

MEXICAN WATER CHAPTER
PROCUREMENT POLICY AND PROCEDURES MANUAL
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**THE MEXICAN WATER CHAPTER
PROCUREMENT POLICIES AND PROCEDURES MANUAL**

I. AUTHORIZATION

- A. Pursuant to 26 N.N.C. § 101 (A), the Chapter (hereafter “Chapter”) is required to formulate, implement and operate under a Five Management System to ensure procurement accountability. Accordingly, Chapter has developed policies and procedures to implement the Five Management System consistent with applicable Navajo Nation Law.
- B. Pursuant to Chapter Resolution #: MWCMAY15-070, the Chapter Procurement Policies and Procedures Manual (hereafter “Procurement Manual”) has been approved.

II. PURPOSE AND SCOPE OF POLICY

- A. The Procurement Manual sets forth the authority, principles and procedures governing the procurement of goods and services by the Chapter. The Procurement Manual provides the basis for the implementation of and general provision to obtain goods and services at a competitive price within a reasonable time.
- B. The general principles of the Procurement Manual are applicable to all Chapter employees and members of the Chapter, including Chapter officials who will monitor procurement activities to ensure all handling of Chapter procurement is done in accordance with principles detailed in the Manual.
- C. The Chapter may establish its own regulations for the accounting of purchased goods and services consistent with Navajo Nation laws and stipulations attached to grants, contracts, or related to procurement agreements. The Chapter will provide assurance that all purchasing is done to benefit the Chapter, and comply with Chapter members’ action and approval.
- D. These policies and procedures shall provide adequate and accurate information for Chapter reporting activities, help justify how resources are utilized, serve as an important internal control measure, help document important decisions, and provide a history of the Chapter’s procurement activities.
- E. These policies and procedures shall ensure that all procurement activities are supported with proper and accurate documentation.

III. APPLICABLE LAWS:

The Chapter shall comply with all applicable state, federal, and Navajo Nation laws, including the Navajo Business Opportunity Act, 5 N.N.C. §§ 201 *et seq.*, and the Navajo Business and Procurement Act, 12 N.N.C. §§ 1501 *et seq.* Upon certification of its Procurement Manual by the Transportation and Community Development Committee,

The Mexican Water Chapter shall comply with all applicable state, federal, and Navajo Nation laws, including the Navajo Business Opportunity Act, 5 N.N.C. §§ 201 *et seq.*, and the Navajo Business and Procurement Act, 12 N.N.C. §§ 1501 *et seq.* Upon certification of its Procurement Manual by the Transportation and Community Development Committee, the Mexican Water Chapter is expressly not governed by the Navajo Nation Procurement Act, 12 N.N.C. §§ 301 *et seq.*, which requirements and procedures are replaced by this Procurement Manual.

IV. PROCUREMENT POLICIES

- A. The Mexican Water Chapter shall treat all perspective vendors in an equal and fair manner, in order to not give preferential treatment to any vendor(s) or prospective procurement source of goods and services.
- B. The Mexican Water Chapter shall ensure maximum open and free competition regardless of the dollar value of the goods or services being purchased.
- C. No rewards, favors, gifts or other form of remuneration shall be received from any vendor(s), contractor, individual or firm, or any other sources having relations with the Mexican Water Chapter.
- D. The Mexican Water Chapter shall have a clearly defined remedy under the terms of any contract or agreement entered into by the Mexican Water Chapter if either party is treated in an unjust manner. Any such remedy shall strictly comply with the Navajo Sovereign Immunity Act, 1 N.N.C. §§ 551 *et seq.* Pursuant to 1 N.N.C. § 554 (J), any Mexican Water Chapter contract or agreement providing for arbitration shall require prior review and approval by the Navajo Nation Department of Justice and compliance with the Navajo Nation Arbitration Act, 7 N.N.C. §§ 1101 *et seq.*
- E. All Mexican Water Chapter purchasing activities shall require:
 - 1. Community approval, to be obtained through a community-approved budget or by individual/specific approval. Individual/specific approval will be documented by use of a Mexican Water Chapter resolution.
 - 2. Review of purchasing requirements and requisitions to insure that the most economic means of purchasing are adopted and to avoid duplicate purchases.
 - 3. An accurate, fair and unbiased description of the goods or services needed on a request for purchase or purchase orders.
 - 4. Awarding of purchase agreements only to those organizations, vendor(s) and suppliers who are capable of providing goods or services needed, and who have proven to be responsible suppliers.

5. Purchase costs to be reasonable through the adoption of a process that provides a mechanism of ensuring fair and open competition.
 6. The Mexican Water Chapter administration staff to maintain documentation of all purchases and establishment of a purchase monitoring system which ensures goods and services are provided in the time frame requested and consistent with applicable terms and conditions specified in any applicable agreement.
 7. The Mexican Water Chapter to make accurate, proper and timely payments on all procurement of goods and services to maintain the Mexican Water Chapter's creditability and good will with vendor(s), contractor(s), or other debtors.
- F. The Mexican Water Chapter shall comply with all applicable Navajo Nation laws, including, but not limited to, the Navajo Business Opportunity Act, 5 N.N.C. §§ 201 *et seq.*, the Navajo Business and Procurement Act, 12 N.N.C. §§ 1501 *et seq.*, the Navajo Nation Privacy Act, 2 N.N.C. §§ 81 *et seq.*, the Navajo Nation Ethics in Government Law, 2 N.N.C. § 3741 *et seq.*, the Navajo Uniform Commercial Code, 5A N.N.C. §§ 1-101 *et seq.*, and 2 N.N.C. § 223 by the following procedures:
1. Pursuant to 26 N.N.C. § 2002 A) and (B), the Mexican Water Chapter shall adhere to all contract requirements enumerated therein.
 2. That all reasonable effort shall be made to offer purchasing opportunities to qualified Navajo-owned suppliers and vendors.
- G. Unauthorized purchases are prohibited. Any Mexican Water Chapter employee or official who charges any procurement of goods or services to the Mexican Water Chapter without proper authorization may be subject to penalties and may be personally liable, as provided in the Mexican Water Chapter Personnel Policies and Procedures Manual or other applicable laws of the Navajo Nation. The Mexican Water Chapter shall not be liable, faulted or responsible for unauthorized purchases.
- H. Any unauthorized purchase performed may result in immediate termination and release of employment from the Mexican Water Chapter, in accordance with any applicable personnel policies and the Personnel Manual under the Mexican Water Chapter's Five Management System.
- I. The Mexican Water Chapter Officials are prohibited from making purchases on behalf of the Mexican Water Chapter. The Mexican Water Chapter Officials can consult with the Mexican Water Chapter Manager on the Administration making purchases which will greatly benefit the Mexican Water Chapter.
- J. All checks for payments to vendors and suppliers shall require two signatures before fund disbursement. The Secretary/Treasurer shall co-sign all Mexican

Water Chapter checks along with the Mexican Water Chapter Manager. In the event that the Secretary/Treasurer is unavailable, another alternate authorized signatory shall sign in his/her place, and shall provide a justification memorandum for any such signature.

K. The following purchasing limits shall be as follows:

1. On any purchase from \$ 0 to \$ 2,500 total purchase, the Administrative Assistant may verbally obtain purchase and vendor information. Fund availability and budgeted line item shall be documented on the Fund Approval Form. The three verbal quotations shall be documented and include the vendor's name, identity of the individual(s) contacted, price quotation, date of contact, phone numbers and the method of contact. Information gathered via internet is valid. Funds must be available and budgeted for such purchases. Said purchases shall only require the approval signature of the Mexican Water Chapter Manager.
2. On any purchase from \$ 2,501 to \$ 10,000 total purchase, the Office Administrative Assistant shall obtain three (3) or more written quotations from different vendors. To *expedite* the purchase, the vendors can fax their cost and terms to the Mexican Water Chapter Manager. All documents must be properly recorded and kept on file. This provision shall only require the signature approval of the Mexican Water Chapter Manager.
3. For any purchase from \$ 10,001, to \$ 50,000 total purchase, the Administrative Assistant shall obtain three (3) or more written quotations from different vendors. The Mexican Water Chapter Manager shall insure that certified entities under the Navajo Business Opportunity Act receive preference, and shall recommend the selected vendor to the Mexican Water Chapter for approval by a simple majority vote during a duly-called Regular Mexican Water Chapter meeting.
4. All procurement contracts and agreements exceeding \$ 50,000 shall be governed by the applicable rules and procedures under the Navajo Business Opportunity Act, 5 N.N.C. §§ 201 *et seq.*, and those procurement provisions further enumerated at Section VII of the Procurement Manual.

V. GENERAL DUTIES AND RESPONSIBILITIES

A. Administrative Responsibilities:

1. The Mexican Water Chapter Manager shall:
 - a. Be the primary check signer of all Mexican Water Chapter checks pursuant to 26 N.N.C. § 1004 (B) for payment to vendors, along with the Mexican Water Chapter Secretary/Treasurer. In the event that the Secretary/Treasurer is unavailable, another authorized

alternate signatory shall sign in his/her place, said signature which shall require a justification memorandum by the alternate signatory.

- b. Be the custodian of all official books, records, documents and funds of the Mexican Water Chapter pursuant to 26 N.N.C. § 1004 (C).
- c. Approve/disapprove purchase requisitions to assure purchases are within the budget according to funding guidelines, reasonableness, and necessity.
- d. Select the vendor(s) based on vendor's reliability in terms of past procurement, general reputation and compliance with applicable Navajo Nation Laws.
- e. Investigate any discrepancies and report it immediately to appropriate authorities.
- f. Recommend amendments to the Procurement Policies and Procedures Manual.

2. The Administrative Assistant shall:

- a. Identify a need to procure services, supplies or equipment for Mexican Water Chapter purposes or projects, and initiate the purchase requisition, based on availability of funds.
- b. Obtain price quotations when required, and verify fund availability by reviewing the appropriate ledgers.
- c. Prepare the appropriate documents for signatory approval.
- d. Prepare and submit all applicable documents to the selected vendor(s).
- e. Verify that the vendor received all documents for purchases.
- f. Obtain and receive the merchandise along with the invoice(s) and prepare receiving report(s) for goods and services received.
- g. Submit invoice and receiving reports to the Mexican Water Chapter Manager for payment.
- h. Also have responsibility of offering recommendations for amending procurement policies and procedures.

- i. Have responsibility of reporting discrepancies and illegal procurement activities to the Mexican Water Chapter Manager or Mexican Water Chapter Officials.

3. Temporary Employees:

- a. May make requests to the Administrative Assistant for goods and/or services during his/her employment with the Mexican Water Chapter.
- b. May also obtain and receive the merchandise along with the invoice(s) for goods and services received.

B. Mexican Water Chapter Officials' oversight responsibilities:

1. The Mexican Water Chapter President shall:

- a. Work closely with the Vice-President and Secretary/Treasurer to ensure that the Mexican Water Chapter administration is adequately meeting the Mexican Water Chapter's directives and expending funds according to conditions of the Navajo Nation Council and/or the Mexican Water Chapters annual budgetary objectives, and shall report to the Mexican Water Chapter membership.
- b. In the absence of the Secretary/Treasurer, may co-sign all Mexican Water Chapter checks with a justification memorandum.
- c. Monitor and review on a quarterly basis the procurement activities and processes of the Mexican Water Chapter, but pursuant to 26 N.N.C. § 1001 (E) shall not have any direct involvement in the management and operations of the Mexican Water Chapter administration.
- d. Work towards resolving any discrepancies, irregularities, or illegalities in the procurement process.
- e. Make recommendations for discussion to amend, modify or revise the Procurement Manual.

2. The Mexican Water Chapter Vice-President shall:

- a. In the absence of the Mexican Water Chapter President, assume delegated duties and responsibilities of the Mexican Water Chapter President for a reasonable time period.
- b. Assist in the quarterly review of the Mexican Water Chapter procurement process, but pursuant to 26 N.N.C. § 1001 (E) shall

- b. Monitor the maintenance of an adequate accounting system to ensure accountability of all funds and expenditures; and will report financial statements to the Chapter President and membership on a monthly basis.
- c. Ensure that the Chapter administration prepares monthly financial reports of all transactions and expenditures of the Chapter by categories.
- d. Co-sign all Chapter checks along with the Chapter Manager.
- e. Report discrepancies and illegalities to the appropriate authorities.
- f. Offer recommendations for amending procurement policies and procedures.
- g. Not have any direct involvement in the management and operations of the Chapter administration pursuant to 26 N.N.C. § 1001 (E).

VI. PURCHASING SYSTEMS AND PROCEDURES

- A. The following procurement procedures shall apply for reoccurring expenditures (electricity, water, telephone, heating, etc.) of goods and services with all funds received by the Chapter:
 - 1. Any Chapter staff and officials may request for goods or services on a Chapter Requisition Form (Exhibit F) through the Administrative Assistant. The Administrative Assistant shall review the request for need and necessity, but shall not hinder any reasonable request.
 - 2. The Administrative Assistant shall verify fund availability, prepare the requisition form and forward documents to the Chapter Manager for approval.
 - 3. The Chapter Manager shall review documents for completeness and either approve or disapprove the purchase requisition.
 - 4. If approved, the requisition form and supporting documents shall be submitted back to the Administrative Assistant who shall order said goods and/or services.
 - 5. Once an invoice is received showing the amount charged to the Chapter, a Fund Approval Form (FAF) shall be attached with the invoice by the Administrative Assistant and submitted to the Chapter Manager.

6. The Chapter Manager shall review the financial documents to make sure any invoice is correct and shall either approve or disapprove the requisition for payment.
7. Supporting documents shall be verified by the secondary signatory (generally the Secretary/Treasurer) who shall also sign the check. In the event that the Secretary/Treasurer is unavailable, another authorized signatory shall sign in his/her place, and shall require a justification memorandum by the alternate signatory.
8. Upon approval and issuance of a check, the Administrative Assistant shall remit payment (check) to the vendor with a copy of the invoice attached.
9. The Administrative Assistant shall post the expenditure to the check register and appropriate ledger.
10. The Administrative Assistant shall file the original invoice with a copy of the canceled check(s) attached, in accordance with the Chapter's Record Management Policy and Procedures Manual.

B. Purchase Order (PO) Procedures (Exhibit D):

The Chapter shall use a Purchase Order method of procuring goods and services when ordering office supplies, janitorial supplies, and fuel supplies, and for the procurement of non-professional services, including for any maintenance agreement for services to the office machines, Chapter heavy equipment, and some building maintenance. Purchase Orders shall not be used for the procurement of any professional services, including any service where the industry standard for that profession provides for professional licensure such as for contractors, plumbers and electricians, and which shall require a Professional Services Agreement to be based on templates approved by the Navajo Nation Department of Justice (DOJ) in consultation with DOJ.

