

Shoshone-Bannock Tribes Tribal Employment Rights Ordinance Regulations

PART 1 GENERAL PROVISIONS

1.1 Purpose

The following regulations are issued pursuant to the authority granted to the Shoshone-Bannock Tribal Employment Rights Commission to implement the provisions of the Shoshone-Bannock Tribal Employment Rights Ordinance, which requires the preferential employment of Indians and Indian-Owned firms by all contract awarding entities and employers operating on the Fort Hall Reservation.

1.2 Coverage For Indian Preference

A. Employment

These employment preference regulations shall apply to any employer who employs two or more employees, who during any 30-day period spend, cumulatively, 25 or more hours performing work on the Fort Hall Reservation. However, they shall not apply to any direct employment by the Shoshone-Bannock Tribes, the Federal governments, State governments, or the subdivisions of such governments. It shall apply to all contractors or grantees of such governments and to all commercial enterprises operated by such governments.

B. Contracting and Subcontracting

The contract and subcontract preference requirements of these regulations shall apply to any entity that awards one or more contracts and/or subcontracts for supplies, services, labor or materials, the total amount which exceeds \$5,000, in which a significant portion of the services, labor, supplies or materials will be used on the Reservation. However, these requirements shall not apply to the award of any contract where the award is made directly by the Federal or state governments, but shall apply to subcontracts awarded by a federal or state contractor or grantee. The regulations shall apply to contracts and subcontracts by awarded directly by the Tribes. They shall also apply to the award of any contract by a commercial enterprise of the Tribes, or its divisions, departments or subsidiaries.

1.3 Submission of Compliance Plan

A. Upon execution of a compliance plan, the covered entity shall provide a copy of a current Tribal Business License, proof of Worker's Compensation coverage or a written statement verifying exemption from coverage, certified payroll reports after each payroll, and disclose to the TERO the entity's safety plan/policy and identification of the entity's safety officer. TERO regulatory fees shall also be identified and payment of said fees requested, pursuant with Part 5 of these Regulations. Once a TERO compliance plan has been negotiated the qualified Indian workers will work the craft or skill for the majority of the project. If qualified Indian employee or employees are laid off the covered entity must follow the TERO employment retention per Section 303 of TERO-08-S1 must immediately give a valid reason why the Qualified Indians were sent home or laid off and an immediate amendment to the TERO compliance plan must be arranged for.

B. All covered employers, contractors or entities intending to engage in business activity on the Reservation, prior to the time it commences work on the Reservation, must submit a contracting, subcontracting, employment, and/or training plan to the TERO. No new covered entity may commence work on the Reservation until it has met with the TERO and developed an acceptable plan for implementing its obligations under these Regulations.

(1) Employment and Training Plan

The employment and training plan shall show the number of man-hours, by craft and skill category, needed on the project. The covered entity shall also identify those persons it wishes to have approved as permanent and key employees (see subsection 2.1B of the Regulations) and shall provide all data needed by the TERO to verify the status of those employees. As provided in subsection 2.1, all non-permanent key positions shall be filled with qualified Indians, as provided for in Section 303 of the Ordinance. The plan shall also describe how the employer will participate in the Tribe's training programs.

(2) Contracting and Subcontracting Plan

The contracting and subcontracting plan shall indicate all contracts and subcontracts that will be entered into by such covered entity on said project and the projected dollar amounts thereof. If the covered entity has already selected a firm to perform any contract or subcontract work, it shall list the name of that firm and indicate whether or not it is a firm certified as Indian preference eligible by the TERO. If the selected firm is not a certified firm, the covered entity shall further indicate why each certified firm, if any, registered with the TERO, that was technically qualified to perform the work was not selected. The plan shall also indicate how the covered entity intends to comply with Part 3 of these Regulations when awarding all contracts and subcontracts not yet awarded at the time the plan is submitted.

1.4 Reports and Monitoring

All covered entities engaged in any aspect of business activity on the Reservation shall submit reports and such other information as is requested by the TERO to ensure continued compliance with the Ordinance. Similarly, employees of the TERO shall have the right to make on-site inspections during regular working hours in order to monitor an entity's compliance with the Ordinance and these Regulations. Employees of the TERO shall have the right to inspect and copy all relevant records of an entity, of the entity's signatory unions or subcontracts, to speak with workers on the job site, and to engage in similar investigation activities. All information collected by the TERO shall be kept confidential, unless disclosure is required during a hearing or appeal as provided for in these regulations.

1.5 Definitions

The definitions in these Regulations are found in Section 201 of the Tribal Employment Rights Ordinance and also as follows:

- 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. “Certified Firm” means a business, firm, contractor, or subcontractor that is 51% or more Indian owned, controlled and managed, as recognized and approved by the TERO Commission.
- C. “Commercial Enterprise” means any activity or any government, including the federal, state, Tribal or local governments that is not a traditional governmental function and any non-governmental economic activity involving the provision of goods and services.
- D. “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 services, labor or material(s).
- E. “Contractor” means any person, employer, or entity that enters into 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.
- F. “Commission” or “TERO Commission” means members of the Shoshone-Bannock Tribal Employment Rights Commission established by the Ordinance, and appointed by the Fort Hall Business Council.
- G. “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, including any Shoshone-Bannock LLC, and the gaming operation.
- H. “Day” means a work day, which excludes Saturdays, Sundays, and Federal holidays.

- I. “EEOC” means the United States Equal Employment Opportunity Commission.
- J. “Employee” means any person employed for wages, remuneration, compensation, or other value.
- K. “Employer” means any person, partnership, corporation, or other entity that employs, for wages or remuneration two or more employees. This term does not include a private individual who contracts or subcontracts work on his or her own private residence.
- L. “Entity” means any person, partnership, corporation, joint venture, vendor, government, enterprise, or any other natural or artificial person, organization or association of persons or entities. This term is intended to be broadly interpreted to further the purposes of the Ordinance.
- M. “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.
- N “Indian” means any person that is an enrolled member of a federally recognized Indian tribe.
- O. “Indian Preference Contractor” or “Certified Firm” means a business firm, contractor, or subcontractor that is 51% or more Indian owned, controlled and managed, and as certified by the Commission in Part 4 of these Regulations.
- P. “On or near the Reservation” means the ceded area of the Tribes, and 50 miles distance surrounding the Reservation, and such phrase shall apply to highway and road construction and maintenance projects where such project includes lands within the exterior boundaries of the Reservation.
- Q. “Ordinance” means the Tribal Employment Rights Ordinance.
- R. “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 to perform a specific job, terms of a contract, or other employment position.
- S. “Regulations” means administrative rules and guidelines established by the Commission to further the provisions and administration of the Ordinance.
- T. “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.
- U. “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.

