



Leech Lake Band of Ojibwe



TRIBAL EMPLOYMENT
RIGHTS ORDINANCE
(TERO)

TRIBAL EMPLOYMENT RIGHTS ORDINANCE OF THE LEECH LAKE RESERVATION

TABLE OF CONTENTS

CHAPTER 1, GENERAL PROVISIONS	2
CHAPTER 2, DEFINITIONS	4
CHAPTER 3, SCOPE OF INDIAN PREFERENCE	7
CHAPTER 4, EMPLOYMENT RIGHTS FEE	12
CHAPTER 5, COMPLAINT AND HEARING PROCEDURE	13
CHAPTER 6, SANCTIONS	15
CHAPTER 7, APPEALS PROCEDURE	16
CHAPTER 8, TRIBAL EMPLOYMENT RIGHTS COMMISSION	17
CHAPTER 9, TERO DIRECTOR RESPONSIBILITIES	18
CHAPTER 10, OBLIGATION OF COVERED EMPLOYEES	20

CHAPTER 1

GENERAL PROVISIONS

1.01 Declaration of Policy.

The Leech Lake Band of Ojibwe Tribal Council has a commitment to create employment, business, and training opportunities for members of the Leech Lake Band and for other Indians who reside on or near the reservation. The goal is to eliminate employment discrimination as an element of unemployment thereby helping to reduce poverty and economic dependency. To attain this goal the Leech Lake Tribal Council shall require as a matter of (Band or tribal) law that all covered employers provide a preference first to Leech Lake members and then to other Indians in employment and contracting opportunities.

1.02 Legal Authority.

The Leech Lake Band of Ojibwe Indians possesses the inherent sovereign authority to enact this Tribal Employment Rights Ordinance for the benefit of its members and other Indians on the Leech Lake Reservation. The Band also possesses the inherent sovereign authority to regulate the activities of nonmembers (i) who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements or (ii) when a non-Indian's conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.

There is also substantial recognition by the United States Government for Indian preference policies.

(A) Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) generally prohibits discriminatory practices in several elements of employment based on race, color, religion, sex or national origin. Indian tribes such as the Band are entirely exempt from the provisions of Title VII. Additionally, businesses on or near the Reservation, whether owned by the Band, a Band member, and Indian, or non-Indian may lawfully give preferential treatment to Indians living on or near a reservation pursuant to a publicly announced employment practice:

"Nothing contained in this Title (42 U.S.C. 2000 e et seq.) will apply to any business or enterprise on or near an Indian Reservation in respect to any publicly announced employment practice of such business or enterprise under which they give preferential treatment to any individual because he is an Indian living on or near a reservation.

(B) The Indian Self-Determination and Education Assistance Act (25U.S.C. 450 et seq.) provides that any contract, subcontract, grant, or subgrant, authorized by Federal law to an Indian organization or for the benefit of Indians shall require to the greatest extent feasible that (i) preferences and opportunities for training and employment in connection with the administration of such contract or grants shall be given to Indians, and (ii) preference in the award of subcontracts and sub grants in connection with the administration of a Federal contract or grant shall be given to Indian organizations and to Indian-owned economic enterprises, and (iii) all self-determination contracts or any portion of such contract shall be governed by the Tribe's employment or contract preference laws.

1.03 Short Title.

This Ordinance shall be known and cited as the Leech Lake Tribal Employment Rights Ordinance (TERO).

1.04 Severability.

Should any provision set fourth in this Ordinance or application thereof to any person or circumstance be held invalid by the Tribal Court of the Leech Lake Band of Ojibwe, this will not effect the full remainder of the provisions or the application of the provisions to another person or circumstance.

1.05 Applicability.

This Ordinance shall be applicable to all "Covered employers," as defined in Chapter 2 of this Ordinance, at the time of the effective date of this Ordinance.

1.06 Effective Date.

This Ordinance shall be in full force and effect as of the date of the formal approval and adoption hereof by the Tribal Council.

CHAPTER 2

DEFINITIONS

2.01 Certified Indian Firm or Entity.

Means any commercial or other business in which (51%) is controlled or owned by an Indian or Indians, or employs at least 60% Indian workers. All percentages will be certified by the TERO Commission.