1. The Administrative Assistant shall identify a need to procure eligible goods or services and shall verify funds availability.
2. The Administrative Assistant shall obtain price quotations from at least three (3) vendors who will accept a Purchase Order.
3. The Administrative Assistant shall fill out a Chapter Purchase Requisition Form, which must contain a clear and concise description of the items required and the recommendation of a vendor. The Administrative Assistant shall sign the purchase requisition form and forward the document(s) to the Chapter Manager for approval or disapproval. .
4. The Chapter Manager shall review the purchase requisition for reasonableness, necessity, budget and fund compliance and either approve or disapprove the purchase requisition and vendor selection.

5. The Administrative Assistant shall prepare a Purchase Order when the Purchase Requisition is approved.
6. The amount of the approved Purchase Order shall only be debited from the fund and subsidiary ledger and debited from the Check Register when the procured good or services are satisfactorily received.
7. The Administrative Assistant shall submit the Chapter Purchase Order to the vendor.
8. The Chapter Manager shall be authorized and responsible to correct or void a Purchase Order for the following reasons:
 - a. Increase or decrease of a price quotation
 - b. Vendor's address change
 - c. Item number, description changes
9. Upon receipt of goods or services with shipping documents (bill of lading, invoice, etc.) an inventory shall be performed by the Administrative Assistant who shall fill out the receiving report and stamp RECEIVED on the shipping document.
10. The Chapter Manager shall review the purchase and receipt documents for completeness and accuracy.
11. The Administrative Assistant shall prepare a check to the vendor and submit it to the Chapter Manager for signature. The check shall also be signed by the secondary signatory.
12. The Administrative Assistant shall remit payment to the vendor.
13. The Administrative Assistant shall make posting notation to the fund and subsidiary ledgers to document the actual payment.
14. The Administrative Assistant shall file the original invoice with a copy of the canceled check(s) attached, in accordance with the Chapter's Record Management Policy and Procedures Manual.

C. Prepare a Fund Approval Form (Exhibit C):

1. The Chapter shall use the Fund Approval Form (FAF) method for emergencies or when vendor(s) do not accept Chapter Purchase Orders.
2. The following procedures shall apply:
 - a. The Administrative Assistant shall fill out the Fund Approval Form (FAF).

- b. The Administrative Assistant shall obtain the price quotes and checks for availability of funds.
- c. The Chapter Manager shall review the FAF for reasonableness, necessity, fund and budget compliance and either approve or disapprove the proposed expenditures.
- d. If approved, the Administrative Assistant shall prepare the check.
- e. The Chapter Manager and the secondary signatory shall sign the check.
- f. The payment (check) shall be submitted to the vendor with an attached copy of the vendor's quote.
- g. The Administrative Assistant shall post expenditures to the check register or appropriate ledger.
- h. Upon receipt of goods with shipping document (bill of lading, invoice, etc.), the Administrative Assistant shall perform the inventory and marks the invoice as PAID.
- i. The Chapter Manager shall review FAF with attached invoice.
- j. The Administrative Assistant shall file all purchase transaction documents consistent with the Chapter Records Management Policy and Procedures Manual.

D. Blanket Purchase Order (Attachment Exhibit O):

1. When appropriate, the Chapter may utilize the Blanket Purchase Order purchasing method to a vendor for a specified amount and period of time to cover purchases of a recurring nature, or purchases essential to the function or maintenance of chapter equipment, property or administration.

This purchasing method may be used to minimize the need of individual requisitions, purchase orders, and the costs related to the processing and filing of these documents.

2. When using a Blanket Purchase Order, the Chapter shall maintain a subsidiary ledger of transactions in which all transactions are recorded, and the open balance of the Purchase Order is known.
3. The amount of the Blanket Purchase Order would be set up not to exceed a specified dollar amount, based on an estimate of expenditures for a specified period of time.

4. Only the Chapter Manager shall order and receive goods or services on the Blanket Purchase Order.
5. In every transaction under this method the following procedures shall apply:
 - a. The Chapter Manager shall receive all requests to purchase materials, equipment or services. Any employees and officials may submit a request. Any request from a standing committee member shall only be made through a Chapter official.
 - b. The Administrative Assistant shall verify funds availability and acquire quotations from (3) three vendors.
 - c. The Administrative Assistant shall initiate a Chapter Purchase Requisition Form, typewritten as follows:
 - (1) Complete all blank lines on the requisition form such as date, requestor, where and when materials are to be delivered, and the proper accounting code and fund number.
 - (2) Indicate last source or possible sources of supply, if known, in the space titled "Suggested Vendors".
 - (3) List the items required, giving a complete description including stock number (if applicable), manufacturer's or vendor's name and catalog number, if available.
 - (4) If the information is available, list the unit price from a previous purchase order, vendor's catalog or other source indicating the source from which the prices were taken. A copy of the requested quotations will be attached to the Purchase Requisition Form.
 - (5) If a partial shipment would not satisfy the chapter's need, then, a notation ["Do Not Ship Partial Order"] must be made on the Purchase Requisition Form.
 - d. The Administrative Assistant shall sign the Purchase Requisition Form in the space provided for and forward to the Chapter Manager for approval, including a recommended vendor.
 - e. The Chapter Manager shall review the Purchase Requisition Form for reasonableness, necessity, budget and fund compliance and shall either approve or disapprove the requisition form and vendor selection.

- f. When the purchase is approved, the Administrative Assistant shall prepare a Blanket Purchase Order and encumber funds.
- g. The Administrative Assistant shall submit the Chapter Blanket Purchase Order to the vendor.
- h. Upon receipt of goods or services with receiving documents (bill of lading, invoice, etc.) Administrative Assistant shall perform an inventory, fill out the receiving report, and stamp the shipping document.
- i. The Chapter Manager shall review the Blanket Purchase Order and receiving documents for completeness and accuracy. The Chapter Manager shall then forward the receiving document to the Administrative Assistant for recording in the appropriate fund ledgers to become a source document for processing an unpaid invoice.
- j. The Administrative Assistant shall, upon approval, prepare a check to the vendor and submit the check to the Chapter Manager for signature. The check shall be signed by the secondary signatory.
- k. The Administrative Assistant shall remit payment to the vendor and post to the appropriate accounting ledgers.
- l. The Administrative Assistant shall make posting notation to the fund and subsidiary ledgers to document the actual payment.
- m. The Administrative Assistant shall file the original invoice with a copy of the canceled check(s) attached, in accordance with the Chapter's Record Management Policy and Procedures Manual.

E. Emergency Fund Purchases:

- 1. All Emergency Fund purchases shall meet the following criteria :
 - a. A Declaration of Emergency shall first be declared by the President of the Chapter or the President of the Navajo Nation, based upon an emergency bulletin issued by the Emergency Management Commission.
 - b. The Chapter shall designate an Emergency Fund budget annually and this Fund shall be expended for weather-related emergencies and/or man-made or natural disaster affecting the health, safety, and welfare of Chapter members, individually or as a group residing within the impacted area.

- c. The Chapter shall enact a community approved budget and refrain from unauthorized purchases. The Emergency Fund is a restricted fund and shall be expended consistent with established criteria and requirements in Section VII (D) (2)-(5) of this Policy.
- d. All Emergency fund disbursements shall have supporting documents properly filed at the Chapter Administration for financial audit purposes.
- e. The list of recipients utilizing Emergency Fund commodities distributed free-of-cost shall be accurately filed at the Chapter.
- f. The Chapter shall expend the Emergency Fund only after chapter approval at a duly-called chapter meeting.
- g. All Emergency Fund revenues shall be recorded on a pre-numbered cash receipt, which should be summarized and classified, by the type of revenue generated. All generated revenues shall be posted into the Emergency Fund account.

2. Emergency Priority Listing and Eligibility Requirements:

The Chapter Emergency Funds shall only be used to provide relief support and services, in order of priority, to the following areas;

- a. **Priority One:** In every emergency and disaster incident, priority consideration shall be given to the welfare and care of high-risk elderly and individual(s) with health related conditions.
 - 1. Eligibility requirements:
 - i. Heart patients, elderly with illness, extreme cough and/or fever.
 - ii. Pregnant women with prenatal or post partum difficulties, newborn infants and children requiring medical attention.
 - iii. Diabetic, oxygen dependent, non-ambulatory, and recently discharged medical patients requiring constant medical attention.
- b. **Priority Two:** Priority consideration shall be given to main traveled roads that would allow community members to travel for food, water, hay and feed, fuel and medical attention.
 - 1. Eligibility requirements:

- i. Snow, ice, and mud removal from roads leading to stranded families, high-risk, elderly and handicapped person(s).
 - ii. Establish Emergency Response Team command center to coordinate the assessment, evaluation, and service delivery plan.
 - iii. Equipment repairs and maintenance not to exceed \$6,000.
 - iv. Purchase of gas and diesel fuel for any equipment engaged in providing emergency response relief.
 - v. Overtime compensation for temporary personnel engaged in emergency response.
 - vi. Lodging and meals for heavy equipment operator(s) engaged in emergency road clearance operations.
 - vii. Reasonable rental or lease costs for equipment.
- c. **Priority Three**: Ample supply of food, water, and fuel to sustain a family of five for 3-5 days may be expended from the Emergency Funds.
1. Eligible services:
 - i. Purchases of firewood, coal, food and water from private vendor.
 - ii. Emergency funds not exceeding \$ 200.00 per household to purchase food.
- d. **Priority Four**: Emergency Funds may be expended for temporary and short-term relief for a family of five [3-5 days] *used by families for their livelihood*.
1. Eligible services:
 - i. Purchases of hay, feed, salt blocks, veterinarian supplies/medication and water for sheep, horses, cattle, and other form of livestock.
 - ii. Emergency funds not exceeding \$ 200.00 per household.

- iii. Eligible household will participate in annual livestock tally counts and livestock management education, conducted by the Grazing Officer.
 - iv. Upon chapter membership approval the products can be resold at below market value.
3. Matching funds between agencies: Emergency funds may be used to provide matching funds or as a supplement to the delivery of relief services from the Navajo Nation Government, State Government, County Government, Bureau of Indian Affairs Roads Department and National Guard, and may include such items as fuel or temporary equipment operator(s) through a Memorandum of Agreement (MOA). The MOA shall be initiated when the President of the Chapter declares an Emergency or the Emergency Management Commission issues its Emergency bulletin.
4. Standard Criteria For Declaration of Emergency or Disaster:

The Chapter shall use the following criteria to determine whether an emergency or disaster exists in the community. (Refer to Exhibit J, Standard Criteria for further details).

- a. The lives and/or basic well being of persons and/or livestock in the community are in jeopardy due to the impact of a severe weather related, natural disaster or human cause.
- b. Conditions resulting from natural or weather related events severely obstruct the access of person(s) and/or livestock to obtain critical life sustaining supplies and resources.
- c. Community utilities have stopped functioning, which jeopardizes community services, communications and emergency care systems.
- d. A need for emergency assistance exists necessary to safeguard the lives of persons and/or livestock which cannot be met with existing local resources.
- e. The National Weather Service and/or the Department of Emergency Management Commission broadcasts notification of imminent danger of a natural disaster. Notification can also come from other direct sources, including local chapter officials and members.
- f. A major unforeseen disaster is caused by human acts such as a chemical spill, major roads obstruction, or terrorist act.

- g. Major plague or illness is present such as the West Nile Virus, Bird Flu, Hanta Virus, etc.

5. Purchasing Method(s) For Emergency Fund:

- a. The Chapter shall utilize the Fund Approval Form procurement method and cycle in Section VI (A) for all weather-related emergencies or natural disasters.
- b. The Chapter, when practical, shall utilize the Purchase Order procurement method and cycle in Section VI (D) for emergency prevention and maintenance situations.

VII. COMPETITIVE SEALED BIDDING AND CONTRACTING FOR PROCUREMENT EXCEEDING \$50,000

- A. It shall be the policy of the Chapter to follow all funding source guidelines and restrictions as well as applicable Navajo Nation laws when contracting for all professional services and any procurement exceeding \$ 50,000.
- B. Competitive Sealed Bidding is the currently preferred method of source selection for all professional services and any procurement exceeding \$ 50,000 by local governance certified chapters, and shall be conducted in a manner consistent with the procedures set forth in the Navajo Business Opportunity Act at 5 N.N.C. § 205, as amended. Notwithstanding the competitive sealed bidding procedures under 5 N.N.C. § 205, the Chapter may use any procedures for qualification based selection (QBS) approved in the future by the Navajo Nation Council to be used by local governance certified chapters in the selection of certain professional services, including architects, engineers, and land surveyors.
- C. Chapter Contract Requirements:
 - 1. Any contract authorized to be executed on behalf of the Chapter shall meet the following conditions:
 - a. Contracts shall not waive the sovereign immunity of the Navajo Nation or Chapter and shall expressly state that nothing therein may be construed as a waiver of the sovereign immunity of the Navajo Nation and the Chapter.
 - b. All contracts shall have sufficient funds appropriated and available.
 - c. All contracts shall comply with the Navajo Business Opportunity Act, 5 N.N.C. §§ 201 *et seq.*, the Navajo Business Procurement Act, 12 N.N.C. §§ 1501 *et seq.*, as amended, and the Navajo Employment Preference Act, 15 N.N.C. §§ 601 *et seq.*, as

amended, any rules and regulations promulgated thereto, and any other applicable Navajo Nation law.

- d. All contracts shall be awarded only after public advertisement and bidding *except* where otherwise authorized as purchases less than \$50,000, Emergency Fund purchases, Sole Source purchases, or qualification based selection pursuant to procedures approved for local governance certified chapters by the Navajo Nation Council.
- e. All change orders, modifications or amendments of contracts utilizing Navajo Nation funds and Chapter general funds shall not exceed 10% of the accepted bid. If the 10% cap is exceeded by any change orders, modifications or amendments, such change orders, modifications or amendments shall be subject to re-bid.
- f. All contracts shall expressly state that the liability of the Chapter and the Navajo Nation under the contract is contingent upon the availability of appropriations by the Navajo Nation Council and any other funding source necessary to carry out the Chapter's obligations under the contract.

2. Invitation for Bids:

- a. The Chapter Manager, with technical assistance from the Navajo Regional Business Development Office and the Navajo Nation Business Regulatory Office staff, and in consultation with the chapter officials, shall prepare the Invitation for Bids, which shall include a purchase description, all contractual terms and conditions applicable to the procurement, and the necessary qualification requirements of contractors and supplies needed to provide the goods or services. The following qualifications and documentation shall be required:
 - (1.) Contractors Federal Identification Number
 - (2.) Tax ID Number from Navajo Tax Commission
 - (3.) Experience and expertise
 - (4.) Navajo Preference
 - (5.) Professional liability insurance
 - (6.) Workmen's Compensation
 - (7.) Bonding/Security for the construction
 - (8.) Mandatory pre-bid conference attendance
 - (9.) Resume of owner(s)
- b. The Chapter Manager shall determine the maximum or feasible price or cost of the contract or procurement prior to soliciting bids and proposals. The maximum feasible price or cost must take into account the market price, architectural and engineering estimates, budgetary constraints and prototype cost. This information may not

be revealed until the award of the contract. Any Chapter employee or Chapter Official who provides such information may be held criminally and/or civilly liable.

