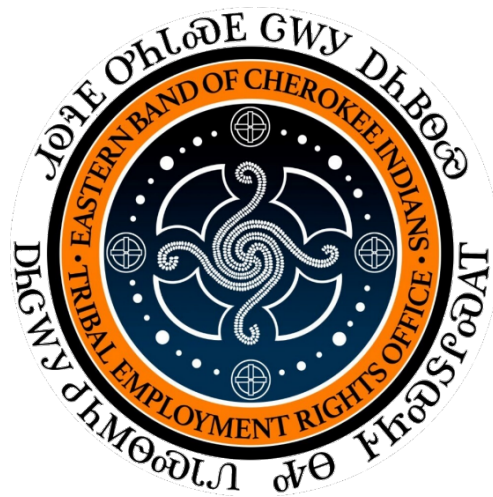


DRAFT FOR PUBLIC REVIEW
03.27.2024 - 4.16.2024

EASTERN BAND OF CHEROKEE INDIANS TRIBAL EMPLOYMENT RIGHTS OFFICE



Cherokee Code, Chapter 92 Tribal Business Preference Law POLICIES AND PROCEDURES

Adopted by the Tribal Employment Rights Commission, revised August 16, 2023

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Statement of Process

The Tribal Employment Right Commission developed and offered this amended document to the public and TERO Vendors for review and comment on ~~June 7, 2023~~, pursuant to Cherokee Code, chapter 92-6(1)(a). The deadline for comments is ~~June 28, 2023~~. Having duly noted the comments received during the open period, on ~~August 16, 2023~~, the Tribal Employment Rights Commission took action to adopt this document as presented.

I. SOURCE OF AUTHORITY

The Tribe has enacted a Tribal Business Preference Law to ensure that Native American owned businesses are given preference in contracting and that tribal members are given Indian preference in employment. The law is codified at Chapter 92 of the Cherokee Code and is administered by the Tribal Employment Rights Commission through the Tribal Employment Rights Office (“TERO”).

The Tribal Business Preference Law applies to contracts entered into by “procuring entities” including the EBCI and all of its enterprises, governmental divisions, and corporate entities in which the EBCI has majority interest or ownership. This law also applies to its subcontracts.

The following policies and procedures have been adopted by the Commission to enforce and apply the preference law fairly and consistently.

II. COMMISSION

The TERO Commission is the sole authority for making determinations regarding certifications of Native American owned businesses and compliance with the Chapter 92 of the Cherokee Code. The Commission consists of five voting members and two vendor liaisons, appointed to serve staggered terms. They meet at least once a month and may meet more frequently as circumstances and the Chairman require.

- Commission meetings are open to the public. The Commission may move to a closed session as deemed necessary by the Chairman.
- The Commission shall act by majority vote. A majority of the Commission constitutes a quorum to transact business. If a commissioner leaves a meeting and his/her absence destroys the quorum, then no business may be transacted until a quorum is re-established.

When a position on the Commission is vacant, the remaining members may exercise the powers of the Commission until the vacancy is filled.

- The TERO Director will be responsible for preparing agendas, minutes, and other requested documentation.
- The Chairman or a designee will represent the TERO Commission at Tribal Council meetings and will give reports and presentations, as necessary.
- The Commission shall publish proposed Ordinance changes in the local paper for twenty (20) days to give the public the opportunity to comment before adopting final rules, regulations, procedures, and guidelines.

III. CERTIFICATION PROCESS

A. APPLICATIONS

The Tribal Business Preference Law outlines the criteria (Cherokee Code §92-10 – 17A) and procedure for processing applications for TERO certification (Cherokee Code §92-18 – 20). Each applicant applying for certification is required to fill out an Application for Certification and provide all supporting documentation as directed by the Commission.

1. The required documentation for all businesses includes:
 - a. Resumes of all owners responsible for day-to-day management of the business.
 - b. Business Plan.
 - c. Federal Tax Returns for the last three calendar years. An IRS Form K may be used.
 - d. Banking signature cards for the business.
 - e. Proof of insurance including but not limited to General Liability, Workers' Compensation, and Vehicle, if applicable. TERO must be listed as a secondary certificate holder on all insurance policies. The applicant is required to hold an amount of insurance as required by the tribe.
 - f. Leases, Management Agreements, and other contractual arrangements for the business.
 - g. Applicable Licenses (Trader's License, Wholesale Permit, Professional, Contractor, Other)
 - h. Copy of Tribal Enrollment Card
 - i. Copy of receipt of paid application fee
 - j. OSHA safety and health plan, if applicable to the business.

- k. Three reference letters for business
- l. Federal, State, and EBCI background check of all owners.
- m. Other documentation deemed necessary by the Commission.