2.02 Chairperson.

Means the Chair of the Leech Lake Tribal Employment Rights Commission.

2.03 Commissioner.

Means a member of the Leech Lake Tribal Employment Rights Commission.

2.04 Core Crews.

Means a member of a contractor's or subcontractor's crew who is a regular, permanent employee that is in a supervisory or other key position, such that an employer would face a serious financial loss. Regular, permanent employee is one who is and has been on the employer's annual payroll during the entire past year or is one of the owners of the firm.

2.05 Covered Employer.

Means any employer on a construction project that has consensual relations with the Band who employs at least one employee at a job-site on the Leech Lake Reservation whose contract or grant is for \$5,000 or more. Covered Employer shall not include the Band, or the Band's entities, businesses, or gaming establishments.

2.06 Employee.

Means any person currently receiving wages or salary for work performed, any person applying for employment, and any person whose work has ceased because of labor disputes or because of unfair labor practice who has not secured any alternative regular and equivalent employment. The term excludes any person employed in the domestic service of any family or person at his/her home, or any individual employed by any other person who is not "employer" under the definition contained in this Chapter.

2.07 Employee on Reservation Land.

Means any person who, in a non-supervisory or non-managerial position, spends more than one-tenth (1/10) of his/her working hours at a site on the Leech Lake Reservation; the term shall also mean and include any person who, in a supervisory or managerial position, spends more than one-twentieth (1/20) of his/her working hours at a site on the Leech Lake Reservation.

2.08 Employer.

Means any person or entity who engages in construction through compensated employees on the Leech Lake Reservation. The term does not include the Leech Lake Tribal Government or any wholly owned government business or corporation, or any political subdivision of the Tribal government, but shall include any independent contractors and subcontractors hired by these government units or government owned entities.

2.09 Indian.

Means and includes any member of an Indian Tribe, Band, or other organized group or community, including any Alaska Native village or unit defined or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601et seq.) and any other Indian persons who are recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

2.10 Notice.

Means information concerning a fact that is expressly and actually given to the named party in a written document.

2.11 Person.

Means and includes both natural persons and artificial persons, including but not limited to corporations, partnerships, joint ventures, sole proprietorships, associations, unions, trusts, trustees and agents.

2.12 Probable Cause.

Means a reasonable ground for belief in certain alleged facts, which is more than mere suspicion.

2.13 Secretary.

Means the Secretary of the U.S. Department of the Interior or his/her duly authorized representative.

2.14 TERO.

Means the Leech Lake Tribal Employment Rights Ordinance.

2.15 Band Member.

Means any person whose name appears on the official Leech Lake Reservation Rolls of the Minnesota Chippewa Tribe.

2.16 Tribal Council.

Means the Tribal Council of the Leech Lake Band of Ojibwe.

2.17 Leech Lake Reservation or Reservation.

Means all land within the exterior boundaries of the Leech Lake Reservation.

2.18 Indian Joint Venture.

Means a joint venture between an Indian owned firm or entity with another entity or entities for special projects in which the Indian owned firm or entity is the managing partner or maintains a controlling interest. The Leech Lake TERO Commission shall determine if a joint venture qualifies under this section.

2.19 Qualified.

Means the capability, competence, and capacity of a person to perform the requirements and obligations of a job or project. The term qualified does not include a comparison among two or more persons seeking the desired employment position, for example, determining whether and Indian is qualified does not include comparing the Indian's capabilities and competence with those of the non-Indians. Qualified measures an individual ability to perform a job not a comparison among each individual's abilities.

2.20 Good Cause.

Means a sufficient ground or reason amounting in law to a legal excuse to take official, reasonable action against a person such as removal, termination, or suspension.

2.21 Conflict of Interest.

Means the existence of a relationship between a public official or fiduciary and a private interest or private party that may cause the public official to disregard her or his official duties or that the relationship improperly influences the public official decision-making.

