



**RESOLUTION OF THE GOVERNING BODY OF THE
THREE AFFILIATED TRIBES OF THE
FORT BERTHOLD INDIAN RESERVATION**

A Resolution entitled, “*Authorizing Interim TERO Indian Preference Guidelines for clarification of the TERO Ordinance & regulations*”

WHEREAS, This Nation having accepted the Indian Reorganization Act of June 18, 1934, the authority under said Act, and having adopted a Constitution and By-laws under said Act, and

WHEREAS, Pursuant to Article III, Section 1 of the Constitution and By-Laws of the Three Affiliated Tribes, the Tribal Business Council is the governing body of the Tribes; and

WHEREAS, Pursuant to Article VI, Section 5(1) of said Constitution, the Tribal Business Council has the power to adopt resolutions regulating the procedures of the Tribal Council, its Agencies and Officials; and

WHEREAS, The Tribal Business Council adopted the Tribal Employment Rights Ordinance (TERO) which established a TERO, Director and Commission; and

WHEREAS, Regulations implementing the TERO were approved by the TERO Commission on May 8, 2012; and

WHEREAS, Title I section 101 of the TERO provides that the TERO was adopted “in order to increase employment of Indian workers and businesses and to eradicate employment discrimination within the exterior boundaries of the Fort Berthold Reservation.”; and

WHEREAS, Title III, section 302 (a) of the TERO states that “All Entities awarding contracts or subcontracts for supplies, services, labor and materials in an amount of \$5,000 or more where the majority of the work on the contract or subcontract will occur within the jurisdiction of the Nation, shall give preference in contracting and subcontracting to qualified firms that are certified by the TERO as 51% or more Indian-owned and controlled.”; and

WHEREAS, Section 302 of the TERO requires the Commission to “establish a system for certifying firms as Indian preference and local Indian preference eligible (“Certified Firm”)”; and

WHEREAS, Section 3.1 (a) of the TERO Regulations state that in order to be certified as eligible for preference in contracting, Indian businesses must be “technically qualified and willing to perform the work at a reasonable price”; and



WHEREAS, Section 3.2 (a) of the TERO Regulations establishes a tiered system of preference applicable to “Contracts and Subcontracts Involving Oil and Gas Exploration, Production, and Ancillary Services”, which has not been approved by the Tribal Business Council, under which certified Indian firms that are 100% owned and controlled by tribal members receive first preference (tier 1), certified firms that are 51% or more owned and controlled by tribal members receive second preference (tier 2) and certified firms that are at least 51% owned and controlled by non-enrolled Indians receive third preference (tier 3); and

WHEREAS, Under section 3.2 (b)(1) of the TERO Regulations an Indian firm seeking certification for tier 1 or tier 2 preference must be “capable in the general business area in which the awarding entity is seeking a contractor or subcontractor...” must “demonstrate it has the experience or staff that are capable and equipment need[ed] to perform in that business area (herein after called “Fitness”) and that the Indian owner(s) upon whom certification is based has the experience or staff that are capable and/or education to effectively manage a company engaged in that area of work....” ; and

WHEREAS, Section 3.2(b)(2) of the TERO Regulations also provides that, in “evaluating whether a firm is a Qualified Indian Contractor and whether a firm is qualified to perform work in a particular business area, the TERO will evaluate whether the structure, finances equipment arrangements, management and other factors are ones that are consistent with normal and customary business practices in that business area.”; and

WHEREAS, Section 3.2 (c) of the TERO Regulations also requires: (1) that any Qualified Indian Firms seeking to bid on a contract or subcontract “must perform no less than 51% of work with its own employees”, . 51% of the work is defined as “51% of the total amount of the contract, minus the cost of equipment and supplies, shall be expended on employees of the Qualified Indian firm”, and (2) “[o]n any contract or subcontract received by a Qualified Indian Firm as a result of a preference provided by this Ordinance, the Qualified Indian Firm must either own at least 51% of the equipment or have an equipment lease arrangement that is normal and customary in that business area.”; and

WHEREAS, The TERO and its Regulations have been misinterpreted in a way that has allowed some certified Indian Firms to act as fronts for non-Indian companies in order to obtain Indian preference; and

WHEREAS, The Tribal Business Council has determined that the existence of certified Indian firms operating as fronts under which non-Indian companies obtain the majority of the benefits of contracts and subcontracts poses a threat to legitimate Indian firms and undermines the intent and purpose for which the TERO was passed.



NOW THEREFORE BE IT RESOLVED, That the Chairman is authorized to develop and implement interim guidelines, with input from the TERO Commission, that clarify the requirements of eligibility for Indian preference under the TERO and its Regulations, and to reassess the eligibility of Indian firms for Indian preference under the TERO and its Regulations according to a proper interpretation of the TERO and its implementing Regulations.

CERTIFICATION

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Indian Reservation hereby certify that the Tribal Business Council is composed of seven (7) members of whom five (5) constitute a quorum, 7 were present at a Regular Meeting thereof duly called, noticed, convened and held on the 11th day of August, 2016, that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 5 members, 0 members opposed, 0 members abstained, 2 members not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman Voting. Not Voting.

Dated this 11th day of August, 2016.

ATTEST:

Tribal Secretary, L. Kenneth Hall
Tribal Business Council

Tribal Chairman, Mark N. Fox
Tribal Business Council