

Chapter 57

ONEIDA INDIAN PREFERENCE LAW

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57.1-1. **Purpose And Policy.** The purpose of this law is:

- (a) to give Indians a greater participation in self-government and;
- (b) to further the government's trust obligation; and

57.1-2. The Oneida Tribe of Indians of Wisconsin has the inherent sovereign power to pass laws to implement and enforce the special rights and protections adopted by the legislated laws of the federal government on behalf of Indians. Such laws include, the United States laws authorizing Indian preference such as the 1964 Civil Rights Act, Executive Order 11246, the Indian Civil Rights Act of 1968, Title VII, 42 U.S.C.A. Sec. 2000e-2(I) and 25 U.S.C.A. Sec. 47.

57.1-3. The Oneida Tribe of Indians of Wisconsin believes it is important to establish an Indian Preference Department in order to use the aforementioned laws and powers to increase employment of Oneida Indian workers and Indian-owned businesses.

57.1-4. The Oneida Tribe of Indians of Wisconsin recognizes the need to maximize economic benefits derived by the increased economy on the Oneida Reservation and commits itself to undertaking reasonable efforts, through information monitoring and reporting, to insure that all businesses utilize the labor force of the Oneida Tribe of Indians of Wisconsin and other Indian Tribes.

57.1-5. The Oneida Tribe of Indians of Wisconsin recognizes the need to maximize economic benefits derived by the increased economy on the Oneida Reservation and desires to achieve this purpose by affording Indian-owned businesses the maximum opportunity to supply materials and services in the direct and indirect performance of all contracts.

57.2-1. Adoption, Amendment, Repeal. This Law is adopted by the Oneida Business Committee and is effective 30 calendar days from the date of adoption.

57.2-2. This Law may be amended pursuant to the procedures set out in the Oneida Administrative Procedures Act by the Oneida Business Committee or the Oneida General Tribal Council.

57.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Law which are considered to have legal force without the invalid portions.

57.2-4. All other Oneida laws, policies, regulations, rules, resolutions, motions and all other similar actions which are inconsistent with this Law are hereby repealed unless specifically re-enacted after adoption of this Law. Such superseding action shall specifically include:

(a) 4-30-85-A

(b) 2-1-91-B

(c) 5-19-93-B

(d) 6-23-96-A

(e) 6-15-94-D

(f) 7-11-94-D

57.2-5. Adoption of this law does not waive the sovereign immunity of the Oneida Tribe of Wisconsin of Indians of Wisconsin.

57.2-8. Authority for implementing, monitoring, and enforcing this Indian Preference Law is delegated to the Indian Preference Department of the Oneida Compliance Division as well as the authority to create the appropriate regulations to implement and carry out the responsibilities set forth in this Law.

57.3-1. Definitions. This Article shall govern the definitions of words and phrases used within this Law. All words not defined herein shall be used in their ordinary and everyday sense.

57.3-2. “Agent” means one who acts relative to a fiduciary relationship to another, as, a person expressly authorized or implied to be authorized to represent a company in the transaction of business of the company.

57.3-3. “Appeals Commission” means the Oneida Appeals Commission.

57.3-4. “Broker” means an intermediary acting in the procurement of business for both parties; an independent contractor employed to negotiate business between a buyer and seller for compensation.

57.3-5. “Compliance Division” means that division within the Oneida tribal administration with the purpose of ensuring adherence to laws, ordinances, policies and procedures Oneida Tribe of Indians of Wisconsin.

57.3-6. “Indian Preference Department” means that department of the Compliance Division with the purpose of implementing, certifying and enforcing Indian preference laws of the Oneida Tribe of Indians of Wisconsin.

57.3-7. “Commission” means the License Commission which is the body empowered by the Oneida government to conduct hearings in disputed licensing and Indian preference matters and impose sanctions in matters of non-compliance with Indian preference laws.

57.3-8. “Core work crew” means the minimum amount of the trade contractor’s management and/or trade skill employees, not including apprentices or trainees, who are essential to start up and continuing work on a project.

57.3-9 “Covered entity” means any employer employing two or more employees engaged in any aspect of business activity pursuant to a contract entered into with the Oneida Tribe.

57.3-10. “Employee” means any person employed for remuneration.