2.22 Minimum Numerical Hiring Goal.

Means the minimum percentage of Indian employees out of all persons employed by a contractor. One hundred percent (100%) of the labor force, classified as skilled or unskilled laborers on a project, shall be from the T.E.R.O. office. Sixty percent (60%) of the skilled labor force, classified as "any skilled tradesman" on a project, shall be from the T.E.R.O. office.

2.23 Consensual Relations with the Tribe.

Any construction firm, contractor, architect, supplier of services, labor or materials who performs work on lands within the Reservation boundaries with the tribal governments or its entities.

CHAPTER 3

SCOPE OF INDIAN PREFERENCE

General Statement of Policy.

The Indian Contract preference requirements of this Ordinance are one tool for promoting the economic development of the Reservation. When used properly, Indian preference in contracting can assist in the development of Indian business and thereby assist the Tribe and its members to achieve economic self-sufficiency. However, if the preference is abused, it will undermine this development and discredit the preference too. Because of this, it is the policy of the Tribe to require that an applicant for Indian contract preference certification provide rigorous proof that it is a legitimate Indian-owned and controlled firm or that it employs 60% or more Indian employees. The Indian owner must own and control 51% and it must make sense from a sound business perspective. Otherwise, Indian preference can be denied if the commission determines that there is no legitimate circumstance to believe that the business is Indian owned and controlled. Joint ventures will be granted certification as Indian preference firms (See Sec. 302.) The TERO office has the discretion to determine whether or not the joint venture is legitimate.

The procedural requirements for certification provide that applications shall be reviewed by the staff of the Tribal Employment Rights Office, which shall request any additional information it believes appropriate. It will then submit the application, along with its recommended findings, to the 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 firm will have a right of appeal to the Tribal Court, as provided in Chapter 7 of this Ordinance. The Tribal Court shall reverse the decision only if it finds that the decision was arbitrary or capricious.

3.01 Contracting and Subcontracting Preference Required.

Every covered entity in a consensual relationship with the tribe, awarding any construction contract or subcontract, in the amount of \$5,000.00 or more, where the majority of the work on the contract or subcontract will occur within the exterior boundaries of the Leech Lake Reservation, including but not limited to contractors or subcontractors for supplies, services, labor, and material, shall give preference in contracting and subcontracting to qualified entities that are certified by the Commission as 51% or more Indian owned and controlled, or at least 60% Indian employees. This firm is dependent on certified firms that are technically qualified and willing to perform at a reasonable price, as defined in Sec. 308. These requirements shall not apply to the award of contracts by the federal, state, or Leech Lake Tribal governments or their agencies or subdivisions.

3.02 Priority of Contracting and Subcontracting Preference.

First preference shall be given to firms certified by the TERO Commissioner.

3.03 Compliance with Federal Law.

If any requirement of this Chapter is inconsistent with an applicable requirement of federal law or regulation, the latter shall take precedence.

3.04 Contracting and Subcontracting Compliance Plan.

A. Consensual Relations with Tribe.

Every covered entity, contractor, and subcontractor intending to engage in a consensual business activity with the tribe on the Reservation must, prior to the time it commences work on the Reservation, submit a contracting and subcontracting compliance plan to the Office. No covered entity, contractor, or subcontractor may commence work on the Reservation until it has met with the TERO Director or his delegate and has developed an acceptable plan for meeting its

obligations under these regulations. The contractor and subcontractor shall indicate all contracts and subcontracts that will be entered into by the entity and the projected dollar amounts thereof. They shall list the name of each firm and indicate whether or not each firm is certified as Indian preference eligible by the Commission. Furthermore the contractor and subcontractor shall explain why a certified firm was passed over, if a certified firm was passed over. The plan shall also indicate how the entity intends to comply with this Chapter when awarding contracts and subcontracts not yet awarded at the time the plan is submitted.

B. Non Consensual Relations

In the event that a particular construction project taking place within the exterior boundaries of the Leech Lake Reservation is not a direct, consensual contracting relationship with the Band, or the Project does not directly impact the Band's lands, the goal of the Commission is to work with contractors and subcontractors cooperatively toward the goal of hiring qualified Indian workers. The TERO Commission will provide incentives for contractors, including training and employment funds through the Jobs Training Partnership Act; Indian employment tax credits; provide information on federal reimbursement of TERO fees where applicable; and other incentives to encourage Indian employment.

