CONFEDERATED SALISH AND KOOTENAI TRIBES
INDIAN PREFERENCE ORDINANCE REGULATIONS

Statutory Authority
These rules are issued pursuant to the authority granted to the Indian Preference Office by the Tribal Council pursuant to Ordinance 101A.

Statement of Purpose
The intent of Tribal Ordinance 101A is to facilitate full employment of Indian people on the Flathead Reservation by promoting Indian economic self-sufficiency through the granting of preference to qualified Indian employees and qualified Indian-owned entities whenever consistent with Federal Law.

Implementation of Specific Indian Preference Requirements
Partners, owners, and managerial employees of contracting firms shall be employed only in management or supervisory positions. The employment preference provisions of Tribal Ordinance 101A and these regulations apply to all other employees.

Indian Preference Employment
Tribal Ordinance 101A and its implementing rules apply to all contracts subject to the Indian Self-Determination Act. (See *Dawavendewa v. Salt River Project* 1998 WL. 605282 (9th Cir.)). The following order of preference applies to the hiring of employees unless prohibited by federal law:

A. First preference shall be given to enrolled members of the Confederated Salish and Kootenai Tribes.

B. Second preference shall be given to enrolled members of any other federally recognized tribe.

C. All others.

Indian Preference Business Certification
A contractor or subcontractor seeking certification as an Indian Preference Business must make application on a form available from the Indian Preference Office and is subject to the following rules:

A. The entity must submit the application and required documentation to the Indian Preference Coordinator, whose decision on the application shall constitute a final decision for the purpose of satisfying administrative process.

B. The entity must renew certification on an annual basis to remain eligible for Indian Preference.

Indian Preference in Contracting and Subcontracting
Preference in the awarding of contracts and subcontracts and in the procurement of services, materials, supplies, and equipment required for work to be performed shall be given to certified Indian-owned businesses as follows unless prohibited by Federal Law:

A. First Preference shall be given to a CSKT member-owned business which is a responsible bidder with a responsive bid. Such CSKT member-owned business coming within 10% of the low bid or price quote shall have the opportunity to meet the low figure.

B. Second preference shall be given to any other Indian-owned business which is a responsible bidder and which submits a responsive bid. Any such other Indian-owned business coming within 10% of the low bid or price quote shall have the opportunity to meet the bid or price if no CSKT member-owned business does so.

Hiring Hall
The Indian Preference Office provides a referral service for applicants seeking work and contractors looking for eligible Indian employees on the Reservation.

A. The following rules apply to workers:

1. Workers seeking employment must send in a postcard on a monthly basis to insure their name is referred to contractors.

2. Workers no longer seeking employment must notify the Indian Preference Office.

3. Workers must renew the application they have on file in the Indian Preference Office annually, in order to remain in the active referral file.

4. Non-Indian employees may not start work without approval of the Indian Preference Office.

The following rules apply to employers:

5. The Indian Preferences Office shall be given a twenty (24) hour time period to furnish a qualified referral. However, the twenty four (24) time period may be waived in cases of emergency as determined by the Indian Preference Coordinator.

6. If the Indian Preference Office is unable to locate a qualified Indian and the Indian Preference Coordinator has certified to this fact in writing, a contractor may be granted an employment waiver.

7. Employers may not use job qualification criteria or personnel requirements which bar Indians from employment, unless such criteria or requirements

are justified by business necessity. Such criteria must be justified in writing to then Indian Preference Office prior to implementation. The Indian Preference Coordinator and individual employers shall have the responsibility to determine whether an employee is qualified for a job craft or skill. The burden of proof shall be on the employer in all disputes of minimum qualifications standards and on termination of Indian preference employees when as employer determines the individual is not qualified.

Contracting Fee
A prime contractor shall be assessed a one time fee of 3% of the bid for any contract over $ 25,000.00. The contractor shall pay one half of the fee prior to starting work on the Flathead Indian Reservation, and the remaining half upon completion of the contract.

Employment Compliance Plan
Every contractor and subcontractor must submit a written compliance plan to the Indian Preference Coordinator prior to commencing work.