V. “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.

W. “TERO” means the Shoshone-Bannock Tribal Employment Rights Office.

X. “Tribes” means the Shoshone-Bannock Tribes of the Fort Hall Reservation.

Y. “Tribal Court” means the Shoshone-Bannock Tribal Court located on the Fort Hall Reservation.

Z. “Tribal member” means an enrolled member of the Shoshone-Bannock Tribes.

PART 2 INDIAN PREFERENCE IN EMPLOYMENT AND TRAINING

2.1 Hiring

A. Tribal Hiring Hall

A covered employer, contractor or 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 employer, contractor or entity may not employ a non-Indian until he or she he has given the TERO 72 hours to locate and refer a qualified Indian.

B. Permanent and Key Employees

Prior to commencing work on the Reservation a prospective employer and all subcontractors shall identify key, regular permanent employees who are considered a core crew, and which are exempt from the Indian preference requirements of this Part. 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 compared to 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. All covered employers must ensure that employees hold a permit before they are eligible to do any work or engage in any business activity on the Reservation.

(2) Work permits shall be granted under the following circumstances:

(a) To 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.

(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 72 hours time period 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 shall issue said owner a work permit.

(e) To such other persons that the Commission determines are entitled to a permit.

(3) The Director is authorized to deny or revoke a work permit to a person who has repeatedly failed or refused to comply with the Ordinance, regulations, guidelines or orders.

D. Sanctions

Any non-Indian found to be employed by a covered employer who does not have a valid work

permit shall be summarily removed from the job and the employer shall be subject to such additional sanctions as the Commission may impose. In imposing sanctions under this Section, the Commission shall consider such factors as:

- (1) Whether the violation was intentional;
- (2) Whether the employer acted quickly to remove the employee at issue; or
- (3) Whether the employer has been cited for other work permits violations in the past.

E. Termination

No qualified Indian worker shall be terminated so long as a non-Indian worker in the same craft is still employed. The non-Indian shall be terminated first, so long as the qualified Indian meets the threshold qualifications for the job. Further, if the employer lays off by crews, qualified Indians shall be transferred to crews that will be retained, so long as there are non-Indians in the same craft employed on the crews that are to be retained.

F. Unions

An employer or subcontractor who has a collective bargaining agreement with one or more labor unions must obtain written agreement from said unions indicating that they will comply with these Indian preference requirements. Specifically, the contractor may make initial job referral requests to the union. However, if the union does not have a qualified Indian worker on any of its out-of-work lists, the union shall contact the TERO. If the TERO can identify a qualified Indian worker, that worker shall be referred through the union hiring hall to the job site. The union may not refer a non-Indian until it has so contacted the TERO. Before referring the non-Indian to the job site, the union shall request and the TERO shall issue a work permit for the worker.

G. Fringe Benefits

When fringe benefits are available for Indian employees through a trust fund, all contractors shall be required to offer the Indian employees the option of:

- (1) Issuing all funds to the company and/or employee pension plan and trust; or
- (2) Issuing all funds to the Indian employee of said Employer.

In the case of option (2) above, all funds shall be issued to the employee in such a manner as to coincide with the employee's regular pay period.

2.2 Training

All employers, as required by the TERO, shall participate in training programs to assist Indians

to become qualified in the various job classifications used by the employer. Employers engaged in construction shall participate in the Tribes' Bureau of Apprenticeship Training program or a union apprenticeship program. All trainees or apprentices shall be Indians. Where an employer is not presently participating in a union apprenticeship program, the Tribes shall make best effort to bear the costs of such training programs but employers may also be required to bear part of the cost. Employers with collective bargaining agreements with unions may use apprenticeship programs, so long as they obtain agreement from the unions to use only Indian apprentices on the project.

2.3 Job Qualifications, Personnel Requirements and Religious Accommodation

A. An employer may not use any job qualification criteria or personnel requirements, which serve as barriers to the employment of Indians and which are not required by business necessity. The burden shall be on the covered employer to demonstrate that such criterion or requirement is required by business necessity. If the employer fails to meet this burden, (s) he will be required to eliminate the criterion or personnel requirement at issue.

B. Employers shall also make reasonable accommodation to the religious beliefs of Indian workers. In implementing these requirements, the TERO shall be guided by the principles established by the Equal Employment Opportunity Commission (EEOC) Guidelines, particularly 29 C.F.R. Parts 1604-1607. However, the TERO reserves the right to go beyond the EEOC principles in order to address employment barriers that are unique to Indians.

C. Where the TERO and employer are unable to reach agreement on the matters covered in this Section, a hearing shall be held, as provided for in these Regulations. The TERO Director shall make a determination on the issues and shall order such actions as (s) he deems necessary to bring the employer into compliance with this Section. The employer may appeal the decision of the TERO Director under the procedures provided for in Part 7 of these Regulations.

2.4 Promotion

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

2.5 Summer Students

Qualified Indians shall be given preference in the hiring of summer student help.

2.6 Retaliation

No employer, including a certified contractor, shall punish, terminate, harass, or otherwise retaliate against any employee, subcontractor, or person who has exercised his or her rights under the TERO Ordinance or has assisted another to do so. Further, any employer or certified contractor who harasses or abuses an employee of the TERO who is carrying on official duties under this Ordinance shall be summarily removed from the Reservation, in accordance with Section 120 of the Tribal Employment Rights Ordinance. An employer or certified contractor shall be responsible for the actions of all of its employees, supervisory or otherwise, and for the action of its subcontractors and their employees in regard to the prohibitions of this Section

2.7 Counseling and Support Programs

The TERO, in conjunction with other Tribal and Federal offices, will provide counseling and other support services to Indians employed by covered employers to assist such Indians retain employment. Employers shall be required to cooperate with such counseling and support services.