3.05 Responsibility for Compliance.

The covered entity letting the contract shall be responsible for compliance with these regulations by all its contractors and subcontractors; provided, that if the entity letting the contract is the United States, the State, the Tribe, or an agency or subdivision thereof, the prime contractor shall be responsible for such compliance.

(1) Construction

The entity awarding the 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 the preference be given in the selection of the subcontractors; provided, that when the prime contractor is awarded directly by the United States, the State, the Tribe, or any agency, subdivision thereof, the prime contractor shall be the responsible entity.

No prime contractor that is in a consensual relationship with the Band shall be permitted to commence work on the Reservation until it has demonstrated that it will comply with the subcontractor preference requirements prior to the award of the contract.

3.06 Requirements in Contracting.

Preference shall be given to certified firms in the award of all covered contracts. An entity may select its contract in any manner it so chooses; provided that:

(1) Competitive Award.

If the entity uses competitive bidding or proposals, competition shall be limited to certified firms, as provided herein. If the entity is unsure if there are any technically qualified certified firms they need to submit a Statement of Intent to respond to such 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 technically qualified certified firm, it may, after so notifying the office, advertise for bids or proposals without limiting competition to certified firms, and may award the contract to the low bidder.

(2) 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 are not technically qualified certified firms available to perform the work at a reasonable price.

3.07 Requirements in Subcontracting.

- (1) The Requirement for choosing subcontracts is the same as Sec. 306 (1) & (2).
- (2) Special Requirements for Construction Subcontracting.

All entities awarding construction contracts shall comply with the following special requirements in the award of subcontract:

(A) The bid notice shall require that each bidder submit, as part of its bid, a subcontractor plan as provided for in Sec. 304. The subcontract price information for each bidder shall be made available to the Office 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 unreasonable low price.

(B) It shall be illegal for any Contractor or bidder to engage in bid shopping. Bid shopping is any practice involving or comparable to the contacting of different subcontracting firms, informing them that a competitor has underbid them, but offering them an opportunity to underbid the competitor.

(C) The Contractor shall not be prohibited from requiring the subcontractor to 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. The final decision on whether an alternative form of security is sufficient shall rest with the Commission.

3.08 Responsibility for Evaluating Technical Qualifications and Reasonable Price.

(1) Technical Qualifications.

Each covered entity, contractor and subcontractor shall have sole discretion to determine technical qualifications of prospective bidders upon any contract it proposes to award. 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 the area in which it believes the firm is deficient and steps it could take to upgrade its qualifications.

(2) Reasonable Price.

An entity may use any process it 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, subject to the provisions of Section 306 and 307, before an entity may reject all technically qualified certified firms on the basis of price, it must enter into price negotiations with one or more such firms and must contract with such firm if a reasonable price can be negotiated.

3.09 Operation under the Contract or Subcontract.

Once an entity enters into a contract or subcontract with a certified firm, the office will not intervene in any way in the relationship between the parties unless the certified firm demonstrates that action taken against it was intended primarily to circumvent the requirements of this Ordinance.

3.10 Criteria for Indian Contract Preference Certification.

To receive certification as firm eligible for Indian contracting and subcontracting preference, the applicant must employ 60% Indian workers, or

The firm must be 51% or more Indian-owned. The application must demonstrate the following:
There must be good reason to believe that the firm was not established solely or primarily to take advantage of the Indian preference program. The Commission shall exercise broad discretion in

determining the integrity of the Indian preference program and in questionable cases shall deny certification.

3.11 Certification Procedure.

(1) Application for Certification.

A firm certified as an Indian preference eligible firm shall submit a completed application to the Office on a form which may be obtained at the Office. Office staff will be available to assist a firm in filling out the application. Within 21 days after receipt of a completed application, the staff shall review the application, request such additional information as it believes appropriate, conduct such investigations as it deems appropriate, and submit an analysis and recommend disposition to the Commission.

(2) Probationary Certification.

