Cherokee Nation Code Annotated
Title 40: Labor and Employment
Chapter 3: Preference in Employment
§ 301. Indian preference requirements generally
Cite as: 40 CNCA § 301

A. All employers are required to give preference to Cherokee Nation Citizens first, then Cherokees from the two other federally recognized Cherokee Tribes, and then members of other federally recognized tribes in hiring, promotion, training, and all other aspects of employment, contracting, or sub-contracting, unless such preference would subject the employer to a violation of a federal or state law applicable to that employer, and must comply with this Title and the rules, regulations and orders of the TERO.

1. The Cherokee Nation government is an **"employer"** for the purposes of this Title and any of its business entities, subject to the exceptions listed in 40 CNCA § 103(J), shall be an **"employer"** for the purpose of this Title.

2. If potential contractors are otherwise equally qualified to complete the relevant contract work and respective bids are otherwise equal, the Cherokee Nation, its entities and wholly owned corporations shall apply a preference as set forth in subparagraph d (i) (ii) (iii) (iv) hereinbelow for economic enterprises in procurement and contracting. Exceptions to this requirement shall be permitted when no Indian-owned economic enterprise is readily available as designated by TERO; when applicable federal or state law does not permit such a preference; when other governmental entity contracts (including, but not limited to, VA or GSA contracts) are available; when more favorable pricing may be obtained; when the order meets the requirements of the Sole Source Request as defined in Acquisition Policy and Procedure; when the contract price is below Five Thousand Dollars ($5,000.00) or in an emergency situation as determined by the Principal Chief.

a. Primary preference shall be given to certified "Indian-owned businesses" where the majority owner(s) are Cherokee citizens,

b. Second preference to other certified "Indian-owned businesses" and,

c. A business may be certified as both an "Indian-owned" and "major Cherokee employer" business. In this case, such dually certified business would receive preference over other Indian-owned businesses within categories a and b above.

d. Preference shall be given in the following order:

i. First Preference shall be given to Cherokee-owned businesses that are major Cherokee employers;

ii. Second Preference shall go to Cherokee-owned businesses;

iii. Third Preference shall go to businesses that are certified as Indian-owned and that are major Cherokee employers;

iv. Final Preference shall go to those businesses that are certified as Indian-owned.

3. Following the preferences in paragraph 2 above, the procurement offices of the Nation shall develop policies to administer to "Locally–owned businesses" as defined herein. In no instance shall this preference degrade or supersede Indian preference.

4. Any contract awarded to a general contractor may be subcontracted, provided that the Indian preference requirements herein apply unless applicable federal or state law prevents the Indian preference application, regardless of the level of subcontracting activity. Failure to apply Indian preference to subcontracts shall be deemed by TERO a violation of this Act, unless applicable federal or state law prevents the application of an Indian preference. The contractor/employer have the burden of proving to TERO that federal or state law applies to that contractor/employer and prevents the Indian preference application.

5. The Cherokee Nation Administration may create procurement and contracting policies and procedures for application of said preference. The Cherokee Nation procurement and/or contracting offices shall maintain a list of entities which have previously provided poor performance or engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws and shall also maintain a list of entities which have provided good performance and satisfactory work and have engaged in compliant behavior with contract provisions, rules, regulations or laws.

6. Nothing shall require the Cherokee Nation to contract with or hire any Indian-owned economic enterprises which have previously provided poor performance or engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws. The Cherokee Nation procurement and/or contracting offices may maintain a list of entities which have previously provided poor performance or unsatisfactory work or which have engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws.

B. In accordance with paragraph 5 of subsection (A) of this section the procurement offices of the Nation and its entities shall maintain a "Debarment List" which shall be a list of contractors which have previously provided poor performance or engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws. The procurement offices shall develop policies and procedures to define poor performance of a contractor/employer. Documentation of poor performance must be available and provided to the contractor upon request. The procurement offices shall forward the names of any certified Indian-owned businesses determined to have poor performances to both the TERO and to the One Stop Business Center for Technical Assistance and Improvement.

1. Debarment list, Annual Certification; in compiling the debarment list required by this section, the TERO shall require, on an annual basis, employers who employ twenty-five (25) employees or more to certify that they are in compliance with applicable state federal and tribal labor and employment laws. Nothing herein shall impose any new obligation on any employer to comply with said labor and employment laws.

2. The period of debarment by the TERO shall be for a period of no less than two (2) years.

C. In accordance with 40 CNCA § 502, the TERO shall address complaints of violations the Act or TERO Rules. Should there be any unresolved violations by Departments of the Nation or its Business Entities, the TERO shall issue reports of non-compliance to the Principal Chief, Tribal Council and applicable Boards of Directors.

Historical Data

LA 38–05, eff. November 17, 2005. Amended LA 30–12, eff. September 12, 2012; LA 01–14, eff. March 21, 2014.