A. The plan shall be submitted on a form provided by the Indian Preference Office.

B. The plan must be submitted and approved ten days before work begins.

C. The prime contractor will be responsible for monitoring all relevant subcontractors for compliance.

D. The Indian Preference Coordinator is authorized to make on-site inspections as necessary.

Reports
The following reporting requirements apply to every contractor and subcontractor having a contract over $25,000.00:

A. Project Payroll Reports (wage and hour reports) must be submitted to the Indian Preference Office within one week after payroll disbursement.

B. Disciplinary action taken must be reported to the Indian Preference Office within two (2) working days.

C. Promotions must be reported to the Indian Preference Office within two (2) working days.

D. Terminations must be reported to the Indian Preference Office within 24 hours, followed within one week by a written explanation of the termination.

E. Lay-offs must be reported to the Indian Preference Office 24 hours in advance. In all lay-offs and reductions in workforce, no Indian worker shall be terminated if a non-Indian worker in same job classification is still employed.

Payroll Hours
All Indian preferences employees will be given the same number of work hours and overtime hours as non-Indian co-workers.

Fringe Benefits
Any Indian employee shall have the right to receive any health insurance or pension benefits (fringe benefits) paid to them directly at the time they receive their regular paycheck. Any employer who refuses to comply with this provision shall be guilty of a violation of the Indian Preference Ordinance.

Collective Bargaining Agreements
Entities having collective bargaining agreements with a union shall comply with Tribal Ordinance 101A and these rules.

Formal Training
The Tribes encourage training programs developed and administered by an employer with the assistance of the Indian Preference Office. Under Davis-Bacon projects, this program shall be U.S. Department of Labor, Bureau of Apprenticeship and Training certified.

Notice of Non-Compliance
When the Indian Preference Coordinator has reason to believe that entity is out of compliance with Ordinance101A or these rules, the Indian Preference Coordinator shall issue notice of noncompliance to the alleged violator.

Such notice shall be served either personally or by registered or certified mail, and shall constitute a summons and complaint for purposes of the violation.

The notice shall state the nature of the alleged violations, the type of sanction that may be assessed for each alleged violation, the right to answer, and the consequences of failing to answer. The notice may provide an opportunity to cure the alleged acts of non-compliance, and if so, the method and time for cure. The notice shall specify the date and place at which a hearing on each alleged violation will be held if the alleged violation is not cured. Such hearing shall be held no less then 30 days or more than 60 days after the date of service of a notice.

Answer
A person who receives a notice of noncompliance shall answer within 15 days of the date of receipt of the notice. The answer shall be personally served or mailed to the Indian Preference Coordinator by registered or certified mail. An answer shall either admit or deny the violation(s), raise all affirmative defenses, and state whether the entity will undertake curative measures, if any, specified in the notice of noncompliance.

If an answer states that a person will undertake all curative measures specified in the notice, the hearing scheduled in the notice may be held in abeyance for a reasonable amount of time to enable completion of the curative measures.

If curative measures are completed within a reasonable time and to the satisfaction of the Indian Preference Coordinator, the hearing may be canceled at the Indian Preferences Coordinator's discretion. Satisfactory completion of curative measures shall not prevent the imposition of fines or penalties.

Sanctions
The Indian Preference Coordinator is authorized to recommended imposition of sanctions from the following list against any person or entity who is found to be in violation of Ordinance 101A and its implementing regulations:

A. Make changes in procedures and policies necessary to eliminate the violations;

B. Suspend all operation subject to ordinance 101A, and/or prohibit engagement in future operations to which Ordinance 101A applies until the identified violation is corrected;

C. Withhold from final payment to the general contractor 20% of the total amount of the relevant contract under which a violation occurs;

D. Deny the rights to commence or business to which Ordinance 101A applies;

E. Order any other provision the Coordinator deems necessary to eliminate the violations.

Grievance Procedure
The Tribal Administrative Procedures Ordinance (TAPO) shall provide the procedures for administrative and judicial review of all final orders arising under Ordinance 101A.

Chief Executive Officer
As applied in Ordinance 101A, the "Chief Executive Officer" referenced in part VI, Section 25 of TAPO shall be the Indian Preference Coordinator.

Revised: February 5, 2009