



Council of the Cherokee Nation

Meeting Minutes Rules Committee

Monday, May 11, 2009

1:00 PM

Legislative Conference Room

SPECIAL SESSION

CALL TO ORDER

Chair Anglen called the meeting to order at 1:12 p.m. He stated we do not have a quorum at this time but will go ahead and proceed with discussion.

INVOCATION

Councilor Snell gave the invocation.

ROLL CALL

Present 7 - Bill John Baker; Buel Anglen; Tina Glory Jordan; Janelle Fullbright; Harley Buzzard; Curtis Snell and Chuck Hoskin, Jr.

Absent 5 - Meredith Frailey; Cara Cowan Watts; Jack D. Baker; Jodie Fishinghawk and Chris Soap

Late Arrival 5 - S. Joe Crittenden; David Thornton Sr. ; Don Garvin; Bradley Cobb and Julia Coates

1. AN ACT REPEALING AND SUPERSEDING CHEROKEE NATION LAW REGARDING LABOR AND THE EMPLOYMENT RIGHTS ORDINANCE AND DECLARING AN EMERGENCY

Sponsors: Councilor Cara Cowan Watts

Chair Anglen announced a revision has been made to the TERO legislation in the packet. The revision is the last sentence of Section 2 where it states this Act repeals and supersedes Legislative Act 38-05. Mr. Todd Hembree stated four proposed amendments have been provided by Councilor Fishinghawk. He recommended first hearing from CNE regarding there status and comments with TERO. Ms. Melanie Knight announced Mr. David Stewart is here to provide an update as to the Chief's commitments on sub contracting processes as well as progress made and what proposal are being made to become consistent across the Cherokee Nation and business entities. Mr. Stewart stated it seems a lot of issues have arisen as a result of the increase in business and size. He spoke of some high level issues that need to be considered during this discussion. The provisions in law that would change their ability to get a number one low bid is important for the tribe. He proposed maintaining a low bid concept and the integrity of the bid process and at the same time try to be fair to our Cherokee vendors. Any time a change is tried through legislation with the free enterprise system and give preference to a particular business a couple of things happen one of which is limiting competition. The concept of limiting the number of people that would even entertain to bid further reduces the competitiveness and over time increases price. He stated what they want

to do is limit the price and give the tribe over time competitive price and value for what they do. He stated they can't be in the business of providing an imbalance or an unfair competitive advantage to Cherokee vendors because then you reduce competition and drive prices up for the tribe. They have attempted to be fair to Cherokee vendors in a number of ways and can while keeping competition and fairness. He spoke of the need for someone present at the business level to address issues with law, monitoring, and imbalance. Councilor Hoskin Jr. stated we aren't completely loosing by having higher cost contracts when we are also gaining entrepreneurs within the Nation that are citizens. Mr. Stewart stated they do not want to jeopardize the integrity of the system but at the same time recognize that we want to have some preference. He commented the State and Fed have minority goals. Councilor Hoskin agreed with the goal system of the State and Fed but said there are consequences for not meeting those goals. He inquired if there are sufficient consequences for CNE if the goals aren't met. What is the incentive for CNE to comply if it isn't mandated? Mr. Stewart stated there could be goals set at the management level with compensation of performance.

Councilor Glory-Jordan requested the Chair to acknowledge there is now a quorum present. Chair Anglen announced at 1:23 p.m. a quorum is present.

Councilor Glory-Jordan made a motion to for Councilor Fishinghawk's list of amendments to the TERO legislation be considered along with the Act. Councilor Hoskin Jr. seconded the motion. Motion carried.

Councilor Hoskin Jr. inquired if there are incentives in place now. Mr. Stewart stated they do not exist now but the Chief has placed a high priority to the comp committees and the board of directors to do this. They are in the process of developing proposals. Councilor Hoskin Jr. stated it seems everyone is working toward the same goal to fill the void. He stated if some concrete proposals were provided then maybe this committee could hold back for a while. He inquired if there were details that could be shared now. Mr. Stewart stated there were. Some of the things on the list of proposals include turnover, Native American employment, and percentage of work to Cherokee vendors. Councilor Hoskin Jr. inquired if they had a list of issues regarding the proposed legislation. Mr. Stewart stated the handout provided today is an attempt to voice concerns and issues with the proposed legislation. He gave an overview of the handout. Chair Anglen stated it seems the sub contractors are the ones getting the short end. The general contractor is always Flintco and they are Native American. Mr. Stewart stated the process is intended to provide them opportunity. Mr. Slaton agreed there are plenty of TERO businesses that can handle the smaller contracts. He stated with the magnitude of the large projects they have it is difficult to find a TERO vendor that has the capacity either financially or through their organization to handle the size of the projects they have had. They have discussed numerous times how to make it easier to become TERO certified. He stated there are still hard feelings regarding TERO that some companies will not apply. Mr. Slaton voiced concern for the 12% penalty for General Contractors. He stated the penalty will flow through to the Nation. The company will just mark up their bid to cover themselves with regard to the penalty. He stated as a company they are doing everything they can to get the work to TERO, Cherokee owned, and or Indian owned companies. He suggested a mentoring program. Mr. Stewart stated they can not force the companies to do the work. He stated the Council should ensure they follow the practices and policies. Councilor Hoskin Jr. inquired if there is part of the application process that causes so much difficulty that the vendor walks away. Mr. Slaton replied most of the comments and complaints are the mountain of paperwork and the requirement of personal tax returns. Mr. Jon Overacker stated all of the documents requested are for the committee to make an informed decision on whether or not to certify as a TERO business. Schedule K shows the percentage of

