



THREE AFFILIATED TRIBES ● FORT BERTHOLD RESERVATION

Mandan, Hidatsa and Arikara Tribes

TRIBAL EMPLOYMENT RIGHTS OFFICE

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MHA TERO Guidance

Self-Performing Preference List

In response to the challenging economic downturn on the Fort Berthold Indian Reservation brought on by the effects of the COVID-19 pandemic, MHA TERO Director Charles Foote has issued this guidance. This guidance is issued as part of MHA TERO's continuing support for Preference Level 1 Companies.

Pursuant to Section 503 of the TERO Ordinance of the Three Affiliated Tribes, the TERO Director is responsible in carrying out the purpose of the Ordinance. MHA TERO Regulation, Section 3.2 reads in part: "Qualified Indian Contractors" that are 100% owned and controlled by enrolled members of the Three Affiliated Tribes shall have first preference on all work on MHA lands."

Therefore, the Director interprets Regulation Section 3.2 and its use of the word *control* to include an analysis of whether the Qualified Indian Contractor self-performs the contracted work OR if that work is subcontracted to a non-Native entity. **A Qualified Indian Contractor which self-performs the work shall be preferred before a Qualified Indian Contractor which does not self-perform the work.**

Upon evaluating whether a Qualified Indian Contractor is self-performing, and the degree to which the Qualified Indian Contractor is self-performing, TERO will review the following factors:

1. The degree of control exercised by the Qualified Indian Contractor in the work performed to complete the contract;
2. Whether the Qualified Indian Contractor's employees are performing the contracted work or whether the work is subcontracted to another entity;
3. Whether the Qualified Indian Contractor owns the equipment necessary to perform the service;

On January 21, 2020, MHA TERO Director Charles Foote issued the IMPLEMENTATION OF THE TERO INDIAN PREFERENCE PROCESS along with the MHA TERO SERVICE LIST #1. The questionnaires for these specific services have been submitted and are currently on file by the MHA TERO Indian Contracting Department. These documents and notices have been and are still currently posted on the MHA TERO website.

After MHA TERO considers these factors by utilizing the MHA TERO Service Justification Questionnaires, a list of Self-Performing Preference Level 1 Companies with the specific service will be identified. These identified self-performing companies shall be given the preference in that Specific Service before the companies who utilize a subcontractor for the work. **This List will remain in effect for these 25 services until the process of issuing Indian Contractors a category (A, B, C, D, or E) is completed. Please monitor the MHA TERO website for updates on this process.**

If you have any questions, please contact MHA TERO Indian Contractor Director, Kelcey Packineau, at (701) 421-1803 or (509) 945-4234 or by email at 007tero@mhanation.com.

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