An applicant granted certification shall be issued a one year probationary certificate. During that period, the TERO Office staff and the Commission shall monitor the firm's activities to ensure that the firm is operating in the manner described in its application. During the probationary period, the Director and the Commission shall have the right to receive such information and documents as they deem appropriate. To enable them to ensure that the firm is operating in the manner described by its application.

(3) Final Certification.

At the end of the probationary period the Commission, after receiving recommendations from the Office staff, shall either:

- (a.) grant full certification;
- (b.) continue the probationary period for up to six months; or
- (c.) deny certification.

(4) Withdrawal of Certification.

From the information provided in reports required by this Ordinance and any rules, regulation, and guidelines of the Commission, on the basis of a written grievance filed by any other firm or person, or on its own initiative, the Office may initiate proceedings to withdraw or suspend the certification of any firm. The office shall prepare an analysis and recommend disposition for the Commission and shall send the firm notice, by registered mail, that its certification is being examined, along with the grounds therefore. The Commission shall then set a date for a hearing, which shall be held within 21 days after it receives the analysis and recommended disposition from the Office. At the hearing, the Director and office staff shall present the case for suspension or withdrawal, and the hearing shall be conducted as set out in Section 5.05. After the hearing, the Commission may:

- (a.) withdraw certification;
- (b.) suspend certification for up to one year;
- (c.) put the firm on probation; and/or
- (d.) order the corrective action be taken within one fixed period.

A firm that had its certification withdrawn may not reapply for a period of one year.

(5) Change in Status and Annual Reports.

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

CHAPTER 4

EMPLOYMENT RIGHTS FEE

Revenues for the operation of TERO shall be primarily based upon employment and contracting rights fees; pursuant to the fees to be imposed as follows:

- (A) For each contract of \$5,000.00 or more, a fee of 3% of the total contract shall be assessed.
- (B) If the contracting entity is the county NO fees will be assessed to the county, the TERO fee will be assessed to the subcontractor.
- (C) The contractor prior to commencement of work on the Reservation shall pay all fees provided for in this Ordinance. Where good cause is shown to the satisfaction of the TERO Director, the contractor may be allowed to pay the fee in two installments.
- (D) The TERO Director shall be responsible for the collection of all TERO fees in a timely manner, pursuant to the rules and regulations that may be adopted by the Commission.
- (E) The Director shall deposit all fees with the Band Central Finance in accordance with the Financial Management System of the Leech Lake Band the fees will be identified as a separate line item of the appropriate TERO account, and may only be utilized by the Tribal Employment Rights Office in accordance with budgets approved by the TERO Commission and the Tribal Council solely for TERO purpose.

Revisions:

Resolution no. 2006-66 changed to:

Resolution no.2009-108

If a copy of the resolution is needed please contact our office and we will provide you with a copy. Our contact number is 218-335-8359.

CHAPTER 5

COMPLAINT AND HEARING PROCEDURE

5.01 Complaint Procedure.

Any person who believes that a violation of the covered employer's Compliance Plan, this Ordinance, or the rules, regulations and/or guidelines promulgated by the Leech Lake TERO Commission, has occurred may file a written complaint with the TERO Director. Upon receipt of a written complaint, the TERO Director shall conduct an investigation of the matters alleged in the complaint and, if necessary, serve written notice of the alleged violation to the person or entity named in the complaint. The TERO Director's investigation shall be undertaken and completed within five business days. If the Director finds there is probable cause to believe the allegation(s) is well founded, the Director shall first attempt to achieve a voluntary, informal solution to the matter through negotiation between parties. If no solution is reached by the end of a five-day period, the TERO Director shall notify the Leech Lake TERO Commission and request that the Commission set a hearing date that occurs within fifteen (15) days from its receipt of the request for a hearing.

5.02 Serving Notice of a Hearing.

The Leech Lake TERO Commission shall serve written notice of the hearing, including the date, time and location to:

- (A) The person or entity against whom the allegation has been made;
- (B) The complainant;
- (C) The Leech Lake TERO Director; and
- (D) Any other identified interested person(s).

