and termination from employment.
- C. To require that all entities awarding contracts give preference to Certified Indian Preference Contractors for contract and subcontract work on the Reservation.
- D. To require all covered employers to utilize the TERO Hiring Hall in all hiring with respect to work to be performed on the Reservation.
- E. To require, in appropriate cases, that covered employers establish needed training programs intended to combat the effects of discrimination.
- F. To provide services to covered employers to assist them in meeting their requirements under this Ordinance, in locating qualified Indians to fill employment needs, establish needed training programs and meet federal requirements guarding against discrimination.
- G. To require all covered employers to contribute to the services provided by and the enforcement of this Ordinance by the fees established herein.
- H. To authorize agreements between the Tribes and the United States or any of its agencies or departments to enforce federal laws prohibiting discrimination as set out and limited in this Ordinance.
- I. To provide for staff support, travel and training of TERO Commissioners.
- J. To provide training and/or funding for training of Indians and Indian-owned businesses contingent upon the availability of funds.

SECTION 201

DEFINITIONS.

As used in this Ordinance:

- A. **“Business for Profit”** means any business, enterprise, or operation, which is not defined as a 501(c)(3) nonprofit or not-for-profit organization by the Internal Revenue Service.
- B. **“Contract”** means an agreement or promise, written or unwritten, between two or more persons which creates an obligation enforceable by law to perform work, supply service, labor, or material(s).
- C. **“Contractor”** means any person, employer, or entity that enters a contract as defined herein to perform work, services, or other obligations where the person, employer, or entity has the primary responsibility for providing the work or services under the contract.
- D. **“Commission”** means the Shoshone-Bannock Tribal Employment Rights Ordinance Commission as established by this Ordinance.
- E. **“Commissioner”** means a Commissioner or member of the Shoshone-Bannock Tribes Tribal Employment Rights Ordinance Commission.
- F. **“Covered Employer”** means any employer employing two or more employees who, during any given period of time, perform work, or render services on or near the Reservation. Covered employers shall include units, departments, and divisions of the Shoshone-Bannock Tribal government, Tribal enterprises and the gaming operation.
- G. **“EEOC”** means the United States Equal Employment Opportunity Commission.
- H. **“Entity”** means any person, partnership, corporation, joint venture, vendor, government, governmental enterprise, or any other natural or artificial person or organization. The term "entity" is intended to be broadly interpreted to further the purposes of the Ordinance.
- I. **“Employee”** means any person employed for remuneration, compensation, or other value.
- J. **“Employer”** means any person, partnership, corporation, or other entity that employs, for wages, two or more employees. An Employer under this Ordinance does not include a private individual who contracts or subcontracts work on his or her own private residence.
- K. **“Fort Hall Business Council”** means the elected governing body of the Shoshone-Bannock Tribes of the Fort Hall Reservation as established and defined by the Shoshone-Bannock Tribes’ Constitution.
- L. **“Indian”** means any person that is an enrolled member of a Federally-recognized Tribe.
- M. **“Indian Preference Contractor”** means a business firm, contractor, or subcontractor that is 51% or more Indian owned, controlled, and managed, as recognized by the TERO Commission.
- N. **“Ordinance”** means the Tribal Employment Rights Ordinance.
- O. **“Qualified Indian”** means an enrolled Shoshone-Bannock Tribal Member, a non-enrolled member or descendant of the Shoshone-Bannock Tribes, or an enrolled member or descendant of another Federally-recognized Indian Tribe who meets minimum qualifications for a specific job or other employment position.
- P. **“Regulations”** means administrative rules and guidelines established by the Commission to further the provisions and administration of this Ordinance. The Ordinance governs the content and interpretation of the regulations.
- Q. **“Regulatory Fee”** means fees collected by the TERO for the direct and indirect administration of the Ordinance and regulations; including but not limited to workforce development, Indian-owned and small business support activities.