2.8 Highway Construction and Maintenance Projects

A. Numerous highway and road construction and maintenance projects occur on and off the Reservation. Often these highway projects include a segment on the Reservation and then continue outside the present exterior boundaries of the Reservation. The TERO Commission has determined that the “on or near” phrase contained in the Covered Employer definition and Section 303 should apply to the ceded lands of the Reservation and within a 50 mile radius of the Reservation. Thus, the Ordinance language was amended to read,

U. “Reservation” includes “. . . 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.”

In addition, the definition for “covered employer” was also amended to state,

G. “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.”

B. Section 303 has the new phrase for Indian preference in employment actions. It states, [a]ll covered employers, for all employment activities occurring on or near the Reservation, shall give preference in hiring, training,”

C. Section 304 for contracting and subcontracting does not provide similar “on or near Reservation” language to require Indian preference. The 2008 TERO Ordinance amendments are

not intended to apply to work performed by businesses, firms or companies located outside the exterior boundaries of the Fort Hall Reservation. But, will apply if the contractor or subcontractor performs work on the Reservation. The provisions of “on and near the Reservation” and “ceded area” are to be used for highway construction and maintenance projects.

D. Subcontractors, whose business is located off the Reservation and who are performing work for a contractor on the Reservation are encouraged to provide training, internships and other employment opportunities to Indians.

PART 3

INDIAN PREFERENCE IN CONTRACTING AND SUBCONTRACTING

3.1 Entity Obligations

A. Generally

Every covered entity engaged in any business activity within the Reservation, including, but not limited to, construction, minerals development, supplies, service, and retail, shall give preference to firms certified by the Tribes under Part 4 of these Regulations in any contract or subcontract to be awarded by it, so long as 50% or more of said contract or subcontract is to be performed on the Reservation and so long as there are certified firms that are technically qualified and willing to perform the work at a reasonable price, as defined by Section 3.5 of this Part.

B. Order of Preference

The following order of preference shall apply to the award of contracts and subcontracts:

(1) First, second and third preference shall be given to Certified firms and Indian-owned firms pursuant to Section 303 of the Ordinance.

(2) If no Indian preference certified firms are available, Indian/non-Indian businesses shall be given preference over wholly-non Indian owned firms or joint ventures.

C. List of Certified Firms

A directory of certified Indian preference firms shall be published and disseminated quarterly. In addition, any entity may obtain a list of firms certified as eligible by the Tribes from the TERO. The TERO shall identify such firms according to the order of preference set out in subsection B of this Section.

3.2 Responsibility for Compliance

The covered entity engaged in business activity shall be responsible for the compliance of all its contractors and subcontractors with these Regulations. Specifically:

A. Construction

The covered entity awarding the prime construction contract shall be responsible for compliance with the requirement that preference be given in the award of the prime contract and for ensuring that the prime contractor is in compliance with the requirement that preference be given in the selection of subcontractors; provided, that when the prime contract is awarded directly by an Agency of the United States Government (see subsection C of this Section), the prime contractor shall be the responsible entity.

No prime contractor shall be permitted to commence work on the Reservation until it has demonstrated that it will comply with the subcontract preference requirements.

B. Natural Resource Development (Oil, Gas, Hard Rock Minerals, Timber, etc.)

The entity obtaining the authorization from the Tribes to engage in development activities on the Reservation shall be responsible for compliance with these Regulations by all of its contractors and subcontractors.

C. Direct Federal Contracts

The Tribes do not assert authority over the United States Government and Federal agency contracting policies and procedures, these Regulations do not apply to the award of direct prime contracts by a Federal agency. However, the selected contractor shall be required to comply fully with all subcontracts preference requirements.

3.3 Requirements in Contracting

Preference shall be given to certified firms in the award of all contracts. An entity shall select its contractor in one of the manners provided below:

A. Competitive Award

If the entity uses competitive bidding or proposals, competition shall be limited to TERO certified and Shoshone-Bannock Indian-owned firms. If the entity is uncertain if there are any qualified certified firms, it may first publish a prior invitation for certified firms to submit a Statement of Intent to respond to such a limited advertisement when published and to furnish, with the Statement of Intent, evidence sufficient to establish their technical qualifications. If the entity fails to receive any Statement of Intent from a technically qualified certified firm, it may after so notifying the TERO, advertise for bids or proposals without limiting competition to certified firms and may award to the low bidder. If only one certified firm submits a bid or Statement of Intent, the entity (unless otherwise prohibited by a federal law or regulation) shall award the contract to that firm so long as the firm is technically qualified and is willing to perform the work at a reasonable price as defined in Section 3.5 of this Part; or

B. Negotiated Award

If the entity selects its contractor through negotiations or other informal process, it may not enter into a contract with a non-certified firm unless it has contacted every certified firm in the relevant field and has determined that there is no certified firm available that is technically qualified to perform the work required at a reasonable price as defined in Section 3.5. So long as a certified firm meets the minimum threshold qualifications, no non-certified firm may be selected.

3.4 Requirements in Subcontracting

A. General Requirement

Preference shall be given in the award of all subcontracts to certified firms. The contractor may select its subcontractor in any manner it so chooses, provided that:

(1) If the contractor uses competitive bidding or proposals, competition shall be limited to certified firms. If the contractor is unsure if there are any qualified certified firms, it may first publish a prior invitation for certified firms to submit a Statement of Intent to respond to such a limited advertisement when published and to furnish, with the Statement of Intent, evidence sufficient to establish their technical qualifications. If the contractor fails to receive any Statement of Intent from a technically qualified firm, it may, after so notifying the TERO, advertise for bids or proposals without limiting competition to certified firms and may award to the low bid. If only one certified firm submits a bid or Statement of Intent, the contractor shall enter into negotiations with that firm and shall award the contract to that firm so long as the firm is technically qualified and is willing to perform the work at a reasonable price as defined in Section 3.5.

