

**Independent Contractor Policy
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¹Please note that this policy contains certain provisions which were enacted on an emergency basis and which have since expired. Those provisions, which are noted in the policy, are considered established practice and should be followed pending official adoption. (Source: Oneida Law Office Memo, *Business Committee Sign-Off Authority*, October 2, 2002).

Independent Contractor Policy

Article I. Policy and Purpose

1-1. Policy.

(1) It is the policy of the Oneida Nation of Wisconsin to utilize Native American and other minority businesses to complete work that the Nation is unable to complete through use of its own employees. All Programs, Enterprises, and government agencies are encouraged to seek within their own employees those with expertise in any matter before going to Independent Contractors.

(2) It is further the policy of the Oneida Nation that the following order of preference be used in the selection of Independent Contractors:

- (a) Oneida Members
- (b) Spouses of Oneida Tribal Members
- (c) Other Native/American Indians
- (d) Other of Minority Status
- (e) All others.

(3) It is further the policy of the Oneida Nation that Independent Contractors train qualified and available Oneida Members or provide training manuals regarding the work that the Independent Contractors are being hired to complete, as may be deemed appropriate by the Oneida Nation.

1-2. Purpose. The purpose of this Independent Contractor Contract Policy is to regulate the hiring of persons to complete work in order to minimize the costs of Independent Contractors.

(1) All departments, programs, enterprises and other agencies of the Oneida Nation of Wisconsin must use the contracts created under this Policy.

(2) No employee shall be hired as Independent Contractor, this shall include tribal officers, and members of Boards, Committees and Commissions.

Article II. Adoption, Amending, Repeal, Definitions

2-1. This Policy has been adopted by the Oneida Business Committee.

2-2. Amendment to this Policy shall be exclusively by the Oneida Business Committee or the Oneida General Tribal Council.

2-3. All regulations, policies, ordinances, and laws regarding Independent Contractors, Consultants, and all others working for the Oneida Nation of Wisconsin in like manner are hereby repealed and are hereby superseded.

2-4. This policy does not apply to construction contracts.

2-5. All words shall be used in their ordinary usage unless defined herein:

(1) "Independent Contractor" means a person not assigned an employee number by the Oneida Tribe, who receives payments for services or deliverables, and who receives any tax reporting form other than a W-2 at the end of a taxable year.

(2) "Preference" means to grant a contract based on priorities listed in section 1-1(2), which means

- (a) Oneida Member - an enrolled member of the Oneida Tribe of Indians of Wisconsin.

- (b) Spouses of an Oneida Member - a male or female spouse of an enrolled member of the Oneida Tribe of Indians of Wisconsin, whether or not that male or female is a member or eligible for enrollment.
 - (c) Other Native American - a person enrolled in a Tribe recognized by the United States.
 - (d) Other Minority - any minority recognized by general practice, including, but not limited to: African-American, Female, Small Business.
 - (e) All Others - means all other vendors.
- (3) "Construction Contract" means those contracts issued to build or remodel structures and includes sub-contracts entered into for any portion of a construction contract.
 - (4) "Service" means an action performed by the contractor and must be adequately described as to the actions that will be taken and final result of the actions taken.
 - (5) "Deliverable" means an object with specified content and format and must be adequately described as to final content.
 - (6) "Employee" means any person working for the Oneida Nation and who is issued an employee number and who has taxes taken from their weekly paycheck. It includes, but is not limited to, persons working for any program or enterprise of the tribe. For purposes of this policy, persons working under an employment contract as a limited term employee are employees of the tribe, not consultants.
 - (7) "Time Line" means an reasonable description of the services or deliverables to be provided by an Independent Contractor and on or about the date it will be completed or on or about the time it will take to be completed.
 - (8) "Conflict of Interest Form" means the form adopted by the Oneida Business Committee to allow the Oneida Nation to locate any possible conflicts the Independent Contractor might have with the Nation's programs, enterprises, employees or the Nation.