2. Additionally, the following documentation is required for each business type:

SOLE PROPRIETORSHIP	PARTNERSHIP	LIMITED LIABILITY CORP	CORPORATION	FRANCHISES	JOINT VENTURES
Evidence of county registration if operating under an assumed name and doing business off the reservation.	Partnership Agreement	Operating Agreement	Articles of Incorporation	Franchise Agreement	Joint Venture Agreement
	Financial Statements	Financial Statements	By-Laws	Articles of Incorporation	Financial Statements
			Stock Certificates	By-Laws	
			Stock Transfer Ledger	Stock Certificates	
			Board of Directors	Stock Transfer Ledger	
			Financial Statements	Board of Directors	
				Financial Statements	

3. The completed Certification Application with supporting documentation shall be submitted to a TERO Compliance Officer. Applicable TERO Vendor fees:

- a. New TERO vendor applicant Fee. Application fees are required for certification in all areas of within chapter 92, that includes craft vendors and native stone masons. New applicants shall pay application fee of \$100.00 dollars for each trade they want to be certified in and once approved by the TERO Commission the vendors shall pay an additional \$100.00 dollar certification fee. General contractors are excluded from this section.
- b. Re-certification of TERO vendors. Applicants for re-certification shall pay a fee of \$175.00 for each trade for which they want to be re-certified.
- c. General Contractors Fee. General Contractors shall pay a \$500.00 fee. Any additional areas of trade certification, beyond the included five areas, will be an additional \$100.00 per area of trade.
- d. Re-certification of General Contractors: Applicants for re-certification shall pay a fee of \$500.00 fee. Any additional areas of trade re-certification will be an additional \$175.00 per area of trade.
- e. Craft vendors Fee: Applicants applying to be certified as craft vendors shall pay a fee of \$20.00 for new certification in that trade.
- f. Re-certification of craft vendors: Certified craft vendors applying for re-certification shall pay a fee of \$15.00 for re-certification in that field.

- g. All applicable fees shall be paid at the Budget and Finance Office before applications are processed. To give time for adequate review, a decision of certification shall be rendered by the Commission within thirty (30) days following receipt of the application and payment of fees.
4. Upon submission, the application is initially reviewed by the TERO staff. If additional documentation or clarification is needed, the applicant shall be contacted within three (3) business days.
5. Applications shall be reviewed thoroughly, and information verified by a TERO Compliance Officer.
6. The TERO Compliance Officer shall conduct a site visit to further determine applicant's eligibility for certification.
7. Upon the TERO Compliance Officer's review and site visit, a certification evaluation shall be completed by the Compliance Officer to make sure that the application is complete. The Compliance Officer will present the certification evaluation to the commission at the monthly commission meeting.
8. Applications approved by the Commission will be classified as Priority I or Priority II. The applicant will be added to the Certified Native American Owned Businesses list ("TERO Vendor List") after all applicable fees are paid.
9. If the application is denied, the decision shall clearly state the basis for denial. The applicant shall have 30 days from the receipt of notice of denial to appeal the decision to the Commission. The appeal must be in writing and must justify why the decision should be reconsidered and should include any supporting documentation. The Commission shall review the application for reconsideration and render a written decision either affirming or reversing its prior decision. If the decision is affirmed, the applicant may not submit a new Certification Application for a period of one year from the date of the final decision.
10. If the application is tabled, the applicant will be required to submit additional information within a time set by the Commission. Once all requested information is received the application will be approved or denied. If the requested information is not provided within the time frame specified, the application shall be deemed inactive.

B. CONFIDENTIAL INFORMATION RETENTION AND DISPOSAL POLICY

ALL information received by TERO will be stored securely and only used confidentially among the TERO staff for lawful purposes only. All certified vendor files will be retained as long as the vendor remains a TERO certified vendor. Once the vendor is no longer a certified vendor then their files will be securely held for five years from the expiration of their certification, after which they will be permanently destroyed.

C. FRONTS ARE PROHIBITED.

To limit the formation of fronts, the Commission shall evaluate an economic entity using the criteria outlined in the Tribal Business Preference Law. In this context a person or business interest who is (1) non-Indian and (2) has controlling interest of a business is a "front". See definitions at Cherokee Code §92-4 and §92-12 for guidance on analyzing a

business' structure to determine whether the business is a "front" or not.

D. BROKERS ARE PROHIBITED.

The term "broker" is broadly defined and is not allowed. Native American real estate brokers are exempt from this definition and authorized to be TERO certified. They are required to apply for certification following the same processes currently established for all TERO vendor certification. See Cherokee Code §92-12A for guidance.

E. SEX OFFENDERS ARE PROHIBITED.

Any person convicted of sex offenses or required to register in any sex offender registry and under the Cherokee Code Ch. 14, Art. X., *Sex Offenders*, shall be prohibited from participation in all TERO program components and shall be prohibited from job referrals to any employment that would violate the Cherokee Code Sex Offenders and Sex Offender Restrictions.

