



GWYB DBP  
**CHEROKEE NATION™**  
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Deputy Principal Chief

## Executive Order No. 12-10-CS

- AUTHORITY:** The Constitution and laws of the Cherokee Nation.
- POLICY:** The executive power to conduct the business of the Nation is authorized by law in accordance with the terms of the Constitution. The Principal Chief has the fundamental responsibility to cause the laws of the Nation to be faithfully executed and to conduct in person and in such manner as shall be prescribed by law, all communications and business of the Cherokee Nation. (Cherokee Constitution, Article VII Section 9).
- PURPOSE:** The purpose of this order is to set out policy related to the execution of Legislative Act 38-05, the Tribal Employment Rights Act.

One of the most meaningful things that a government can advocate for its citizens and their families is self-reliance. Employment and financial success of Cherokees and Cherokee-owned businesses promotes the Nation's strategy for economic self-reliance. The purpose of this implementing Order is to develop self-reliance by encouraging Cherokee citizens and other Indians to the greatest extent feasible to develop the skills, talents and abilities to be competitive in the employment and business environment. The Cherokee Nation may use its contracting and procurement requirements to assist and encourage Cherokees and Cherokee-owned businesses to develop to a level that will allow them to compete for employment and contracts in the greater economy without dependence upon Cherokee Nation assistance. LA 38-05 is also intended to prevent discrimination against Indians in the employment practices of employers who are doing business with the Cherokee Nation on Cherokee Nation Indian Country or in such jurisdiction as is provided in a cooperative agreement between the Cherokee Nation and another government.

- DEFINITIONS:** For the purposes of this Order,

"Locally-owned business" means a business that has its headquarters and majority of its employees residing within the jurisdictional boundaries of the Cherokee Nation, as described in Article II of the Cherokee Constitution, or counties contiguous to those boundaries.

"Major Cherokee Employer" means a business either Indian-owned or not, that employs at least 50 Cherokee citizens as either part of the core crew or project crew, or has at least 75% of its workforce comprised of Cherokee citizens, as certified by the TERO. A business may be certified as Indian-owned, Major Cherokee Employer, or both.

“One Stop Business Center” means a centralized location where Cherokee-owned businesses can obtain information regarding procurement, training, and financing.

**5. ORDER:** It is hereby ordered:

- A. That Indian preference as described in the Act shall apply to the Nation and its business entities.
- B. To implement Sections 5.V. and 8.A. of LA 38-05, the Tribal Employment Rights Office (TERO) shall be authorized to administer the following:
  - i. Any employer, as defined in the Act, shall be required to pay a fee of not less than twenty-five dollars (\$25.00) per employee, per award for non-Indian employees hired in for the project that are in addition to the core crew.
  - ii. Each such employer shall be required to submit a core crew list to the TERO.
  - iii. Once the core crew list is submitted the TERO will confirm the essential employees the vendor has listed.
  - iv. If the TERO has identified Indians that can be used for the non-core employees, it shall ask the employer to place the qualified Indians.
  - v. The employer has the right not to place qualified Indians referred by the TERO for non-core position. If the employer chooses not to place the Indians referred by the TERO within three (3) days, the vendor shall pay \$25.00 per day for each non-Indian the vendor chooses to keep on the project, so long as the qualified Indian is available to work.
  - vi. The TERO is also authorized to administer other fees and penalties as provided in LA 38-05.
- C. To implement Section 8.C. of LA 38-05, the Nation and its entities shall observe the following preferences:
  - i. give preference to Indians in hiring, promotion and training of employees as follows:
    - 1. primary preference to Cherokee citizens; and
    - 2. second preference to other Indians.

- ii. give the following preferences in contracting or sub-contracting:
    - 1. primary preference to certified “Indian-owned businesses” where the majority owners are Cherokee citizens;
    - 2. second preference to other certified “Indian-owned businesses”; and,
    - 3. third preference to “Major Cherokee employer” businesses. In no instance shall preference to “Major Cherokee employer” businesses degradate or supersede preference to Indian-owned businesses.
    - 4. A business may be certified as both an “Indian-owned” and “Major Cherokee employer” business. In this case, such dually-certified business would receive preference over other Indian-owned businesses within categories 1. and 2. above.
  - iii. Following the preferences in item ii. above, the procurement offices of the Nation may develop policies to administer preference to “Locally-Owned businesses” as defined herein. In no instance shall this preference degradate or supersede Indian preference.
  - iv. Any contract awarded to a general contractor may be sub-contracted, provided that the Indian preference requirements herein apply, regardless of the level of subcontracting activity. Failure to apply Indian preference to subcontracts shall be deemed by TERO a violation of LA 38-05.
- D. In accordance with Section 8.C.3. of LA 38-05, the procurement offices of the Nation and its entities shall maintain a list of contractors which have previously provided poor performance or engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws. Procurement offices shall develop policies and procedures to define poor performance of a contractor/employer. Documentation of poor performance or non-compliance must be available and provided to the contractor upon request. The procurement offices shall forward the names of any certified Indian-owned businesses determined to have poor performance to both the TERO and to the One Stop Business Center for technical assistance and improvement.
- E. In accordance with Section 24 of LA 38-05, the TERO shall address complaints of violations of the Act or TERO rules. Should there be any unresolved violations by departments of the Nation or its business entities, the TERO shall issue reports of non-compliance to the Principal Chief, Tribal Council and applicable Boards of Directors.

- F. The Cherokee Nation and its entities shall each establish annual recruitment goals for increasing Cherokee citizen representation in their respective employee population. Progress toward goal attainment shall be reported at least quarterly to the Executive and Legislative branches, as well as the affected Boards of Directors.
- G. The Nation and its entities shall develop and provide to the public, at least a quarterly report of spending that is eligible for Indian preference and the amount of discretionary spend with certified Indian-owned businesses.

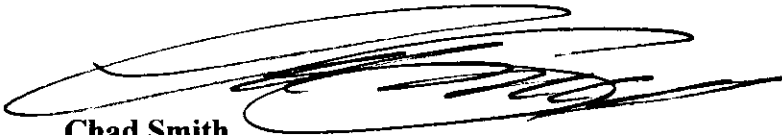
**6. RECISSION OF PRIOR ORDERS AND DIRECTIVES:**

This order supersedes and rescinds any prior order or administrative directive to the contrary.

**7. EFFECTIVE DATE:**

This order shall be implemented by immediate policy changes in each affected department.

**IT IS SO ORDERED ON FEBRUARY 8, 2010.**



**Chad Smith  
Principal Chief**