(2) If the contractor selects its subcontractor through negotiations or other informal process, it may not enter into a contract with a non-certified firm unless it has contacted every certified firm in the relevant field and has determined that there is not a certified firm available that is technically qualified to perform the work required at a reasonable price as defined in Section 3.5. So long as a certified firm meets the minimum threshold qualifications, no non-certified firm may be selected.

B. Special Construction Contract Requirement

Covered entities awarding construction contracts shall comply with the following special requirements in the award of subcontracts:

(1) The bid notice shall require that each bidder submit, as part of its bid, a subcontract plan showing, for each subcontract it intends to enter into, the name of the firm, whether it is or not certified, if not certified why the contractor did not select a certified firm, and the projected subcontract price, as provided for in Part 1, Section 1.3 B. Pursuant to Section 1.3B a contractor will not be permitted to commence work on the Reservation unless it has an

approved subcontracting plan, it is in the contract-awarding entity's self-interest to declare as non-responsive or non-responsible any bidder who fails to submit a satisfactory plan. The subcontract price information for each bidder shall be made available to the TERO and shall be used to ensure that a contractor has not engaged in bid shopping as a means to discourage certified firms or to force them to accept a subcontract at an unreasonably low price.

(2) It shall be illegal for any contractor or bidder to engage in bid shopping. Bid shopping is defined as any practice involving or comparable to the contracting of different subcontracting firms, informing them that a competitor has underbid them, but offering them an opportunity to under bid the competitor. Any contractor found to have engaged in bid shopping shall be prohibited from engaging in work on the Reservation or, if engaged in work, shall be liable for treble damages for any losses suffered by a certified firm as a result of the contractor's bid shopping practices. The TERO reserves the right to require any contractor to demonstrate that a reasonable relationship exists between the dollar amount of a proposed subcontract and the reasonable costs of supplies, materials and labor.

(3) The entity shall be prohibited from using qualification criteria that creates a barrier to Indian firms.

(4) The contractor shall not be prohibited from requiring that a subcontractor provide some form of security. However, if a subcontractor-bonding requirement has been imposed and an Indian firm is unable to obtain a bond, the prime contractor must permit the Indian subcontractor to provide another adequate form of security. An acceptable bonding alternative may include any of the following:

- (a) No bond required on amounts of \$25,000 or less;
- (b) Surety bonds;
- (c) Cash bonds -- to 25% -- held in escrow by tribal attorney or bank;
- (d) Increased retainers -- 25% instead of normal;
- (e) Letter of credit -- 100%;
- (f) Letter of credit -- 10% -- with cash monitoring system;
- (g) Cash monitoring system;
- (h) Other options to be considered as they arise. The final decision on whether an alternative form of security is sufficient shall rest with the TERO.

(5) If it is determined that there is no certified firm available and qualified to perform a particular subcontract because the subcontract is too large for the capacity of any one certified firm, the contractor shall make a good faith effort to solicit and consider two or more certified firms which may combine

their services and may qualify to perform the work.

3.5 Responsibility for Evaluating Technical Qualifications and Reasonable Price

A. Technical Qualifications

(1) The entity and its contractors and subcontractors shall have the discretion to determine technical qualifications. However, if the entity determines that there are no certified firms that are technically qualified, the entity must provide to each certified firm it rejects a description, in writing, of areas in which it believes the firm is weak and steps it could take to upgrade its qualifications.

(2) If a certified firm that was disqualified on the grounds of technical qualification believes that the disqualification was the result of an improper effort by an entity, contractor, or subcontractor, to circumvent its preference responsibilities under these Regulations, it may file a complaint with the TERO. Said complaint shall be filed within twenty (20) days after the firm was notified of its non-qualification. The burden shall be on the complaining firm to demonstrate (1) it is qualified, and (2) its disqualification was the result of an effort to circumvent these Regulations. If after a hearing, as provided for in Part 7, the complaint is found to be valid, the TERO Director shall impose such sanctions as (s) he deems appropriate, including punitive damages.

B. Reasonable Price

An entity may use any process it so chooses for determining what constitutes a reasonable price including, but not limited to, competitive bidding (open or closed), private negotiations, or the establishment of a prototype cost ceiling before bidding or negotiations commence. However, before an entity may reject all certified firms on the basis of price, it must offer one or more of the certified firms an opportunity to negotiate price. If there is only one technically qualified certified firm, an entity must enter into negotiations on price with such firm and must contract with that firm if a reasonable price can be negotiated. No entity may reject a certified firm on the grounds that the price is not reasonable and subsequently contract with a non-certified firm at the same or higher price. Any contract modification in price that is justified is not a circumvention of this Section. Any entity found to have violated this requirement by such circumvention shall be liable for treble damages for any losses suffered by a certified firm as a result of the entity's actions.

C. Test of Reasonableness

In the event that a challenge is made regarding reasonable price, the following TERO Reasonable Guidelines may be used to determine reasonable pricing.

- (1) Bid Bracket One \$0 to \$100,000: Bid multiplied by 10% (Bid x 10%).
- (2) Bid Bracket Two \$100,001 to \$200,000: Bid minus \$100,000 multiplied by 6%

plus \$10,000 (Bid - \$100,000 x 6% + \$10,000).

(3) Bid Bracket Three \$200,001 to \$500,000: Bid minus \$200,000 multiplied by 4% plus \$16,000 (Bid - \$200,000 x 4% + \$16,000).

(4) Bid Bracket Four \$500,001 to \$1,000,000: Bid minus \$500,000 multiplied by 3% plus \$28,000 (Bid - \$500,000 x 3% + \$28,000).

(5) Bid Bracket Five \$1,000,001 to \$5,000,000: Bid minus \$1,000,000 multiplied by 1.5% plus \$43,000 (Bid - \$1,000,000 x 1.5% + \$43,000).

(6) Bid Bracket Six \$5,000,001 to \$10,000,000: Bid minus \$5,000,000 multiplied by .5% plus \$103,000 (Bid - \$5,000,000 x .5% + \$103,000).