Article III. Form of Contract

- 3-1. All contracts with the Oneida Nation of Wisconsin should be in the format set out as Form IC-1.
- 3-2. The sections of the contract are as follows, excepting those that specifically state otherwise:
 - (1) Opening clause. This clause describes the parties and how they will be addressed in the contract.
 - (2) Section A. This section contains the description of the services and deliverables to be rendered by the Independent Contractor. The description of the services and deliverables shall contain a time line and a description of the specific services or deliverables either listed in the contract provided or as an attachment.
 - (3) Section B. This section makes all results of this contract the property of the Tribe.
 - (4) Section C. This section describes the length of the contract. An Independent Contractor may not be required to be at a designated office or keep designated office hours during the length of the contract.
 - (5) Section D. This section of the contract states when the effective dates of the contract begins and ends. It means that the contract is binding upon the parties, even though it may not begin until some time after signing.

- (6) Section E. This section requires that a person be named who shall accept deliverables and be apprized of completion of services. This person is responsible for, but not limited to:
 - (a) verifying that the contract has been completed,
 - (b) requesting extensions of the contract,
 - (c) requesting modifications to the payment amount or schedule, and
 - (d) terminating the contract.
- (7) Section F. This section shall list how payments shall be made under this contract. If multiple deliverables are made, then each payment should be made with the receipt of deliverables. Payment may not be made in advance. Each request for payment should have an invoice and a letter stating completion of services or deliverables is satisfactory. Notice or need for an invoice for any payment must be in the contract, further, no alcohol or other beverages, food, personal items, travel, or room rental may be paid under this contract.
- (8) Section G. This section places the tax reporting burden on the Independent Contractor.
- (9) Section H. This section places liability for injuries occurring as a result of this contract on the Independent Contractor.
- (10) Section I. This section allows the Independent Contractor to sub-contract the services and deliverables, but does not allow this contract to be assigned in any way.
- (11) Section J. This section states when and how notice of termination of the contract may be made.
- (12) Section K. The Conflict of Interest form must be signed and attached.
- (13) Ending clause. This clause binds the Nation and the Independent Contractor.

3-3. Attachments. All parts of the contract must be filled in. If the space in the form contract is not sufficient, then that section should be labeled as "Attachment" and the section that it is the attachment for.

- (1) Some sections will always have an attachment. An example is Section A. This section should contain a time flow chart on how and when the services or deliverables will be completed.

3-4. All persons making contracts on behalf of the Oneida Nation of Wisconsin shall to be subject to background checks if the nature of the contract warrants. This background check, if found necessary, shall be completed before the contract is executed. Background checks may include, but are not limited to, verifying the security of the business, prior business dealings, or minority status verification.

- (1) The Administrative Council may compile a list of types of contracts requiring background checks and the nature of that investigation. Provided, that the list is approved by the Oneida Business Committee and published not less than fifteen (15) days prior to when it is to be implemented or enforced.

Article IV. Accounting Procedures

4-1. Accounting procedures regarding Independent Contractors shall be as described herein.

4-2. All Independent Contractor contracts submitted for Purchase Order Numbers from the Oneida Purchasing Department shall have the following documents:

- (1) Copy of the contract, and all attachments, signed by both parties. If requiring Oneida Business Committee approval, a notation in the upper right hand corner containing the date it was approved. If it does not require Oneida Business Committee approval, a notation in the upper right hand corner to that effect.
 - (2) Appropriations Request from Programs, or Purchase Requisition from Enterprises with description of payment schedule dates and amounts.
 - (3) Copy of Attorney review of contract.
- 4-3. Any request for extension or modification of any Independent Contractor contract shall contain the following documents:
- (1) Letter explaining the extension or modification and signed by both parties.
 - (2) Approval by party listed in Article VII, if approval was required on original contract.
- 4-4. All requests for payment of any Independent Contractor contract shall have the following documents:
- (1) Apron requesting full or partial payment.
 - (2) Letter stating that the Independent Contractor has satisfactorily completed the partial deliverables or services, or the full deliverables or services.
- 4-5. The Purchasing Supervisor for the Oneida Tribe of Indians of Wisconsin may reject any contract that fails to meet the requirements set out in section 4-2(1-4) or section 4-3(1-2).
- 4-6. The Accounts Payable Department for the Oneida Tribe of Indians of Wisconsin may reject any request for payment for failure to meet the requirements of section 4-4(1-2).

