

Chapter 48. Contracting

6.4801 SHORT TITLE

This Statute shall be entitled “Contracting Statute”. This statute rescinds and replaces any and all previous Statutes, Resolution, Regulations and/or policies related to this subject matter. This Statute repeals and replaces Waganakising Odawak Statute (WOS) 2018-019, Waganakising Odawak Statute (WOS) 2013-007 and WOS 2002-04, Section III. C. Contractors and Subcontractors.

(Source: WOS 2019-004, May 1, 2019, Section I)

6.4802 PURPOSE

To authorize the Tribe and its sub-entities to negotiate, execute and enforce contracts within the parameters stated in this Statute and provide for legal and financial review authority.

(Source: WOS 2019-004, May 1, 2019, Section II)

6.4803 DEFINITIONS

- A.** “Competitive Contracts” means contracts for which one or more vendors compete by placing bids.
- B.** “Enjinaaknegeng” means the LTBB Legal Department.
- C.** “Financial Review Authority” means a designated person within each Tribal branch or its sub-entity that has the authority to review finances.
- D.** “Frivolous law suit” means a suit without any legal merit.
- E.** “Non-Competitive Contracts” means contracts that do not require public notice or bids.
- F.** “Official” means any person holding an elective or appointed office in any branch, entity, enterprise, authority, division, department, office, commission, council, board, bureau, committee, legislative body, agency and any establishment within the Executive, Legislative or

Judiciary branch of the Tribe including Members of the Election Board and Prosecutors.

G. “Preponderance of the Evidence” means just enough evidence to make it more likely than not that the fact the claimant seeks to prove is true.

H. “Tribally-owned Corporations” means a Corporation or a subsidiary of a corporation that is at least fifty-percent (50%) owned or controlled by the Tribe.

(Source: WOS 2019-004, May 1, 2019, Section III)

6.4804 LEGAL and FINANCIAL REVIEW

A. To ensure that all contracts follow Tribal law and are in the best interest of the Tribe, all contracts entered into on behalf of Little Traverse Bay Bands of Odawa Indians (LTBB) or Odawa Casino Resort (OCR) or other LTBB Tribal entities must be reviewed by Enjinaaknegeng and the Financial Review Authority before they are executed and/or take effect.

1. Enjinaaknegeng shall review contracts for legal form, including, but not limited to, appropriate designation of parties, legal consideration (i.e., mutual obligations), jurisdiction, waiver of sovereign immunity, term and liability.

2. Each branch of the government or its sub-entity shall notify the Department of Commerce of the person identified as a “Financial Review Authority” and shall update the information as needed. A financial review will be conducted to ensure that all contracts are allowable under the program, budget and/or adequate finances are available to cover the contract.

(Source: WOS 2019-004, May 1, 2019, Section IV)

6.4805 WAIVER OF SOVERIEGN IMMUNITY

A. Any contract containing a provision for a waiver of sovereign immunity shall be approved by Tribal Council before they are executed and/or take effect unless otherwise authorized by Statute or Resolution.

B. The Tribal Council clearly and expressly waives its sovereign immunity to the Limited Remedies as set forth in this Statute for any official that violates this Statute.

(Source: WOS 2019-004, May 1, 2019, Section V)

6.4806 CENTRAL REPOSITORY FOR CONTRACTS

In order to maintain a central repository for contracts, a copy of all final, executed contracts entered into on behalf of LTBB or OCR or other LTBB Tribal entities shall be sent to Enjinaaknegeng for placement in a contract repository. The repository may be kept electronically as long as backups are maintained.

(Source: WOS 2019-004, May 1, 2019, Section VI)

6.4807 ETHICAL RESPONSIBILITIES OF LTBB CONTRACTING PARTIES

A. Standards of Conduct for Officials as Contracting Parties. All LTBB officials shall abide by Little Traverse Bay Bands of Odawa Indians *Constitutionally Mandated Rules of Conduct for Officials of Tribal Government* when involved in contracting activities.

B. Standards of Conduct for Employees as Contracting Parties. Employees shall disclose any potential conflict of interest when involved in contracting activities and shall abide all terms of the Employee handbook related to ethical considerations involving contracting activities.

(Source: WOS 2019-004, May 1, 2019, Section VII)

6.4808 TRIBAL CITIZENS PREFERENCE

A. Non-Competitive Contracts and Competitive Contracts. Contracting Parties must give a preference to LTBB Tribal Citizens and LTBB Tribal Citizen owned businesses in issuing noncompetitive and competitive contracts. Tribal Citizen owned businesses means a business owned by at least 51% by the LTBB Tribal Citizen.

B. LTBB Tribal Citizen Contractors/Vendors shall be given preference with respect to request for proposals and quotes only. A list of qualified LTBB Tribal Citizen Contractors/Vendors shall

be maintained and updated semi-annually by the LTBB Executive or designee and shall be presented to Tribal Council for approval. This list may be subject to review by Enjinaaknegeng at any time.

C. LTBB Tribal Citizen Contractors/Vendors:

- 1.** Shall hold similar qualifications as all other Contractors/Vendors in their product, service or specialty area.
- 2.** Shall maintain quality of product, service or specialty area which is consistent with standards for their particular industry. If quality standards are not maintained, the contract may be revoked.
- 3.** Shall maintain timeliness of delivery and/or service which is consistent with standards for their particular industry. If timeliness standards are not maintained, the contract may be revoked.
- 4.** Shall be required to hold required licensure, provide performance bonds, etc. as required and/or stipulated in the request for proposal.