- c. Dates for the following shall be set by the Chapter Manager, in consultation with the Chapter Officials, and with technical assistance from the Navajo Nation Regional Business Development Office staff:
 - (1.) Advertisement date, commencing and ending
 - (2.) Pre-conference dates
 - (3.) Site walk through
 - (4.) Actual submission date for proposal
 - (5.) Actual date for opening of bids, proposal and cost
 - (6.) Selection of a Contractor
 - (7.) Project completion time
 - (8.) Contract formulization (signing of contract)
 - (9.) Contract commencement
 - (10.) Dates for period deliverable and payment for services
 - (11.) Close out of contract/final reports

- d. After preparing the invitation for bid solicitation, the Chapter Manager shall provide ten (10) days public notice or invitation to bid in a newspaper having general circulation and distribution within the Navajo Nation; or, shall provide notice or invitation to bid by mail or facsimile to all certified businesses listed on the Navajo Nation Source List compiled and maintained by the Navajo Nation Business Regulatory Department. The Notice of invitation to bid shall include:
 - (1.) The requirements, descriptions, classification and specifications of the goods or services requested;
 - (2.) The deadline dates for submission of bids, bid openings, award and any other significant dates;

- e. To demonstrate that competitive bidding was performed, the Chapter shall maintain a copy on file of the solicitation used to obtain the bids. In addition, if the Chapter used the advertising mechanisms to place the solicitation announcement, the Chapter shall maintain a copy of the announcement and an indication of where and when such announcement was placed.

- f. A pre-bid, pre-proposal, or a pre-contract conference shall be held to provide additional information only obtainable by seeing the site of service, construction site, or individuals with whom the contract is to be performed.

- g. Once the actual submission date for bids/proposals has expired, no late bids or proposals shall be accepted. All bids shall be submitted to the Chapter and shall be received and stamped at the Chapter administration by the Chapter Administrative Assistant. The Chapter Manager shall ensure that all bid documents received are recorded and safeguarded in a safe or under lock and key until the bid opening date.

- h. Bid Opening Procedures and Requirements; The following procedures shall be used at bid openings when there is more than one priority business submitting a bid pursuant to 5 N.N.C. § 205 (E):
 - (1) The bid opening will be at a designated site and announced two (2) weeks in advance through the local news media. A declaration by the Chapter President to the public attending shall be made that all bid information is confidential and subject to the Navajo Nation Privacy Act, 2 N.N.C. §§ 81 *et seq.*, the Navajo Nation Ethics in Government Act, 2 N.N.C. §§ 3741 *et seq.*, and all other applicable Navajo Nation criminal and civil laws.

 - (2) The Chapter Manager, in the presence of witnesses, including the Chapter Officials, shall open all bids publicly. The amount of each bid, and such other relevant information as may be specified by regulations, together with the name of each bidder, shall be recorded; the record and each bid shall be open to public inspection, to the extent permitted by the Navajo Nation Privacy Act, 2 N.N.C. §§ 81 *et seq.*

 - (3) Bid Acceptance, Evaluation and Selection: Bids shall be unconditionally accepted without alteration or correction, except as authorized by the Navajo Business Opportunity Act, or other provisions of applicable law. The Chapter Manager and Chapter Officials shall evaluate all bids based on the requirements set forth in the Invitation for Bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. The criteria affecting the bid price and considered in evaluation for award shall be objectively measurable, and may include discounts, transportation cost, and total or life cycle costs. No criteria may be used in bid evaluation that is not set forth in the Invitation for Bids.

- (4) Correction(s) or Withdrawal of Bids: Cancellation of Awards, correction(s) or withdrawal of inadvertently erroneous bids before or afterward, or cancellation of awards or contracts based on such bid mistakes, shall be permitted. After bid opening, no changes in bid prices or provisions of bids prejudicial to fair competition shall be allowed. All decisions to permit correction or withdrawal of bids shall be supported by a written determination made by the Chapter Manager, and in consultation with the Chapter Officials.
- (5) Contract Award: the contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids, and whose bid is within the Maximum Feasible Cost. In the event all bids exceed available funds, as determined by the Chapter Manager, and the low responsive and responsible bid does not exceed such funds by more than five (5%) percent, the Chapter Manager and the Chapter Officials shall be authorized to negotiate with the bidder to adjust the bid price in order to bring the bid within the amount of the available funds.
- (6) The Chapter, prior to contract formation, shall approve the contract award or the negotiated bid at a regular duly called Chapter meeting. When the contract is formed, executed by the other party, and approved by the Chapter membership, the Chapter President shall sign and execute the contract on behalf of the Chapter in accordance with 2 N.N.C. § 222 (D) and other applicable law.

3. Competitive Sealed Proposals:

A contract may be entered into by competitive sealed proposal if the Chapter Manager determines in writing to the Chapter Officials that the use of competitive sealed bidding is either not practical or not advantageous to the Chapter. The competitive sealed proposals process shall be conducted in a manner consistent with the procedures set forth in the Navajo Business Opportunity Act at 5 N.N.C. § 205.

4. Request for Proposals:

- a. The Chapter Manager shall prepare a Request for Proposal, including a purchase description, and all contractual terms and conditions applicable to the procurement. The Request for Proposals shall also set forth the criteria to be used in evaluation of proposals. The Request for Proposals shall also refer to the

preference of Navajo and Indian-owned business under the Navajo Nation Business Opportunity Act.

b. Maximum Feasible Cost:

The Chapter Manager, with assistance from the Navajo Nation Regional Business Development Office staff, shall develop, prior to advertisement of the Request for Proposals, a maximum feasible cost if a service is to be performed, based on the following:

1. Architectural and engineering estimates
2. Market price
3. Budget allocation
4. Prototype cost

c. Public Notice:

A minimum of ten (10) days public notice of the Request for Proposal shall be given before the opening of proposals, with dates on submission of proposals and proposal selection. It shall be the normal practice of the Chapter to provide notice or invitation to bid to certified businesses listed on the Navajo Nation Business Source List compiled and maintained by the Navajo Nation Business Regulatory Department. The public notice may also be published in a newspaper with regular circulation.

d. Opening of Proposals:

- (1) Proposals shall be opened publicly by the Chapter Manager in the presence of witnesses, including the Chapter Officials. The proposals shall be tabulated in a Register of Proposals that will be set up by the Administrative Assistant, and shall be available for public inspection after the contract award, to the extent provided for in the Navajo Nation Privacy Act, 2 N.N.C. § 81 *et seq.* All opening of Proposals for procurement amount in excess of \$ 50,000 shall be governed by Request for Proposals procedures under the Navajo Nation Business Opportunity Act at 5 N.N.C. § 205 (E).
- (2) The opening of all Requests for Proposals shall follow the same procedures promulgated at Subsection 2 (h) of this section.

e. Evaluation Factors:

Request for proposals shall state the relative importance of price and other evaluation factors. The Chapter Manager and the Chapter Officials shall evaluate all proposals, which will include criteria to

determine acceptability such as inspections, testing, quality, workmanship, delivery and suitability for a particular purpose. No criteria may be used in proposal evaluation that is not set forth in the Request for Proposals.

f. Revisions to Proposals:

As provided for in the Request for Proposals, the Chapter Manager may, after public notice but prior to bid closing date, conduct discussions with the responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award, for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements. Offerors shall be afforded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submission and prior to award for the purpose of obtaining a best and final offer. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

g. Award:

- (1) The Chapter Manager with assistance from the Navajo Nation Regional Business Development Office staff will determine in writing to the Chapter Officials which proposal is the most advantageous to the Chapter, taking into consideration price and the evaluation factors set forth in the Request for Proposals. No other factors or criteria except those criteria set forth in the Request for Proposals shall be used in the evaluation. The contract file shall contain the basis on which the award is made, and shall be made public to the extent provided for in the Navajo Nation Privacy Act, 2 N.N.C. §§ 81 *et seq.*
- (2) The contract shall be awarded within five (5) days by written notice from the Chapter Manager to the selected offeror whose proposal meets the requirements and criteria set forth in the Request for Proposals, and whose proposal is within the Maximum Feasible Cost.
- (3) The Chapter, prior to contract formation, shall approve the contract award or the negotiated award at a regular duly called Chapter meeting. Once the contract is formed and executed by the other party, the Chapter President shall sign and execute the contract on behalf of the Chapter, in accordance with 2 N.N.C. §222 (D) and other applicable law.

D. Cancellation of Invitation for Bids or Requests for Proposal:

An Invitation for Bids, a Request for Proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, or when it is in the best interest of the Chapter. This shall be expressly stated in the Invitation for Bids, the Request for Proposals, or any other solicitation.

E. Responsibility of Bidders and Offerors:

1. Determination of Non-responsibility:

The Chapter Manager may make a written determination of non-responsibility of a bidder or offeror. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror.

2. Right of Nondisclosure:

Information furnished by a bidder or offeror pursuant to this section shall only be disclosed in accordance with the applicable provisions of the Navajo Nation Privacy Act, 2 N.N.C. §§ 81 *et seq.*

F. Contract Performance and Payment Bonds:

1. When a construction contract is awarded in excess of \$50,000, the following bonds or security shall be delivered to the Chapter administration and shall become binding on the parties upon the execution of the contract:

a. A performance bond satisfactory to the Chapter, executed by a surety company, in an amount equal to 100% of the price specified in the contract.

b. A payment bond, satisfactory to the Chapter, executed by a surety company, for the protection of all persons supplying labor and materials to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to 100% of the price specified in the contract.

G. Construction and Construction Related Contracts:

1. For all construction and construction related procurement exceeding \$50,000.00, the Chapter Manager, or the Chapter's legal counsel, as applicable, shall consult with the Navajo Nation Department of Justice and shall use a contract template approved by the Department of Justice.

2. Sponsor-Lead Agency Agreement: The Chapter Manager shall determine, in consultation with the Chapter Officials, whether it is in the best interest of the Chapter to have guidance or assistance from a Navajo Nation division, department or program for a particular construction or construction related project. If the Chapter Manager determines that such guidance or assistance is in the best interest of the Chapter, the Chapter shall enter into a Sponsor-Lead Agency Agreement with the appropriate Navajo Nation agency with assistance from the Navajo Nation Department of Justice.

H. Sole Source Procurement:

- A. A contract may be awarded for goods and services without competition when there is only one source for the unique required goods and/or service needed in a single procurement of \$20,000 or less. The Chapter Manager, in consultation with Chapter Officials and the Navajo Nation Department of Justice or the Chapter's legal counsel, shall determine the unique procurement nature and need and shall make written justification of a single source for the goods or services. The written determination and justification and the selection of the unique contractor shall be included in the contract file. Certified entities under the Navajo Business Opportunity Act shall receive preference in sole source procurement. A Chapter resolution shall be required to certify the selection of the vendor and the purchase of goods or services.
- B. Sole Source Procurement shall not be used to circumvent the requirements for competition under this Procurement Manual. Any reckless or intentional circumvention of the requirements for competition in procurement under the Chapter's procurement policies or other applicable law shall subject any involved parties to civil and/or criminal liability.

I. Procurement of Licensed Professional Services:

1. For the purpose of procuring the services of accountants, auditors, architects, engineers, electricians, or other licensed professional services, the Chapter Manager may determine in writing to the Chapter Officials that the use of the competitive sealed bidding process is either not practical or not advantageous to the Chapter.
2. The Chapter may then procure said services by competitive sealed proposals. The competitive sealed proposals for licensed professional services shall be conducted in a manner consistent with the procedures set forth in the Navajo Nation Business Opportunity Act at 5 N.N.C. § 205, *unless* otherwise authorized as small purchases, emergency purchases, or sole source purchases under the Chapter Procurement Manual, or qualification based selection of professional services authorized by other applicable law.

3. For all professional services contracts, the Chapter Manager, or the Chapter's legal counsel, as applicable, shall consult with the Navajo Nation Department of Justice and shall use contract templates approved by the Department of Justice.

VIII. INSPECTION, ACCEPTANCE OR REJECTION

A. Policy:

All goods or services received by the Chapter shall be inspected and evaluated for acceptance or rejection. Contracts for the sale of goods and Buyer's rights to inspect, accept, or reject goods are governed by the Navajo Uniform Commercial Code, 5A N.N.C. §§ 1-101 *et seq.*

B. Procedures:

The following procedures shall be maintained for the inspection, acceptance or rejection of goods or services:

1. Upon receipt of goods and/or services the Administrative Assistant shall examine the shipping documents and compare such documents with the original purchase order receiving copy.
2. The Administrative Assistant shall verify the items and quantities received are correct according to the original purchase order.
3. The Administrative Assistant shall prepare a receiving report of the goods and/or services received by the Chapter and forward all documents (receiving reports, shipping documents, invoices, etc.) to the Chapter Manager for inspection, acceptance or rejection.
4. The Chapter Manager shall be responsible for inspecting and accepting or rejecting goods received based on the following:
 - a. Freight damaged merchandise
 - b. Shortage in shipments/overage
 - c. Low quality or non-conforming goods
 - d. Unauthorized order or shipment
5. If any of the discrepancies described above in Section IX (B) (4) are found during the Chapter Manager's inspection, the Chapter Manager shall notify the vendor(s) immediately to arrange for a method to return the merchandise, or to arrange for cure or other corrective measure satisfactory to both parties. For the Chapter's specific right to reject goods, in whole or in part, see 5A N.N.C. § 2-601

6. To save time and cost, the Chapter Manager may pick-up the merchandise at a vendor's commercial establishment where the goods can be examined and inspected.

IX. INVENTORY CONTROL

A. Resale Inventory:

The development and implementation of a resale inventory policy prevents overstocking, shortage and loss as a result of theft, spoilage, breakage, etc.

1. The Chapter shall maintain detailed records of inventory items showing the description, cost, quantity and location of all inventories.
2. The total dollar value of inventory items and the price changes shall be recorded in the chapter's financial records.
3. Verification of inventory shall be made on a monthly basis through a physical count.
4. Any differences in the financial records shall be investigated for cause and the records adjusted accordingly. Any adjustment to the records shall require a justification memorandum by the Chapter Manager.
5. The inventory shall consist of goods purchased and/or produced for resale. Examples of such inventory are hay, grain, craft items and fuel for households.
6. First-in-First-Out (FIFO) Inventory Method: The Chapter shall use the FIFO inventory method. It is based on the assumption that the first items in are the first out of inventory. Under this method, the ending inventory balance will reflect the cost of the most recent purchases. The advantage of this method is that it gives an up-to-date inventory value.
 - a. The following example illustrates the use of the FIFO method for one inventory item under a perpetual inventory system. In this method, a cost must be assigned to each item of inventory purchased or sold.

March - INVENTORY LOG

Date 2006	Quantity	Unit Cost	Sale(s)	On- hand	Adj.	Amount	Balance (Inventory)
03/02	100	1.50		100		150.00	\$ 150.00
03/10	50	1.60		150		80.00	\$ 230.00
03/15		1.60	100	50		160.00	\$ 70.00
03/16		1.60	25	25		40.00	\$ 30.00
03/17	10 busted bales	1.60		15	16.00	16.00	14.00

03/20	25	1.60		40		40.00	\$ 54.40
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- b. The Chapter will also use the FIFO inventory method for all resale items. Determining the cost and value of the resale items will depend upon the following factors:
 - (1.) Cost to produce the item
 - (2.) Economic demand for the item
 - (3.) Comparable price on the market
 - (4.) Chapter membership approval of sale price (hay, grain, etc.)