- R. **“Reservation”** means all lands and waters within the present confines of the Fort Hall Reservation, notwithstanding the issuance of any patent, easement, or rights-of-way running through the Reservation, ceded lands, and such other lands without such boundaries as may be added by purchase, exchange, transfer, gift or grant, or which are under the jurisdiction of the Tribes.
- S. **“Subcontractor”** means any entity, usually a third party, hired or retained by a contractor, to perform work, supply services, or provide materials under a contract.
- T. **“TERO”** means the Tribal Employment Rights Ordinance.
- U. **“Tribes”** means the Shoshone-Bannock Tribes of the Fort Hall Reservation.
- V. **“Tribal Court”** means the Shoshone-Bannock Tribal Court of the Fort Hall Reservation.
- W. **“Tribal Member”** means an enrolled member of the Shoshone-Bannock Tribes.

SECTION 303 INDIAN PREFERENCE IN EMPLOYMENT ACTIONS.

All covered employers, for all employment activities occurring on or near the Reservation, shall give preference in hiring, training, advancements, promotions, and lay-offs to qualified Indians, with preferences in the following order:

- A. First preference to enrolled members of the Shoshone-Bannock Tribes in all hiring, promotion, training, layoffs, and all other aspects of employment;
- B. Second preference to non-enrolled members or descendants of the Shoshone-Bannock Tribes;
- C. Third preference to enrolled members or descendants of other Federally-recognized Indian Tribes;
- D. Fourth preference to non-Indians who have successful work experience with Indian Tribes; and
- E. Fifth preference to non-Indians.

Preference in lay-offs means that qualified members of the Shoshone-Bannock Tribes shall be given preference for retention when lay-offs occur. As between qualified Indians subject to lay-offs, retention preference shall be given to qualified Indians in accordance with the above-listed preference order unless the lay-off is based upon significant employee performance and/or qualifications.

SECTION 304 INDIAN PREFERENCE IN CONTRACTING.

- A. All covered employers awarding contracts or subcontracts for supplies, services, labor, and/or materials in an amount of \$5,000.00 or more shall give preference in contracting and subcontracting to qualified entities that are certified by the Commission as 51% or more Indian owned and controlled with a first preference to qualified entities that are 51% or more owned and controlled by qualified Indians in the preference order set forth in Section 303.
- B. These Indian Preference requirements shall apply to the award of contracts awarded directly by the Shoshone-Bannock Tribes, its programs and divisions on any contract or subcontract of which work occurs off the Reservation and involves work related to protection and preservation of treaty rights and in which the Shoshone-Bannock Tribes or its programs and divisions have a direct interest.

- C. The Indian Preference requirements contained in this Ordinance shall be binding on all contractors and subcontractors of covered employers and will be deemed to be part of and incorporated into any contract or subcontract covered by this Ordinance. The covered employer shall have the initial and primary responsibility for ensuring that all contractors and subcontractors comply with these requirements.
- D. The above Indian Preference requirements apply in all cases except where specific percent of ownership or preference requirements are established by Tribal law for particular types of employment or contracting.
- E. Any exception from these Indian Preference in Contracting compliance requirements, or Indian preference provisions in this Ordinance must be negotiated with and approved by the TERO Commission prior to any action being taken by the Fort Hall Business Council.

SECTION 305 REGULATORY FEE.

