

# **Tribal Employment Rights Ordinances & Tribal Business Issues**

BIA Alaska Provider's  
Conference

November 28, 2006



# Tribal Employment Rights Ordinances

- TEROs
  - What are they?
    - Ordinances passed by a Tribal council that help ensure employment of Tribal members on projects, contracts, and other job creators subject to the TERO
    - TEROs also often provide a mechanism for collecting fees to be used for Tribal member job related training

# TERO

- Typical TERO provisions:
  - Creation of Tribal employment rights office
    - Collect TERO fee
    - Spend funds on TERO related expenses
    - Provide job counseling services
    - Root out discrimination in hiring
  - Covered employer definition:
    - The Tribe
    - Contractors with the Tribe (within the village boundaries)

# TERO

---

- Typical provisions, con't:
  - Employment preference in favor of Tribal members, Alaska Natives and American Indians
  - Complaint process regarding a covered employer's failure to abide by TERO provisions
  - Sanctions provisions
  - TERO fee structure

# TERO

- In practice:
  - TEROs mainly implemented for Indian Self-Determination Act contracts
    - Legal issues regarding ability for Tribe to require other “covered employers” to comply (lack of territorial jurisdiction)
    - Practical issues: added cost to contracts

# ISDA construction regulation

- 25 CFR § 900.136
  - Do tribal employment rights ordinances apply to construction contracts and subcontracts?
  - Yes. Tribal employment rights ordinances do apply to construction contracts and subcontracts pursuant to section 7(b) and section 7(c) of the Act.

# TEROs

---

- Tribal Project Labor Agreements
  - Agreements with unions that replace TEROs

# Questions

---



# Tribal Business Issues

- The theory: the role of the Tribal council in developing a Tribally-owned business entity
- The options: corporate structures available to Tribes
- The practice: common issues

# The Theory: Interests of the Council and the Tribal for-profit

- General interests of the Council – the governing body of a federally recognized tribe:
  - Providing and running governmental programs for the Tribe: realty, health care, tribal court, environmental.
  - Improving lives of members: economic matters, social matters, cultural matters
  - Building infrastructure: housing, water and sewer, Tribal hall, etc.

# Interests of the Council: con't

- Economic interests of the Council as a government:
  - Employment for members of the Tribe
  - Employment generally for the people of the area
  - Increasing per capita incomes
  - Increasing number of professional/management jobs
  - Enticing business to the village
  - Keeping business dollars in the local economy

# Interests of the Council: con't

- Economic interests of the Council as a business owner: make the for-profit entity profitable. All other goals flow from profitability.
- If the company is profitable, employment increases, there are more professional/management jobs, per capita income increases, and business dollars stay in the local economy.
- But also business profits can be used for governmental purposes: supplement social program dollars, build better facilities, etc.

# Interests of the for-profit board

- Interests of the board
  - Profitability – with most for-profit companies, this is the only interest.
  - Employment of Tribal members

# The Role of the Council

- The Tribal Council is the parent company of the business for-profit company
  - What rights does ownership bring with it?
    - The company is an asset – it can be sold
    - The Council has the right of governance – it seats the Board; it can amend the organizational documents (articles of incorporation or organization; bylaws or operating agreement)

# The Role of the Council: con't

- Governance: The Council should set the big-picture goals of its corporate subsidiaries.
  - Profitability: a given.
    - But, how does the Council foster profitability?
    - What resources does the Council provide?
    - How does the Council set an aggressive yet realistic goal?
    - How to manage dividends/distributions to the Council?
  - Other goals? Employment; Professional development; Fulfilling other needs of the Council as a government (building infrastructure).

# The Role of the Council: con't

---

- Employment goals: what is appropriate?
  - Big picture involvement is appropriate. Examples: should the company have a tribal/Native hiring preference? Monitoring employment numbers.
  - When does the Tribe chose employment over profit?



# The Role of the Council: con't

---

- How does the Council ensure that it fulfills its role?
  - Regular reporting at Council meetings by the business management
  - Strategic planning by joint sessions of Council and Board

# The Options: Corporate Structures

- For-profit businesses should be held in separate corporate structures:
  - Containment of liabilities
  - Audit issues
- Corporate options:
  - IRA Section 17 corporations
  - State chartered corporations or limited liability companies
  - (Tribally chartered corporations)

# Corporate structures

- The Tribal holding company model:
  - A corporate entity owned by the Tribe with its own board of directors
  - The board is appointed by the Tribal council
  - The board includes some overlap with the council for control reasons

# The practice: common issues

- Common issues:
  - Sovereign immunity
  - Tribal employment issues
  - Surviving political upheaval
- Initial success issues
  - Visionary management without appropriate business skill set

# Questions

---