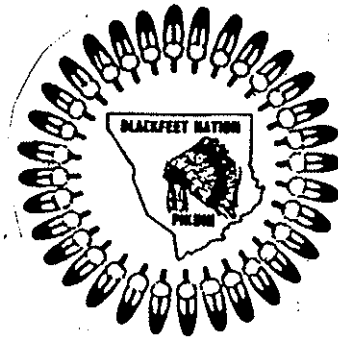


# **BLACKFEET TRIBAL EMPLOYMENT**

## **RIGHTS OFFICE**

### **T.E.R.O. ORDINANCE**



**BLACKFEET TRIBE  
OF THE BLACKFEET INDIAN RESERVATION**

## **NOTICE**

Effective December 1, 1983 all business entities conducting business within the exterior boundaries of the Blackfeet Indian Reservation must be registered and licensed by the Blackfeet Tribe.

This license is not limited to businesses, which maintain a business residence on the reservation while conducting business, but shall include businesses, which haven't any business residence on the reservation yet conduct business transactions through agents, representatives or franchises on the reservation with persons or other businesses on the reservation.

This license shall apply to persons, partnerships, corporations associations and any and all other legal entities where ever situated, provided these entities are doing and transacting business on the reservation whether directly or, as aforesaid, through agents, representatives or franchises.

The Blackfeet Tribe as the Governmental entity responsible for providing some Governmental services to all residents of the Blackfeet Reservation such as law and order, consumer safety, etc. These added responsibilities of non-members as well as members of the Blackfeet Tribe conducting business on the reservation will require the necessary financial resources to fulfill designated needs.

Any business entity which does not comply with registration, appropriate licensing, and payment of the license will be subjected to enforcement procedures.

**FOR LICENSING AND PERMITS – The procedure is as follows:**

1. Register certificate and statement
2. Application (form to be provided)
3. Review by Blackfeet Revenue and Eco. Development
4. Issuance of license by the Blackfeet acting by and through the Revenue Dept.
5. Contact the Blackfeet Revenue Dept., ph. (406) 338-2277  
P.O. Box 850, Blackfeet Nation. 59417

**SUMMARY OF T.E.R.O.  
EMPLOYMENT PREFERENCE REQUIREMENTS  
ON THE BLACKFEET RESERVATION**

INTRODUCTION

ARTICLE I.

Indian Preference in subcontracting and employment Indian Preference in subcontracting and Employment Tribal Law. It is the intent of the Blackfeet Tribal Employment Rights Office (BTERO) to strictly enforce the preference requirements as set forth by the Blackfeet Tribe. The specific requirements imposed by the tribe's preference ordinances. Those requirements are summarized in part II of this document.

The apparent low bidder will not be awarded a contract until it has submitted proof that it will comply with the Indian Preference requirements. The apparent low bidder will submit a subcontracting plan to be approved by the Blackfeet Tribal Employment Rights Office. If it can not do so, the apparent low bidder will be declared non-responsive and negotiations will begin with the second apparent low bidder. The Blackfeet Tribe has qualified subcontractors and workers needed to perform most of the work on this reservation. A summary of the specific requirements follows.

SUBCONTRACTING

ARTICLE II.

Subsection A. Generally

The contractor must use Indian subcontractors whenever the latter are available, so long as they are technically qualified and reasonably priced. The attached list shows the subcontracting areas in which there are Blackfeet or other Indian contractors available and known to the Blackfeet TERO. (First preference must be given to local Blackfeet subcontractors). An apparent low bidder who fails to employ local Indian firms in most or all of the trades set out in the attached list will be considered non-responsive, unless it can show that none of these firms were technically qualified or reasonable priced. The determination on technical qualification is left to the contract or, unless it appears that technical qualification criteria are being used as an excuse to avoid the contractor's Indian Preference requirements. In regard to the reasonable price criteria, a bidder may not reject an Indian firm just because it can show that a non-Indian firm can do the work cheaper. Pursuant to Federal Agencies, 7(b) requirements, a contractor may not even begin negotiating price with a non-Indian subcontractor until it has determined that no Indian firm is available at a reasonable in light of projected material and labor costs.