(7) Bid Bracket Seven \$10,000,001 to \$20,000,000: Bid minus \$10,000,000 multiplied by 25% plus \$128,000 (Bid - \$10,000,000 x .25% + \$128,000).

(8) Bid Bracket Eight \$20,000,001 to \$100,000,000: Bid minus \$20,000,000 multiplied by 10% plus \$153,000 (Bid - \$20,000,000 x .10% + \$153,000).

3.6 Operation of the Contract or Subcontract

Once an entity enters into a contract with a certified firm, the TERO will not intervene in any way in the relationship between the parties unless a certified firm demonstrates that action taken against it is intended primarily to circumvent the requirements of these Regulations.

3.7 Brokering and Fronts

No Indian firm shall represent that it is exercising management control of a project in order to qualify for Indian preference in the award of said contract or subcontract when in fact such management control is exercised by a non-Indian entity such that the Indian entity is acting as a “Front” or in name only, rather than managing, controlling, possessing a majority of technical qualifications, or sharing a majority profits of the business.

PART 4

CRITERIA AND PROCEDURES FOR CERTIFYING FIRMS AS INDIAN PREFERENCE ELIGIBLE

4.1 General Statement of Policy

Pursuant to its sovereign authority, the Shoshone-Bannock Tribes have imposed Indian contract

preference requirements as one tool for promoting the economic development of the Reservation. When used properly, Indian preference in contracting can assist in the development of Indian-owned businesses and thereby assist the Tribes and its members to achieve economic self-sufficiency. However, if the preference is abused, it will undermine this development and discredit the preference tool. Because of this, it is the policy of the Tribes to require that an applicant for Indian preference certification provide rigorous proof that it is a legitimate Indian-Owned, managed, and controlled firm.

In evaluating an applicant, a number of specific criteria will apply. These criteria are set out in Section 4.2, the criteria section, of this Part. However, experience has shown that persons interested in abusing the Indian preference program are able to structure firms to get around most specific criteria. Therefore, in addition to applying the specific criteria, the TERO Commission will evaluate a firm under the following general criterion: applying sound management principles, would the firm have been structured in the manner it is, and would the Indian owners have been given the amount of ownership and control they have given, if there were no Indian preference program in existence? If the TERO Commission determines that it has good reason to believe that the firm has been structured (managerially or financially) in a manner that is convoluted or inconsistent with sound business practices in order to enable the firm to qualify for Indian preference certification, the firm will be denied such certification, even if it meets the specific criteria, unless the firm is able to demonstrate beyond a reasonable doubt that it was not structured to manipulate the Indian preference criteria.

The specific criteria also require that the ownership, control, technical qualification, and management arrangements of a firm make sense from a sound business perspective. The Indian owners must own, manage, control and possess 51% or more of the firm's technical qualifications. One primary consideration in applying this criterion will be what the Indian owner(s) brought to the firm in consideration for the extent of ownership given them, and would sound business practice justify giving them a share were Indian preference not in consideration. For example, assume the Indian owner paid for his or her 51% share through a promissory note a non-Indian owner. In the ordinary course of business, such a transaction would not occur unless the new owner brought something of value, such as managerial or technical expertise, capital and equipment, or marketing opportunities. (The ability to qualify Indian preference is not considered such a marketing opportunity.) Therefore, such an arrangement would be denied Indian preference certification unless some other sound business reason for the arrangement could be demonstrated. Where an Indian can demonstrate that he or she was unable to provide good value for his or her 51% share because the usual sources of capital were closed off to him or her because he or she was an Indian, that person shall be required to demonstrate that he or she extended his or her capital raising ability as far as possible -- such that he or she is "at risk" in an significant way -- e.g., mortgaged a house or vehicle.

The Indian owner(s) must be directly involved in the firm's management. While it is not required that the Indian owner(s) be the Chief Operating Officer of the firm, at least one of the Indian owners will have to be involved in the day-to-day operations of the firm on a full-time basis and in a senior level position. The Indian person(s) in this position must have the experience or expertise in the area of business the firm is engaged in (or in management generally) to make the senior level role a legitimate one. The Indian owner(s) must also have

sufficient knowledge about the firm to be accountable for the firm's activities.

Certification will not be granted to a firm where one or more of the Indian owners are not involved in the day-to-day operations of the firm in the manner described above. There is virtually no benefit to the Indian community from such passive ownership, other than profits to the owners. It could take several years for a firm to show a profit, if one in fact materializes. Yet during that time the non-Indian managers can benefit at the expense of the Indian community. The limited benefits to the Indian owner(s) do not justify this risk. One of two exceptions to this rule is that certification will be granted to 100% Indian owned firms where the managers of the business is a non-Indian spouse of an Indian and the family lives on or near the Reservation. No effort will be made to distinguish between the value contributed by a non-Indian spouse versus the Indian spouse. The family's contribution will be treated as an undivided unit. The second exception is for a more "public corporation," defined as one that is owned by 10 or more persons, 70% of which is Indian-owned, and where the Chief Executive Officer is an Indian.

Joint ventures will not be granted certification as Indian preference firms. However, an Indian/non-Indian joint venture will be given contracting preference over non-Indian firms if there is no certified Indian preference unitary firm available.

Such rigorous criteria, giving substantial discretion to the TERO Commission are necessary and appropriate for the Indian contract preference program. Neither the Tribes nor the Indian community benefits from the establishment of "bogus" Indian firms, while the certification of such firms undercuts credibility of the Tribes' Indian preference program. An Indian firm or individual that is unable, on its own, to qualify as the prime contractor on a large project has other options open to it besides participating in the development of a bogus firm. For example, he or she can seek work at the subcontractor or employee level and benefit from the Tribes' requirement that preference be given to Indian subcontractors and employees.

The procedural requirements for certification provide that applications shall be reviewed by the staff of the TERO, which shall request any additional information it believes appropriate. It will then submit the application, along with its recommended findings, to the TERO Commission. The Commission shall review the application and findings, interview the principals of the firm, request additional information as appropriate, and then make a determination on whether certification should be granted. The TERO Commission shall have the right to disqualify applicants for cause, with an opportunity to reapply.

