

TABLED

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA
MAY 04 2023

DATE

ORDINANCE NO. 594 (2023)

- WHEREAS, the Eastern Band of Cherokee Indians established the Tribal Employment Rights Office (hereinafter TERO), under Cherokee Code Section 92-2, to promote growth and increase contracting opportunities for Native American owned businesses; and
- WHEREAS, it has been determined by the Tribal Employment Rights Commission (hereinafter TERC) that amendments must be made to Cherokee Code Chapter 92, Article II, *TERO Commission And Office*, to remove problematic and conflicting provisions from Chapter 92; and
- WHEREAS, current Cherokee Code Section 92-4., Cherokee Code Section 92-25(f)(3) and Cherokee Code Section 92-(f)(4), provide for three levels of Indian preference priority; and
- WHEREAS, there is a need to strike part of Cherokee Code Section 92-4., 92-25(f)(3) and 92-(f)(4), to reduce the number of priority levels from three to two, eliminating the priority 2, and changing priority 3 to priority 2 upon ratification of this amendment; and
- WHEREAS, the amendment will eliminate the current and only distinction between priority 1 and priority 2, which is whether the business is located upon Tribal trust lands; and
- WHEREAS, it also been determined by the TERC that Cherokee Code Sec. 92-10(a)(11) and Cherokee Code Sec. 92-10(a)(14), need to be amended to strike the discretion of the TERC to certify businesses that have not been in business for over a year and to require all TERO vendors to take TERO training one a year.
- WHEREAS, the amendment will allow for clear guidance and training concerning the powers and responsibilities of both the Commission and TERO Staff in the certification process.
- THEREFORE, BE IT ORDAINED, by the Eastern Band of Cherokee Indians, in Tribal Council assembled, at which a quorum is present, that Cherokee Code Section 92-4., Cherokee Code Section 92-25(f)(3), Cherokee Code Section 92-(f)(4), Cherokee Code Sec. 92-10(a)(11), and Cherokee Code Sec. 92-10(a)(14), shall be amended to read as follows.
- BE IT FURTHER ORDAINED that all ordinances or resolutions that are inconsistent with this ordinance are hereby rescinded.
- BE IT FINALLY ORDAINED that this ordinance shall become effective upon ratification by the Principal Chief.

Submitted by the Tribal Employment Rights (TERC).

ARTICLE I. POLICY, APPLICATION, DEFINITIONS

Sec. 92-4. Definitions.

Native stone provider means a supplier that provides stone directly harvested from land held in trust for the Eastern Band of Cherokee Indians.

Priority 1 firm means an economic entity, ~~located on Trust Lands~~, that is 51 percent owned and controlled by an enrolled member of the EBCI or a married couple in which one spouse is a member of the EBCI, and that is qualified in this Chapter to receive the first priority to be awarded a contract with the ability to re-bid.

~~*Priority 2 firm* means an economic entity, located anywhere else, that is 51 percent owned and controlled by an enrolled member of the EBCI or a married couple in which one spouse is a member of the EBCI, and that is qualified in this Chapter to receive the second priority to be awarded a contract but cannot re-bid against a Priority 1 firm. (Note: Procedures for Providing Preference located in Section 92-25)~~

Priority 3 2 firm means an economic entity, owned by a member of any other federally recognized tribe, and that is qualified in this Chapter to receive the third priority to be awarded a contract but cannot re-bid against a Priority 1 ~~or Priority 2~~ firm.

Procuring entity means the Tribe, its administrative divisions, programs, offices, and enterprises, and any corporate entity in which the Tribe has a majority interest or ownership, and contractors and subcontractors working under contract thereof. ...

ARTICLE V. PREFERENCES

Sec. 92-25. Procedures for providing preference.

- (d) If there is only one economic entity certified to perform the work, the procuring entity may negotiate with that certified economic entity as the sole source of the work, if otherwise allowed by law and Tribal policy.
- (e) If there are no certified economic entities that can perform the work sought in the contract this section does not apply.
- (f) If a certified economic entity submits a bid in response to a notice of competitive bidding, preferences shall be provided as follows:
 - (1) If a Priority 1 certified economic entity is the lowest responsible bidder, then the contract shall be awarded to it.
 - (2) If a Priority 2 certified economic entity is the lowest responsible bidder, then the three Priority 1 economic entities closest to the low bid shall be given a chance to re-bid. Upon re-bid, the Priority 1 certified economic entity that is within five percent of the lowest responsible bid shall be awarded the contract. If there are no Priority 1 firms that are within five percent of the lowest responsible bid, then Priority 2 re-bids shall be considered and the Priority 2 firm with the lowest bid within five percent shall be awarded the contract.
 - ~~(3) If a Priority 3 certified economic entity is the lowest responsible bidder, then the three Priority 1 economic entities closest to the low bid shall be given a chance to re-bid. Upon re-bid, the Priority 1 certified economic entity that is within five percent of the lowest responsible bid shall be awarded the contract. If there are no Priority 1 firms that are within five percent of the lowest responsible bid, then the three Priority 2 economic entities closest to the low bid shall be given a chance to re-bid. Upon re-bid, the Priority 2 certified economic entity that is within five percent of the lowest responsible bid shall be awarded the contract. If there are no Priority 2 firms that are within five percent of the lowest responsible bid, then the Priority 3 bid shall be awarded the contract.~~
 - ~~(4)~~(3) If a certified economic entity is not the lowest responsible bidder, then the three Priority 1, certified economic entities closest to the low bid shall be given a chance to re-bid. If there are no Priority 1 firms involved in the bid, then the three Priority 2 firms closest to the lowest bid shall be given a chance to re-bid. If there are no Priority 2 firms involved in the bid, then the three Priority 3 firms closest to the lowest bid shall be given a chance to re-bid. Upon re-bid, the certified economic entity that is within five percent of the lowest responsible bid shall be awarded the contract.
- (g) Procuring entities shall adhere to these bidding requirements. In the event of an emergency bidding requirements shall be waived although certified economic entities shall be used if feasible.

Article III. Certification.

Sec. 92-10. Certification requirements.

- (11) An economic entity shall have been operational for at least one year in the trade in which the economic entity wants to be certified. An economic entity shall also have been operational for at least one year in any areas of trade they add later and shall provide additional business plans for the additional areas they seek to be certified in later. ~~If the economic entity has not been operational for one year, the Commission shall consider one of the following when determining certification:~~
- a. ~~Education/training/licensure/certification in a related field; or~~
 - b. ~~Experience in a related field; or~~
 - c. ~~Completion of a related course(s) through the EBCI Enterprise Development program.~~
- (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; and
 - 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 an annual ~~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.
- (c) Any elected officials, Executive staff, Program Directors and currently seated members of other Boards and Commissions that receive monetary compensation may not be TERO-certified.

(Ord. No. 280, 4-29-2002; Ord. No. 769, 8-7-2007; Ord. No. 562, 4-25-2011; Ord. No. 153, 5-2-2013; Ord. No. 497, 4-14-2015; Ord. No. 290, 8-4-2016; Ord. No. 449, 2-2-2017)