Article V. Oneida Tribal Secretary

- 5-1. The Oneida Tribal Secretary shall receive the documents as listed within this Article V.
- 5-2. The following documents shall be delivered to the Oneida Tribal Secretary's office prior to close of the business day on Friday:
- (1) Signed originals of contract and all attachments, including, but not limited to, any attachments requiring more space for description, and any disclosure statements.
 - (2) Original of Attorney review of contract.
 - (3) Statement containing the following information:
 - (a) Deviation from Oneida Preference or use of non-employee.
 - (b) Need for Independent Contractor.
 - (c) Bids or proposals received, must be at least three and documentation.
 - (d) Why there will be no training of an Oneida Member to do this work in the future, why no training manuals are to be provided so future work may be provided by Oneida Members, or what type of training or manuals will be provided.
 - (4) Summary of contract person(s) and services and or deliverables, cost, and how long the contract is to last and how training will be provided so that this can be done by Oneida Members or employees in the future. This summary is the only document placed in the Oneida Business Committee Packets according to the Paper Reduction Policy.

Article VI. Attorney Review

- 6-1. Independent Contractor contracts shall be review by the designated Tribal Attorney.
- 6-2. The Attorney Review shall consist of the following:

- (1) verification that sovereign immunity has not been waived, or
- (2) verification that Independent Contractor status has not been violated, provided however, that the contract has not been accompanied by a memorandum from the person listed in Section E of the form contract that an Independent Contractor relationship is not requested. Provided further, that if such a memorandum is attached, that the contract provides for the proper tax withholding, and
- (3) verification that the content of the contract meets the legal needs for the protection of tribal assets, description of services, payment, and other similar items.

6-3. No Attorney Review is valid until all recommendations have been complied with, or notation that after a meeting with the reviewing Attorney that the recommendations do not need to be followed.

Article VII. Approval Requirements

7-1. All contracts shall be approved in the manner set out herein prior to execution or forwarding to the Tribal Attorney's Office for Attorney Review.

7-2. All budgeted and unbudgeted contracts shall be processed in the following manner. All programs and enterprises that regularly contract and consult shall be considered budgeted contracts provided that Division Directors shall have the authority to designate in writing which contracts are budgeted or unbudgeted. Provided further, Division Directors are authorized to provide for additional, but not less than herein, approval requirements.

- (1) Approval shall be as follows for unbudgeted contracts with three bids:

More than	Less than	Approval of
	\$1000	Program Director
\$1000	\$5000	Area Director, Enterprise Managers
\$5000	\$10,000	Gaming Director, Trust Committee Chair, Tribal School Chair, Division Director
\$10,000	\$25,000	Gaming Commission, Chief Financial Officer, or General Manager ²
\$25,000	\$50,000	Treasurer
\$50,000		Finance and Appropriations Committee

- (2) Approval shall be as follows for budgeted contracts with three bids:

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² Must give notice to the Tribal Treasurer's Office prior to granting approval. In subsection 2, must give notice to the Tribal Treasurer's Office in the \$50,000 to \$200,000 range. And, in subsection 3, must give notice to the Tribal Treasurer's office in the \$10,000 to \$25,000 range.

