

MEMORANDUM OF UNDERSTANDING
between the
United States Department of Agriculture,
Rural Utilities Service
and
Crow Tribe of Indians
regarding
AN INTERPRETATION OF CERTAIN PROVISIONS
of the
TRIBAL EMPLOYMENT RIGHTS REGULATIONS OF THE CROW TRIBE

WHEREAS, the United States Department of Agriculture, Rural Utilities Service (“RUS”), is authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) to administer various loan and grant programs pursuant to which recipients of such loans and grants must solicit bids for various construction and construction-related activities; and

WHEREAS, a central premise to awarding financial assistance to successful loan and grant recipients is that in soliciting bids for construction and construction-related activities, loan and grant recipients will ensure that such solicitations will be subject to and conducted under free and open competition among all qualified bidders; and

WHEREAS, subsection (b) of the Indian Self-Determination and Education Assistance Act (“ISDEAA”) requires that, “to the greatest extent feasible, (1) preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and (2) preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as such economic enterprises are defined in 25 U.S.C. § 1452; and

WHEREAS, the Tribal Employment Rights Regulations of the Crow Tribe (“Crow TERO Regulations”), dated June 1, 2011, Part 3 “Indian Preference in Contracting and Subcontracting,” contains provisions that give specific preference to firms owned by members of the Crow Tribe over other, non-Crow Indian-certified firms;

WHEREAS, RUS understands the ISDEAA to mandate an inclusive preference for Indian-certified contractors in contracting and subcontracting, as opposed to an exclusive, tribe-specific preference;

WHEREAS, Section 3.1(d) of the Crow TERO Regulations contains a proviso stating that if any requirement of the Crow TERO Regulations is inconsistent with the requirements of a Federal law or regulation, the latter shall take precedence and an alternative method of Indian preference may be utilized as determined by the Crow TERO director on a case-by-case basis; and

WHEREAS, RUS acknowledges that the Section 3.1(d) proviso will be read narrowly with respect to conflicting laws to allow Indian preference “to the greatest extent feasible” consistent with existing federal law.

NOW, THEREFORE, the parties hereto enter into this Memorandum of Understanding to set forth the following understandings:

1. For all construction projects and construction-related activities pursuant to RUS loan and grant financing authorized by the Consolidated Farm and Rural Development Act, RUS will accept application of the Crow TERO Regulations and its authorizing tribal legislation; the Crow Nation Workforce Protection Act, including recognition, acceptance and agreement with Indian preference for advertisement and contract award, except for application of tribal-specific preference as stated herein.
2. RUS will read the provisions of the Crow TERO Regulations that refer to Indian preference, including those provisions of the Crow TERO Regulations that specifically set forth a preference for firms owned by Crow Tribe members, as referring to preference for any Indian-certified business, regardless of tribal affiliation or membership.
3. The Crow Tribe will, in all solicitations for bids for construction projects and construction-related activities pursuant to RUS loan and grant financing authorized by the Consolidated Farm and Rural Development Act, include terms, qualifiers, and descriptions of responsive and responsible bidders to ensure that all Indian-certified firms are allowed the same opportunity and priority to bid for and be awarded contracts pursuant to such loan and grant financing as are firms owned by Crow Tribe members. In accordance with current practice, construction projects and construction-related activities will be advertised in the Billings Builder’s Exchange and the Billings Gazette to reach a broad range of qualified contractors.

POINTS OF CONTACT.

The following are the responsible officers for each party to the agreement:

USDA:

Steve Troendle
Director, Community Programs
USDA Rural Development – Montana
2229 Boot Hill Court
Bozeman, MT 59715
Steve.Troendle@mt.usda.gov
(406) 585-2529

CROW TRIBE:

Wesley Falls Down
TERO Director
Crow Tribe of Indians
P.O. Box 159
406-638-3851
wesleyf@crownations.net

DURATION:


This Memorandum of Understanding becomes effective on the date of final signature hereto and will remain in effect until terminated by mutual agreement of the parties hereto.

[Signatures follow on next page]

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This Memorandum of Understanding is signed for:


United States Department of Agriculture
Rural Utilities Service

By: 

Jonathan S. Adelstein
Administrator

Date: SEP 22 2011

Crow Tribe of Indians

By: 

Cedric Black Eagle
Chairman

Date: 10/20/11