5.03 Contents of the Notice of a Hearing.

The notice of a hearing shall advise each party of:

- (A) The nature of the hearing;
- (B) The right to be present and participate in the hearing;
- (C) The right to present witness testimony and documentary evidence, and the right to cross-examine witnesses;
- (D) The right to be represented by counsel at his or her own expense;
- (E) The right to make an audio tape, video tape, or stenographic record of the hearing at his or her own expense; and
- (F) The right of the complaint to request assistance at the hearing be provided to him or her by the Leech Lake TERO Program staff.

5.04 Conflict of Interest.

If at any hearing before the Leech Lake TERO Commission, the Commission determines that an actual or potential conflict of interest exists between any member of the Commission and a hearing participant, the conflict shall disqualify such member or members of the Commission from participation in such hearings.

5.05 Rules of Procedure.

The commission on its own initiative or at the request of any person notified of a Commission hearing may call identified witnesses to appear, and subpoena documents and/or records necessary for the hearing. The following Rules of Procedure shall be followed at all hearings conducted by the Commission:

- (A) Each notified party shall have the right to be present and participate in the hearing.
- (B) Each notified party shall have the right to present relevant sworn testimony and documentary evidence;
- (C) Each notified party shall have the right to call a witnesses on his or her own behalf and to cross examine witnesses called by any other hearing participant;
- (D) Each notified party shall have the right to be represented by counsel at his or her own expense;
- (E) The Chairman shall preside over the proceedings;
- (F) Formal rules of evidence need not be observed, but the Commission shall act to ascertain the facts in a reasonable and orderly fashion. Any evidence submitted to the Commission for consideration shall exclude hearsay, innuendo and personal attacks;
- (G) The Commission shall record the hearing by utilizing a reliable audio tape recorder. Any party may make an audio tapes or a stenographic record of the hearing at his or her own expense;
- (H) The proceedings may be recessed and continued at the discretion of the Commission, should it deem such an action advisable or necessary;
- (I) At the conclusion of the proceedings, the Commission may either render an immediate decision or take the matter under advisement and issue its decision and order no later than seven days from the conclusion of the hearing; and
- (J) The written decision and order, setting forth-specific findings, shall be sent to the complainant and respondent. Should the Commission determine that the person or entity against whom charges were brought failed to comply with any requirements set forth in this Ordinance, and/or any rule, regulation or guideline promulgated by the Leech Lake TERO Commission, the Commission may impose one or more the sanctions set forth in Chapter 6 of this Ordinance, and may order that such person take corrective action to remedy any harm caused by the non-compliance issue.

CHAPTER 6

SANCTIONS

The Commission, in its discretion may impose any of the following sanctions, or a combination thereof, provided that the severity of the sanction correlates to the severity of the offense.

- (A) Imposition of a civil monetary fine.
- (B) Suspension or termination of the violator's current privilege of conducting business with the Leech Lake Reservation.
- (C) Prohibition from conducting business on the Leech Lake Reservation for a period of time.
- (D) Monetary or other appropriate relief for damages to compensate any individual harmed because of the violation.
- (E) Reversion of any contract between violator and Leech Lake.

CHAPTER 7

APPEALS PROCEDURE

The Tribal Court of the Leech Lake Band of Ojibwe shall have jurisdiction over appeals taken from decisions and orders issued by the Commission. An appeal to the Tribal Court may be taken from any final order of the Commission by any party adversely affected thereby. The appeal must be filed no later than twenty (20) days after the party receives a copy of the Commission's decision. The Tribal Court shall uphold the decision of the Commission unless it finds that the decision of the Commission is arbitrary, capricious or in excess of the authority of the Commission. The appeal shall be taken by filing a written notice of appeal with the Tribal Court, serving a copy on the Director within twenty (20) days after the date of the entry of the order. The notice of appeal shall:

1. Provide the Commission's decision and order which is the subject of the appeal;
2. Specify the grounds justifying reversal or modification of the order; and
3. Be signed by appellant.