F. PARTNERSHIPS, CORPORATIONS AND JOINT VENTURES

In the Tribal Business Law Preference Law, the definition for "economic entities" is intended to be broadly construed. Chapter 92-13 requires that partnerships and corporations must be 51% owned by an EBCI tribal member or other federally recognized tribe to be certified. Joint ventures require that the certified economic entity provide 25% of the work performed in addition to other considerations. All TERO vendors are required to submit, in writing, that they are entering into a joint venture and will submit a joint venture agreement for prior approval prior to bidding; failure to do so will result in loss of preference and a fee of 10% of the contract amount. See the definitions of "economic entity" and "priorities" at Cherokee Code §92-4 and §92-13.

G. ASSETS SOLD OR TRANSFERRED

The Tribal Business Preference Law provides guidance on the sale or transfer of business assets of a certified economic entity at Cherokee Code §92-13B.

H. OWNERSHIP BY TRUSTS

The Tribal Business Preference Law provides guidance on the ownership of an economic entity by a trust at Cherokee Code §92-14.

I. CERTIFICATION WILL BE DENIED DUE TO BAD CHARACTER

The economic entity and all its principals shall have good character. An otherwise qualified economic entity shall be denied certification or have its certification suspended or terminated for reasons of bad character. The commission may determine that bad character is demonstrated by any one of the circumstances listed in Cherokee Code §92-15. After reviewing Cherokee Code §92-15, the Commission will review the information provided and decide on whether the certified economic entity in question acted with bad character or in bad faith.

J. TRIBAL DEBTS

Pursuant to Cherokee Code §92-16, a Compliance Officer will contact Tribal Finance to determine whether a tribal debt is owed. A vendor or applicant will be given an opportunity to settle a tribal debt before recommendation to the Commission.

K. ANNUAL REVIEW

The Commission shall annually review certified economic entities for compliance with this Chapter and rules, regulations, guidelines, and orders. Within forty-five days of a vendor's Certification Expiration, the TERO staff shall notify the firm in writing of the pending expiration. The annual review of all certified economic entities is March of each year. See Cherokee Code §92-21 for guidance.

1. The certified economic entity seeking re-certification must submit a completed TERO Re-Certification Application to a Compliance Officer. The Compliance Officer will review the application, conduct any site visits and/or inquiries with the vendor and/or procuring entities, and if necessary, include this information in the Compliance Officer's certification evaluation.
2. If a new economic entity seeks initial certification within six (6) months of the annual review (between September to March), the TERO certification fee may be prorated.
3. A currently certified economic entity may add an area of certification in another field at any time along with the payment of any applicable fees. If the new area of certification is determined by the Commission to be unrelated to the applicant's current certification, then the applicant shall fill out a new application for that area of certification.
4. Upon review of certification renewals, the Commission may deny certification or suspend a business that has received three written complaints or negative evaluations. If an economic entity is denied certification, the Tribe, the Commission, or the TERO shall not be held liable for the decision. The economic entity may continue to participate in the bidding process; however, the entity may not use the designation and qualify for any preference as a certified economic entity.
5. Failure to renew certification within this time means the firm will have to apply as a new applicant to once again be certified.

L. ANNUAL TRAINING

All certified economic entities are required to attend an annual training session hosted by TERO. See Cherokee Code §92-10(a)(14). The Annual TERO Training will contain information on the TERO laws, policies, and procedures of the TERO program and process.

IV. LIST OF CERTIFIED BUSINESSES

A list of Certified Native American Owned Businesses approved by the Commission shall be maintained by TERO. The Director will provide an updated list monthly. The list shall include at a minimum the category of certification, business name, contact name, address, and phone numbers. Each entity shall be identified as Priority I, Priority II, Craft Vendor, Native Stone Provider or Native Stone Mason. The list shall be provided tribal-wide to Secretary's, Program Directors, Program Managers, Purchasing Officials, TERO Vendors, Tribal enterprises and entities and others as requested.

The categories approved by the Commission are developed for the convenience of the Commission, procuring entities and certified businesses. The Commission shall use the North American Industry Classification System (NAICS) to establish and define categories. The categories may be revised as the Commission deems helpful.

The list is not an endorsement of any businesses' capability to perform certain work but must be used by procuring entities to solicit bids from TERO Certified Native American Owned Businesses in accordance with Tribal procurement requirements.

Crafters: Applicants applying to be certified as craft vendors shall provide proof of tribal enrollment card and meet the application requirements.

V. COMPLIANCE GUIDELINES

A. RESPONSIBILITIES OF PROCURING ENTITIES

All Procuring Entities must comply with the Tribal Business Preference Law. Preference must be given to Certified Native American Owned Businesses when awarding procurement opportunities, contracts or subcontracts for supplies, services, and labor and materials. The procuring entity shall ensure that the economic entity shall have, for each specific trade, the capacity to perform 51 percent of any job it is awarded with its own personnel, equipment and facilities and the ability to timely obtain, as "timely" is defined by the procuring entity, additional necessary personnel, equipment, and facilities to perform contracts if awarded certification. See §92-23 – §92-28A for guidance.