- 7. The Chapter shall maintain support documentation on all inventory transactions on an ongoing basis. These inventory records shall reflect the inventory receipts, issuances and balances. The inventory record keeping and custodial functions shall be segregated for internal control measures.
 - a. Inventory Sales Receipt (cash receipt): A pre-numbered and numerically controlled sales receipt form shall be prepared in duplicate for each sale. Each form shall be properly prepared and have the following information: number and quantities issued; unit sale price; vendor; date; total amount of sales; and the signature of the employee who sold the inventory. The inventory sale receipts shall be reconciled with the inventory records on a monthly basis, or whenever necessary.

- 8. Inventory Control Procedures:
 - a. The Administrative Assistant, at the time of inventory count, shall obtain the current perpetual inventory record and cross reference items during a physical count to determine whether any items are missing, damaged, spoiled, or obsolete.
 - b. The Administrative Assistant shall report any discrepancies to the inventory immediately to the Chapter Manager.
 - c. The Chapter Manager shall review the inventory count listing and any findings by the Administrative Assistant. If there is a major deficiency or changes in the inventory not properly recorded, the Chapter Manager shall consult with the Chapter officials as soon as possible, and correct the deficiencies with the help of the Administrative Assistant. Any changes to the inventory shall require a justification memorandum.
 - d. The Administrative Assistant shall handle all daily inventory record keeping. The Chapter Manager shall perform a monthly physical count and reconciliation of cash receipt tickets to the inventory records.

- e. The Chapter Manager shall use a fair market value determination in the resale of any items.

X. DEFINITIONS

The language contained in this section applies generally to this policy manual except as otherwise provided elsewhere in the Five Management Systems.

- A. Accounting - Accounting means the methods and records established and maintained to identify, assemble, analyze, classify, record and report a Chapter's financial transactions; and to maintain accountability.
- B. Administrative Functions - are those activities of the Chapter government which are non-legislative, and which are performed by Chapter employees.
- C. Bid - is a formal submission made as an offer by a potential supplier or service provider to provide goods and/or services to the Chapter, which includes information such as pricing, delivery schedule and other information related to the bidder's ability to provide the goods and/or services. A bid is evolved from the bidding process. A bid is not considered to be a binding offer by a vendor.
- D. Blanket Purchase Order – means a purchase method to acquire goods or services other a direct fund disbursement (check). For example: The chapter might wish to use a blanket purchase order to encumber a certain fund and to ensure that goods or services are received on regular basis.
- E. Chapter Employee - means a person employed by the Chapter government or administration and governed by the Chapter's Personnel Policies under its Five Management System.
- F. Chapter Manager - is the executive level professional who is hired by the Chapter to be responsible for administering the Five Management Systems and the everyday administration of the Chapter.
- G. Chapter Officials - means the following public officials elected by the registered Chapter membership: Chapter President, Chapter Vice-President, and Chapter Secretary/Treasurer.
- H. Chapter – means a political subdivision of the Navajo Nation considered as a general-purpose local government for reporting purposes of the Navajo Nation. The word "Chapter" is also used as a reference to the land and the people of such subdivision.
- I. Chapter Resolution - means the document recording the official action taken by the Chapter membership at a duly called chapter meeting, and certified by the presiding Chapter official.

- J. Construction – means the process of building, altering, repairing, improving, or demolishing any public, structure or building, or other public improvement of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, building or real property.
- K. Contract - means all types of Chapter agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, or construction. The term contract does not include agreements, including prime contracts and grants, between the Chapter and Navajo Nation, or the federal, state, and county government for the provision of governmental services to Navajos and other persons within the Chapter.
- L. “Cost Plus” Contract – means paid on the basis of a fixed fee or a percentage added to actual cost.
- M Custodian – means an individual fiduciary entrusted with guarding and having day-to-day charge of official books, records, documents, equipment, property and funds of the Chapter.
- N. Emergency Purchases - means an unforeseen and dangerous situation requiring immediate purchasing action by the Chapter to restore peace, health and safety for the people or their property.
- O. Five Management System - means a system for the administration of the Chapter government which includes fiscal, procurement, records, personnel and property management policies and rules.
- P. Navajo Nation Law - means Navajo statutes, administrative rules and regulations and Navajo Fundamental law.
- Q. Personal Property - is all supplies, materials, and equipment and other property, including expendable and non-expendable property, capitalized and non-capitalized, but which does not include real property or fixtures.
- R. Procurement – means buying, purchasing, renting, leasing, or otherwise acquiring any goods, services or construction related projects. It also includes all functions that pertain to the obtaining of any goods, services or construction related projects, including any requirements for said procurement, any selection and/or solicitation of sources, vendors, or contractors, and the preparation and award of any contract and all phases of contract administration.
- S. Proposal – means an offer to perform a contract for the performance of work and labor and/or the delivery of goods sought where it is neither practicable nor advantageous to the Chapter to procure specified types of supplies, services, or construction projects by competitive sealed bidding.

- T. Request for Proposal – means all documents and information, whether attached or incorporated by reference, utilized for soliciting proposals.
- U. Real Property (Chapter) - is any interest in land, together with the improvements, structures and fixtures located thereon.
- V. Responsive Bidder – means a person who has submitted a bid, which conforms in all material aspects to the Invitation for Bids.
- W. Responsible Bidder or Offeror – means a person who has the capability in all aspects to perform fully the contract requirements with integrity and reliability, and who will assure good faith performance.
- X. Services – means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports, which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.
- Y. Supplies – means all property, including but not limited to equipment, materials, printing, insurance, and lease of real property, excluding land or a permanent interest in land.
- Z. Vendor - means a person or a commercial establishment that sells goods or services. Example: one who has goods in a public place.

XI. APPENDICES

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|----|---|-----------|
| A. | NN Business Opportunity Act | Exhibit A |
| B. | NN Access to Information and Privacy Act | Exhibit B |
| C. | Navajo Uniform Commercial Code | Exhibit C |
| D. | Fund Approval Form | Exhibit D |
| E. | Purchase Requisition (PR) | Exhibit E |
| F. | Purchase Order (PO) | Exhibit F |
| G. | Chapter Requisition Form | Exhibit G |
| H. | Receiving Report | Exhibit H |
| I. | Request for Quotation Form | Exhibit I |
| J. | Standard Criteria for Declaration of Emergency
or Disaster | Exhibit J |
| K. | Bid Tabulation Form | Exhibit K |
| L. | Bid Evaluation Form | Exhibit L |

COMMERCE AND TRADE

5 N.N.C. § 201

C.J.S. Contracts §§ 37 to 41, 44, 46, 55 to 56,
58.
C.J.S. Deeds §§ 1 to 8.
C.J.S. Indians §§ 12, 31, 49, 51, 67.

C.J.S. Landlord and Tenant §§ 79, 81(1),
88(2, 3, 4, 5, 6, 7, 8, 9, 10, 11), 184, 211(1).
C.J.S. Vendor and Purchaser §§ 98, 115.

Chapter 2. Navajo Nation Business Opportunity Act

Section

- 201. Title; Findings; Legislative Purpose and Intent
- 202. Definitions
- 203. Jurisdiction; Application; Compliance Requirements and Violations
- 204. Required Business and Contracting Preference Priorities; Certification Requirements
- 205. Navajo Business Opportunity Procedures in Bidding and Procurement
- 206. Waivers
- 207. Implementation and Compliance with Navajo Nation Business Opportunity Provisions; Specific Duties and Responsibilities
- 208. Certification of Eligible Entities and Authorization of Business Activities
- 209. Monitoring and Enforcement
- 210. Imposition of sanctions
- 211. Appeals
- 212. Other Navajo Nation Entities and Associated Agencies
- 213. Severability
- 214. Effective Date
- 215. Periodic Review and Amendments

History

CAP-37-02, April 19, 2002.
CJY-59-85, July 30, 1985.

§ 201. Title; Findings; Legislative Purpose and Intent

A. This Act shall be known and cited as the Navajo Nation Business Opportunity Act; Title 5, Navajo Nation Code, §§ 201 through 215.

B. Whereas the Navajo Nation Council finds:

1. The Navajo Nation is comprised of more than 25,000 square miles of land;
2. The Navajo Nation population now exceeds 250,000 members, of which over 175,000 members reside within the Navajo Nation. In addition, residents of the Navajo Nation include approximately 8,000 non-Navajos;
3. The unemployment rate of the Navajo Nation is approximately fifty percent (50%);
4. In 1996, the United States Congress enacted the Personal Responsibility and Work Reconciliation Act of 1996 (P.L. 104-193 "Welfare Reform Act"). This Act will impact thousands of Navajo people. As a result, there is a need to accelerate the development of privately owned businesses and provide more employment opportunities;

5 N.N.C. § 201

COMMERCE AND TRADE

5. There is a need within the Navajo Nation to accelerate business development and economic growth within the Navajo Nation;

6. Although the Navajo Nation has a population that is approximately 90% Navajo, approximately 76% of the contracts by the Navajo Nation between the years 1994 and 2003 were awarded to non-Navajos, according to the Navajo Nation award data; and

7. The Navajo Nation's sovereign status is directly related to its ability and authority to regulate all commercial activities within the Navajo Nation, including those of non-Indians and non-member Indians. In addition, the Treaty of 1868 between the Navajo Nation and the United States recognizes the inherent authority of the Navajo Nation to exclude non-Indians from the Navajo Nation. Pursuant to this authority, engaging in business within the Navajo Nation is a privilege granted by the Navajo Nation and is subject to such conditions as the Navajo Nation may require, subject to applicable federal law. The privilege of entering into the Navajo Nation for the purpose of engaging in business is therefore conditioned upon, among other things, compliance with this Act.

C. The purpose of this Act is to:

1. Promote the economic self-sufficiency of the Navajo Nation by granting "first opportunity" and/or preference in contracting to Navajo and/or Indian owned and operated businesses;

2. Promote competitive bidding and contracting opportunities among Navajo businesses;

3. Develop a dynamic and self-sustaining private sector for the Navajo Nation;

4. Increase Navajo business and employment opportunities for the Navajo people;

5. Provide for business certification in accordance with current Navajo Nation laws; and

6. Regulate the conduct of those engaging in business within the Navajo Nation in order to protect and promote the economic security and welfare of the Navajo Nation.

D. It is not the intent of this Act to require the Navajo Nation or any other public entities or private entities to contract with non-qualified Navajo businesses.

E. It is the intent of this Act to grant first opportunity and contracting preference to qualified Navajo-owned or Indian-owned businesses for all contracts, subcontracts, grants and subgrants issued by public and private entities within the Navajo Nation.

F. The provisions of this Act should be liberally interpreted to promote economic development and the growth of Navajo-owned businesses within the Navajo Nation.

G. The Navajo Nation shall determine the nature, composition, qualification, and preference certification of all businesses subject to the provisions of this Act.

History

CJA-07-05, January 28, 2005.
CAP-37-02, April 19, 2002.
CJY-59-85, Exhibit C, § 1, July 30, 1985.

Library References

Civil Rights ⇄1041, 1236.	C.J.S. Civil Rights §§ 23, 64 to 65.
Indians ⇄24, 32.	C.J.S. Indians §§ 12, 31, 49, 51.
Westlaw Topic Nos. 78, 209.	

§ 202. Definitions

For all purposes of this Act, the following definitions shall be applicable:

A. "Bid Shopping" is defined herein as any practice involving the solicitation or communication of any competitor's bid prior to and after bid opening, thereby providing an unfair advantage and opportunity to underbid any competitor.

B. "Bidders" is defined as buyers and sellers of goods and services who offer to perform a contract for work and labor or to supply services and goods at a specified price.

C. "Broker" is defined as buyers and sellers of goods and services including agents/negotiators between buyer and seller, who do not have custody of property or will not personally perform the contract to provide the goods or services.

D. "Dealer" is defined as one who buys to sell for resale, not one who buys to keep, or makes to sell.

E. "Established Business" is defined as a for-profit economic entity, firm or other organization, engaged in business activities with ownership, custody and control of an existing adequate inventory or providing professional services with a published address and telephone number and making significant contributions to the Navajo economy.

F. "Front" is defined as a business claiming to have fifty-one percent (51%) or more Navajo or other Indian ownership of any commercial, industrial, or other economic entity or organization, but without the Navajo or other Indian owner or owners exercising the major role in decision-making for operations, profit-sharing and actual management control.

G. "Navajo Indian" or "Navajo" is defined as a person who is an enrolled member of the Navajo Nation.

H. "Navajo Nation" shall have the same definition as used at 1 N.N.C. § 552 including:

1. When referring to governmental territory, all land within the territorial boundaries of the Navajo Nation, including:

a. All lands within the exterior boundaries of the Navajo Indian Reservation, including the Navajo Partitioned Land, or of the Eastern Navajo portion of the Navajo Nation, including Alamo, Tohajilee, and Ramah, or of Navajo-dependent Indian Communities;

5 N.N.C. § 202

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b. All lands held in trust by the United States for, or restricted by the United States or otherwise set aside or apart under the superintendence of the United States for the use or benefit of the Navajo Nation, the Navajo Tribe, any Band of Navajo Indians, or any individual Navajo Indian; and

c. All other lands over which the Navajo Nation may exercise governmental jurisdiction in accordance with federal or international law or to which the Navajo Nation has ownership through the Treaty of 1868.

I. "Other Indian" is defined as an Indian other than Navajo who is an enrolled member of a federally recognized Indian Tribe within the United States.

J. "Owned and Controlled" is defined as having at least fifty-one percent (51%) or more ownership of any commercial, industrial, or other economic entity, firm or organization, provided that such ownership shall consist of active participation in decision-making role in operations, profit-sharing and actual management control.

K. "Prime Contractor" is defined as any party, or entity which undertakes, offers to undertake or purports to have the capacity to undertake contracting of a project for a specified price and is authorized and responsible for the management, coordination, completion, supervision or subcontracting for the contracted project.

L. "Procuring Party" is defined as the party that initiates the proceeding to cause a project to be bid for contracting.

M. "Prospective bidders" is defined as potential buyers or sellers of goods and services who offer to perform a contract for work and labor or supply services and goods at a specific price.

N. "Private entity" is defined as a privately-owned business entity doing business on the Navajo Nation, including corporations which are wholly-owned by the Navajo Nation.

O. "Public entity" is defined as an entity which is a part of the Navajo Nation government.

P. "Subcontractor" is defined as any party or entity to which any contract is let by the prime contractor or its subcontractor for materials, equipment, transportation or other goods and services on that prime contract, regardless of tier.

History

CJA-07-05, January 28, 2005.

CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 2, July 30, 1985.