CHAPTER 8

LEECH LAKE TRIBAL EMPLOYMENT RIGHTS COMMISSION

8.01 Creation and Delegation of Authority.

The Leech Lake Band of Ojibwe Indians hereby creates and delegates authority to the Leech Lake Tribal Employment Rights Commission to carry out the policies and requirements established by this Ordinance for all Construction employment and contracting on the Reservation. The Leech Lake TERO Commission shall consist of five (5) members appointed by the Leech Lake Tribal Council. The terms of office for the Commission members shall be two (2) years staggered. The Commission members shall select a Chair and Vice-Chair of the Leech Lake TERO Commission. The Tribal Council may remove a Commissioner only for good cause shown after notice and hearing by the Council. Members of the Commission may receive a stipend, as the budget permits, and shall be reimbursed for any reasonable and documented expenses actually incurred in connection with his or her performance of duties and responsibilities.

8.02 Power of the Commission.

The Leech Lake TERO Commission is delegated the following authority, duties and responsibilities:

- (A) To establish rules and regulations governing the activities and procedures of the Leech Lake TERO Commission.
- (B) To issue rules, regulations and guidelines deemed necessary to carry out the provisions in the Ordinance.
- (C) To hold formal hearings, issue notice of the hearing, and call for the required witnesses and documents, according to the hearing procedures set forth in this Ordinance and the rules, regulations, and /or guidelines promulgated by the Leech Lake TERO Commission. The Commission may appoint a hearing officer if it deems it necessary in extremely complex hearings.
- (D) To impose any sanctions and grant any relief as authorized by Chapter 6 of this Ordinance.
- (E) To require any covered employer to undertake necessary corrective actions to come into compliance with the requirements set forth in this Ordinance and the regulations and/or guidelines promulgated by the Leech Lake TERO Commission.
- (F) To take legal action as necessary to enforce any part of this Ordinance.

CHAPTER 9

TERO DIRECTOR RESPONSIBILITIES

9.01 TERO Director.

The supervisory authority over Leech Lake TERO staff is delegated to the TERO Director. The Director shall have direct reporting responsibility to the Leech Lake TERO Commission.

9.02 Powers and Duties of the Director.

In order to execute the Band's TERO Ordinance, the Leech Lake TERO Director shall have the following authority, duties and responsibilities:

- (A) To prepare line item budgets for the operation of the Leech Lake TERO Program.
- (B) To supervise expenditure of the Leech Lake TERO Program.
- (C) To prosecute before the Leech Lake TERO Commission any claims of noncompliance with this Ordinance and the rules, regulations and/or guidelines promulgated by the Leech Lake TERO Commission.
- (D) Develop and maintain in an updated status, a register setting forth the names and addresses of Indian-owned firms certified for Indian preference by the Leech Lake TERO Commission. The register will also include any identification of the respective areas of work in which such firms are considered qualified.
- (E) To develop and maintain a plan for coordination and distribution of the certification register to all appropriate-covered employees and to potential future employers.
- (F) To develop and maintain a plan for distribution of this Ordinance and for supplementary ordinances enacted by the Tribal Council or rules, regulations and /or guideline established by the Leech Lake TERO Commission, to all covered employers and to all government entities receiving contracts or grants for work to be done at job-sites on the Leech Lake Reservation.
- (G) To ensure compliance by covered employers with any reporting requirements as prescribed by this Ordinance, a supplementary ordinance, rules, regulations and/or guidelines established by the Leech Lake TERO Commission.
- (H) To negotiate with representatives of any employer to resolve on an informal, voluntary basis, any claims of noncompliance with the Compliance Plan, requirements set forth in this Ordinance, supplementary ordinances enacted by the Tribal Council or rules, regulations and/or guidelines established by the Leech Lake TERO Commission.
- (I) To inspect all non-confidential information contained in books and records maintained by any covered employer to ensure continued compliance with the requirements set forth in this Ordinance, a supplementary ordinance, rules, regulations, and/or guidelines set by the Leech Lake TERO Commission.
- (J) To monitor Compliance Plan and adherence to the requirements set forth in this Ordinance, a Tribal Council supplementary ordinance or, rules regulations and/or guidelines set by the Leech Lake TERO Commission. The Director will: Conduct on-site inspections anytime during the actual operation of the business of any covered employer, and speak with any contractors, subcontractors, or employers or on-site employees if such conversation does not unreasonably interfere with operation of the business.
- (K) To review applications for Indian preference certification, conduct all necessary or required investigations in relation to any applicants qualifications, and to submit to the Leech Lake

TERO Commission a written analysis and recommendation for disposition of any such application.