The Commission requires that procuring entity policies comport with the Tribal Business Preference Policy codified in the Cherokee Code at chapter 92. While §92-23(c) recognizes that a funding source or an entity's administrative procurement policy may be in effect, a Compliance Officer will contact tribal programs and entities to request their procurement and hiring policy on an annual basis to determine whether it comports to §92 principles. If it does not, the Compliance Officer will work with the program or entity to ensure alignment with the Tribal Business Preference Policy codified in the Cherokee Code at chapter 92.

B. ANNUAL TRAINING

All certified economic entities are required to attend an annual training session hosted by TERO per §92-10(a)(14). The Commission has determined that training shall be provided to all procuring entities (including tribal programs). The Annual TERO Training will contain

information on the TERO laws, policies, and procedures of the TERO program and process.

C. NOTIFICATION OF UPCOMING PROJECTS

1. The TERO Director will request that no later than forty-five (45) days after budget approval or at the beginning of each fiscal year, a list of anticipated projects for that year including the name of the project, the location of the project, the project contact person, projected start date and other relevant information including the estimated cost of the project. See Cherokee Code §92-25(a).
2. On a quarterly basis, Compliance Officers will seek updates to the project lists from the Tribal programs, Tribal enterprises, and entities.

D. TERO PREFERENCE & PROCUREMENT PROCESS

The Tribal Business Preference Law provides guidance on providing preference and procurement at Cherokee Code §92-23 – 28A.

1. PREFERENCE AND PROCUREMENT, GENERALLY.
 - a. Determination of Commodities, Services, Labor and Material(s) Required. The Procuring Entity shall review the Certified Native American Owned Businesses List (“TERO Vendor List”) provided by TERO and communicate with TERO to identify vendors certified and capable of providing the commodities, services, and/or labor and material(s) required for their projects.
 - b. Tribal Program, Entity as Supplier Exemption. When a Tribal program or entity determines that another Tribal program or entity can provide the required commodities, services, and/or labor and material(s) without profit, the Procuring Entity may negotiate that arrangement and is exempt from the requirements of Chapter 92. Cherokee Code, §92-26.
 - c. TERO Applicability. If there are no Certified Native American Owned Businesses that can provide the required supplies, services, and/or labor and materials, Chapter 92 does not apply.
 - d. Sole Source. If there is only one Certified Native American Owned Business, the Procuring Entity may sole source to that vendor. If otherwise allowed by law and Tribal policy, the Procuring Entity may provide a sole source justification stating the reasons for sole sourcing the contract. Cherokee Code §92-25(a).
 - e. Competitive Bidding Required. If there is more than one Certified Native American Owned Business, the Procuring Entity shall provide for competitive bidding. If there is five or more competitive bidding shall be restricted to this group. Small purchases of goods, supplies, services and labor and material may be done in a customary manner with price preference applying.

2. BID REQUIREMENTS

If competitive bidding is required, all TERO Certified Native American Owned Businesses certified to do the type of work sought must be notified and given an opportunity to bid.

The procuring entity shall follow the processes outlined below in conjunction with its own procurement policies.

3. BID PACKAGE AND NOTICE

- a. The Procuring Entity will compile a bid package including invitation to bid or advertisement notification, bid deadlines, RFP, bid documents and specification and TERO Preference Package provided by TERO. Any changes to the original RFP must be resubmitted to TERO.
- b. A copy of the complete bid package shall be sent to TERO at least 24 hours prior to the bid release.
- c. If a Pre-Bid Conference is required, TERO shall be notified within 72 hours before the scheduled date and a TERO representative must be present.
- d. Proof of notification to TERO-certified vendors shall be provided. The notification must include the project name, scope of work, due date and time, any licensing requirements, contact person's name, and phone number.
- e. This notification shall be provided by:
 - i. *Notice by First Class Mail or Certified Mail*
Certified mail notification must be sent at least two weeks prior to the established bid submittal date.
 - ii. *Notice by Advertisement*
An advertisement must run for at least two weeks in the newspaper of record in Cherokee.
 - iii. *Notice by Email*
Notification may be sent via email if the recipient has an email address and proof of receipt of email must be provided.

4. BID SUBMISSION

- a. Bids must be submitted by the deadline. Bids received after the deadline shall not be considered. Incomplete bids shall not be considered.
- b. Bids must be submitted in accordance with Chapter 92-27 fair bidding and deadlines (a), (b), (c), and (d) and related policies and procedures adopted by the Commission. Failure to comply will cause the bid to be considered non-responsive and it shall be rejected.

5. BID OPENING

The Commission has assigned to and directs the TERO Compliance Officers to follow these procedures in their role of participation of bid openings. Cherokee Code, §92-6 and §92-27.