D. The Contracting Party shall not be bound by pricing with respect to Tribal Preference. For example, the LTBB Contractor/Vendor shall not receive a premium over others bidders due to Tribal Citizenry. In addition, a Tribal Citizen Contractor/Vendor that provides the lowest quote, yet does not meet the qualifications as noted above, may not be awarded the contract.

(Source: WOS 2019-004, May 1, 2019, Section VIII)

6.4809 TRIBALLY-OWNED CORPORATIONS

A. Non-Competitive Contracts and Competitive Contracts. Contracting Parties must give a preference to Tribally-owned Corporations in issuing noncompetitive and competitive contracts. "Tribally-owned Corporations" means a Corporation or a subsidiary of a corporation that is at least fifty-percent (50%) owned or controlled by the Tribe.

B. Tribally-owned Corporations shall be given preference with respect to request for proposals and quotes only. A list of qualified Tribally-owned Corporations shall be maintained

and updated semi-annually by the LTBB Executive or designee and shall be presented to Tribal Council for approval. This list may be subject to review by Enjinaaknegeng at any time.

C. Tribally-owned Corporations:

1. Shall hold similar qualifications as all other Contractors/Vendors in their product, service or specialty area.
2. Shall maintain quality of product, service or specialty area which is consistent with standards for their particular industry. If quality standards are not maintained, the contract may be revoked.
3. Shall maintain timeliness of delivery and/or service which is consistent with standards for their particular industry. If timeliness standards are not maintained, the contract may be revoked.
4. Shall be required to hold required licensure, provide performance bonds, etc. as required and/or stipulated in the request for proposal.

D. The Contracting Party shall not be bound by pricing with respect to Tribally-owned Corporations. For example, the Tribally-owned Corporations shall not receive a premium over others bidders due to Tribal ownership. In addition, a Tribally-owned Corporations that provides the lowest quote, yet does not meet the qualifications as noted above, may not be awarded the contract.

(Source: WOS 2019-004, May 1, 2019, Section IX)

E. General Funds and Sole Sourcing. The Tribe and its sub-entities shall offer first right of refusal to Tribally-Owned Corporation, if the following criteria is met:

1. Only General Funds are being used.
2. The Tribally Owned Corporation offers same or similar services at competitive or market value.
3. If the Tribally Owned Corporation does not accept the offer within five (5)

business days, all other provisions of this Statute apply.

(Source: WOS 2019-010, August 30, 2019, Section I)

6.4810 AUTHORIZING SIGNATURES

A. As a general rule, only the persons with direct authority may sign a contract that binds the Tribe. An employee who enters into a contract that binds the Tribe or its sub-entities without authority may be subject to disciplinary actions, including termination. An Official who enters into a contract that binds the Tribe or its sub-entities without authority may be held personally liable.

B. The Accounting Office will not issue and/or sign a check for goods and services obtained in violation of this policy without a written justification substantiating why the contract was not presented in a timely fashion or was signed by an unauthorized person.

(Source: WOS 2019-004, May 1, 2019, Section X)

6.4811 LIMITED REMEDIES BEFORE THE TRIBAL COURT FOR VIOLATIONS

A. An Official who enters into a contract that binds the Tribe or its sub-entities without authority may be personally sued for the incurred liability. Any claim of violation against an Official must be filed with the Tribal Court either during the duration of the contract or within ninety (90) days after the end of the term of the contract.

B. In any action filed under this Statute, the Tribal Court may grant the following remedies:

1. *Equitable Remedies.* If the Tribal Court determines that the preponderance of the evidence indicates that a violation occurred, its judgment must specify an appropriate equitable remedy or remedies for that violation.

2. *Damages.*

a. The standard for determining whether a violation of this statute has occurred for the purpose of imposing damages is “preponderance of the

evidence.”

- b.** If the Tribal Court finds a violation of this statute occurred with negligence, gross negligence, reckless indifference or malice, the Tribal Court may additionally award compensatory, punitive damages and/or fines.
- 3.** The Tribal Court may award reasonable attorney fees and costs at its discretion to the prevailing.
- 4.** If the Tribal Court finds that the non-prevailing party’s claims were frivolous, the Court should fine the party and may order any other remedies as the Tribal Court deems appropriate.

(Source: WOS 2019-004, May 1, 2019, Section XI)

6.4812 SAVINGS CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this statute is found by a court of competent jurisdiction to violate the Constitution of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or section shall be considered to stand alone and to be deleted, the entirety of the balance of the statute remain in full and binding force and effect.

(Source: WOS 2019-004, May 1, 2019, Section XII)

6.4813 EFFECTIVE DATE

Effective upon signature of the Executive or 30 days from Tribal Council approval whichever comes first, or, if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(Source: WOS 2019-004, May 1, 2019, Section XIII)

6.4814 OTHER RELATED STATUTES

See Waganakising Odawak Statute (WOS) 2014-011 Contracts Statute, or as may be amended.

(Source: WOS 2019-004, May 1, 2019, Section XIV)