

TABLED

Cherokee Council House
Cherokee, North Carolina
DEC 03 2020

Date

Ordinance No. 344 (2020)

WHEREAS, the Charter and Governing Document authorizes and empowers the Eastern Band of Cherokee Indians (EBCI) Tribal Council to adopt laws and regulations for the general government of the Tribe. Charter and Governing Document, sect. 23 (Sept. 5, 1995) *see also* C.C. §117-10.

WHEREAS, Tribal Council authorizes the payment of Tribal monies. Charter and Government Document, sec. 16 and 23 (1986).

WHEREAS, the Eastern Band of Cherokee Indians Fiscal Management Policy Manual briefly mentions competitive bids and request for proposals, however, very little to no procedures. E.B.C.I. FISCAL MANAGEMENT POLICY MANUAL 21 (2019).

WHEREAS, the Tribe will have future projects and the respective tribal entity needs guidance on how to accurately budget for a major project, and;

WHEREAS, there is a need to create Project Contract procedures.

NOW THEREFORE BE IT ORDAINED by the Eastern Band of Cherokee Indians, in Council assembled at which a quorum is present that the Tribal Council amends the Cherokee Code to include Chapter 117, Article VI, as follows in EXHIBIT A.

BE IT FURTHER ORDAINED the Ordinance provisions that amend or adopt new sections of the Cherokee Code shall be codified by the Department of Justice. The Department of Justice shall incorporate such amended provisions in the next codification of the Cherokee Code.

BE IT STILL FURTHER ORDAINED should any provision of this Ordinance be determined invalid by the Cherokee Supreme Court, or the Cherokee Court without appeal to the Cherokee Supreme Court, or any other court of competent jurisdiction, those portions of this Ordinance which are not determined invalid shall remain the law of the Eastern Band of Cherokee Indians

BE IT FINALLY ORDAINED that this ordinance shall become effective when ratified.

*Submitted By: Chelsea Saunooke, Wolfstown/Big Y Representative
Bo Crowe, Wolfstown/Big Y Representative
Albert Rose, Birdtown Representative*

Cherokee Code

Chapter 117 – TRIBAL GOVERNMENT

ARTICLE VI. – PROJECT CONTRACTS

Sec. 117-120. – In General.

(a) Purpose. Tribal Council finds that Tribal divisions, departments, programs, public authorities, boards, committees, or commissions, exist to aid the conduct of the Tribe’s business. The law’s intent is to provide them uniform guidance when investing Tribal funds in major capital projects.

(b) Application. This section applies all Tribal divisions, departments, programs, and shall include, but not limited to Tribal Casino Gaming Enterprise (TGCE) established in C. C. §16A-3, Tribal Alcoholic Beverage Control Commission (TABCC) established in C. C. §18B-200, Tribal Employment Rights Commission (TERO) established in C. C. §92-5, the Sequoyah National Golf Club L.L.C Board of Directors established in Eastern Band of Cherokee Indians (EBCI) Tribal Council Resolution No. 418 (2008), and any other board, commission, L.L.C., or entity created by Tribal Council. For purposes of this section all of the above shall be referred to as “tribal entity”.

(1) Any project contract over five hundred thousand dollars (\$500,000.00) shall be subject to this Article.

(2) All project must get approval in accordance with the Economic Diversification Process.

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1 **Sec. 117-121. – Selection.**

2 (a) There shall be a competitive process with any new project, the tribal entity shall
3 invite request for qualifications (RFQ) to select the architect engineer. The tribal
4 entity shall:

5 (1) Investigate all individuals or companies that submit a RFQ.

6 (2) Call their references.

7 (3) Grading scale question shall be contained in the RFQ.

8 (b) The tribal entity select the top architect companies to bid on designing the
9 construction or architectural drawings.

10 (c) The tribal entity shall put together a bid package for the architect or construction
11 design which shall include the following:

12 (1) Invitation to bid that gives a brief overview of the project, deadlines, and
13 general requirements;

14 (2) Bid instructions that contain specifics of how the bid should be completed
15 and submitted;

16 (3) Bid forms, including but not limited to items such as a bid sheet, bid
17 schedule, bidder's questionnaire on experience, financial responsibility
18 and capability, and a copy of the contract; and

19 (4) Supplements, including items important to the overall bid process such as
20 a property survey and soil analysis.

21 (d) From the design bid process the tribal entity shall submit the budget request for
22 the design in accordance with the budgeting procedures.

23 (e) The tribal entity shall submit the design contract for approval and must include
24 ten percent (10%) retainage from each draw.

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26 **Sec. 117-122. – Planning.**

27 (a) With the completed construction or architectural drawings, the tribal entity shall
28 invite request for qualifications (RFQ) to select the general contractor.

29 (b) Once the tribal entity selects the general contractor, they shall issue a bid package
30 for the remaining contractors as stated in C.C. §117-121(c). Additionally, a

1 complete set of project documents are required to prepare an accurate cost and
2 budget estimate. The project documents shall include the following:

3 (1) Construction or architectural drawings that show a schematic design of the
4 job. The drawings may illustrate many different views or elevations of the
5 job.

6 (2) Specifications that determine the type of materials or methods to be used
7 in construction. The specifications must meet the applicable codes.

8 (3) The contract which outlines the obligations of each party. The contract
9 shall include ten percent (10%) retainage from each draw.

10 (c) The tribal entity shall compile a project budget based on the RFPs and submit a
11 budget request for the project in accordance with established budget procedures.

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13 **Sec. 117-123. – Payment.**

14 The project management agreement shall specify how the contract price is calculated.
15 Payment terms shall be specific and include: who is issuing payment, amount of the payment,
16 form of the payment, when the payment will be issued, and a ten percent (10%) retainage. The
17 project management agreement may also allow the Architect the authority to proceed with the
18 project on the tribal entity's behalf.

19 (a) Draw Schedule or progress payments shall be made after specified construction
20 phases are completed. The draw schedule shall be clearly outlined in the
21 construction contract and shall include:

22 (1) number of payments,

23 (2) amount of each payment,

24 (3) stage of progress between payments, and

25 (4) date or stage when each one is due.

26 (b) Change orders, if any, shall be discussed on a monthly basis. The tribal entity
27 shall report monthly to the Budget Committee any change orders. Change orders
28 are legally binding and shall including:

29 (1) change order date;

30 (2) description of the change in work;

- (3) reason for the change;
- (4) change in contract price;
- (5) change, if any, in contracted time; and
- (6) signatures from both parties.

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7 Chapter 16A – TRIBAL CASINO GAMING ENTERPRISE

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9 **Sec. 16A-5. – Powers and duties of Board of Advisors.**

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11 (e) *Contracting and procurement.* The TCGE shall have the power and duty to:

- 12 (1) Enter into agreements, contracts, and understandings with any government
13 agency, person, partnership, corporation or Indian tribe; and
- 14 (2) Retain the services of any business or professional consultants.
- 15 (3) All contracts and other documents executed in the name of the TCGE
16 must be signed by two Board members, one of whom shall be the
17 Chairperson or the Vice-Chairperson, provided that the Board of Advisors
18 in its discretion may delegate such signatory authority for specific types of
19 documents to an officer or employee of the TCGE or a designated
20 employee of the Management Contractor.
- 21 (4) All project contracts shall follow the procedures set out in Cherokee Code
22 Chapter 117, Article VI.

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