- a. Upon receipt of bid proposals within the established deadline a bid opening shall be scheduled within a reasonable amount of time.
- b. All interested parties shall be properly notified and shall be represented at the Bid Opening including a TERO Compliance Officer.
- c. Procuring entities shall allow for the potential re-bid opportunities of TERO vendors during the Bid Opening.
- d. Bids determined to be non-responsive and non-responsible shall be eliminated from the bid process.
- e. If applicable, provide preference in accordance with Chapter 92.
- f. The bid shall be awarded according to the steps outlined in Chapter 92.
- g. If a TERO-certified vendor receives an opportunity to submit a revised bid, the revised bid shall be submitted within seventy-two (72) hours (excluding weekends and holidays) of notice of the opportunity to re-bid.
- h. Bids are to be kept confidential unless procuring entity releases after contract is awarded.

6. COMPLIANCE PLAN

When awarded a Tribal construction contract, a contractor shall submit a compliance plan to a Compliance Officer within fourteen (14) calendar days of being awarded the contract.

7. PERFORMANCE STANDARDS

Procuring entities shall report poor performance by certified economic entities to a TERO Compliance Officer in a timely manner if the performance will be used as a reason for not awarding subsequent contracts to the certified economic entity. The reports must be in writing and must be submitted before denying the certified economic entity an opportunity to bid on a contract. Cherokee Code, §92-28 and §92-28A.

E. MONITORING PROCESS FOR EMPLOYMENT DATA

The Tribal Business Preference Law outlines procedures to provide Indian preference in contracting and employment in Cherokee Code §92-25(a) that mandates all Tribal programs, enterprises, and entities to report the projects they anticipate funding during the fiscal year. This report is due no later than 45 days after budget approval and may be updated as needed. The following outlines the purpose and procedure in enforcement of this provision.

Policy. To increase Tribal Program awareness, participation, and adhesion to the overall purpose of the Tribal Business Preference Law, and to ensure better monitoring practices by TERO of these projects focused on Indian preference in contracting and employment, TERO

will review and analyze Tribal program, entity, and enterprise procurement initiatives each fiscal year.

The TERO Compliance Officer(s):

1. Will request and internally review each annual procurement project report submitted by Tribal programs, entities, and enterprises, and compile Indian preference and employment opportunities and data.
2. Will compile a report that will be disseminated to the procuring entity, the Tribal Council, and tribal communities.
3. Shall contact the tribal programs, tribal entities, and tribal enterprises to be reviewed within a 48-hour period prior to a review being conducted. Each review will be expected to last approximately 1 week unless evidence of non-compliance is found.
4. Shall develop a scope of work for each program or entity subject to review to determine the accounts to review based on the procuring entity's budgeted line items.
5. Shall obtain year-to-date- accounts from Tribal Finance for line items subject to be reviewed as determined in the scope of work.
6. Shall schedule appointments with the appropriate program staff to begin the review according to the entity's procurement plan.
7. Shall document all activities of the review including names, dates, and times of interviews and information reviewed using the Review Form.
8. Shall provide a written response to all parties involved within five (5) working days, including the appropriate procuring entity, if no violation is found upon completion of the review.
9. Shall issue a citation of non-compliance within five (5) days to the appropriate procuring entity and TERO Commission, if s/he has a reason to believe that a violation has occurred. The non-compliant tribal program, entity or enterprise will be placed on a three (3) month review period and will be expected to correct the situation.

F. RESPONSIBILITIES OF TERO CERTIFIED VENDORS

1. TERO Certified Native American Owned Businesses (TERO Vendors) must comply with Chapter 92.
2. When changes occur in the ownership or management of the business, TERO must be notified within thirty (30) days.
3. TERO vendors are responsible for self-promotion and shall put forth efforts to establish contacts and relationships with Procuring Entity's for potential future business.
4. When notified of bid opportunities, TERO vendors shall respond promptly.
5. All owners of TERO Certified Owned Businesses shall attend at least one business development seminar or other TERO approved training per year. TERO will keep a log of

this requirement and those vendors not in compliance may be subject to fines and/or sanctions.

6. TERO vendors shall list TERO as a lienholder on insurance certificates so that the TERO staff is aware of all changes in insurance.
7. A certified economic entity shall perform any job it is awarded under this Chapter with enough of the entity's own workforce, or by subcontracting with another certified economic entity, that it or another certified economic entity, will retain 60% of the contract price.
8. TERO vendors that subcontract work are required to retain 60% of the contract price. this includes the value of management, supervision, workforce, equipment, and other assets belonging to the certified economic entity. A TERO vendor shall not subcontract with a non- TERO vendor without first making a good faith effort to:
 - a. Provide an opportunity to all certified economic entities within the trade category; and
 - b. 60% of the work must be performed by the certified economic entity awarded the contract.

If the commission finds that a good faith effort was not made the vendor will be barred on bidding on subsequent contracts.