Revision note. The Commerce Department was discontinued pursuant to the 1981 Budget

and replaced by the Business Regulatory Department within the Division of Economic Development.

Library References

Civil Rights ☞1041, 1236.
Indians ☞1, 2, 24, 32.
Westlaw Topic Nos. 78, 209.

C.J.S. Civil Rights §§ 23, 64 to 65.
C.J.S. Indians §§ 2 to 4, 12, 23 to 29, 31, 38
to 39, 49, 51, 94, 130, 156.

§ 203. Jurisdiction; Application; Compliance Requirements and Violations

A. General Jurisdiction. The Navajo Nation has the inherent sovereign authority to authorize and regulate business activities of business entities within the jurisdiction of the Navajo Nation, as defined in 7 N.N.C. § 254.

B. Application. This Act shall apply uniformly to all public and private entities engaging in business on the Navajo Nation and to the Navajo Nation itself. This Act shall apply to all procurement contracts exceeding fifty thousand dollars (\$50,000) and on a limited basis to those procurement contracts less than fifty thousand dollars (\$50,000).

C. Inapplicability to Lease and Other Transactions. This Act shall not apply to the negotiation, execution, award, transfer, assignment or approval of business site leases, homesite leases, office space leases, shopping center leases, mineral or non mineral leases, subleases, permits, licenses and transactions that are governed by other applicable laws and regulations of the Navajo Nation and the United States. This Act shall not apply to activities of private persons who contract for goods or services for their individual use or benefit.

D. Implementing Federal Indian Preference Laws and Regulations. To the fullest extent possible, this Act and its rules and regulations shall be construed in accordance with applicable federal Indian preference laws and regulations. Specifically, with respect to any self-determination contract or portion of a self-determination contract intended to benefit the Navajo Nation, this Act and any other applicable tribal employment or contract preference laws shall govern with respect to the administration of the contract or portion of the contract in accordance with the Indian Self Determination and Education Assistance Act, 25 U.S.C §§ 450(e)(c). If federal or state funded contracts specifically provide for the application of Indian preference rather than Navajo preference, the procuring party shall attempt to negotiate with such party in order to apply the provisions of this Act. In the event federal or state law expressly precludes the application of this Act, then Indian preference laws shall be applied and shall not constitute a violation of this Act.

E. Falsification or Concealment of Information; Sanctions and Penalties. Any person who authorizes, or knowingly or recklessly omits, or allows, or falsifies, or otherwise misrepresents any fact or matter material to any determination required by this Act, shall be subject to all applicable sanctions and penalties provided under this Act and any other applicable laws or regulations of the Navajo Nation.

F. Bid-Shopping. Bid shopping shall be prohibited.

5 N.N.C. § 203

COMMERCE AND TRADE

G. Conflicts of Interest: Disqualification. No official or employee of the Navajo Nation government or entity of the Navajo Nation which is authorized to implement this Act shall promote, approve or participate in any matter pending before that agency or entity, in which such official or employee or any member of his or her immediate family has an economic or other special interest pursuant to the Navajo Nation Ethics in Government Law. The failure or refusal of such official or employee to abstain from such participation as required thereunder, shall render void any approval or action taken by the Navajo Nation Government or entity in which such official or employee participated, to the extent such action is favorable to the business entity in which such official or employee had an interest. The official(s) or employee(s) in conflict shall be subject to all applicable sanctions and penalties provided by law.

History

CJA-07-05, January 28, 2005.
CAP-37-02, April 19, 2002.
CJY-59-85, Exhibit C, § 3, July 30, 1985.
Revision note. CJY-59-85 inadvertently omitted the first Paragraph of § 203(D). See
ACJN-112-85, Exhibit B, § 3.4, and Exhibit C, which recommended an "addition to § 3.4 [§ 203(D)]", not a substitution.

Library References

Civil Rights ☞1041, 1236.
Indians ☞16, 24, 32.
Westlaw Topic Nos. 78, 209.
C.J.S. Civil Rights §§ 23, 64 to 65.
C.J.S. Indians §§ 12, 31, 49, 51, 98.

§ 204. Required Business and Contracting Preference Priorities; Certification Requirements

A. Preference Priorities. The Navajo Nation shall certify all businesses pursuant to the following Navajo business opportunity priority classification:

1. Priority #1. Certification shall be granted to any one hundred percent (100%) Navajo-owned and controlled business, having its principal place of business on or off the Navajo Nation.

2. Priority #2. Certification shall be granted to any fifty-one percent (51%) to ninety-nine percent (99%) Navajo or fifty-one percent (51%) to one hundred percent (100%) other Indian owned and controlled business or one hundred percent (100%) Navajo Nation owned and controlled economic enterprise having its principal place of business on or off the Navajo Nation.

B. Obtaining a Priority Certification and Required Compliance. To receive a priority certification under this Act, the business must satisfactorily demonstrate that the business meets the requirements of § 204(A)(1) or (2).

C. Appeal of Priority Certification Determination. Any business denied a priority classification may appeal the determination pursuant to § 211 hereof.

D. Conditions and Requirements for Broker and Dealer Certification; Established Businesses. Brokers and dealers as defined in § 202 of this Act shall be certified for those activities which brokers and dealers normally conduct throughout the United States, subject to pre-qualification by the contract-

letting, purchasing or procuring entity requesting such broker and/or dealer's services. Certification of brokers and dealers shall further be limited to those having an established business as defined in § 202 herein and certified only for the services being performed. Certification of any broker or dealer shall not qualify any other entity, firm or organization thereof. Such other entities, firms or organizations shall be individually subject to the provisions and conditions herein.

E. Partnership Certification. To be certified as eligible for any Navajo Business Opportunity hereunder, Navajo or other Indian ownership and control must be at least fifty-one percent (51%) of the entire partnership business, as well as the project or transaction for which Navajo Business Opportunity is sought, regardless of the number of general or limited partners.

F. Joint Venture Certification. To be eligible for any Navajo Business Opportunity hereunder, Navajo or other Indian ownership and control must be at least fifty-one percent (51%) of the overall combined joint venture, as well as the project or transaction for which Navajo Business Opportunity is sought, with profits to be divided from each venture in proportion to such respective interest.

History

CJA-07-05, January 28, 2005.

CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 4, July 30, 1985.

Revision note. The Commerce Department was discontinued by the 1981 Budget and organization chart. See § C.

Library References

Civil Rights ☞1041.

Indians ☞24, 32.

Westlaw Topic Nos. 78, 209.

C.J.S. Civil Rights § 23.

C.J.S. Indians §§ 12, 31, 49, 51.

§ 205. Navajo Business Opportunity Procedures in Bidding and Procurement

A. Initial Determination of Maximum Feasible Price or Cost by Contracting or Procuring Party. The determination of the maximum feasible price or cost, in accordance with appropriate Business Regulatory Department rules and regulations, shall be made by the contracting or procuring party prior to soliciting bids and proposals. The maximum feasible price or cost may take into account market price, budgetary constraints and prototype cost and may not be revealed until the award of the contract.

B. Notice to the Business Regulatory Department. Prior to bid openings, the procuring party shall provide to the Business Regulatory Department:

1. A copy of the bid solicitation;
2. A copy of the notice published in the newspaper; and
3. A list of all businesses notified, including the dates and manner of such notices.

C. Bid Opening Procedures and Requirements. The following procedures shall be used at bid openings when there is more than one priority business submitting a bid:

5 N.N.C. § 205

COMMERCE AND TRADE

1. All bids submitted by Priority #1 businesses shall be opened first.
2. The procuring entity shall determine the qualifications of the bidders based on qualifications established in accordance § 205(A)(2). Bids submitted by businesses deemed non-qualified or non-responsive shall not be considered.
3. The award shall be made to the qualified Priority #1 bidder with the lowest responsive bid among the Priority #1 bidders provided the bid does not exceed the maximum feasible price or cost.
4. If there is no qualified Priority #1 bidder, or if there is no qualified Priority #1 bidder with a bid less than or equal to the maximum feasible price or cost, the bids of the Priority #2 businesses shall then be opened and award shall be given to the qualified Priority #2 bidder with the lowest responsive bid provided the bid is less than or equal to the maximum feasible price or cost.
5. If no qualified Priority #1 or Priority #2 bidder is entitled to award, bidding may then be open to all other bidders, subject to the same specifications, qualifications and maximum feasible price or cost.
6. Any modifications of the specifications, qualifications or maximum feasible cost or price made subsequent to bid opening and which does not result in a contract award shall be rebid pursuant to the above procedures.
7. Notwithstanding any provision of this Act, in the event that federal law prohibits bid or procurement opportunity or preference as provided herein or prohibits negotiations with a bidder other than the bidder with the lowest bid or price offer, the initial bidding shall be opened to all Priority #1 and #2 businesses; and award shall be made to the bidder offering the lowest price, provided that the bid is less than or equal to the maximum feasible cost or price.

D. Subcontracting Requirements. Prior to the bid opening, prime contractors shall submit to the Business Regulatory Department a subcontracting plan listing the following:

1. Subcontractors and suppliers to be used by the prime contractor;
2. Procedures used in selecting subcontractors and suppliers; and
3. Subcontracts or lease agreements for equipment to be used in performance of the contract.

E. Prime and Subcontractor Performance Bonding: Permitted Alternatives. The prime contractor shall obtain surety bonding or other performance security from subcontractors to secure their performance and wage obligations including, but not limited to cash bonds, letters of credit and cash monitoring systems such as retention, escrow and/or assignment of construction accounts. The prime contractor shall determine the form of performance security. The prime contractor shall maintain guaranteed security and be ultimately liable for performance of subcontractors.

F. Minimum Subcontract and Procurement Percentage Requirements. The Business Regulatory Department shall have the authority to require all procure-

ment entities and prime contractors to comply with current minimum percentages for procurement and subcontract awards to Navajo-owned and controlled entities, firms and organizations, based upon availability and qualifications of such entities to provide specific products and services.

G. **Prior Approval of Modifications.** Any contract modification that results in a higher cost or price in excess of twenty percent (20%) of the original amount of the contract or if the procuring party substantially modifies such project, activity or transaction, shall be subject to review and approval by the Business Regulatory Department, to ensure that such modifications are not contrary to the purposes, intent or other provisions of other applicable laws.

H. **Required Adherence to Priority Certification.** Procuring entities shall not award contracts to non-Navajo owned and controlled entities at a price equal to or greater than the price offered by an equally qualified Priority #1 or #2 business.

History

CJA-07-05, January 28, 2005.
CAP-37-02, April 19, 2002.
CJY-59-85, Exhibit C, § 5, July 30, 1985.

Cross References

Contracts, see 2 N.N.C. § 223.

Library References

Civil Rights ⇨1041.	C.J.S. Civil Rights § 23.
Contracts ⇨16 to 18, 236.	C.J.S. Contracts §§ 37 to 41, 44 to 46, 55 to 59, 407, 409 to 411.
Indians ⇨24.	C.J.S. Indians §§ 12, 31.
Westlaw Topic Nos. 78, 95, 209.	

§ 206. Waivers

No Waiver of any requirement of this Act shall be granted except by valid resolution of the Navajo Nation Council.

History

CJA-07-05, January 28, 2005.
CAP-37-02, April 19, 2002.
CJY-59-85, Exhibit C, § 6, July 30, 1985.

Library References

Indians ⇨24.
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 207. Implementation and Compliance with Navajo Nation Business Opportunity Provisions; Specific Duties and Responsibilities

A. **Economic Development Committee.** The Economic Development Committee of the Navajo Nation Council shall have the responsibility and authority to review, amend, modify and approve proposed rules and regulations for implementation of this Act.

5 N.N.C. § 207

COMMERCE AND TRADE

B. Division of Economic Development. The Division of Economic Development of the Navajo Nation shall be responsible for administering, enforcing and implementing the provisions herein.

C. Business Regulatory Department. The Business Regulatory Department within the Division of Economic Development, shall be responsible for:

1. Developing and maintaining a certification program to determine the appropriate certification priority of business entities.
2. Promulgating rules and regulations to implement this Act. All proposed rules and regulations shall be published for public comments at least 90 days prior to submission to the Economic Development Committee of the Navajo Nation Council for final review and approval.
3. Publishing, maintaining and making available approved rules, regulations, guidelines and forms including provisions of this Act, to ensure that all Navajo Nation entities, all business entities and the Navajo People are kept fully informed of all current laws, rules, regulations and procedures for compliance hereto.
4. Regularly reviewing such rules and regulations in coordination with other Navajo Nation entities and agencies for applicability to economic and market conditions and their relevance to the interests of the Navajo People and the Navajo Nation and the intent of this Act.
5. Enforcing compliance with this Act, pursuant to the intent of this Act and the rules and regulations adopted hereto; requiring applicability of this Act to any proposed contract, subcontract or other transaction to be performed within the Navajo Nation by or on behalf of the Navajo Nation, as part of required clearance procedures, prior to approval by the appropriate oversight committee or authority; and requiring prebid, preconstruction or pre-qualification requirements as needed and appropriate to comply with this Act.
6. Coordinating efforts with federal agencies that require Indian preference or maximum utilization of minority business enterprises.
7. Maintaining and publishing a current Source List of all certified Priority #1 and #2 business entities, persons, firms, enterprises or organizations. By including an entity on such a Source List, the Business Regulatory Department in no way certifies that the entity is qualified to perform in the category in which it is listed. The purpose of this Source List is to utilize such list as a source document only for contract-letting and procuring parties required to determine and notify available Navajo and other Indian-owned entities in the respective areas of commerce which are subject to the provisions of this Act.
8. Providing, in accordance with its responsibilities, capabilities and available resources, in coordination with those of other responsible and appropriate Navajo Nation departments and entities, such community, governmental and business sector educational programs, information and advice as may be necessary and appropriate from time to time, to the continued understanding and awareness by such entities of the policies, objectives, and

current procedural requirements for compliance with all provisions of this Act and the current rules and regulations adopted hereunder.

9. Recommend disciplinary action for Navajo Nation employees or officials found to be in violation or noncompliance with this Act pursuant to the applicable Executive, Judicial, or Legislative Navajo Nation Personnel Policies Manual, or the Ethics in Government Law.

History

CJA-07-05, January 28, 2005.
CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 7, July 30, 1985.
CD-68-89, December 15, 1989.

Cross References

Contracts, generally, see 2 N.N.C. § 185(B).
Contract signatures, see 2 N.N.C. § 222.

Library References

Civil Rights ⇐1041, 1236.
Indians ⇐24, 32.
Westlaw Topic Nos. 78, 209.

C.J.S. Civil Rights §§ 23, 64 to 65.
C.J.S. Indians §§ 12, 31, 49, 51.

§ 208. Certification of Eligible Entities and Authorization of Business Activities

Establishment of Procedure. The Business Regulatory Department shall have the following duties, responsibilities and authority:

A. Require timely submission of information and documentation on percentage of ownership and organization structure as required herein for certification or recertification eligibility;

B. Deny certification if required information is not provided in a timely manner;

C. Renew, suspend or decertify certifications. Annual, temporary or conditional certifications may be issued based on the circumstances. Certifications shall be reviewed based on new information or changes in organization or operations which materially affect eligibility for certification. Reviews shall be conducted in a manner so as to avoid any loss of eligibility to entities entitled hereto;

D. Certified businesses entities shall be required to disclose changes in organization and/or ownership that may materially affect the eligibility for preference priority certification; and

E. All confidential certification information shall be kept confidential and shall not be disclosed except as necessary in a proceeding under this Act and other applicable laws.