57.3-11. “Employer” means any person, partnership, corporation or other entity that employs, for wages, two or more employees.

57.3-12. “Entity” means any person, Indian or non-Indian, sole proprietor, partnership,

corporation, joint venture, franchise, governmental enterprise, or any other natural or artificial person or organization. The term “entity” is intended to be as broad and encompassing as possible to ensure the jurisdiction of the Oneida Indian Preference Law.

57.3-13. “Indian” means any enrolled member of a federally recognized Indian Tribe.

57.3-14. “Indian-owned Business” means a for-profit business which is majority owned, managed and 51% minimal share of the net profits distributed to Indians and is certified as Indian preference eligible by the Indian Preference Department. An Indian-owned business shall include, but is not limited to, a sole proprietorship, partnership, corporation, joint venture, or franchise.

57.3-15. “Key Employee” means one who is in a top supervisory position or who performs a critical function such that an employer would risk likely financial damage or loss if that task were assigned to a person unknown to the employer.

57.3-16. “Qualified Indian Trades Worker” means those skilled workers qualified to perform services for which the person is trained.

57.3-17. “Rider I” means the Rider to Construction Contracts, Qualified Indian Trades Worker Policy; Indian Owned Business Requirements Policy, resolution #BC-4-3-96-A and technical amendments in resolution #BC-5-22-96-A.

57.3-18. “Skills Bank” means a list of qualified Indian trades workers with qualifications and dates of availability and exclusive referral source under this Law, located within the Indian Preference Department.

57.3-19. “Oneida Tribe” means the Oneida Tribe of Indians of Wisconsin.

57.4-1. General. Certification. Issuance of a certificate under this Law does not convey any comment regarding the ability of a business or person to perform the work for which Indian preference certification was given. Approval and presentation of an Indian preference certification under this Law, confer only the recognition of, or ownership by, a person meeting the definition of an Indian owned business or qualified Indian trades worker within this Law and thus able to partake of Indian preference laws.

57.4-2. Application of Law. Indian preference as set out in this Law shall be applied to all contracts entered into by the Oneida Tribe. All businesses on or near the Oneida Reservation that have a contract with the Oneida Tribe must utilize the Skills Bank to obtain employees or the listing of certified businesses for subcontracting. All other businesses on or near the Oneida Reservation may utilize Indian preference for their employment and contract needs.

57.4-3. Certification. Certification for Indian preference shall be granted by the Indian Preference Department to those Indian-owned businesses, and qualified Indian trade workers who qualify in accordance with the Indian Preference criteria, which includes, but is not limited to, the requirements for the average qualifications of all persons and entities within a given employment or business field, taking into account the skill, abilities and experience required within a given classification. A one time waiver of these requirements may be granted by the Indian Preference Department according to the adopted regulations.

57.4-4. Applicants seeking certification as an Indian preference eligible entity, or a trades worker seeking placement in the Skills Bank shall submit a completed application on a form provided by the Indian Preference Department.

57.4-5. Information received from an applicant for certification will be kept at the Indian Preference Department. An applicant's file information may be subject to audit for governmental purposes as used at a hearing as evidence in a disputed matter. With these exceptions, no information received will otherwise release to any person or agent without the written consent of the applicant except where obligated by tribal or federal law.

57.4-6. Certification of a qualified Indian trades worker as determined by the Indian Preference Department will include placing the applicant's name in the Skills Bank for referral by the Indian Preference Department.

57.4-7. The Indian Preference Department shall review the application and findings, interview principles of the entity, request additional information as appropriate, and then make a determination on whether certification should be granted.

57.4-8. Probationary Certification. An Indian-owned business or qualified Indian trades worker shall receive a probationary certification to be made final at the end of one year; or a longer period, not to exceed two years, if so determined by the Indian Preference Department for reasonable and just cause as identified and set out in regulations.

57.4-9. During the probationary period, the Indian Preference Department shall monitor the activities of the Indian-owned businesses or qualified Indian trades workers and shall have the right to request and receive such information and documents as deemed appropriate to ensure the Indian-owned business or qualified Indian trades worker is operating in a manner described in its certification application and as it relates to the Indian preference criteria.