ownership of a business. He stated they have offered for the applicant to come to the certification hearing and provide the documents. The committee reviews the documents at that time and gives the documents back immediately following the meeting with no copies made. Councilor Hoskin Jr. inquired if this information is requested pursuant to something specific in the current TERO statute. Mr. Overacker stated it is general provisions that tie into the Act. Ms. Diane Kelley stated the policies were established at the beginning when working with EEOC. Mr. Stewart stated it protects the integrity of the system over time from a lot of abuse. Councilor Hoskin Jr. questioned the legal authority to collect the documentation. Mr. Overacker stated the statute has the TERO office creating policy. Councilor Glory-Jordan requested CNE address their proposed contract language changes on the two page handout provided. Mr. Stewart stated item 1 deals with subcontractor bidding and selection process. The different language used on different contracts is listed. In summarization the language will be in every contract entered into. Item 2 disclosure of bid results is difficult. He stated there are two schools of thought. One is to be competitive you don't want the bid results revealed. Councilor Glory-Jordan inquired as to why the bid results aren't disclosed once awarded. She questioned how the TERO vendor is to learn to be more competitive in the process when they don't know how much they were off. She stated the State of Oklahoma within 21 days of the bid award releases line by line the winning bid to the un successful bidders. This would allow the TERO vendors to be more competitive and learn from each bid process. Mr. Stewart stated he isn't completely against disclosing the information but it may be a violation of contract agreement to release some of the information. Mr. Stewart stated there are certain situations where it doesn't work. He requested time to come up with broader wording to satisfy all concerns. Councilor Glory-Jordan requested Mr. Hembree work with the entities to determine language for bid disclosure information. Mr. Jerry Crew stated this system works for the State due to the ability to most always do a hard bid. He stated CNE most generally is design build. Another issue may be if there is a non disclosure agreement in place with the contractor. He stated the TERO office is always involved in the pre bid process and the selection process. Mr. Stewart stated there won't be very many design build projects in the future. He requested time to develop proposed language for transparencies and fairness. Mr. Crew apologized for speaking from past issues rather than from where we are now. Mr. Stewart stated he would get with Mr. Hembree to develop this language as well. Item 3 is regarding prompt payment. He stated they have taken a lot of steps informally to get people paid. He stated there will be a person at CNB who is dedicated to resolving some of the issues and contact. He stated if a contractor doesn't pay they would consider it a violation when considering future awards. He suggested the legislation state the business entities shall create policies and procedures to ensure prompt payment to the vendors. The entities would then need to bring their policy and procedure to the Council for consideration. Councilor Glory-Jordan stated knowing what the policy and procedure is for all of the entities would help considerably with answering complaints. Item 4 deals with the handling of retainage. Mr. Stewart stated they have done numerous things to try to facilitate payment of the retainage early. They are proposing language to allow the release and ensure it is in all contracts.

Councilor Glory-Jordan made a motion for the next six months on a monthly basis review the policy changes being proposed. Councilor Fishinghawk seconded the motion. Motion carried.

Ms. Knight announced the Nation is also prepared to implement the same proposals Mr. Stewart has presented. She stated they have worked on them together and can be implemented across the board. Councilor Bill John Baker inquired if the Nation would also provide a report at the same time. Ms. Knight stated they are doing a revision of their acquisition policies right now that haven't taken into account these

items. Mr. Stewart stated they are ready and could provide a report next month at committee level. Ms. Catcher stated on the Nation's side they can disclose the bid results once the award has been made. She questioned if everything was to be reported or if there is a dollar threshold. Councilor Glory-Jordan requested reporting on all items. Councilor Glory-Jordan made a motion to share policies changes with the Council to allow them to be informed. Councilor Fishinghawk seconded the motion. Ms. Catcher stated the acquisition management policies have been changed in several years. She stated they would develop some training materials and share with the Council. Councilor Glory-Jordan made a motion for the next six months all of the policy changes are brought to this body. Councilor Fishinghawk seconded the motion. Motion carried.

Ms. Knights stated CNI is a little different in regard to the proposal handed out in that they are not usually the owner when it comes to the project they are usually the general. Disclosure in particular would be subject to the owner agreeing they can disclose the information.

ANNOUNCEMENTS

ADJOURNMENT

Councilor Bill John Baker made a motion to adjourn. Councilor Crittenden seconded the motion. Motion carried at 2:18 p.m.

STAFF PRESENT:

<i>Callie Catcher</i>	<i>Nason Morton</i>	<i>Mike Miller</i>
<i>Melanie Knight</i>	<i>Anna Knight</i>	<i>Jon Overacker</i>
<i>Diane Kelley</i>	<i>Gregg Simmons</i>	

VISITORS PRESENT:

<i>Todd Hembree</i>	<i>David Stewart</i>	<i>Shawn Slaton</i>
<i>Jerry Crew</i>	<i>Bob Huffman</i>	<i>Bryan Collins</i>
<i>Gina Olaya</i>		

APPROVAL / DISTRIBUTION

Minutes submitted by: Shelli Brittain, Legal & Legislative Coordinator

Motion to approve minutes made by: *Bradley Codd*

Minutes attested and concurred by: *Meredith Traylor*

Date: *6/05/09*