9. Subcontracting with an entity that is not certified is prohibited if all certified economic entities have not been given the opportunity to perform the work and the majority of the work is not performed by the certified economic entity awarded the contract.
10. TERO Certified Vendors and businesses that enter into a contract with the EBCI are required to submit monthly reports. These forms may be turned into the TERO office via email, fax or in person by the tenth of the following month. Late reports will be accepted until the twentieth of the month and will result in a \$25 late fee. Failure to report correct information or report at all will result in sanctions and/or fines as determined by the Commission.

VI. ENFORCEMENT

A. COMPLAINT PROCESS

A complaint may be filed by any person who believes any certified vendor, procuring entity TERO Director, TERO staff, or the Commission has violated Chapter 92 and related policies and procedures. Cherokee Code, §92-29.

1. A Complaint Form shall be completed providing sufficient information pertaining to the complaint including date, time and location of the occurrence, identification of all involved parties, the reason for the complaint, and all pertinent information.
2. The Complaint Form must be complete and filed with the Compliance Officer within thirty (30) days of the incident.

3. Upon receipt of a completed Complaint Form the Compliance Officer will assign a number and log the complaint and will review the complaint to determine the necessary action. All written complaints must be attached to the recertification paperwork each year.
4. If after reviewing the Compliance Officer determines that no action is necessary based on the information provided, the complaint shall be dismissed, and a written response will be provided to the complainant within five (5) working days of the date the complaint was filed. A copy of the complaint will be kept on file for three (3) years.
5. If the Compliance Officer determines that there is enough information to warrant an investigation, an investigation shall be initiated within five (5) working days of the date the complaint was filed.

B. CONFIDENTIALITY

Information obtained by the Commission and TERO shall be kept confidential, unless disclosure is required for further investigation, or during a hearing or appeal as provided for in Chapter 92. The Commission and the TERO Office shall be sensitive to the confidentiality need of parties that come before them and shall attempt to accommodate reasonable requests to keep information confidential. However, requests for or claims of confidentiality shall not be permitted to hamper the Commission and TERO in the performance of its duties.

C. INVESTIGATIONS

The Compliance Officer shall perform investigations, on his or her own initiative or pursuant to a written complaint, within the territory of the Tribe to determine whether a violation of Chapter 92 or related policies and procedures has occurred. The Compliance officer may enter, during business hours, the place of business or employment of any Tribal economic entity or procuring entity for the purpose of the investigations and may require submission of reports to monitor compliance. Cherokee Code, §92-29.

1. The Compliance Officer shall contact all parties to a complaint including the alleged violator and any witnesses. If the complaint involves a Tribal division or program the Compliance Officer shall contact the Secretary, Program Director and Program Manager of the division and program at issue.
2. Interviews shall be conducted in person to obtain necessary information to facilitate the investigation. The Compliance Officer has the authority to inspect and copy all relevant records, to speak with workers on the job site, and to engage in other investigatory activities. Information obtained by the Compliance Officer shall be kept confidential, unless disclosure is required for further investigation, or during a hearing or appeal as provided for in Chapter 92.
3. The Compliance Officer shall document all activities of an investigation including names, dates and times of interviews and information collected using the Investigation Form.

4. Upon completion of the investigation if no violation is found, the Compliance Officer shall provide a written response to all parties involved within five (5) working days, including the appropriate Secretary, Program Director and Program Managers.
5. If the Compliance Officer has reason to believe that a violation has occurred, the TERO Compliance Officer shall attempt to informally settle the matter presented by the violation within five (5) working days. The appropriate Secretary, Program Director and Program Managers shall be included in such attempts to informally settle the matter.
6. Terms of an informal settlement shall be documented and signed by the complainant and alleged violator. If the alleged violator fails to uphold the requirements of the settlement during a six (6) month period, the original violation shall become effective.
7. If an informal settlement cannot be reached, the TERO Compliance Officer shall issue a written formal notice of non-compliance to the alleged violator with copies to the appropriate Secretary, Program Director and Program Manager. The Compliance Officer shall assess fines or sanctions at his or her discretion. The alleged violator shall be advised of the right to request a hearing before the Commission.
8. Where TERO issues a formal notice of noncompliance, the alleged violator may request a hearing within 30 days from the receipt date of the written formal notice of non-compliance.
9. If no hearing is requested, the Commission shall uphold the findings of the compliance officers including affirming or modifying the sanctions determined by the compliance officer. The sanctions or fines shall be provided to the alleged violator within five (5) working days of the Commission's decision.

D. COMMISSION HEARINGS

The Tribal Employment Rights Commission is authorized to perform administrative hearings to enforce the Tribal Business Preference Law codified in the Cherokee Code at §92-6(6) and §92-32(d). The following procedures follow the Tribal Administrative Procedures Act codified in the Cherokee Code §150, et. seq.