57.4-10. At the end of the probationary period, the Indian Preference Department shall either

- (a) grant full certification;
- (b) continue the probationary period for up to six months; or
- (c) deny certification.

57.4-11. Decertification: Withdrawal or Suspension of Certification or Removal from the Skills Bank. After investigation, if the Indian Preference Department is satisfied that an Indian-owned business or qualified Indian trades worker, has violated or is in non-compliance with Indian preference laws, the Indian Preference Department shall notify a covered entity of removal of certification of a qualified Indian trades worker, withdraw or suspend the certification of the Indian-owned business or remove the qualified Indian trades worker's name from the Skills Bank.

57.4-12. The Indian Preference Department shall prepare a report consisting of an analysis and recommended disposition for the Commission which may include a report regarding noncompliance by a tribal employee or tribal department.

57.4-13. The Indian Preference Department shall notify the certified Indian-owned business or qualified Indian trades worker by registered mail that its certification is being examined specifying the alleged violations along with the grounds therefore. The Indian Preference Department may withhold the name of the complaining party if there is reason to believe such party may be subject to retaliation.

57.4-14. The Indian Preference Department shall seek to achieve an informal settlement of the alleged violations. If the Indian Preference Department is unable to do so, the Indian Preference Department may temporarily withdraw certification for non-compliance with Indian preference laws. The temporary withdrawal of an entity's Indian preference certification by the Indian

Preference Department may be for no longer than thirty days after which the certification shall be reinstated if no further decision has been made by the Commission. A formal notice of noncompliance or withdrawal of certification shall be issued, which shall also advise the Indian-owned business or qualified Indian trades worker of their right to be present at the hearing.

57.4-15. An Indian-owned business or qualified Indian trades worker that has had their certification withdrawn may not reapply for a period of one year.

57.4-16. If a certification has been denied or withdrawn, an Indian-owned business or a qualified Indian trades worker may appeal the decision to the Commission in writing within 30 days of receiving the notice of denial, or withdrawal of certification, stating with specificity why the Indian-owned business or qualified Indian trades worker is in compliance with the Indian preference laws, the procedural errors or errors in law, and how the finding, denial or withdrawal has harmed the appellant. Pursuant to the procedural process in the Oneida Administrative Procedures Act or as identified in regulations promulgated pursuant to this law, the Commission shall make a determination, in writing, regarding compliance or certification. This decision may be appealed to the Oneida Appeals Commission.

57.4-17. The Commission shall notify the Indian-owned business or qualified Indian trades worker of the decision by delivering by certified mail a written copy of the decision.

57.4-18. Employees of the Oneida Tribe that fail to comply with the requirement of this law will be given notice of their noncompliance and a reasonable time to cure. Of the preceding actions result in continued noncompliance with the Indian preference laws, the Indian Preference Department may file a complaint with the Commission for a decision and a penalty to be determined on a case by a case basis by the Commission.

57.5-1. Certification of Indian-owned Business. This Article shall identify criteria for the identification of Indian-owned businesses. The Indian Preference Department may set forth additional criteria within regulations to more clearly develop and define the criteria set forth herein.

57.5-. An applicant for Indian-owned business certification must provide proof of financial responsibility such as an adequate line of credit, contributions of sufficient working capital, bonding, or insurance.

57.5-3. An applicant for Indian-owned business certification must provide proof to the Indian Preference Department that it is a legitimate Indian-owned and controlled entity. The applicant must demonstrate that an Indian(s) owns and controls 51% or more of the entity. Such ownership shall be embodied in the entity's organizational documents, such as, but not limited to, the documents of incorporation, stock ownership, or partnership agreement. Ownership and control includes:

- (a) financial ownership; the Indian(s) owns 51% or more of the assets and equipment, will receive 51% or more of the entity's assets upon dissolution, and will receive 51% or more of the profits; and
- (b) control; the Indian's 51% or more ownership provides him or her with a majority of voting rights or other decisional authority and that all decisions of the entity are to be made by a majority vote.

57.5-4. An Indian owner must be directly involved in the applicant's management. It is not required that the Indian owner(s) be the chief operating officer of the entity, however, at least one of the Indian owner(s) will have to be involved in the day-to-day operations of the entity on a full time basis and in a senior level position. Certification will not be granted to an entity where one or more of the Indian owners are not involved in the day-to-day operations of the business in the manner described above.