History

CJA-07-05, January 28, 2005.
CAP-37-02, April 19, 2002.
CJY-59-85, Exhibit C, § 8, July 30, 1985.

Library References

Indians ⇐24, 32.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 12, 31, 49, 51.

§ 209. Monitoring and Enforcement

A. Navajo Nation Review and Approval Process. All proposed professional services, procurement and construction contracts shall be reviewed by the Business Regulatory Department for compliance with the Act.

B. Procedure Upon Alleged Violation. To investigate alleged violations or noncompliance of this Act, the Business Regulatory Department shall:

1. Investigate any alleged violation and/or complaint under this Act upon receipt of a written document;
2. Prepare a written summary of facts constituting a violation of the Act or applicable rules, and provide all statements of witnesses along with the summary thereof; and
3. Initially seek voluntary compliance and appropriate remedial action pursuant to this Act.
4. If voluntary compliance or remediation is not possible, the Department shall render a decision pursuant to this Act.
5. A decision by the Business Regulatory Department may be appealed pursuant to § 211 of this Act.

C. Interim Project Suspension; Temporary Restraining Orders and Permanent Injunctive Relief from Navajo Nation Court.

1. In the event of a violation of or noncompliance with this Act presenting a probability of continuing material and irreparable harm which is greater than the harm from suspension of performance, the Executive Director of the Division of Economic Development shall, with assistance from the Navajo Nation Department of Justice, on behalf of the threatened interests of the Navajo Nation and of innocent third parties, immediately apply to the District Court of the Navajo Nation for a temporary restraining order and an order to show cause why permanent injunctive relief should not be granted (including orders to permanently cease and desist such performance as determined appropriate) according to the Navajo Nation Rules of Appellate Procedure.

2. If a Navajo Nation Court orders suspension of performance, the Division of Economic Development shall take immediate remedial action as authorized by said Court to prevent or minimize material harm and damage to innocent third parties and to the interests of the Navajo Nation resulting or likely to result from such suspension of performance.

History

CJA-07-05, January 28, 2005.
 CAP-37-02, April 19, 2002.
 CJY-59-85, Exhibit C, § 9, July 30, 1985.

Note. § 209(C)(1) reference to Navajo Nation Rules of Civil Appellate Procedure changed to the Navajo Nation Rules of Civil Procedure.

§ 210. Imposition of sanctions

Upon opportunity for hearing and determination as provided herein, the Administrative Hearing Officer may impose any and all of the following sanctions for violation of this Act or the rules and regulations lawfully promulgated hereunder:

A. Civil monetary fines not to exceed five hundred dollars (\$500.00) per day, per violation.

B. Suspension or termination of a party's authorization to engage in business activity on the Navajo Nation; provided that the party shall be given a reasonable time to remove its equipment and other property it may have on the Navajo Nation and to take such measures to facilitate the satisfaction or assumption of any contractual obligations it has.

C. Prohibit the party from engaging in future business activity on the Navajo Nation for a specified period or permanently, pursuant to applicable laws of the Navajo Nation.

D. Require the party to make such changes in its performance, organization or operations to comply with this Act.

E. Impose other sanctions as appropriate to ensure compliance and to remedy any harm or damages from violation of this Act pursuant to applicable laws.

F. Recommend corrective or remedial action to the President of the Navajo Nation, or the Navajo Nation Council or its appropriate standing committee for Navajo Nation entities in violation or noncompliance with this Act.

History

CJA-07-05, January 28, 2005.
CAP-37-02, April 19, 2002.
CJY-59-85, Exhibit C, § 10, July 30, 1985.

Library References

Civil Rights ⇨1041.	C.J.S. Civil Rights § 23.
Indians ⇨24, 32(4.1, 6, 8).	C.J.S. Indians §§ 12, 29, 31, 51, 59, 157.
Westlaw Topic Nos. 78, 209.	

§ 211. Appeals

A. Appeals to Business Regulatory Department. Appeals can be made by those businesses who are denied priority certification or parties that are adversely affected by a decision with the Act. Appeals shall not include those matters which are found through an investigation conducted under § 208 (b) of this Act to be private contractual disputes between parties. If a business is denied priority certification, the business may appeal the decision for administrative resolution to the Director of the Business Regulatory Department (or successor agency or designee) by filing with the Director a notice of appeal within 10 days of the date of the written adverse decision. The written notice of appeal shall:

5 N.N.C. § 211

COMMERCE AND TRADE

1. Identify the business that was denied certification or license or adversely affected by a decision made pursuant to this Act;
2. Provide a short statement indicating the nature and circumstances of the denial or decision;
3. State the basis for the appeal; and,
4. State the remedial action being sought by the business or party.

B. Appeals to the Hearing Officer. If the Director upholds the Department's decision to deny certification to the affected business, the appealing party may appeal the Director's decision to the Navajo Office of Hearings and Appeals for assignment to an Administrative Hearing Officer.

1. The hearing officer shall hear the appeal within 30 days of receipt of the notice of appeal.
2. Upon mutual agreement with the appealing party, time extensions in increments of not more than 15 days may be granted.
3. Notice shall be provided to the parties at least 10 days in advance of hearing date.
4. Each party at the hearing may be represented by legal counsel and shall have the opportunity to subpoena witnesses and documents, present evidence and examine witnesses.
5. After the hearing each party shall have 10 days to submit in writing proposed findings of facts and conclusions of law. The hearing officer may uphold or reverse the appealed decision(s) or any part thereof, but may not grant any other relief.
6. The hearing officer shall issue written findings of facts and conclusions of law that shall state the decision and grounds thereof.

C. Appeals to the Courts. The decision of the hearing officer may be appealed by the party adversely affected to the Navajo Nation Supreme Court pursuant to the Navajo Nation Rules of Civil Appellate Procedure. The court shall review the decision of the hearing officer and the administrative record only. The decision shall not be subject to de novo review on appeal. The court may substitute its judgment on those questions of law within its special competence but shall otherwise uphold the decision of the hearing officer where reasonable.

History

CJA-07-05, January 28, 2005.
CAP-37-02, April 19, 2002.
CJY-59-85, Exhibit C, § 11, July 30, 1985.

Library References

Indians § 24, 32(4).
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31, 51 to 52, 115.

§ 212. Other Navajo Nation Entities and Associated Agencies

All Navajo Nation entities, departments and other agencies involved in any stage of contracting, subcontracting or other procurement process shall comply with this Act in accordance with applicable law.

History

CJA-07-05, January 28, 2005.
 CAP-37-02, April 19, 2002.
 CJY-59-85, Exhibit C, § 12, July 30, 1985.

Library References

Indians ⇨24.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 12, 31.

§ 213. Severability

If any provision of this Act or any rule or regulation adopted hereto is found invalid, the remainder of this Act and of the rules and regulations adopted hereto shall not be affected thereby.

History

CJA-07-05, January 28, 2005.
 CAP-37-02, April 19, 2002.
 CJY-59-85, Exhibit C, § 13, July 30, 1985.

Library References

Indians ⇨32(4.1).
 Statutes ⇨64.
 Westlaw Topic Nos. 209, 361.
 C.J.S. Statutes § 83.

§ 214. Effective Date

The effective date of this Act shall be the date of its approval by the Navajo Nation Council.

History

CJA-07-05, January 28, 2005.
 CAP-37-02, April 19, 2002.
 CJY-59-85, Exhibit C, § 15, July 30, 1985.

§ 215. Periodic Review and Amendments

This Act may be amended from time to time only by the Navajo Nation Council upon the recommendation of the Economic Development Committee.

History

CJA-07-05, January 28, 2005.
 CAP-37-02, April 19, 2002.
 CJY-59-85, Exhibit C, § 18, July 30, 1985.
Note. Previously numbered Section 216.
 Former Section 215 deleted.

RESOLUTION OF THE
NAVAJO NATION COUNCIL

20th NAVAJO NATION COUNCIL -- Third Year, 2005

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; TITLE FIVE OF THE NAVAJO
NATION CODE; APPROVING AMENDMENTS TO THE NAVAJO NATION
BUSINESS OPPORTUNITY ACT

BE IT ENACTED:

The Navajo Nation Council hereby approves the following
amendments to the Title 5, Navajo Nation Code, Chapter 2:

Title 5, Navajo Nation Code

Commerce and Trade

Chapter 2. Navajo Nation Business Opportunity Act

§201. Title; Findings; Legislative Purpose And Intent

A. This Act shall be known and cited as the Navajo Nation
Business Opportunity Act; Title 5, Navajo Nation Code,
Sections 201 through 215 ~~216~~.

B. Whereas the Navajo Nation Council finds:

1. The Navajo Nation is comprised of more than 25,000
square miles of land;
2. The Navajo Nation population now exceeds 250,000
members, of which over 175,000 members reside within
the Navajo Nation. In addition, residents of the
Navajo Nation include approximately 8,000 non-
Navajos;

Nation may require, subject to applicable federal law. The privilege of entering into the Navajo Nation for the purpose of engaging in business is therefore conditioned upon, among other things, compliance with this Act.

C. The purpose of this Act is to:

1. Promote the economic self-sufficiency of the Navajo Nation by granting "first opportunity" and/or preference in contracting to Navajo and/or Indian owned and operated businesses;
2. Promote competitive bidding and contracting opportunities among Navajo businesses;
3. Develop a dynamic and self sustaining private sector for the Navajo Nation;
4. Increase Navajo business and employment opportunities for the Navajo people;
5. Provide for business certification in accordance with current Navajo Nation laws; and
6. Regulate the conduct of those engaging in business within the Navajo Nation in order to protect and promote the economic security and welfare of the Navajo Nation.

D. It is not the intent of this Act to require the Navajo Nation or any other public entities or private entities to contract with non-qualified Navajo businesses.

C. "Broker" is defined as buyers and sellers of goods and services including agents/negotiators between buyer and seller, who do not have custody of property or will not personally perform the contract to provide the goods or services.

D. "Dealer" is defined as one who buys to sell for resale, not one who buys to keep, or makes to sell.

E. "Established Business" is defined as an for-profit economic entity, firm or other organization, engaged in business activities with ownership, custody and control of an existing adequate inventory or providing professional services with a published address and telephone number and making significant contributions to the Navajo economy.

F. "Front" is defined as a business claiming to ~~having~~ have 51% or more Navajo or other Indian ownership of any commercial, industrial, or other economic entity or organization, but ~~not having~~ without the Navajo or other Indian owner or owners exercising the major role a material participation in decision-making role in for operations, profit-sharing and actual management control.

G. "Navajo Indian" or "Navajo" is defined as a person who is an enrolled member of the Navajo Nation.

H. "Navajo Nation" shall have the same definition as used at 1 N.N.C. § 552 including:

J. "Owned and Controlled" is defined as having at least 51% or more ownership of any commercial, industrial, or other economic entity, firm or organization, provided that such ownership shall consist of active participation in decision making in operations, profit-sharing and actual management control.

K. "Prime Contractor" is defined as any party, or entity which undertakes, offers to undertake or purports to have the capacity to undertake contracting of a project for a specified price and is authorized and responsible for the management, coordination, completion, supervision or subcontracting for the contracted project.

L. "Procuring Party" is defined as the party that initiates the proceeding to cause a project to be bid for contracting.

M. "Prospective bidders" is defined as potential buyers or sellers of goods and services who offer to perform a contract for work and labor or supply services and goods at a specific price.

~~N. "Subcontractor" is defined as any party or entity to which any contract is let by the prime contractor or its subcontractor for materials, equipment, transportation or other goods and services on that prime contract, regardless of tier.~~

Act shall apply to all procurement contracts exceeding \$50,000 and on a limited basis to those procurement contracts less than \$50,000, ~~which will be governed by the rules and regulations of the Navajo Nation Procurement Code (12 N.C.C. §§301-317).~~

C. *Inapplicability to Lease and Other Transactions.* This Act shall not apply to the negotiation, execution, award, transfer, assignment or approval of business site leases, homesite leases, office space leases, shopping center leases, mineral or non mineral leases, subleases, permits, licenses and transactions that are governed by other applicable laws and regulations of the Navajo Nation and the United States. This Act shall not apply to activities of private persons who contract for goods or services for their individual use or benefit.

D. *Implementing Federal Indian Preference Laws and Regulations.* To the fullest ~~reasonable~~ extent possible, this Act and its rules and regulations shall be construed in accordance with applicable federal Indian preference laws and regulations. Specifically, with respect to any self-determination contract or portion of a self-determination contract intended to benefit the Navajo Nation, this Act and any other applicable tribal employment or contract preference laws shall govern with respect to the administration of the contract or portion of the contract in accordance with the Indian Self Determination and Education Assistance Act, 25 U.S.C §§450(e) (c). If

F.G. *Bid-Shopping.* Bid shopping as ~~defined in §202(A)~~ shall be prohibited.

G.H *Conflicts of Interest: Disqualification.* No official or employee of the Navajo Nation government or entity of the Navajo Nation which is authorized to implement this Act shall promote, approve or participate in any matter pending before that agency or entity, in which such official or employee or any member of his or her immediate family has an economic or other special interest pursuant to the Navajo Nation Ethics in Government Law. The failure or refusal of such official or employee to abstain from such participation as required thereunder, shall render void any approval or action taken by the Navajo Nation Government or entity in which such official or employee participated, to the extent such action is favorable to the business entity in which such official or employee had an interest. The official(s) or employee(s) in conflict shall be subject to all applicable sanctions and penalties provided by law.

~~I. Other Compliance With Navajo Nation Business Requirements. No business shall operate within the Navajo Nation without prior authorization, license or permit as required by the Navajo Nation.~~

§204. Required Business And Contracting Preference Priorities; Certification Requirements

by the contract-letting, purchasing or procuring entity requesting such broker and/or dealer's services. Certification of brokers and dealers shall further be limited to those having an established business as defined in §202 herein and certified only for the services being performed. Certification of any broker or dealer shall not qualify any other entity, firm or organization thereof. Such other entities, firms or organizations shall be individually subject to the provisions and conditions herein.

E. Partnership Certification. To be certified as eligible for any Navajo Business Opportunity hereunder, Navajo or other Indian ownership and control must be at least fifty-one percent (51%) of the entire partnership business, as well as the project or transaction for which Navajo Business Opportunity is sought, regardless of the number of general or limited partners.

F. Joint Venture Certification. To be eligible for any Navajo Business Opportunity hereunder, Navajo or other Indian ownership and control must be at least fifty-one percent (51%) of the overall combined joint venture, as well as the project or transaction for which Navajo Business Opportunity is sought, with profits to be divided from each venture in proportion to such respective interest.