1. HEARINGS; GENERALLY

Any hearing held pursuant to Chapter 92 shall be conducted by the Commission. The Commission may consider evidence it deems relevant to the hearing, under rules of practice and procedure adopted by the Commission. The Commission shall not be bound by technical rules of evidence in the conduct of hearings under this Chapter, and no informality in any proceeding, as in the manner of taking testimony, may invalidate any order, decision, rule, or regulation made, approved or confirmed by the Commission. No stenographic record of the proceedings and testimony is required except upon arrangement by, and at the cost of the party charged with the violation.

2. HEARINGS; NOTICE AND PROCEDURAL RULES.

- a. In any hearing, the Commission shall afford all parties an opportunity for hearing upon their request. Moreover, where the Commission determines that a hearing should be held in furtherance of the public interest, the Commission may provide for a hearing even where one is not requested by any party. In any event, no such hearing shall be held upon less than 30 days advance notice to all parties. The notice shall include:
 - i. A statement of the time, place, and nature of the proceeding;
 - ii. A statement of the legal authority and jurisdiction under which the hearing is to be held;
 - iii. A reference to the specific sections of the tribal codes and administrative rules or regulations involved;
 - iv. A statement of the issues and matters asserted.
- b. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.
- c. Unless precluded by law, informal disposition may also be made of any hearing by stipulation, agreed settlement, consent order, or default.
- d. The record in a hearing shall include:
 - i. All intermediate rulings, including determinations and official interpretations;
 - ii. Evidence received or considered;
 - iii. A statement of matters officially noticed;
 - iv. Questions and offers of proof, objections, and rulings thereon;
 - v. Proposed findings and exceptions;
 - vi. Any decision, opinion, or report by the officer presiding at the hearing.
- e. Oral proceedings shall be recorded or transcribed. A copy of the entire record or any part thereof shall be furnished to any party upon their written request therefor and payment of the costs thereof.
- f. Findings of fact shall be based exclusively on the evidence presented and on matters officially noticed.
- g. The North Carolina Rules of Civil Procedure and Evidence may, where applicable, be used as general guides for hearing proceedings, except as to matters covered explicitly by tribal law.
- h. The Commission may:
 - i. Administer oaths and affirmations, examine witnesses, and receive evidence, and no person shall be compelled to divulge information which he could not be compelled to divulge in Cherokee Court;
 - ii. Issue subpoenas pursuant to C.C. section 117-17;

- iii. Receive offers of proof and relevant evidence;
- iv. Take or cause depositions to be taken;
- v. Regulate the course of the hearing;
- vi. Hold conferences for the settlement or simplification of the issues;
- vii. Dispose of procedural matters by decision; and
- viii. Take any other action authorized by tribal laws.

3. RULES OF EVIDENCE AND CROSS-EXAMINATION

In hearings:

- a. The Commission may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent people in the conduct of their affairs. They shall give effect to the rules of privilege recognized by law. They may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.
- b. All evidence, including but not limited to records and documents in the possession of the TERO, of which it desires to avail itself, shall be offered and made a part of the record in the case, and no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.
- c. Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence.
- d. The Commission may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within their specialized knowledge. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. The Commission or their authorized agents, may utilize their experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to them.

4. HEARINGS; OATHS, SUBPOENAS, EVIDENCE, WITNESSES; CONTEMPT.

- a. In any hearing, after proper notice, the Commission may, pursuant to C.C. section 117-17:
 - i. Issue a subpoena upon the request of any party upon a statement showing general relevance and reasonable scope of the evidence sought;
 - ii. Issue a subpoena upon their own motion;
- b. Subpoenas may be served outside the tribal trust lands to the maximum extent allowable in conformance with the requirements of the Due Process Clause of the Indian Civil Rights Act, 25 U.S.C. § 1301, for purposes of long-arm jurisdiction with

respect to any activity or consequence of any activity occurring within tribal trust lands.

- c. If an individual fails to obey a subpoena or obeys a subpoena but refuses to testify when requested concerning any matter under examination or investigation at the hearing, or the attorney issuing the subpoena may petition the Cherokee Court for enforcement of the subpoena. The petition shall be accompanied by a copy of the subpoena and proof of service, and shall set forth in what specific manner the subpoena has not been complied with, and shall ask that the court issue an order of the court to compel the witness to appear and testify before TERO
- d. Upon its receipt of such petition, the court shall enter an order directing the witness to appear before the court at a time and place to be fixed in such order and then and there to show cause why he has not responded to the subpoena or has refused to testify. A copy of the order shall promptly be served upon the witness.
- e. If it appears to the court that the subpoena was properly issued and that the particular questions which the witness refuses to answer are reasonable and relevant, and in the case of a rule-making hearing that the requested appearance and testimony are reasonably necessary to secure information the expected nature of which would reasonably tend to cause TERO to exercise its rule-making authority, the court shall enter an order that the witness appear at the time and place fixed in the order and testify or produce the required papers, and on failing to obey said order the witness shall be subject to civil contempt proceedings before the Cherokee Court.