Subsection B. Bid Shopping

A bidder or contractor is prohibited from engaging in bid shopping.

Subsection C. Bonding

A contractor may, if it wishes, require that subcontractors provide some form of security. However, if the prime decides to require subcontractor bonds, and an Indian subcontractor is unable to obtain a bond, the prime contractor must permit the Indian subcontractor to provide another adequate form of security, a list of acceptable bonding alternatives is provided here:

1. No bond required on amounts of \$25,000.00
2. Security bond
3. Cash bonds - to 25% - held in escrow by tribal attorney or bank
4. Increased retainages - 25% instead of normal
5. Letter of credit 100%
6. Letter of credit 10% - with cash monitoring system
7. Cash monitoring system
8. Other options to be considered as they arise

The final decision on whether an alternative form of security is sufficient shall rest with the Blackfeet Tribal Equal Rights Office and Regional Office of Facilities Engineering of IHS.

**Subsection D. Breaking up subcontractors in to smaller pieces**

If it is determined that there is no Indians available or qualified to perform a particular subcontract because the subcontract is too large for the capacity of any one Indian firm, the contractor shall, divide that subcontract into smaller pieces so that several Indian firms may qualify and perform the work. If low bidder feels that this is impossible, it will be up to the low bidder to document the facts and present them to the Blackfeet Tribal Employment Rights Office and the Contract Letting Entity for review and determination.

**Subsection E. Indian Preference Plan**

Within one week after bid opening, the apparent low bidder shall submit an Indian Preference Plan as it pertains to labor, supplier, and subcontractor. The Blackfeet Tribal Employment Rights Office staff will be available to assist the low bidder in developing an acceptable preference plan. For those subcontracts not to be awarded to Indian firms the bidder shall provide acceptable documentation on why no Indian firm was selected. This documentation shall be submitted to the Blackfeet Tribal Employment Rights Office for review. If acceptable documentation is not provided, the bidder will be declared non-responsive.

## EMPLOYMENT

### ARTICLE III.

**Subsection A. Goal**

The apparent low bidder shall agree to a goal of 95 percent Indian employment in those trades where there are qualified Indian workers available. The attached list shows those trades in which the Blackfeet Tribe has sufficient qualified workers to insure compliance with the 95 percent goal. Other Montana Indians will be used as alternates for those positions.

**Subsection B. Filling of Jobs**

On all jobs in the project, initial and replacement, the contractor or any subcontractor may not employ a non-Indian until it has given the Blackfeet Tribal Employment Rights Office 72 hours to locate and refer a qualified Indian. However in cases where a worker is needed in a shorter period of time, the contractor may so request and said request shall be granted so long as the contractor can demonstrate that need exists.

**Subsection C. Unions**

1. These employment preference requirements shall be applicable whether or not

the contractor is signatory to a collective bargaining agreement. The Blackfeet Tribe is ready and willing to work cooperatively with any union and its contractors and subcontractors to achieve the goals of this Indian preference program, if the union adopts the same cooperative approach. Within one week after bid opening, the apparent low bidder shall provide from each labor union with which it plans to enter in to a collective bargaining agreement on the hospital project, a letter in which the union agrees to the following:

2. To comply with the 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 BTERO. If the BTERO can identify a qualified Indian worker, that worker shall be referred through the union hiring hall on the job site. The union may not refer a non-Indian until it has so contacted the BTERO.

3. No Indian worker shall be required to a site off the reservation to be processed by the union hiring hall. Such processing shall be done on the reservation or by phone or mail.

4. Any Indian worker who does not wish to become a member of the union shall be granted a temporary permit for the duration of the project. Said worker shall pay all union dues shall not be required to pay an initiation fee.

5. In addition, tribal law requires that Davis-Bacon health and welfare fringe benefits be paid directly in cash to any Indian worker who is not a member of a union. If the applicable union refuses to exempt said Indian from its trust fund requirements on health and welfare benefits, the contractor shall be required to make two payments, one to the worker directly in cash and one to the union trust fund.

**Subsection D. Prime Contractor Responsibility**

The prime contractor shall be responsible for compliance of all its subs with these employment preference requirements.