~~e. The necessary qualifications of the business to provide goods or services.~~

A. *Initial Determination of Maximum Feasible Price or Cost by Contracting or Procuring Party.* The determination of the maximum feasible price or cost, in accordance with appropriate Business Regulatory Department rules and regulations, shall be made by the contracting or procuring party prior to soliciting bids and proposals. The maximum feasible price or cost may take into account market price, budgetary constraints and prototype cost and may not be revealed until the award of the contract.

B.D. *Notice to the Business Regulatory Department.* Prior to bid openings, the procuring party shall provide to the Business Regulatory Department:

1. A copy of the bid solicitation;
2. A copy of the notice published in the newspaper; and
3. A list of all businesses notified, including the dates and manner of such notices.

C.E. *Bid Opening Procedures and Requirements.* The following procedures shall be used at bid openings when there is more than one priority business submitting a bid:

1. All bids submitted by Priority #1 businesses shall be opened first.
2. The procuring entity shall determine the qualifications of the bidders based on qualifications

the initial bidding shall be opened to all Priority #1 and #2 businesses; and award shall be made to the bidder offering the lowest price, provided that the bid is less than or equal to the maximum feasible cost or price.

D.F. Subcontracting Requirements. Prior to the bid opening, prime contractors shall submit to the Business Regulatory Department a subcontracting plan listing the following:

1. Subcontractors and suppliers to be used by the prime contractor;
2. Procedures used in selecting subcontractors and suppliers; and
3. Subcontracts or lease agreements for equipment to be used in performance of the contract.

E.G. Prime and Subcontractor Performance Bonding: Permitted Alternatives. The prime contractor shall obtain surety bonding or other performance security from subcontractors to secure their performance and wage obligations including, but not limited to cash bonds, letters of credit and cash monitoring systems such as retention, escrow and/or assignment of construction accounts. The prime contractor shall determine the form of performance security. The prime contractor shall maintain guaranteed security and be ultimately liable for performance of subcontractors.

§207. Implementation And Compliance With Navajo Nation Business Opportunity Provisions; Specific Duties And Responsibilities

A. *Economic Development Committee.* The Economic Development Committee of the Navajo Nation Council shall have the responsibility and authority to review, amend, modify and approve proposed rules and regulations for implementation of this Act.

B. *Division of Economic Development.* The Division of Economic Development of the Navajo Nation shall be responsible for administering, enforcing and implementing the provisions herein.

C. *Business Regulatory Department.* The Business Regulatory Department within the Division of Economic Development shall be responsible for:

1. Developing and maintaining a certification program to determine the appropriate certification priority of business entities.
2. Promulgating rules and regulations to implement this Act. All proposed rules and regulations shall be published for public comments at least ninety (90) days prior to submission to the Economic Development Committee of the Navajo Nation Council for final review and approval.

including an entity on such a Source List, the Business Regulatory Department in no way certifies that the entity is qualified to perform in the category in which it is listed. The purpose of this Source List is to utilize such list as a source document only for contract-letting and procuring parties required to determine and notify available Navajo and other Indian-owned entities in the respective areas of commerce which are subject to the provisions of this Act.

8. Providing, in accordance with its responsibilities, capabilities and available resources, in coordination with those of other responsible and appropriate Navajo Nation departments and entities, such community, governmental and business sector educational programs, information and advice as may be necessary and appropriate from time to time, to the continued understanding and awareness by such entities of the policies, objectives, and current procedural requirements for compliance with all provisions of this Act and the current rules and regulations adopted hereunder.
9. Recommend disciplinary action for Navajo Nation employees or officials found to be in violation or noncompliance with this Act pursuant to the applicable Executive, Judicial, or Legislative Navajo Nation Personnel Policies Manual, or the Ethics in Government Law.

E. All confidential certification information shall not be disclosed except as necessary in a proceeding under this Act and other applicable laws.

§ 209. Monitoring And Enforcement

A. *Navajo Nation Review and Approval Process.* All proposed professional services, procurement and construction contracts shall be initially reviewed by the Business Regulatory Department for compliance with the Act.

B. *Procedure Upon Alleged Violation.* To investigate alleged violations or noncompliance of this Act, the Business Regulatory Department shall:

1. Investigate any alleged violation and/or complaint under this Act upon receipt of a written document.
2. Prepare a written summary of facts constituting a violation of the Act or applicable rules, and provide all statements of witnesses along with the summary thereof.
3. Initially seek voluntary compliance and appropriate remedial action pursuant to this Act.
4. If voluntary compliance or remediation is not possible, the Business Regulatory Department shall render a decision pursuant to this Act.
5. A decision by the Business Regulatory Department may be appealed pursuant to §210 of this Act.

C. *Interim Project Suspension; Temporary Restraining Orders and Permanent Injunctive Relief from Navajo Nation Court.*

Act or the rules and regulations lawfully promulgated hereunder:

- A. Civil monetary fines not to exceed five hundred dollars (\$500.00) per day, per violation.

- B. Suspension or termination of a party's authorization to engage in business activity on the Navajo Nation; provided that the party shall be given a reasonable time to remove its equipment and other property it may have on the Navajo Nation and to take such measures to facilitate the satisfaction or assumption of any contractual obligations it has.

- C. Prohibit the party from engaging in future business activity on the Navajo Nation for a specified period or permanently, pursuant to applicable laws of the Navajo Nation.

- D. Require the party to make such changes in its performance, organization or operations to comply with this Act.

- E. Impose other sanctions as appropriate to ensure compliance and to remedy any harm or damages from violation of this Act pursuant to applicable laws.

- ~~F. Recommend disciplinary action for Navajo Nation employees found to be in violation or noncompliance with this Act pursuant to the applicable Navajo Nation Personnel Policies Manual.~~

4. State the remedial action being sought by the business or party.

B. *Appeals to the Hearing Officer.* If the Director upholds the Department's decision to deny certification to the affected business, the appealing party may appeal the Director's decision to the Navajo Nation Office of Hearing and Appeals for assignment to an Administrative Hearing Officer.

1. The hearing officer shall hear the appeal within thirty (30) days of receipt of the notice of appeal.
2. Upon mutual agreement with the appealing party, time extensions in increments of not more than fifteen (15) days may be granted.
3. Notice shall be provided to the parties at least ten (10) days in advance of hearing date.
4. Each party at the hearing may be represented by legal counsel and shall have the opportunity to subpoena witnesses and documents, present evidence and examine witnesses.
5. After the hearing each party shall have ten (10) days to submit in writing proposed findings of facts and conclusions of law. The hearing officer may uphold or reverse the appealed decision(s) or any part thereof, but may not grant any other relief.
6. The hearing officer shall issue written findings of facts and conclusions of law that shall state the decision and grounds thereof.

~~§215. Prior Inconsistent Law Superseded~~

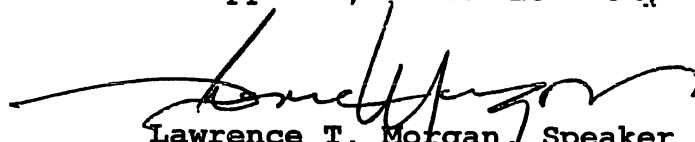
~~Upon the effective date of this Act, all prior inconsistent enactments, laws, policies, ordinances and regulations of the Navajo Nation are hereby superseded.~~

§215216. Periodic Review And Amendments

This Act may be amended from time to time only by the Navajo Nation Council upon the recommendation of the Economic Development Committee.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 53 in favor and 2 opposed, this 28th day of January 2005.

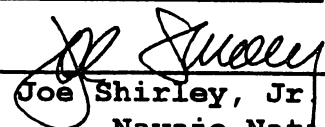

Lawrence T. Morgan, Speaker
Navajo Nation Council
02 Feb 05
Date

Motion: Willie Tracey, Jr.

Second: Willie Begay

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (C)(10), on this _____ day of FEB 11 2005 2005.



Joe Shirley, Jr, President
Navajo Nation

NAVAJO NATION PROCUREMENT CODE - 12 N.N.C. §301 - 371

GENERAL PROVISIONS

- 12 N.N.C. §301 Purposes, Rules of Construction.
- 12 N.N.C. §302 Requirement of Good Faith.
- 12 N.N.C. §303 Application of this Code.
- 12 N.N.C. §304 Severability.
- 12 N.N.C. §305 Construction Against Implicit Repealer.
- 12 N.N.C. §306 Effective Date.
- 12 N.N.C. §307 Determinations.
- 12 N.N.C. §308 Definitions.
- 12 N.N.C. §309 Public Access to Procurement Information.
- 12 N.N.C. §310 Collection of Data Concerning Public Procurement.
- 12 N.N.C. §311 Retention of Procurement Records.
- 12 N.N.C. §312 Reporting of Anti-competitive Practices.

REGULATIONS REQUIRED BY THIS CODE

- 12 N.N.C. §320 Navajo Nation Procurement Regulations.

SOURCE SELECTION AND CONTRACT FORMATION

- 12 N.N.C. §330 Methods of Source Selection.
- 12 N.N.C. §331 Competitive Sealed Bidding.
- 12 N.N.C. §332 Competitive Sealed Proposals.
- 12 N.N.C. §333 Small Purchases.
- 12 N.N.C. §334 Emergency Procurement.
- 12 N.N.C. §335 Sole Source Procurement.
- 12 N.N.C. §336 Record of Sole Source Procurement and Emergency Procurement.
- 12 N.N.C. §337 Cancellation of Invitations for Bids or Requests for Proposals.
- 12 N.N.C. §338 Responsibility of Bidders and Offerors.
- 12 N.N.C. §339 Prequalification of Suppliers.

PROCUREMENT OF CONSTRUCTION SERVICES

- 12 N.N.C. §340 Responsibility for Selection of Methods of Construction Contracting Management.
- 12 N.N.C. §341 Bid Security.
- 12 N.N.C. §342 Contract Performance and Payment Bonds.
- 12 N.N.C. §343 Bond Forms and Copies.
- 12 N.N.C. §344 Contract Clauses and Their Administration.
- 12 N.N.C. §345 Fiscal Responsibility.

procurement system of the Navajo Nation;

(6) to provide increased economy in Navajo Nation procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds of the Navajo Nation;

(8) to provide safeguards for the maintenance of a procurement system of quality and integrity.

12 N.N.C. §302 Requirement of Good Faith. This Code requires all parties involved in the negotiation, performance, or administration of Navajo Nation contracts to act in good faith.

12 N.N.C. §303 Application of this Code.

(a) General Application. This Code applies only to contracts solicited or entered into after the effective date of this Code unless the parties agree to its application to a contract solicited or entered into prior to the effective date.

(b) Application to Navajo Nation Procurement. This Code shall apply to every expenditure of public funds, irrespective of their source, by the Navajo Nation, acting through a Division, department, office, or program of the Navajo Nation as defined herein, under any contract. Nothing in this Code or in regulations promulgated hereunder shall prevent any Division, department, office, or program of the Navajo Nation or political subdivision of the Navajo Nation from complying with the terms and conditions of any grant, gift, bequest, intergovernmental, joint powers or cooperative agreement. This Act shall not apply to governance-certified Chapters, who are governed by their own procurement policies.

(c) For the purpose of procuring the services of accountants, physicians, dentists, or other licensed professional services, other than attorneys or tribal court advocates, any Division, department, office, or program of the Navajo Nation of the Navajo Nation may act as a Purchasing Agency and contract on its own behalf for such services, subject to this Code and regulations promulgated by the Budget and Finance Committee. The Purchasing Agency may consult with the Director, Division of Finance, Purchasing Department or authorized designee when procuring such services.

(d) Contracts for the services of outside attorneys and tribal court advocates shall be awarded only through the Attorney General of the Navajo Nation. This limitation shall not apply to the employment of attorneys or tribal court advocates by Divisions, departments, offices, programs, and political subdivisions of the Navajo Nation, in accord with Navajo Nation law.

12 N.N.C. §304 Severability. If any provision of this Code is held invalid, such invalidity shall not affect other provisions or application of this Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are declared to be severable.

12 N.N.C. §305 Construction Against Implicit Repealer. Since this Code is a general act, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction of the subsequent legislation can be reasonably avoided.

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(m) "Employee" means an individual drawing a salary from a Division, department, office, or program of the Navajo Nation, whether elected or not, and any uncompensated individual performing personal services for any Division, department, office, or program of the Navajo Nation.

(n) "Established Catalogue Price" means the price included in a catalogue, price list, schedule, or other form that:

(1) is regularly maintained by a manufacturer or contractor;

(2) is either published or otherwise available for inspection by customers; and

(3) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(o) "Division, department, office, or program of the Navajo Nation" means any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment or official of the Executive, Legislative, or Judicial branch of the Navajo Nation Government. It does not mean any other governance-certified political subdivision of the Navajo Nation, or an enterprise or authority of the Navajo Nation.

(p) "Grant" means the receipt or provision of governmental assistance, whether financial or otherwise, under a program authorized by Navajo Nation, state or federal law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services, or construction; a contract resulting from such an award is not a grant but a procurement contract.

(q) "Invitation for Bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

(r) "May" denotes the permissive.

(s) "Person" means any business, individual, union, committee, club, other organization, or group of individuals.

(t) "Political Subdivision" Political subdivisions are governmental units of the Navajo Nation which are created by Navajo Nation law and include the Chapters and Townsites of the Navajo Nation.

(u) "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any goods and/or services, unless excluded from coverage by some other provision of Navajo Nation law. It also includes all functions that pertain to the obtaining of any goods and/or services, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(v) "Procurement Officer or authorized designee" means any person authorized to enter into, make written determinations regarding, and administer contracts. The term also includes an authorized representative acting within the limits of authority.

(w) "Proposal" means an offer to perform a contract for the performance of work and labor and/or the delivery of goods sought where it is either not practicable or not advantageous to the Navajo Nation to procure specified types of supplies, services, or construction by competitive sealed bidding.

(x) "Purchase Description" means the words used in a solicitation to describe the supplies, services, or construction to be purchased, and includes specifications attached to, or made a part of

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12 N.N.C. §312 Reporting of Anti-competitive Practices. When for any reason, collusion or other anti-competitive practices are suspected in contracting provided under this Code, a notice of the relevant facts shall be transmitted to the Attorney General.

REGULATIONS REQUIRED BY THIS CODE

12 N.N.C. §320 Navajo Nation Procurement Regulations.

(a) Regulations shall be developed by the Division of Finance, Purchasing Department, in consultation with the Business Regulatory Department, Department of Justice and Office of Legislative Counsel, and adopted by the Budget and Finance Committee of the Navajo Nation Council within one (1) year of the passage of this Act, and shall be reviewed for potential revision at least every two (2) years. Navajo Nation procurement regulations shall be consistent with the provisions of the Navajo Nation Business Preference Law.

(b) The Budget and Finance Committee shall not delegate its power to promulgate procurement regulations.

(c) No regulation shall change any commitment, right, or obligation of the Navajo Nation or of a contractor under a contract in existence on the effective date of such regulation.