57.5-5. The Indian Preference Department shall set forth criteria in regulations which shall assist in identifying an Indian owner's involvement in the management of the business. Provided that, identification of management involvement does not indicate a determination or opinion regarding the activities of the entity.

57.5-6. Procedures for certification of an Indian-owned business will be pursuant to this Article and any additional criteria set forth by the Indian Preference Department in regulations promulgated to implement this law. This should include, but is not limited to the following:

- (a) An application for certification with the specific criteria information such as a Tribal enrollment card, proof of ownership, financial responsibility or insurance, etc., will be completed and submitted to the Indian Preference Department.
- (b) The applicant must sign and submit the appropriate Indian preference certification forms.
- (c) The Indian Preference Department will review the application and attachments and interview the applicant, and any request additional information.
- (d) The Indian Preference Department will make its determination for certification or probationary certification within thirty days of receiving the application.
- (e) The applicant's name is entered into the Indian Preference Department's data-base and Certified Indian-Owned Business list, which is updated annually.
- (f) The certificate is sent to the applicant.
- (g) The applicant may request a hearing by the Commission if the Indian Preference Department denies or withdraws certification.
- (h) The Commission will conduct a hearing within ten (10) working days of receipt of the appeal.
- (i) The applicant may appeal the Commission's decision to the Oneida Appeals Commission.
- (j) The certification must be renewed yearly. Renewal notices will be sent out by the Indian Preference Department, however, the responsibility for renewal is upon the entity.

57.5-7. Certification of joint ventures will be limited to the extent of the Indian preference criteria relative to verification of one of the owner's status as an Indian, and proof of 51% ownership. A 50-50% certified joint venture will be given preference over non-Indian businesses only when no Indian-owned business is available.

57.5-8. If the Indian Preference Department has determined that the Indian-owned business is within Indian preference compliance, it may grant a new certification; or if the Indian Preference Department determines that the Indian-owned business shall be so notified and be given 60 days to cure the non-compliance. The Indian Preference Department shall examine the application and evidence of subsequent compliance and make its decision to either grant probationary

certification or withdraw the certificate. A copy of the decision of the Indian Preference Department shall be sent to the Indian-owned business.

57.5-9. Each covered entity engaged in business activity shall be responsible for compliance of all its contractors and subcontractors with this Law.

57.5-10. *Change in Status and Annual Reports.* Each Indian-owned business shall report to the Indian Preference Department in writing, of any changes in ownership, or control status within 60 days of the occurrence.

57.5-11. Each Indian-owned business shall, on the anniversary of its receipt of permanent certification, update the information provided in its initial application on an annual report form provided by the Indian Preference Department. Failure to provide information pursuant to these requirements shall constitute grounds for non-renewal of certification.

57.5-12. If the Indian Preference Department receives a complaint that an Indian-owned business is operating in a manner that is harmful to the health, safety, or welfare of the Oneida Tribe or the Oneida community, the Indian Preference Department shall refer the complaint to the appropriate tribal department for investigation.

57.6-1. Brokers, Agents. A broker will be certified as Indian-owned businesses only if they are dealers who own, operate or maintain a store, warehouse or other establishment in which the commodities being supplied are bought, kept in stock and sold to the public in the usual course of business; provided that this requirement shall not apply where the applicant demonstrates that it is not customary and usual in the area of the trade in question for a broker not to maintain an establishment and to keep commodities in stock.

57.6-2. To qualify as an Indian-owned business, the broker must provide conclusive evidence that the broker is an independent contractor and not an agent of a non-Indian owned business. He must provide proof that he owes no fiduciary responsibility or has no fixed or permanent relationship to any one company. He must hold himself out for employment to the public generally and that the employment is that of being a special agent for a single client.

57.6-3. Agents who are an employees of a non-Indian owned business or who merely represents a company, such as an insurance agent or real estate agent for a non-Indian-owned business, will not be given certification as an Indian-owned business.

