

Construction Contracting Conditions

For Fond du Lac Reservation Business Committee and
Fond du Lac Development Corp. construction contracts

(Last modified: August 28, 2019)

The following conditions apply to Fond du Lac Reservation Business Committee and Fond du Lac Development Corp. construction contracts:

1. Fond du Lac Business License Ordinance. Contractor acknowledges its responsibility to apply for a business license from the Fond du Lac Band of Lake Superior Chippewa as required under the Fond du Lac Business License Ordinance, FDL Ordinance #5/84 (available at the Band's official website at <http://www.fdlrez.com/government/fdlordinances.htm>). This is required whether a project is conducted on- or off-Reservation (and regardless of any language to the contrary in the Ordinance itself).
2. Fond du Lac Tribal Employment Rights Ordinance.
 - a. Contractor shall constitute a "contractor" under the Fond du Lac Tribal Employment Rights Ordinance ("TERO"), FDL Ordinance #12/94 (also available at the Band's official website), and shall abide by its provisions for all on- and off-reservation projects.
 - b. Contractor agrees that all workers entitled to preference under TERO shall be employed in accordance with their experience and qualification, but under no circumstance shall TERO hires be paid at a rate less than the journeyman Laborer, Common (General Labor Work) rate (including basic rate plus fringe rate) as provided in the Minnesota Department of Labor and Industry prevailing wage determination for the county in which the project is located (as may be amended). Fringe amount shall be paid directly to TERO hires, unless the employee requests otherwise.
 - c. Contractor will file certified payroll report forms with all applications for payment that substantiate TERO compliance, including showing all hours worked on the project, percentage of TERO hours, and compliance with all other TERO and project requirements.
 - d. Contractor will pay a TERO fee of 3% (three percent) of the total project cost, as instructed by the Fond du Lac TERO Officer.

3. Right to Work.

- a. Contractor shall comply with Fond du Lac Ordinance #03/07, Prohibiting Compulsory Membership in a Labor Organization as a Condition of Employment on the Fond du Lac Reservation (available at the Band's website) for all on- and off-reservation projects. TERO hires cannot be required to join a labor organization as a condition of working on the project.
- b. It shall be Contractor's obligation to determine how to comply with requirements of Band law; this contract; other, applicable labor laws; bidder's pre-existing collective bargaining agreements with labor organizations; and other obligations as may apply to bidder in a given jurisdiction. Notwithstanding this, the Band must approve any labor agreements specific to the project.

4. Drug & Alcohol Testing Requirements. Contractor shall be responsible for maintaining a drug-free workplace. If the Contractor works or is expected to work on site on more than one day in a one-year period, the Contractor shall be subject to drug testing in accordance with Section XII of the Fond du Lac Band of Lake Superior Chippewa Employee Drug and Alcohol Testing Policy (copy available upon request). If the Contractor is an individual, then the Contractor shall be required to enter into an agreement, at the Contractor's cost, with the Fond du Lac Employee Compliance Department for drug and alcohol testing. If the Contractor is an organization consisting of two or more individuals, then the Contractor shall implement the following drug and alcohol testing of all personnel and subcontractors utilized in on-site performance of this Contract. Contractor may propose an alternative plan that is at least as stringent as that set forth here, as reflected in a safety plan or as otherwise permitted in writing by owner.

- a. Prohibited Substances. Testing shall, at minimum, include the following substances: (1) Alcohol (over .08 percent), (2) Marijuana, (3) Cocaine, (4) Amphetamines, (5) Opiates, (6) Phencyclidine ("PCP"), and (7) Ecstasy.
- b. Testing Requirements. (1) Pre-Placement: each employee or subcontractor must be tested before commencing on-site performance under this Contract; (2) Reasonable Suspicion: any on-site employee or subcontractor must be tested if there is reasonable suspicion that the employee or subcontractor is under the influence of alcohol or drugs; and (3) Post Accident: any employee

or subcontractor who has caused or contributed to an accident at the worksite involving substantial property damage or any personal injury must be tested within 24 hours of the accident. Testing shall be performed through a licensed testing laboratory. Commercial vehicle drivers shall be tested in accordance with applicable DOT regulations.

- c. Recordkeeping Requirements. Contractor shall maintain records of its compliance with this section for a period of at least two years following completion of the project.
5. Fond du Lac Reservation Statement of Enrollment and Residency Status for State Income Tax Purposes (On-Reservation Projects Only). Eligible Band members are exempt from state income tax for on-reservation work. The Contractor shall cooperate with the exercise of state income tax immunity for eligible Band members and shall submit the form required for this exemption. This form shall be provided to the Contractor.
6. Exemption from Sales and Excise Taxes on Materials (On- and Off-Reservation Projects). The Fond du Lac Band of Lake Superior Chippewa is exempt from Minnesota sales and excise taxes on the purchase of materials used in the performance of on- and off-reservation projects. For on-reservation projects, the Contractor shall be responsible for completing and providing to the seller a certificate of exemption, Minnesota Revenue Form ST3 (as may be amended). For off-reservation projects, the Contractor shall be responsible for establishing and maintaining an appropriate purchasing program to preserve the tax exemption.
7. Wages and Salaries. Davis-Bacon wage rates will be required for all workers employed at this site, regardless of TERO status.