- A. The regulatory fee shall not apply to the daily operation of schools, churches, hospitals, health clinics, nursing homes, veterans' centers, or the Tribal government, its enterprises and gaming operation. The Tribal government and entities are exempt from the regulatory fee, but all contractors or subcontractors working for the Tribal government or its entities are assessed the regulatory fee.
- B. The regulatory fee is imposed as follows:
 - 1. Every contractor, or subcontractor awarded a contract by a covered employer in the sum of \$25,000 shall pay a one-time fee of 2.5% of the total amount of the contract. The fee shall be paid prior to commencing work. However, where good cause is shown, the TERO Director may authorize a covered employer, contractor, or subcontractor to pay said fee in installments over the course of the contract with the consent of the Commission.
 - 2. Every covered employer, except building or construction contractors, with two (2) or more employees working on the Reservation shall pay a quarterly fee of 1% of its employees quarterly payroll which shall be paid within thirty (30) calendar day after the end of each quarter.
 - 3. TERO shall be responsible for collecting Regulatory Fees pursuant to the rules and regulations adopted by the Commission. The fees shall be paid to the "Shoshone-Bannock TERO Department" and shall be credited to the TERO Revenue line item in a restricted TERO fund of the Shoshone-Bannock Tribes. Regulatory Fees collected shall be used for the direct and indirect administration of this Ordinance and regulations; including but not limited to, workforce development, Indian-owned and small business support activities.
 - 4. In the event a contract or subcontract terminates or cancels and is at least 85% complete, the contract or subcontract is deemed 100% complete for purposes of imposing the Regulatory Fee.

Any exceptions from the regulatory fee or Indian preference provisions in this Ordinance must be negotiated with and approved by the TERO Commission prior to any action being taken by the Fort Hall Business Council.

NOTICE:

This information is only a portion of the TERO Ordinance!

SHOSHONE-BANNOCK TRIBES TRIBAL EMPLOYMENT RIGHTS ORDINANCE

SAMPLE COMPLIANCE PLAN

EMPLOYMENT COMPLIANCE PLAN

The Shoshone-Bannock Tribes have a Tribal Employment Rights Ordinance in effect; and Company Name is a contractor/employer performing work on or near the Fort Hall Reservation. Company Name, through its representative, Owner, hereby agrees to comply with the Indian Preference provision in hiring, training, promotions, layoffs and all other aspects of employment, including contracting and subcontracting and as set forth in the 2008 Tribal Employment Rights Ordinance.

The Tribal Employment Rights Ordinance, Chapter 4, Section 402.D, requires each covered employer or entity to submit to an acceptable compliance plan indicating how it will comply with the Ordinance before commencing work within the exterior boundaries of the Fort Hall Reservation. *For this reason, no covered entity may commence work on the reservation until it has met with the TERO and developed an acceptable plan for implementation of its obligations under this law.*

The Shoshone-Bannock Tribes have a Worker Protection Ordinance in effect which governs workers, employers and labor organizations to ensure a safe work environment, free of employment discrimination, protecting health and safety, and providing for fair wages and benefits. This law and regulations promulgated there under apply to all workers, employers and contractors conducting work on the Fort Hall Reservation. The TERO Commission adopted a maximum of 30% Key and Permanent employees, the balance will be 70% minimum “qualified Indians” for all projects within the exterior boundaries of the Fort Hall Indian Reservation and off reservation if contractor, consultant, or service provider is working to enhance and protect treaty rights of the Shoshone-Bannock Tribes. In addition, please be advised all employers and employees working through contracts on all projects are required and shall have a minimum of an OSHA 10 training or documentation (proof) or make arrangements with the Safety Officer and TERO Staff to arrange for training.

THE EMPLOYER FURTHER AGREES TO:

1. Provide proof of a Shoshone-Bannock Tribal Business License.
2. Provide prior notification to any contractor, subcontractor or any other entity being considered as a service provider to the company of their obligations to comply with the Tribal Employment Rights Ordinance. *List any subcontractors on separate page identified as “Page 3.”*
3. Make payable a Regulatory Fee to the Tribal Employment Rights Office (TERO) in the amount of 2.5% percent, of total contract meeting or exceeding \$25,000, which is \$ **AMOUNT**. TERO fees shall be paid immediately before commencing work on the Reservation. The regulatory fee of 2.5% will be paid by the General Contractor for all of sub-contractors and suppliers.
4. Provide a copy of Worker’s Compensation Insurance coverage for all employees by submission of a Certificate of Insurance.