57.7-1. Skills Bank. Certification for qualified Indian trades workers shall be granted by the Indian Preference Department pursuant to the requirements of the Department's criteria set out in Article IV of this law, Section III(A) of Rider I, and in the criteria of the Indian Preference Department. Taking into account the wide range of skills, abilities and experience required within a given classification, a determination for certification as a qualified Indian trades worker will be made by the Indian Preference Department based upon the criterion required by all persons employed in any given trade or occupation, including, but not limited to, the average standard, training, education and/or licensing needs of the employment field applied for.

57.7-2. Qualified Indian trades workers will be placed in the Skills Bank for referrals.

57.7-3. The name of a qualified Indian trades worker may be removed from the Skills Bank by the Indian Preference Department for reasons of non-compliance with this law.

57.7-4. The Indian Preference Department shall notify the qualified Indian trades worker in writing of the removal of his name from the Skills Bank, the specific violation alleged, the requirements for compliance with Indian preference laws for reinstatement in the Skills Bank and the qualified Indian trades worker's right to a hearing by the Commission upon request.

57.7-5. If the qualified Indian trades worker does not respond to the notification within thirty (30) days, the qualified Indian trades worker's name shall be remain removed from the Skills Bank for no less than ninety (90) days.

57.7-6. Within thirty days of receiving the notice of removal, the qualified Indian trades worker may request a hearing by the Commission for reinstatement in the Skills Bank. The hearing will be held pursuant to the rules of the Administrative Procedure Act.

57.7-7. A qualified Indian trades worker whose name has been removed from the Skills Bank may apply for recertification by the Indian Preference Department within one year after removal.

57.7-8. The Skills Bank will maintain a list of qualified Indian trades workers with qualifications and dates of availability.

57.8-1. License Commission. There is hereby created a License Commission which shall consist of six members who shall be appointed by the Oneida Business Committee for terms of three years.

57.8-2. The Commission shall be responsible for:

- (a) Reviewing regulations developed by the Indian Preference Department prior to submission for adoption;
- (b) Presiding over hearings of disputed issues of Indian Preference Law and hold hearings as required by this Law;
- (c) Interpreting this Law and enforcing regulations promulgated by this Law;
- (d) Writing decisions regarding disputes of Indian preference compliance pursuant to the evidence presented at the hearings; and
- (e) Holding regularly scheduled meetings to review the laws and policies relative to this Law.

57.8-3. The Oneida Appeals Commission shall be the hearing body for disputes until such time as the Commission is empowered by the Oneida Business Committee.

57.9 Indian Preference in Contracting.

57.9-1. All entities of the Oneida Tribe, which include but are not limited to programs, enterprises and other subdivisions of the Oneida Tribe awarding contracts or subcontracts for goods or services with the Oneida Tribe where the majority of the work, service or goods are performed or provided on or near the Oneida Reservation, shall give preference in contracting and subcontracting to Indian-owned businesses, awarded in the following priority:

- (a) Members of the Oneida Tribe of Indians of Wisconsin
- (b) Spouses of enrolled members of the Oneida Tribe of Indians of Wisconsin
- (c) Members of other federally-recognized Indian tribes.

57.9-2. Contract References.

(a) All contracts entered into by the Oneida Tribe, a tribal agency, or an Oneida member-owned business or other vendor shall specifically stipulate that compliance with the Indian Preference Law, as amended, is required, and violation thereof may be deemed a substantial breach. All such contracts shall have a copy of the Indian Preference Law attached, and shall contain an Acknowledgment Clause below the execution lines of the contract, which shall be separately executed by the contractor, said clause to read as follows:

"The undersigned has read the copy of the Oneida Indian Preference Law attached hereto, understands its provisions and their bearing on the contractor's rights and responsibilities, and agrees that such provisions shall govern the contractor's performance of the contract."

(b) All construction contracts entered into by an Oneida member-owned business or other vendor, shall have the Rider I for Construction Contracts attached.

57.9-3. Non-compliance with any term of Rider I for Construction Contracts shall constitute a breach of the contract. (See Rider I, "Qualified Indian Trades Workers Policy" section VII., and "Indian Owned Business Requirements Policy" section VII.) After giving notice of a violation to the non-compliant party and a reasonable time for response, the Indian Preference Department may, at its discretion, initiate the investigation process as required under this law in section 14, "Violations of This Law" and may recommend to the Tribal contracting department that it suspend the contract during the pendency of the investigation. Suspension of the contract shall require the concurrence of the Tribal contracting department.

