



TERO – ODOT

Memorandum of Understanding

CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION

&

THE OREGON DEPARTMENT OF TRANSPORTATION

MOU History

- ▶ CTUIR TERO started August 7, 1978 with adoption of TERO Code, establishing TERO Program and the TERO Commission
- ▶ FIRST MOU was in 1985 between Confederated Tribes of the Umatilla Indian Reservation & Oregon Department Of Transportation
- ▶ MOU BOUNDARY initially extended 60 miles from exterior boundaries of the Umatilla Indian Reservation with 2.5% TERO fee for all projects
- ▶ Based on Tribal Sovereignty & Federal Highway Administration Policies prescribing Indian Preference



MOU RECITALS

- ▶ The Agreement pertains to cooperation between to apply the Indian Employment Preference to Federal-Aid Highway projects taking place on or near the Umatilla Indian Reservation.
- ▶ Oregon Revised Statutes (ORS) 190.110 et seq. grants authority to state agencies to enter into agreements with an American Indian tribe or an agency of an American Indian tribe for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
- ▶ CTUIR has the inherent sovereignty to promulgate and enforce the Tribal Employment Rights Office (TERO) Code within the boundaries of the Umatilla Indian Reservation.
- ▶ The Surface Transportation Assistance Act (as reauthorized in 1987), the Intermodal Surface Transportation Efficiency Act of 1991, the Moving Ahead for Progress in the 21st Century Act of 2012, and the Fixing America's Surface Transportation Act of 2015, permit Indian preference employment goals on Federal-Aid highway projects located on or near Indian reservations.
- ▶ Section 140(d) of the United States Code, Title 23 provides, "States may implement a preference for employment of Indians on projects carried out under this title near Indian reservation."

US DOT Notice 4720.7

- ▶ In off reservation situations, (Tribal Employment Rights Office) can bill contractors at an agreed upon rate for services rendered, i.e. recruitment, employee referral and related supportive services. The proceeds are used by the tribes to develop and maintain their skills bank, to fund job referrals, counseling, liaison, and other services and activities related to the employment and training of Indians.
- ▶ In the event there is a change in federal law, regulation or guidance applicable to this MOU, or that the Federal Highway Administration changes its interpretations of these laws and regulations, such change will automatically apply to the MOU from the date of adoption or publication.

MOU Recitals (cont.)

- ▶ ODOT recognizes that jobs in the private employment sector on or near the Reservation are an important resource for Indians residing on or near the reservation.
- ▶ ODOT considers the availability of a pool of skilled and trained workers in heavy highway construction trades to be beneficial to Federal-Aid highway projects on or near the Reservation.

Purpose of MOU

- ▶ The purpose of this Agreement is to establish procedures to be followed by both parties to aid in ensuring that:
- ▶ 1) when contractors performing work on Federal-Aid highway projects under an ODOT contract on the Reservation, the contractors comply with the TERO Code.
- ▶ 2) when contractors are performing work on Federal-Aid projects near the Reservation, defined by Exhibit A, the contractors comply with the MOU Compliance Agreement and TERO Code, as applicable.
- ▶ Section 2 of the MOU addresses Definitions.



The Purpose of TERO

- ▶ To prevent employment related discrimination/harassment against American Indians;
- ▶ To ensure compliance with this Code that is intended to give preference in employment, contracting and sub-contracting, and training to American Indians;
- ▶ To maximize utilization of Indian workers in all employment opportunities on and near the CTUIR;
- ▶ To ensure the Indian workforce on the CTUIR are trained and equipped to enter the workforce and maintain employment of their choosing

Employer Requirements



Compliance Agreement:

- ▶ A binding agreement between TERO and the contractor that must be adhered to.
- ▶ The Prime/General will need a signed agreement before work commences.
- ▶ Sub contractors will need to have compliance agreements in place as well before work starts.

Hiring goals:

- ▶ Typical TERO Employment Goal is 25% for all contractors.
- ▶ Each contractor may require an adjusted hiring goal as negotiated.
- ▶ On-the-job training goals.

Wage Rates:

- ▶ Applicable wage scale provisions will be enforced
- ▶ Fringe must be paid in cash

Employer Requirements (cont.)

Unions:

- ▶ Employers with collective bargaining agreements with a union are responsible for informing such unions of Indian preference.
- ▶ “Temporary Work Permits” shall be granted to TERO workers who do not wish to join a union.