A firm may receive a six-month to one-year probationary certification if the firm has limited business activity, is lacking experience or credentials, or for other specific criteria as the Commission believes is necessary. The TERO and the Commission shall have the right, at any time, either on their own initiative or upon the filing of a complaint by any party, to conduct an investigation of a firm to determine if its certification should be suspended or withdrawn. The TERO and the Commission shall require new applications from firms that had been certified by the Tribes prior to the adoption of these criteria. If it is determined that a firm does not qualify under the new criteria, the firm will be given four months to come into compliance with the new criteria. If it fails to do so by the end of that period, its certification shall be withdrawn.

4.2 Criteria for Indian Contract Preference Certification

To receive certification as a firm eligible for Indian preference, an applicant must satisfy all of the criteria set out in this Section.

A. Ownership

The firm or joint venture must be 51% or more Indian-owned. The applicant must demonstrate the following:

(1) **Formal Ownership.** That an Indian or Indians own(s) 51% or more of the partnership, corporation, or other legal structure for which the application is being submitted. Such ownership must be embodied in the firm's organic documents, such as its stock ownership or partnership agreement. Ownership includes:

(a) **Financial ownership -- i.e.,** the Indian(s) owns 51% or more of the assets and equipment, will receive 51% or more of the firm's assets upon dissolution, and will receive 51% or more of the profits; and

(b) **Control -- i.e.,** the Indian(s) 51% or more ownership provides him or her with a majority of voting rights or other decisional authority and that all decisions of the firm are to be made by a majority vote except where otherwise required by laws.

(2) **Value.** The Indian owner(s) provided real value for his or her 51% or more ownership by providing capital, equipment, real property, or similar assets commensurate with the value of his or her ownership share. It will not be considered "real value" if the Indian(s) purchased his or her ownership share, directly or indirectly, through a promissory note, the ultimate creditor of which is the non-Indian owner of the firm or an immediate relation thereof, or any similar arrangement, unless a convincing showing can be made that the Indian owner(s) brought such special skills, marketing connections, or similar benefits to the firm that there is a good reason to believe the arrangement would have been entered into even if there were not an Indian preference program in existence. Where the Indian participant can demonstrate that he or she could not pay good value for his or her 51% or more Indian ownership because the normal capital sources were closed to him or her because he or she is an Indian, that person may satisfy this requirement by demonstrating further that he or she extended his or her capital-raising capability as far as possible, such that the Indian participant clearly is at risk in the business in relationship to his or her means.

(3) **Profits.** The Indian owner(s) will receive 51% or more of all profits. If there is any provision that gives the non-Indian owner a greater share of the profits, in whatever form and under whatever name, such as through management fees, equipment rental fees, or bonuses tied to profits, certification will be denied. Salary scales will be reviewed to ensure the relative salaries being paid Indian and non-Indian owners are consistent with the qualification and skills of the parties and are not being used to circumvent the requirement that Indian owners receive 51% or more of the profits.

B. Management Control

The firm must be under significant Indian management and control. The firm must be able to demonstrate that:

(1) One or more of the Indian owners must be substantially involved, as a senior level official, in the day-to-day management of the firm as his or her primary employment activity. The Indian owner does not have to be the "Chief Executive Officer." However, he or she must, through prior experience or training, have substantial occupational ties to the area of business in which the firm is engaged such that he or she is qualified to serve in the senior level position and is sufficiently knowledgeable about the firm's activities to be accountable to the Tribes for the firm's activities. This provision may be waived when:

(a) The firm is 100% Indian-owned and the Chief Executive Officer is the spouse and/or parent of the owner(s), the family lives on or near the Reservation, and the majority of employees are Indian; or

(b) The firm is modeled on a publicly-held corporation such that it is owned by 10 or more persons, is at least 70% Indian-owned, the Chief Executive Officer and the highest-salaried employee in the firm is/are Indian, and a majority of the employees are Indian.

(2) No joint ventures will be certified. However, an Indian/non-Indian joint venture that otherwise satisfies the requirements of these criteria shall be given contracting preference over wholly non-Indian firms when no certified Indian firm is available.

C. Integrity of Structure

There must be good reason to believe that the firm was not established solely or primarily to take advantage of the Indian preference program. In evaluating an applicant under this criterion the TERO will consider the factors set out below. The TERO shall exercise broad discretion in applying these criteria in order to preserve the integrity of the Indian preference program and in questionable cases shall deny certification.

(1) History of the firm. Whether the history of the firm provides reason to believe it was established primarily to take advantage of the Indian preference program, and in particular whether the firm, a portion of the firm, or key actors in the firm originally were associated with a Non-Indian-Owned business that gained little of business value in terms of capital, expertise, equipment, etc., by adding ownership or by merging with an Indian firm.

(2) Employees, Whether key non-Indian employees of the applicant are former employees of a non-Indian firm with which the Indian firm is or has been affiliated, through a joint venture or other arrangement, such that there is reason to believe the non-Indian firm is controlling the applicant. Whether Indians are employed in all or most of the positions for which qualified Indians are available. A high percentage of non-Indian employees in such positions

will provide reason to believe the firm was established primarily to benefit non-Indians.

(3) **Relative Experience and Resources.** Whether the experience, expertise, resources, etc., of the non-Indian partner(s) is so much greater than that of the Indian(s) that there is little sound business reason for the non-Indian to accept a junior role in the firm or venture other than to be able to take advantage of the Indian preference program.

D. Brokers

Brokers will be certified only if they are dealers who own, operate, or maintain a store, warehouse, or other establishment in which the commodities being supplied are bought, kept in stock, and sold to the public in the usual course of business; Provided, that this requirement shall not apply where the applicant demonstrates that it is customary and usual in the area of trade for a broker/dealer not to maintain an establishment and to keep the commodities in stock.