57.9-4. Subsection 4-18 of the Indian Preference Law shall control for any violations of this article by employees of the Tribe.

57.9-5. Employees of the Oneida Tribe of Indians of Wisconsin hired through the Oneida Human Resources Department or as a contracted employee of the Tribe shall follow the Blue Book or other duly enacted policies of the Tribe that guide employment requirements in regard to Indian Preference. However, employees of the Tribe, in the execution of their employment duties are required to follow the procedures of this law in contracting and bidding procedures for the Tribe.

57.10 Labor Unions

57.10-1. Qualified Indian trades workers shall not be required to be affiliated with organized labor for employment under this law within the exterior boundaries of the Oneida Reservation. However, such worker shall not be eligible for the benefits of a union contract, other than wage scales, unless he/she elects to join the union.

57.11 Bidding

57.11-1. Construction and other contracts awarded by and for the Tribe in an amount exceeding \$1,000 shall include Indian preference priority by applying an Indian preference

percentage discount to Indian-owned businesses submitting bids for the project. The awarding authority shall determine contract awards by utilizing the percentage guidelines below, subtracting the corresponding percentage(s) from preferred bids for such contracts.

57.11-2. The Indian Preference percentage to be applied to Indian-owned businesses' preferred bids for non-construction contracts shall be 5% across the board. The Indian Preference percentage guidelines to be applied to Indian-owned businesses preferred bids for a construction contract are as follows:

- (a) 10% of the first \$50,000 segment of a bid.
- (b) plus 9% of the next \$50,000 segment of a bid.
- (c) plus 8% of the next \$100,000 segment of a bid.
- (d) plus 7% of the next \$100,000 segment of a bid.
- (e) plus 6% of the next \$100,000 segment of a bid.
- (f) plus 5% of the next \$100,000 segment of a bid.
- (g) plus 4% of the next \$500,000 segment of a bid
- (h) plus 2% of the next \$1,000,000 segment of a bid
- (i) plus 1% of any further amount over \$2,000,000

57.11-3. Contractors receiving contracts pursuant to Section 10.1 above shall provide the opportunity to bid for subcontracting work to all Indian-preference certified businesses in that field, shall obtain a list of all such certified businesses from the Indian Preference Department, and shall notify each such business, by certified mail, of the opportunity to bid.

57.12 Retaliation

57.12-1. No person, employer or other entity shall punish, terminate, or harass any employee or other person in retaliation for that person's exercise of his or her rights under the this law.

57.12-2. If a complaint has been filed with the Indian Preference Department citing retaliation for exercising or attempting to exercise Indian Preference rights, the Indian Preference Department shall initiate an investigation of the complaint. If a violation of this section is found, the complainant may file a complaint with the Oneida Appeals Commission, along with the Indian Preference Department's information and recommendation.

57.12-3. The Oneida Appeals Commission shall determine the facts in the matter based upon the evidence presented at a hearing, and such remedy, if any, as may be appropriate.

57.13 Layoffs

57.13-1. Under a contract entered into with the Oneida Tribe, no qualified Indian trades worker with at least minimum skills for the job shall be terminated or laid off for workforce reduction purposes so long as a non-Indian in the same craft with similar skills remains employed. This requirement is for the contract period only, and does not include the core work group.

57.13-2. If a complaint has been filed with the Indian Preference Department citing a violation of

Section 13-1, the Indian Preference may initiate an investigation of the complaint. If a violation is found, the Indian Preference Department may begin informal resolution or arbitration as required by Section 14-2 (B)(1) or Section 14-2 (B)(2) of this Law. Thereafter, if a resolution is not reached, the complainant or the Indian Preference Department may file a complaint with the Oneida Appeals Commission pursuant to Section 14-3, and the Oneida Appeals Commission may impose those remedies as in Section 14-4.

57.13-3. If the Oneida Appeals Commission determines that there has been a violation of 13-1 by the contractor, the Indian trades worker shall be reinstated in his/her position at the previous wage.

57.13-4. Lay-offs in this section do not apply to employees of the Tribe hired through the Human Resources Department or otherwise contracted by the Tribe as a Tribal employee; this section is applicable to outside contractors and independent contractors.