- (L) To initiate proceeding for suspension or revocation of Indian Preference certification of a firm.
- (M) To secure additional funding from alternative sources (e.g., federal and/or state funding source, private and public agencies).
- (N) To set up and maintain a Tribal hiring hall from which covered employers will select and employ qualified Indians to fill employment positions.
- (O) To enforce the minimum numerical hiring goal and timetables established by this Ordinance for the number of qualified Indians a covered employer must employ on its workforce, during any year, by skill area or job classification.
- (P) Prohibit covered employers from instituting or utilizing job qualifications criteria and/or personnel requirements that, in effect, serve as barriers to employment of Indians, unless they can establish that business necessity requires such criteria.
- (Q) To negotiate with labor unions to ensure union compliance with the requirements set forth in this Ordinance, supplementary ordinances, rules, regulations, and/or guidelines established by the Leech Lake TERO Commission.
- (R) The TERO Director shall be responsible for the collection of all TERO fees in a timely manner, pursuant to the rules and regulations that may be adopted by the Commission.
- (S) To establish a fair labor wage scale on par with Labor Union and Construction Wage Union rates, but no lower than those established by the Davis and Bacon Act or State wage for county.

CHAPTER 10

OBLIGATIONS OF COVERED EMPLOYEES

10.01 Compliance with Tribal Law.

Covered employees shall comply with applicable Tribal law, this Ordinance, and the rules, regulations, and orders of the Tribal Employment Rights Commission. Covered employers that violate this Ordinance or any such rules, regulation, guidelines, or order may be subject to sanctions imposed by the Commission.

10.02 Compliance Plan.

- (A) A covered employer who intends to do any business within the exterior boundaries of the Leech Lake Reservation shall not commence or conduct such business until the covered employer receives and signs a Compliance Plan that establishes the covered employer's obligations, under this Ordinance, other applicable Band laws, and any and all rules, regulation, and/or guidelines of the TERO Commission. The covered employer shall also be given a copy of this Ordinance. The Compliance Plan shall be signed after consultation with the TERO Director and before commencement of the conduct contemplated by the covered employer.
- (B) No employer may commence work unless a Compliance Plan has been submitted to and approved by the TERO Director. No Compliance Plan shall exceed the given length of a contract, or one-year period of time. Any applicable TERO fees shall be included in the Compliance Plan. All Compliance Plans shall allow for reporting and on-site inspections by TERO. Contractors or Sub-contractors who shall engage in work on the Reservation must obtain an approved Compliance Plan.
- (C) A covered employer shall meet with the TERO Director each time a contract is awarded, prior to the start of work. The covered employer shall identify its core crew, and submit a precise list of the numbers and trades or skills of local hires expected to be employed. The covered employer must meet the minimum numerical hiring goal, as defined in this Ordinance unless the Director determines that special circumstances permit a departure from the employers proposed Compliance Plan, including determining the core crew before approving or rejecting a proposed Compliance Plan.

10.03 Unions.

Covered employers who have a collective bargaining agreement or other agreement or understanding with one or more unions shall obtain a written agreement from such union(s) stating that the union(s) shall comply with the provision of this Ordinance and the rules, regulations, and orders of the Commission.

10.04 Reporting Requirements.

Covered Employers shall submit to the TERO Office such information and documentation as the Director or commission should request or file the requisite report forms furnished by the TERO Office. A covered employer may be entitled to refuse to submit any information or documentation that is deemed confidential for valid business reasons by the TERO Commission.

10.05 On-site Inspection.

The TERO Commission, the TERO Director, and authorized TERO employees shall have the right to conduct periodic on-site inspections of any covered employer at any time in order to monitor compliance by the covered employer with the requirements set forth by this Ordinance.

10.06 Recognition of Freedom of Religion.

A covered employer shall respect and make reasonable accommodations for the religious beliefs, traditions, and practice of Indian employees and owners of Indian firms, certified under this Ordinance.