**CONCLUSION**

If a bidder has any questions about these requirements that bidder should contact the Blackfeet Tribal Employment Rights Office, Mr. Don White, or Rodney Gervais at (406) 338-7887. The Blackfeet TERO is available to work with any bidder or contractor and will be willing to discuss any unique problems a particular bidder or contractor may have, so long as the solution is not inconsistent with the goals and objectives of this Indian preference program.

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918 SIXTEENTH STREET N.W.  
WASHINGTON, D.C. 20006  
(202)466-5550

OF COUNCIL TO  
GOLDFARD, SINGER, & AUSTERN

**MEMORANDUM**

QUESTION: Are Indians required to pay income tax to the state on income earned on their reservation?

SUMMARY ANSWER: An Indian working on his or her own reservation is exempt from all state taxes, including personal income taxes. As such, an employer is not required to, and should not, withhold any income for state tax purposes from the wages of such Indian employees.

LEGAL ANALYSES:

The blackletter law on the issue of state jurisdiction over Indians on their own reservation is that Congress has also acted consistently upon the assumption that the states have no power to regulate the affairs of Indians on a reservation. "Williams v. Lee" 558 U.S. 217 (1955) the rule goes back to the first major decision on Indian Affairs, "Worcester v. Georgia" 31 U.S. (6pet.) 515 (1832), in which Chief Justice John Marshall set out the basic principles of Indian law that still apply today – "The Cherokee Nation, then is a distinct community, occupying its own territory... in which the laws, vested in the government of the United States." 561.

The logic behind the rule has changed over the years. The courts no longer speak of tribes as separate nations. Instead, the rule is based on the right of reservation Indians to make their own laws and ruled by them. States are prohibited from infringing on this right, and it has been held as a general rule that any state regulation of Indians interferes with their right to make their own laws.

The rule has been followed consistently by the courts, except in those few instances where there is specific congressional legislation giving the states jurisdiction over certain matters on reservation; and the courts have interpreted such legislation narrowly.

The principle applies to all aspects of state jurisdiction. However, the greatest amount of litigation has been over the question of the applicability of state taxes to Indians on their reservation. The leading case on the point is McClanahan v. Arizona State Tax Commission. 411 USS. 164 (1973). The general holding of McClanahan was summarized by the court in a subsequent case: "In the special area of state taxation, absent cession of jurisdiction or other federal statutes permitting it, there has been no satisfactory authority for taxing Indian reservation

lands or Indian income from activities carried on within the boundaries of the reservation, and McClanahan v. Arizona State Tax Commission. *Supra*, lays to rest any doubt in this respect by holding that such taxation is not permissible absent congressional consent. "Mescalero v. Jones" 411 U.S. 463, 475-76 (1976).

The specific holding in McClanahan was that an Indian who both resides and works on the reservation within which he or she is a tribal member is not subject to the state's personal income tax requirements. The holding is narrow in the sense that:

1. The Indian must be on his or her own reservation. A Blackfeet Tribal member working on the Fort Peck Reservation is subject to state taxes.

2. The Indian must both reside and work on the reservation. A Blackfeet residing in Browning, but working in Cut Bank, or residing in Cut Bank but working in Browning is subject to state taxes.

3. If a project on which an Indian is employed takes place on and off the reservation, the Indian must pay state income tax on that portion of the work that takes place off the reservation.

4. The exemption applies even if the Indian resides and/or works on fee land so long as the fee land is located within the reservation. The exemption from state law is not based on the trust status of the land but on the fact that reservations are separate political jurisdictions, within which states lack jurisdiction within another state. In Moe v. Confederated Salish and Kootenai Tribes. 425 U.S. 463 (1976) the Supreme Court held that a state lacked the authority to tax the personal property of Indians living on fee land within their reservation.

Because covered Indians are exempt from state personal income taxes, and because the exemption has been recognized by the State of Montana, see La Rooque v. State of Montana 583 P 1059 (Mont. S. Ct. 1978), an employer should not withhold money for state income tax purposes from wages of an Indian residing and working on his or her reservation. An employer who does withhold after being made aware that the Indian is residing and working on his/her own reservation violates the rights of said Indian and is subject to legal actions.