57.14. Violations of This Law

57.14-1. Complaints of Violation. Any individual aggrieved by what he/she believes to be a violation of this law, or of any regulation or policy issued pursuant to this law, may file a complaint with the Indian Preference Department. The complaint must be in writing and provide such information as is necessary to enable the Indian Preference Department to carry out an investigation.

57.14-2. Investigations. The Indian Preference Department shall have the authority to conduct an investigation of a written complaint that alleges specific violations of this law, Said investigation shall include, but not be limited to, the following: the qualifications of the contractor; the qualifications of the contractor's employees and subcontractors, if any; the qualifications of the aggrieved individual; the circumstances surrounding the alleged violation; the contract; and such other facts as are pertinent to the complaint. Wherever possible, the written complaint should provide such facts as would aid the Department to carry out its investigation. The information collected shall be kept confidential until the hearing or appeal on the matter, but any report or recommendation prepared by the Department for use at the hearing shall be promptly released to the aggrieved person and alleged violator.

(a) Sequence of Events after an investigation of a complaint by the Indian Preference Department, if the Department reasonably believes that there is sufficient evidence of a genuine and material issue of non-compliance with this law:

- (1) Informal Resolution: The Indian Preference Department shall attempt an informal resolution by contacting the Tribal contracting party and other parties to the contract, and then meeting with the parties in attempt to resolve the conflict informally and satisfactorily to all the parties.

(A) If an informal resolution to the issue of non-compliance with this law is reached, that resolution shall be in writing and signed by

all parties in interest.

(B) The issue shall then remain in abeyance for the term of the contract during which time all parties shall comply with the terms of the informal resolution.

(C) Breach of the terms of the informal resolution by any of the parties may be a cause of action for litigation within the tribal jurisdiction for non-compliance with this law.

(2) Arbitration: If a contract between the Tribe and non-compliant party has an arbitration clause, the issue of resolution will be pursued under the rules and regulations of arbitration and the parties shall be bound by the decisions of the arbiter(s).

57.14-3. Determination of Violation and Filing of a Complaint. The Indian Preference Department may file a complaint with the Oneida Appeals Commission for an original hearing if the Department reasonably believes that there is sufficient evidence of a genuine and material issue of non-compliance with this law or the regulations or policies issued pursuant to this law, and (1) an attempt to resolve the alleged non-compliance has failed through informal resolution, arbitration, or dispute or termination provisions, or (2) a party has refused to participate in an informal resolution process, or to cooperate in good faith.

57.14-4. Injunction. The Indian Preference Department may, after consulting with the tribal contracting party and attempting resolution, request an injunction from the Appeals Commission suspending the terms of the contract during the pendency of the litigation and preventing further payment to the contractors.

(a) The Appeals Commission may order a 10 day injunction during which time a preliminary decision will be made by the Appeals Commission whether or not there is just cause to prove a violation of an Indian Preference Law or Rider I.

(b) If the Appeals Commission determines that there exists a finding of just cause to reasonably believe that a violation of the Indian Preference Law or Rider I has occurred, the Appeals Commission may extend the injunction for the pendency of the litigation and until a final decision has been rendered.

(c) If the Appeals Commission determines that there is no just cause to reasonably believe that a violation of an Indian Preference law or Rider I has been established, the Appeals Commission may lift the injunction, dismiss the case, and/or order a remedy to the prevailing party as the Commission deems fair and just.

57.14-5. If the Oneida Appeals Commission determines that a violation of this law has occurred, the remedies imposed upon the violator may include:

- (a) Denial of Indian preference certification
- (b) Suspension or termination of certification.
- (c) Withdrawal of tribal license and denial of the right to conduct further business with the Oneida Tribe.
- (d) Imposition of a civil forfeiture not to exceed \$5,000 for each violation
- (e) Specific performance to and for the aggrieved party.
- (f) Other action necessary to ensure compliance with this law and to remedy any harm caused by a violation of this law.

57.14.6. Conflict of Laws. Should a conflict or ambiguity arise between this law and/or the interpretation of this law as compared to Rider I or any other previously enacted Indian Preference Laws, policies or procedures, this law will control.

Adopted - BC-07-29-98-B
Amended - BC-3-27-02-A
Amended - BC-3-26-03-A