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Cherokee Council House
Cherokee, North Carolina

MAR 08 2012

Date

ORDINANCE NO. 153 (2012)

WHEREAS, Cherokee Code Chapter 92 regulates Tribal Business Preference Law within the territorial jurisdiction of the Eastern Band of Cherokee Indians; and

WHEREAS, Chapter 92 needs to be amended to more efficiently address required certification requirements.

NOW THEREFORE, BE IT ORDAINED by the Tribal Council of the Eastern Band of Cherokee Indians assembled, at which a quorum is present, that Cherokee Code Chapter 92 is amended, to read as follows:

Chapter 92 TRIBAL BUSINESS PREFERENCE LAW

ARTICLE III. CERTIFICATION

Sec. 92-10. Certification requirements.

(a) To be certified as an Indian owned economic entity entitled to a preference under this chapter the following requirements shall be met.

(1) The economic entity shall be at least 51 percent unconditionally owned and controlled by a member of a federally recognized Indian tribe that recognized blood quantum equal to or greater than EBCI or a married couple in which one spouse is a member of the Tribe and be able to provide documentary evidence of that ownership.

(2) The economic entity shall maintain a valid, current tribal business license.

(3) The economic entity or persons within the entity, whichever is appropriate, shall at all relevant times maintain the professional licenses, registrations and certifications required by applicable law.

(4) Reserved.

(5) The economic entity shall have a business plan that contains a formal statement of a set of business goals. If all goals have not been met give the reasons why they are believed attainable and the plan for reaching those goals. The plan may contain goals that follow the ideals set forth with in this Chapter. It may also contain background information about the organization or team attempting to reach those goals.

(6) The economic entity shall at all relevant times maintain adequate capital to sustain its operations and carry out its business plan.

(7) The economic entity shall have a record of successful performance on contracts in the trade for which it wants to be certified.

(8) The economic entity shall have at least three verifiable references from persons for whom it has performed work in each trade in which it wants to be certified.

(9) The economic entity shall have, for each specific trade for which it wants to be certified, the capacity to perform 50 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.

(10) The economic entity and its principals shall submit to and pay for the following background checks, which may be requested or performed by the Commission upon submission of an application to the Commission or at any time after certification:

- a. Licensing history.
- b. Criminal history.
- c. Debt and credit history.
- d. Litigation involving the economic entity and/or principals as defendants.

Such background checks shall be completed by entities acceptable to TERO as set out in its policies and procedures.

(11) An economic entity shall have been operational for at least two years in the trade in which the economic entity wants to be certified. The Commission has authority to review and waive this requirement.

(12) The economic entity shall have the following minimum insurance:

- a. Workers compensation insurance as required by law in the State of North Carolina;
- b. General liability insurance sufficient to meet Tribal contracting requirements;
- c. Vehicle insurance;
- d. At the time of applying for certification, the economic entity shall show proof of insurance coverage sufficient to meet Tribal contracting requirements;
- e. The Commission may require more or additional insurance including, but not limited to, professional liability or malpractice insurance.

(13) The economic entity shall be inspected by an official of the TERO to ensure that the economic entity possesses, has leased or has the ability to lease the material, equipment, tools and/or personnel required to perform the economic entity's daily business functions.

(14) The principals of the economic entity shall attend a business development seminar approved by the TERO and a training session hosted by TERO.

(b) If, at any time, an economic entity fails to meet the requirements imposed in this section the Commission shall, after a hearing, suspend the economic entity's certification

and give it an opportunity to meet the requirements. Repeated failure to meet requirements will result in termination of certification.

BE IT FINALLY ORDAINED that all ordinances inconsistent with this ordinance are rescinded, and that this ordinance shall become effective when ratified by the Principal Chief.

Submitted by: Tribal Employment Rights Office