4.3 Certification Procedures

A. Application for Certification

A firm seeking certification, as an Indian preference eligible firm shall submit a completed application to the TERO on a form provided by TERO (Application forms may be obtained at the TERO office.) TERO staff will be available to assist a firm fill out the application. On a quarterly basis, after receipt of a completed application, the TERO Director shall review the application, request such additional information as it believes appropriate and submit an analysis and recommended disposition to the Commission. Copies of the analysis and recommended disposition shall be kept confidential and shall not be made available to the applicant or any other party. Within fifteen (15) days of receipt of the TERO analysis and recommended disposition, the Commission shall hold a formal review on the application, posting notice of the hearing time at the Tribal Administration Office, the Fort Hall Agency, and the TERO office at least five (5) days prior to the hearing. Only the Indian principal(s) of the firm shall be present at the formal review. In addition, any other party wishing to present information to the Commission shall be entitled to do so, by requesting, no less than one (1) day prior to the formal review, an opportunity to participate. A party may not be represented by counsel.

B. Probationary Certification

An applicant may receive a six-month to one-year probationary certification if the firm has limited business activity, is lacking experience or credentials, or for other specific criteria as the Commission believes is necessary. During that period, the TERO staff and the Commission shall monitor the firm's activities to ensure that the firm is operating in the manner described in its application. Also during the period, the TERO and the Commission shall have the right to request and receive such information and documents, as they deem appropriate.

C. Final Certification

Either at the end of the probationary period, or upon full satisfaction of the specific application

criteria, the Commission shall either:

- (1) grant full two-year certification;
- (2) continue the probationary period for up to six months; or
- (3) deny certification.

D. Withdrawal of Certification

From the information provided in reports required by Sections 4.3 F, on the basis of a written grievance filed by any other firm or person, or on its own initiative, the TERO may initiate proceedings to withdraw or suspend the certification of any firm. The TERO shall prepare an analysis and recommended disposition for the Commission and shall send the firm notices, by registered mail, that its certification is being examined, along with the grounds therefore. The Commission shall set a date for a hearing, which shall be held within twenty-one (21) days after it receives the analysis and recommended disposition from the TERO. At the hearing, the TERO staff shall present the case for suspension or withdrawal, and the hearing shall be conducted as set out in Part 7. After the hearing, the Commission may:

- (1) withdraw certification;
- (2) suspend certification for up to one year;
- (3) put the firm on probation; and/or
- (4) order that corrective action be taken within a fixed period. A firm that has had its certification withdrawn may not re-apply for a period of one year.

E. Firms Certified Prior to the Adoption of These Criteria

Each firm holding Indian preference certification from the Tribes prior to the effective date of these Regulations shall submit an application required under these criteria to the TERO within thirty (30) days after the effective date of these Regulations. If the TERO determines the firm qualifies under these new criteria, it shall recommend to the Commission, which, unless it has grounds to act to the contrary, shall issue a new certificate within thirty (30) days of receipt of the TERO recommendation. If the TERO has reason to believe the firm does not qualify, it shall prepare an analysis of the reasons therefore, along with its recommended disposition. The analysis shall be submitted to the Commission within twenty-one (21) days after receipt of the application. Should the TERO require additional information from the firm, computation of the 21-day period shall be stayed by the Commission for a reasonable time to permit such information to be provided. The Commission shall:

- (1) grant the firm a new certification; or
- (2) determine that the firm is not in compliance. If the Commission determines that

the firm is not in compliance, it shall provide the reasons therefore. The firm shall then have fifteen (15) days from the date of the decision to demonstrate to the Commission that it has made such changes as are necessary to come into compliance. If at the end of the fifteen 15-day period the firm has failed to come into compliance, its certificate shall be withdrawn. A copy of the withdrawal notice shall be sent to the firm.

F. Change in Status and Annual Reports

Each certified firm shall report to the TERO, in writing, any changes in its ownership or control status within sixty (60) days after such changes have occurred. Each certified firm, on the anniversary of its receipt of permanent certification, shall update the information provided in its initial application on an Annual Report form provided by the TERO. Failure to provide information pursuant to these requirements shall constitute grounds for withdrawal of certification.

PART 5 FEES

5.1 TERO Fees

A. Section 305B of the Ordinance provides that a regulatory fee shall be imposed on contracts awarded in the sum of \$25,000 or greater for work performed on the Reservation. These fees are assessed for the privilege of conducting business on the Reservation and to provide sufficient revenue for the training, apprenticeships, the operation of the TERO office and the enforcement of the Ordinance and regulations.

B. If a contract exceeds the \$25,000 threshold, a fee in the amount of 2.5% of the total amount of the contract will be assessed. Smaller amount contracts will not be added together for the purpose of meeting or exceeding the \$25,000 threshold so long as the contracts represent separate and distinct projects, and appropriate documentation (e.g. contracts, invoices) is provided to the TERO Office showing the amount of the contract(s) awarded,

5.2 Provision for Collection of Fees

A. All fees are due and shall be paid in full by any covered entity prior to his or her commencing work on the Reservation, unless other arrangements are agreed to, in writing, by the Director, pursuant to subsection 5.3.

B. If the covered entity fails to pay the fee by the day it commences work on the Reservation, or fails to pay the fee as detailed by TERO Compliance Plan, the Director shall send a non-compliance notice to the covered entity by registered mail, informing him or her that the fee payment is overdue and of the consequences that will result if the fee is not paid

immediately.

C. If the fee is not paid on or before the 15th day after the covered entity commenced work, or as detailed by the TERO Compliance Plan, the Director shall file a formal charge of violation, and shall schedule a Commission hearing to be held in five (5) days or as soon thereafter as the Commission can meet, and shall inform the covered entity of the scheduled hearing.

C. At the hearing, to be held whether or not the covered entity attends, the Commission shall determine whether or not the covered entity has failed to comply. If it finds noncompliance, it shall:

- (1) Impose penalties of up to 10% of the amount due.
- (2) Petition the Tribal Court to uphold the decision of the Commission and to enforce it through confiscation proceedings as provided for in Section 506 of the Tribal Employment Ordinance, or other remedy as provided by the Shoshone-Bannock Tribes Law & Order Code.