5. HEARINGS; CONSIDERATION OF THE RECORD AND RE-OPENING.

In a hearing, the Commissioners shall personally consider the whole record, or such portions thereof as may be cited by the parties. After the close of the hearing and when determined to be in the interest of justice, the Commission may temporarily postpone its decision and elect to re-open the record and request that the parties to the proceeding submit additional legal memoranda and/or present oral argument. After fully considering such additional written or oral presentations, the Commission shall promptly render its decision.

6. HEARINGS; DECISIONS AND ORDERS; FINDINGS AND CONCLUSIONS;

Every decision and order rendered by Commission in a hearing shall be in writing or stated in the record and shall be accompanied by findings of fact and a detailed summary of their decision. The findings of fact shall consist of a concise statement of each fact found upon each contested issue of fact. Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed to each party or if a party is represented by an attorney, to his attorney of record.

E. SANCTIONS

The Commission may impose sanctions in accordance with section 92-33 for all violations. If the Commission imposes a sanction, the violator shall pay damages to the TERO Office. An order to pay sanctions and/or damages to the injured party creates a debt to the Tribe, for which per capita distributions may be garnished or future contracts with the Tribe may be denied until the debt is paid.

At a minimum the following fines shall be imposed:

TRIBAL ENTITY VIOLATIONS SCHEDULE			
VIOLATIONS	PROCURING ENTITY: PRIVATE BUSINESS	PROCURING ENTITY: TRIBAL PROGRAM	TRIBAL ENTITY: OTHER
1 st Violation	\$250	\$250	\$2,500
2 nd Violation	\$500	\$500	\$5,000
3 rd Violation	\$1,000 + Suspension of Operation within Territory of Tribe for One Year	\$1,000 + Personnel Action - Written Reprimand	\$10,000 + Other Sanctions
ACCUMULATION OF VIOLATIONS			
2 nd Accumulation of THREE Violations	Suspension of Operation within Territory of Tribe for Three Years	Personnel Action - Suspension	Refer to OIAE - violation of Cherokee Code, Ch. 117-45.3 & appointing authority
3 rd Accumulation of THREE Violations	Permanent Termination of Operation within Territory of Tribe	Personnel Action - Termination	Refer to OIAE - violation of Cherokee Code, Ch. 117-45.3 & appointing authority

TERO VENDOR VIOLATIONS SCHEDULE				
VIOLATIONS	TERO ENTITY	JOINT VENTURE	SUBCONTRACTOR	GENERAL CONTRACTOR
1 st Violation	\$250 - \$1,500	\$250 - \$1,500	\$250 - \$1,500	\$2,500
2 nd Violation	\$500 - \$3,000	\$500 - \$3,000	\$500 - \$3,000	\$5,000
3 rd Violation	\$1,000 - \$5,000 + Suspension for One Year	\$1,000 - \$5,000 + referral to TERC Hearing Process & Tribal Business Committee	\$1,000 - \$5,000 + Other Sanctions & referral to TERC Hearing Process & Tribal Business Committee	\$10,000 + referral to TERC Hearing Process & Tribal Business Committee

F. APPEALS TO TRIBAL COURT

1. An appeal to the Cherokee Court may be taken from any final order of the Commission by a party adversely affected by the final order. The appeal shall be filed with the court no later than 20 days after the party receives formal notice of the Commission's decision as evidence by certified mail or other delivery mechanism where a signature shows receipt.

2. The Cherokee Court shall uphold the decision of the Commission unless the appellant proves that the decision of the Commission is arbitrary, capricious, or in excess of the authority of the Commission.
3. The appeal shall be executed by serving a written notice of appeal with the Cherokee Court, with a copy to the TERO Director, within 20 days after the date of the entry of the order of the Commission. The notice of appeal shall:
 4. Set forth the order from which appeal is taken;
 5. Specify the grounds upon which reversal or modification of the order is sought;
 6. Be signed by the appellant.
7. Except as provided below or in subsection (b) the order of the Commission shall abate pending the determination of the Cherokee Court. However, the Director of TERO may petition and for good cause shown the court may order the party requesting a hearing to post a bond:
 - a. Sufficient to cover monetary damages that the Commission assessed against the party;
 - b. To assure the party's compliance with other sanctions; or
 - c. To assure remedial actions imposed by the Commission's order if that order is upheld by the court.
8. If the order of the Commission is reversed or modified, the court shall expressly and specifically direct the Commission as to further action ordered by the court in the matter including making and entering any order or orders in connection therewith and the limitations, or conditions to be contained therein.
 - a. If the Commission's order is upheld on appeal, or if no appeal is sought within 20 days from the date of the party's receipt of the Commission's order, the Commission shall petition the court and the court shall grant such orders as are necessary and appropriate to enforce the orders of the Commission and the sanctions imposed by it.

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