Site inspections:

- ▶ Employer will allow TERO to make on-site inspections to monitor compliance
- ▶ TERO has the right to inspect and copy all relevant records of an Employer, Union or sub.
- ▶ TERO has the right to speak to all worker and to conduct investigations on the job site.
- ▶ All information collected is kept confidential

Certified Indian Owned Businesses



Preference:

- ▶ Employers shall give preference to IOB's in the award of contracts or sub-contracts.
- ▶ Applicable percentages for preference are found in the Code; Section 5.06(B) – Solicitation Process

Directory:

- ▶ TERO will maintain an updated list of certified Indian Owned Businesses
- ▶ To obtain preference per the Code, Indian owned businesses must be certified by TERO.

Certification:

- ▶ Detailed process for certification, re-certification and decertification are found in the Code.

TERO Contractor Certification

- ▶ The MOU prescribes that all contractors intending to bid as prime contractors on TERO-ODOT MOU projects must undergo certification by TERO that is valid for three years.
- ▶ CTUIR TERO conducts quarterly contractor certification workshops.

Bid Advertisement



Goal % (prime and subcontractors):

- ▶ Review special provisions
- ▶ Crew
- ▶ Crafts (call TERO re: available crafts)
- ▶ Core crew
- ▶ Plan for TERO employees

Estimate Compliance Tax (primes only)

OJT Contract Requirements?

- ▶ TERO Apprentices?

DBE Goals?

- ▶ TERO Certified Indian Owned Businesses



Before Going To Work

- ▶ Prime must pay compliance tax

Compliance Agreements:

- ▶ Prime must have a signed compliance agreement from TERO
- ▶ All Subs will also need signed compliance agreements turned in before work can commence
- ▶ ODOT will not approve subcontracts until we hear from TERO that they are in place
- ▶ Preconstruction conference
- ▶ Very effective to address TERO requirements for the prime contractor and all subcontractors

TERO Referrals

- ▶ Contact TERO office two business days in advance
- ▶ Existing Native American employees may be eligible
 - Existing Native American employees must be listed on the Compliance Agreement
 - Said employee will need to fill out the necessary TERO paperwork as well
- ▶ Referral cards
 - TERO workers will present their cards to you
 - Some workers will show up and claim to be dispatched by TERO, that may not be the case
- ▶ Exchange contact information
- ▶ Check in with compliance officer on job site and communicate with TERO staff via email and/or phone

Miscellaneous

- ▶ Racial slurs/discrimination prohibited
- ▶ Fringes paid in cash
- ▶ Prime contractors need to give TERO access to Doc Express for certified payroll
- ▶ Communication is key for all parties involved

MOU Project Administration

- ▶ ODOT and TERO will work together to identify projects eligible under the MOU to promote and support Indian employment. ODOT will share the State Transportation Improvement Plan (STIP) with the TERO and identify those projects that are Federal –Aid highway projects that have work within the MOU boundary.
- ▶ Parties agree that contractors and their subcontractors for ODOT MOU Projects will be subject to the MOU Compliance Agreement and TERO Code as applicable and that On-Reservation Projects will be subject to direct application of the TERO Code and inherent tribal authority.
- ▶ ODOT and TERO will meet annually each spring to discuss project selection and specific project workforce training and needs. Discussion may include project schedule, bid documents (applicable deadlines, Compliance Agreement form, and TERO Code revisions), scope and duration.
- ▶ Parties may also discuss fee-supported training activities, goal setting process, reporting summaries, and challenges or successes in contractor compliance, such as participation and performance of contractors under respective compliance agreements.

MOU Project Administration (cont.)

- ▶ Goals Setting – TERO establishes accomplishable hiring goal, based on an assessment of workforce availability and worker skill needs for the project.
- ▶ Include all Indians regardless of tribal affiliation or place of enrollment.
- ▶ Hiring goals apply to job classifications related to heavy highway construction trades, including but not limited to carpenter, laborer, equipment operator, cement mason, truck driver, electrician and ironworker.
- ▶ MOU Compliance Agreement – ODOT agrees that a condition of award of the contract for the ODOT project will be that the contractor executes a MOU Compliance Agreement.

MOU Provisions (cont.)

- ▶ Pre-Construction Conference TERO and ODOT will be available to provide a detailed explanation of, and answer questions about, the provisions of the TERO Code, and Indian Preference goals.
- ▶ The pre-con shall finalize all compliance agreements and requirements between TERO and the Contractor and Subcontractors, and answering any questions on Indian Preference and applicable special contract provisions.
- ▶ MOU Compliance Fee utilizes a sliding scale calculation to determine the Compliance Fee that is paid by the prime contractor
- ▶ Parties agree that compliance fees are to be used by TERO to develop and maintain a TERO hiring hall, fund job referral, conduct screening, career counseling, liaison representation, training and apprenticeship.
- ▶ Reporting: TERO provides monthly reports



TERO & ODOT



THANK YOU FOR ATTENDING

Any Questions?