More than	Less than	Approval of
	\$3000	Program Director
\$3000	\$10,000	Area Director or Enterprise Manager
\$10,000	\$50,000	Gaming Director, Trust Committee Chair, Tribal School Chair, Division Director
\$50,000	\$200,000	Gaming Commission, Chief Financial Officer, or General Manager
\$200,000		Finance and Appropriations Committee

(3) Approval shall be as follows for budgeted or unbudgeted sole source contracts:

More than	Less than	Approval of
	\$1000	Program Director
\$1000	\$5000	Area Director or Enterprise Manager
\$5000	\$10,000	Gaming Director, Trust Committee Chair, Tribal School Chair, Division Director
\$10,000	\$25,000	Gaming Commission, Chief Financial Officer, or General Manager
\$25,000	\$50,000	Tribal Treasurer
\$50,000		Finance and Appropriations

7-3. The reporting process regarding contracts shall be as follows:

(1) Division Directors shall report to the Administrative Council on all contracts on a monthly basis, date to be established by the Administrative Council. All contracts opened, completed or in progress during the reporting period are to be reported as to the amount, reason for contracting, status and any modifications that occurred.

(2) Administrative Council shall report to the Oneida Business Committee on a quarterly basis on all contracts entered into. This summary report shall itemize contracts over \$10,000.00 regarding content, cost and status, and list all other contracts.

(Sections 7-1 through 7-3 added through BC-2-15-95-A)

Form IC-1

INDEPENDENT CONTRACTOR CONTRACT

An agreement by and between the Oneida Nation of Wisconsin, whose mailing address is P.O. Box 365, Oneida, Wisconsin, 54155, hereinafter referred to as the "Nation", and

Name: _____

Address: _____

Federal ID Number: _____ (Or Social Security Number for self employed)

Vendor Number: _____

Vendor Permit Number: _____

hereinafter referred to as Independent Contractor pursuant to the following conditions and covenants:

A. There shall be the following services and deliverables:

Attachment A Listed herein.

B. Results from services rendered under this contract, and deliverables, are the property of the Oneida Tribe of Indians of Wisconsin and must be tendered for payment, further no information resulting from this agreement or made accessible to the contractor may be communicated to any third party for any purpose without the express written permission of the Nation.

C. The length of this contract is from the __ day of __, 19__ to the __ day of __, 19__.

D. The terms of this contract shall be effective with the signing of both parties and shall conclude with satisfactory completion of the proposed services and/or deliverables. No work may be commenced under this contract until all parties have signed and appropriate approvals have been obtained.

E. Satisfactory completion of this contract shall be subject to the approval of ____.

F. The Oneida Nation agrees to pay the following for the acceptable completed work of the Independent Contractor upon submission of an invoice along with any deliverables as listed below:

Attachment B Listed herein.

G. The Independent Contractor shall be responsible for all withholding and any other employment taxes due to any taxing authority.

H. The Independent Contractor shall be responsible for any injuries incurred during this agreement.

I. This agreement may not be assigned by either party for any reasons. Provided however, that this does not bar the Independent Contractor from sub-contracting any or all work under this contract, further provided, that Section B, above, shall be applicable to any sub-contractor.

J. This agreement may be terminated upon reasonable advance written notice by either party. In the event of termination, no payment of services shall be rendered, provided however, payment for deliverables shall be made upon approval of person listed in (D).

K. Consultant has signed the Conflict of Interest form and certifies that there are no known conflicts that would interfere with this contract. A conflict arising after this contract is signed shall be made known to the person listed in (D). A conflict arising after the signing of this contract will allow the Oneida Business Committee to terminate this contract immediately, or as may be deemed reasonably appropriate by the Nation. By signing below I agree to all terms of this contract, subject to the approval of the Oneida Business Committee.

(Independent Contractor signature and date)

(Supervisor, employer, person signing the contract on behalf of the Oneida Nation of Wisconsin and date)

End.

Adopted - BC-7-5-95-A, Emergency Action Article VII

Adopted - BC-2-15-95-A, Emergency Action Article VII

Adopted - 7-27-94, motion