D. Where the Director or Commission has reasonable cause to believe that a covered entity will leave the jurisdiction before the procedures set out above can be completed, they may other administrative or judicial relief as deemed appropriate.

5.3 Alternative Arrangement

The Director, in his or her discretion, may, upon receipt of a written request, authorize a covered entity to pay the required fees in installments over the course of the year or the contract, as appropriate, when:

- A. The total annual fee exceeds \$10,000, and/or
- B. The covered entity demonstrates hardship or other good cause.

The decision to authorize an alternative arrangement, which shall be in writing, shall rest solely with the TERO Director and is not appealable to the Commission or the Tribal Court.

PART 6 SETTLEMENT

6.1 Informal Settlement

If, based on a complaint filed or on its own information, the TERO has reason to believe that a covered entity has failed to comply with these Regulations, the TERO shall so notify the covered entity in writing, specifying the alleged violation(s). If the party so notified is a contractor or subcontractor, notice shall also be provided to the covered entity holding the permit or authorization under which the contractor or subcontractor is operating, and such covered entity shall be a party to all further negotiations, hearings, and appeals. The TERO shall then conduct an investigation of the charge and shall attempt to achieve an informal settlement of the matter. If voluntary resolution cannot be achieved and the Director has reasonable cause to believe a

party has violated the Ordinance or Regulations, a formal notice of non-compliance shall be issued to the party and shall proceed with the enforcement procedures as set out in Section 504 of the Ordinance.

PART 7 DUE PROCESS HEARING PROCEDURES

7.1 Pre-Hearing Procedures

A. Review of TERO Files

The respondent (the covered entity against whom a charge has been filed) shall have the right to review the complaint file of the TERO Director by scheduling a visit to the TERO office during regular working hours at any point after receiving notice of a hearing. However, the Director shall have the right to "sanitize" any portion of the file to protect confidential information. The file shall be sanitized in a manner that causes the loss of the least amount of relevant information from the files.

B. List of Witnesses

Ten (10) days prior to the hearing (or as soon as possible if the hearing is to be held within ten (10) days after notice), the respondent and the Director shall submit to the Commission Chairperson a list of witnesses each intends to call at the hearing, the approximate length of their testimony, and the subject matter and relevance of their testimony. It shall indicate any witnesses that must be subpoenaed. The Director shall then seek the subpoenas.

C. Subpoenas of Documents and Things

The respondent shall, no later than ten (10) days prior to the hearing (or as soon as possible if the hearing is noticed less than ten (10) days before the hearing) provide the Director with a list of items it wishes to have subpoenaed and the relevance of each. The Director shall seek subpoena of all relevant items listed by respondent as well as items needed by the Director. Any disputes shall be brought to the Chairperson of the Commission who shall resolve such disputes.

D. Postponements

Any request for a postponement of the hearing must be submitted in writing to the Chairperson of the Commission no fewer than three (3) days prior to the hearing. However, if the Director

and respondent mutually submit a request for a postponement because there is a possibility of settling the matter, the request for a postponement may be submitted at any time.

7.2 Conduct of the Hearing

A. Presiding Officer

As presiding official, the Chairperson of the Commission will control the proceedings. He or she will take whatever action is necessary to insure an equitable, orderly, and expeditious hearing. Parties will abide by the presiding official's rulings. The presiding official has the authority, among others, to:

- (1) Administer oaths or affirmations;
- (2) Regulate the course of the hearing;
- (3) Rule on evidence, documents, and testimony of witnesses, if challenged;
- (4) Limit the number of witnesses when testimony would be unduly repetitious; and
- (5) Exclude any person from the hearing for contemptuous conduct or misbehavior that obstructs the hearing.

B. Director

The TERO Director shall represent the TERO on all charges filed by it, even if the charge was initiated by a complaint filed by a private individual.

C. Respondent

The respondent shall be present for the entire hearing and (s) he or his or her representative (other than an attorney) shall represent him or her during the proceedings.

D. Attorneys

Either party may have an attorney present as an advisor. However, the attorney may not make any presentations, cross-examine witnesses or address the Commission.

E. Recording of the Hearing

The Commission shall have the hearing tape recorded in full and shall retain the tape(s) for no less than one (a) year after the hearing. The respondent shall also be permitted to tape the hearing.

F. Prohibition Against Reprisals

All parties shall have a right to testify on their own behalf, without fear of reprisal.

G. Starting Time

The hearing shall be open promptly at the time specified by the Commission. The Commission shall allow for a 15-minute grace period before declaring the hearing started, postponed or cancelled.

H. Opening Statements

Both parties will be afforded the opportunity to present opening statements with respect to what they intend to prove at the hearing.

I. Order of Proceeding

The Director will present the TERO case first, followed by the respondent.

J. Examination and Cross Examination of Witnesses

Both parties may subpoena and examine friendly and hostile witnesses. Both parties may examine and cross-examine witnesses. However, no harassment or efforts to intimidate witnesses shall be permitted. The Commission members may examine witnesses at any point in their testimony. The testimony of all witnesses shall be under oath or affirmation.

K. Irrelevant Testimony

Parties may object to clearly irrelevant material, but technical objections to testimony as used in a court of law will not be entertained. The Commission shall prohibit any testimony that it deems clearly irrelevant in order to keep control of the hearing.

L. Closing Statement

Closing statement for each party will be permitted. The Director shall proceed first, followed by the respondent.

M. Audience

The hearing shall be open to the public. However, the Commission may remove any person who disrupts the hearing or behaves in an inappropriate manner.

7.3 The Decision

The decision shall be in writing and issued within thirty (30) days after the hearing. The decision shall consist of the following parts, in the following order:

- (1) The facts.

(2) The finding of violation or no violation on each charge filed by the Director, along with the legal and factual basis for the finding.

(3) The orders and/or sanctions imposed, if any.

(4) Information on the respondent's right to appeal.

(5) Information on the authority of the Commission to act if the party fails to comply with its order or fails to appeal, and

(6) The injunctive or bonding requirements, if any, that the Commission will seek from the Tribal Court pending the completion of the appeal if an appeal is filed, or the running of the time for the appeal if no appeal is filed.

* Adopted November 2012