5. Provide a certified payroll report to include the number of man-hours worked by employees and a list of any terminations with reasons, on this project. TERO requires Form WHD-347 will be utilized for all Certified Payroll submission by the General and Subcontractors.
6. Make payable Training Fees for occupations classified on the prevailing wage scale at the rate of \$.50 cents per man-hour worked, per each classified position detailed on the project. Employer shall be responsible for payment of training fees due upon each quarter or project, whichever duration is lesser.
7. Provide a copy of Contractor's Safety Policy, including the identification of Safety Officer.

SHOSHONE-BANNOCK TRIBES/Contractor
COMPLIANCE PLAN – Fiscal Year 2013
PAGE 2

Project is stated to begin on **DATE** and will conclude on **DATE**. Location of project will occur at **LOCATION OF WORK**, scope of work to include **INDICATE SCOPE OF WORK**. * TERO will authorize a maximum of 30% Key and Permanent employees a contractor can have on the job and a minimum of 70% Indian employees will be worked on the Project.

ANTICIPATED WORKFORCE	TRAINING FEE APPLICABLE (Yes / No)	INDIAN	NON-INDIAN	% INDIAN
Key & Permanent (30%) maximum.		XX		100%

The company also agrees to notify the TERO of any other positions, not included in this Compliance Plan, which may occur prior to start up for job referrals.

This Compliance Plan is in full force and effect on **DATE** for the duration of the contract or unless either party notifies the other in writing of its request to renegotiate.

 Representative
 Title

 Wesley Edmo
 TERO Director

Mailing Address	
City, State, Zip	

Phone Number	
Fax Number	
Email Address	

cc: Employer
File

TRIBAL EMPLOYMENT RIGHTS OFFICE
Shoshone-Bannock TERO ~ PO Box 306, Fort Hall, ID 83203
TERO@sbtribes.com
Phone (208) 478-3848 or Fax (208) 478-3756

NOTICE :
This information is only a portion of the TERO Regulations!

TERO Regulations

PART 2
INDIAN PREFERENCE IN EMPLOYMENT AND TRAINING

2.1 Hiring

A. Tribal Hiring Hall

A covered entity may recruit and hire employees from whatever sources are available to him/her and by whatever process (s) he so chooses, provided that a covered entity may not employ a non-Indian until he or she he has given the Shoshone-Bannock Tribal Employment Rights Office (TERO) 72 hours to locate and refer a qualified Indian, as provided for in Section 107 of the Tribal Employment Rights Ordinance.

B. Permanent and Key Employees

Prior to commencing work on the Fort Hall Reservation a prospective employer and all subcontractors shall identify key regular, permanent employees. Such employees may be employed on the project whether or not they are Indians. A regular, permanent employee is one who is and has been on the employer or subcontractor's annual payroll for a period of one year continuously, or is an owner of the firm (as against one who is hired on a project-by-project basis).

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

C. Work Permits

1. Non Indians shall not be employed by a covered employer until he or she has obtained a work permit from the TERO.
2. Work permits shall be granted under the following circumstances:
 - a) To all-key permanent employees listed in the employer's preference plan who are certified by the TERO Director as meeting the criteria for key permanent employees. Upon approving the plan, the TERO shall issue work permits to the approved key permanent employees for identified timeframes.
 - b) To non-Indians hired after the employer has asked the TERO to locate and refer a qualified Indian and the TERO has been unable to do within the time provided by these regulations. When the TERO has been unable to locate and refer a qualified Indian within the time provided, the employer shall request and the TERO shall issue a work permit for the person hired for the position at issue.
 - c) To a person employed by a covered employer where the person is employed on the Reservation in a permanent position and he or she began his or her employment before the effective date of the TERO Ordinance.
 - d) To all owners of covered entities, where the owner will be performing work for his or her entity. Prior to commencing work, the person shall demonstrate that he or she is a legitimate owner of the entity and shall request a work permit. Upon finding that the person is a legitimate owner, the TERO Director may issue said owner a work permit.
 - e) To such other persons that the Commission determines are entitled to a permit.

NOTICE:

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**SHOSHONE-BANNOCK
TRIBES**



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