SOURCE SELECTION AND CONTRACT FORMATION

12 N.N.C. §330 Methods of Source Selection. Unless otherwise authorized by law, all Navajo Nation contracts shall be awarded by competitive sealed bidding, pursuant to 12 N.N.C. §331 (Competitive Sealed Bidding), except as provided in:

(a) 12 N.N.C. §332 (Competitive Sealed Proposals);

(b) 12 N.N.C. §333 (Small Purchases);

(c) 12 N.N.C. §334 (Emergency Procurement);

(d) 12 N.N.C. §335 (Sole Source Procurement); or

(e) 12 N.N.C. §346 (Architect-Engineer and Land Surveying Services).

12 N.N.C. §331 Competitive Sealed Bidding. Competitive Sealed Bidding shall be the preferred method of source selection, and shall be conducted in a manner consistent with the procedures set forth in the Navajo Nation Business Preference Act, 5 N.N.C. §205.

(a) Invitation for Bids. An Invitation for Bids shall include a purchase description, and all contractual terms and conditions applicable to the procurement. Purchase descriptions, terms and conditions, and specifications for goods and services shall not be unduly restrictive. The Invitation for Bids shall set forth the criteria to be used in evaluation of bids which are submitted. The Invitation for Bids shall refer to the preference of Navajo and Indian-owned businesses under the Navajo Nation Business Preference Law.

(b) Public Notice. Adequate public notice of the Invitation for Bids shall be issued a reasonable time prior to the date set for the opening of bids. Certified entities under the Navajo

EXHIBIT A

Department, the head of a Purchasing Agency, or a designee of either officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the Navajo Nation, a contract may be entered into by competitive sealed proposals. The Budget and Finance Committee may provide by regulation that it is either not practicable or not advantageous to the Navajo Nation to procure specified types of supplies, services, or construction by competitive sealed bidding. The competitive sealed proposals process shall be conducted in a manner consistent with the procedures set forth in the Navajo Nation Business Preference Act, 5 N.N.C. §205.

(b) Request for Proposals. Proposals shall be solicited through a Request for Proposals. A Request for Proposals shall be issued and shall include a purchase description, and all contractual terms and conditions applicable to the procurement. Purchase descriptions, terms and conditions, and specifications for goods and services shall not be unduly restrictive. The Request for Proposals shall set forth the criteria to be used in evaluation of proposals which are submitted. The Request for Proposals shall refer to the preference of Navajo and Indian-owned businesses under the Navajo Nation Business Preference Law.

(c) Public Notice. Adequate public notice of the Request for Proposals shall be given in the same manner as provided in 12 N.N.C. §331(b) (Competitive Sealed Bidding, Public Notice).

(d) Opening of Proposals. The opening of proposals shall be performed in a manner consistent with the Navajo Nation Business Preference Act. Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A Register of Proposals shall be prepared in accordance with regulations promulgated by the Budget and Finance Committee, and shall be open for public inspection after contract award, to the extent provided in the Navajo Nation Privacy and Access to Information Act.

(e) Evaluation Factors. The Request for Proposals shall state the relative importance of price and other evaluation factors. The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive offeror whose proposal meets the requirements and criteria set forth in the Request for Proposals. In the event all proposals in a procurement exceed available funds as certified by the appropriate fiscal officer, and the low responsive and responsible proposal does not exceed such funds by more than five percent, the Director, Division of Finance, Purchasing Department or authorized designee, or the head of a Purchasing Agency, is authorized in situations where time or economic considerations preclude re-solicitation of work of a reduced scope to negotiate an adjustment of the proposal price, including changes in the proposal requirements, with the low responsive and responsible offeror, in order to bring the proposal within the amount of available funds.

(f) Discussion with Responsible Offerors and Revisions to Proposals. As provided in the Request for Proposals, and under regulations promulgated by the Budget and Finance Committee, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

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12 N.N.C. §336 Record of Small Purchases, Sole Source Procurement and Emergency Procurement.

(a) Contents of Record. The Director, Division of Finance, Purchasing Department shall maintain a record listing all contracts made under 12 N.N.C. §333 (Small Purchases), 12 N.N.C. §334 (Emergency Procurement) and 12 N.N.C. §335 (Sole Source Procurement) for a minimum of five years. The record shall contain:

- (1) each contractor's name;**
- (2) the amount and type of each contract; and**
- (3) a listing of the supplies, services, or construction procured under each contract.**

(b) Submission to Navajo Nation Council. A copy of such record shall be submitted to the Navajo Nation Council on an annual basis. The record shall be available for public inspection to the extent provided by the Navajo Nation Privacy and Access to Information Act.

12 N.N.C. §337 Cancellation of Invitations for Bids or Requests for Proposals. An Invitation for Bids, a Request for Proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, or when it is in the best interests of the Navajo Nation in accordance with regulations promulgated by the Budget and Finance Committee. The reasons therefor shall be made part of the contract file.

12 N.N.C. §338 Responsibility of Bidders and Offerors. (a) **Determination of Nonresponsibility.** A written determination of nonresponsibility of a bidder or offeror shall be made in accordance with regulations promulgated by the Budget and Finance Committee. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.

(b) Right of Nondisclosure. Information furnished by a bidder or offeror pursuant to this section shall only be disclosed in accord with the provisions of the Navajo Nation Privacy and Access to Information Act.

12 N.N.C. §339 Prequalification of Suppliers. Prospective suppliers may be prequalified for particular types of supplies, services, and construction in accordance with regulations promulgated by the Budget and Finance Committee. Solicitation mailing lists of potential contractors shall include but shall not be limited to such prequalified suppliers.

PROCUREMENT OF CONSTRUCTION AND RELATED SERVICES

12 N.N.C. §340 Responsibility for Selection of Methods of Construction Contracting Management. The Budget and Finance Committee, in consultation and coordination with the Transportation and Community Development Committee, shall promulgate regulations providing for as many alternative methods of construction management as it may determine to be feasible. These regulations shall:

(a) set forth criteria to be used in determining which method of construction contracting management is to be used for a particular project;

(b) grant to the Director, Division of Finance, Purchasing Department or authorized designee,

EXHIBIT A

(c) Authority to Require Additional Bonds. Nothing in this section shall be construed to limit the authority of the Navajo Nation to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in subsection (a) of this section.

12 N.N.C. §343 Bond Forms and Copies. (a) Bond Forms. The Budget and Finance Committee shall promulgate by regulation the form of the bonds required by this Act.

(b) Certified Copies of Bonds. Any person may request and obtain from the Navajo Nation a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

12 N.N.C. §344 Contract Clauses and Their Administration. (a) Contract Clauses. The Budget and Finance Committee shall promulgate regulations requiring the inclusion in Navajo Nation construction contracts of clauses providing for adjustments in prices, time of performance, or other contract provisions, as appropriate, and covering the following subjects:

(1) the unilateral right of the Navajo Nation to order in writing:

(A) changes in the work within the scope of the contract; and

(B) changes in the time of performance of the contract that do not alter the scope of the contract work;

(2) variations occurring between estimated quantities of work in a contract and actual quantities;

(3) suspension of work ordered by the Navajo Nation; and

(4) site conditions differing from those indicated in the contract, or ordinarily encountered, except that differing site conditions clauses may be included in a contract:

(A) when the site conditions within the contract are specifically negotiated;

(B) when the contractor provides the site or design; or

(C) when the parties have otherwise agreed with respect to the risk of differing site conditions.

(b) Price Adjustments.

(1) Adjustments in price pursuant to clauses promulgated under subsection (a) of this section shall be computed in one or more of the following ways:

(A) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(B) by unit prices specified in the contract or subsequently agreed upon;

(C) by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

(D) in such other manner as the contracting parties may mutually agree; or

(E) in the absence of agreement by the parties, by a unilateral determination by the Navajo Nation of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the Navajo Nation in accordance with applicable sections of the regulations promulgated by the Budget and Finance

EXHIBIT A

(c) Architect-Engineer Selection Committee. In the procurement of architect-engineer and land surveying services, the Director, Division of Finance, Purchasing Department or the head of a Purchasing Agency shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The Director, Division of Finance, Purchasing Department and a representative of Navajo Design and Engineering Services shall comprise the Architect-Engineer Selection Committee for each architect engineer and land surveying services contract over \$250,000. The Selection Committee for architect-engineer and land surveying services contracts under this amount shall be established in accordance with regulations promulgated by the Budget and Finance Committee. The Selection Committee shall evaluate current statements of qualifications and performance data on file with the Navajo Nation, together with those that may be submitted by other firms regarding the proposed contract. The Selection Committee shall conduct discussions with no less than three firms (if at least three firms respond to the solicitation) regarding the contract and the relative utility of alternative methods of approach for furnishing the required services, and then shall select therefrom, in order of preference, based upon criteria established and published by the Selection Committee, no less than three of the firms (if at least three firms respond to the solicitation) deemed to be the most highly qualified to provide the services required.

(d) Negotiation. The Procurement Officer shall negotiate a contract with the highest qualified firm for architect-engineer or land surveying services at compensation which the Procurement Officer or authorized designee determines in writing to be fair and reasonable to the Navajo Nation. In making this decision, the Procurement Officer or authorized designee shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. Should the Procurement Officer or authorized designee be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price the Procurement Officer or authorized designee determines to be fair and reasonable to the Navajo Nation, negotiations with that firm shall be formally terminated. The Procurement Officer shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the Procurement Officer or authorized designee shall formally terminate negotiations. The Procurement Officer or authorized designee shall then undertake negotiations with the third most qualified firm. Should the Procurement Officer or authorized designee be unable to negotiate a contract at a fair and reasonable price with any of the selected firms, the Procurement Officer or authorized designee shall select additional firms in order of their competence and qualifications, and the Procurement Officer or authorized designee shall continue negotiations in accordance with this section until an agreement is reached.

CONTRACT ADMINISTRATION

12 N.N.C. §350 Contract Clauses and Their Administration. (a) Contract Clauses. The Budget and Finance Committee may promulgate regulations permitting or requiring the inclusion of clauses providing for adjustments in prices, time of performance, or other contract provisions as appropriate covering the following subjects:

(1) the unilateral right of the Navajo Nation to order in writing:

(A) changes in the work within the scope of the contract; and

performance of any contract awarded or to be awarded by the Navajo Nation.

12 N.N.C. §352 Right to Audit Records. (a) Audit of Cost or Pricing Data. The Navajo Nation may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data to the extent that such books and records relate to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books and records that relate to such cost or pricing data for three years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

(b) Contract Audit. The Navajo Nation shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of five years from the date of final payment under the prime contract and by the subcontractor for a period of five years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

12 N.N.C. §353 Types of Contracts. Subject to the limitations of this section, any type of contract which will promote the best interests of the Navajo Nation may be used; provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited.

12 N.N.C. §354 Multi-Term Contracts. Unless otherwise provided by law, a contract may be entered into for any period of time deemed to be in the best interests of the Navajo Nation provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds for completion of the contract.

12 N.N.C. §355 Cost Principles Regulations Required. The Budget and Finance Committee shall promulgate regulations setting forth cost principles which shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs, provided that, such cost principles may be modified by contract.

LEGAL AND CONTRACTUAL REMEDIES

12 N.N.C. §360 Authority to Resolve Protested Solicitations and Awards. (a) Right to Protest. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Director, Division of Finance, Purchasing Department or the head of a Purchasing Agency. The protest shall be submitted in writing within 14 days after such aggrieved person knows or should have known of the facts giving rise thereto.

(b) Authority to Resolve Protests. The Director, Division of Finance, Purchasing Department, the head of a Purchasing Agency, or a designee of either officer, with the approval of

EXHIBIT A

(4) violation of contract provisions, as set forth below, of a character which is regarded by the Director, Division of Finance, Purchasing Department or the head of a Purchasing Agency, with concurrence of the Attorney General (or Office of Legislative Counsel, in the case of a Legislative Branch procurement) to be so serious as to justify debarment action:

(A) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(B) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment; and

(5) any other cause which the Director, Division of Finance, Purchasing Department or the head of a Purchasing Agency, with the approval of the Attorney General, or Office of Legislative Counsel, in the case of a Legislative Branch procurement, determines to be so serious and compelling as to affect responsibility as a Navajo Nation contractor, including debarment by another governmental entity for any cause listed in regulations of the Budget and Finance Committee.

(c) Decision. The Director, Division of Finance, Purchasing Department or authorized designee or the head of a Purchasing Agency shall issue a written decision to debar or suspend. The decision shall:

(1) state the reasons for the action taken; and

(2) inform the debarred or suspended person involved of his or her rights to administrative review as provided in this Article.

(d) Notice of Decision. A copy of the decision under subsection (c) of this section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.

(e) Finality of Decision. A decision under subsection (3) of this section shall be final and conclusive, unless fraudulent or the person adversely affected by the decision appeals administratively in accordance with 12 N.N.C. §§362 and 363.

12 N.N.C. §362 Administrative Review. The Office of Hearings and Appeals shall have the jurisdiction to hear and decide appeals of decisions under this Code.

12 N.N.C. §363 Scope of Administrative Review. (a) The Office of Hearings and Appeals shall have jurisdiction to review and determine de novo:

(1) any protest of a solicitation or award of a contract by an aggrieved actual or prospective bidder or offeror, or a contractor; and

(2) any appeal by an aggrieved party from a determination by the Director, Division of Finance, Purchasing Department, the head of a Purchasing Agency, or a designee of either officer authorized by this Code.

(b) Time Limitation on Filing an Appeal. The aggrieved person shall file his or her appeal within 20 days of the receipt of a decision.

(3) Decision. The decision of the Office of Hearings and Appeals shall make a determination

**RESOLUTION OF THE
BUDGET AND FINANCE COMMITTEE OF
THE NAVAJO NATION COUNCIL**

**Approving and Accepting the Navajo Nation Procurement Rules
and Regulations as Described Within the Procurement Code**

WHEREAS:

- 1. Pursuant to 2 N.N.C. § 374 (B)(16), as amended by Navajo Nation Council Resolution CO-81-90, the Budget and Finance Committee of the Navajo Nation Council has oversight authority over the Office of the Controller; and**
- 2. Pursuant to 2 N.N.C. § 372, the Budget and Finance Committee is a standing committee of the Navajo Nation Council established for the purpose of recommending to the Navajo Nation Council the adoption of legislation designed to strengthen the fiscal and financial position of the Navajo Nation and to promote the efficient use of the fiscal and financial resources of the Navajo Nation; and**
- 3. The Navajo Nation Office of the Attorney General, Office of Legislative Counsel, Business Regulatory Office and Division of Finance, Purchasing Services Department recommend the adoption of the Navajo Nation Procurement Rules and Regulations; and**
- 4. The Navajo Nation Office of Legislative Counsel and the Office of the Attorney General, Business Regulatory and Division of Finance, Purchasing Services Department have developed a proposed comprehensive Navajo Nation Procurement Rules and Regulations, attached hereto as Exhibit "A"; and**
- 5. Pursuant to 12 N.N.C. § 320 (as amended by CJY-68-01), the Navajo Nation Office of Legislative Counsel, Office of Attorney General, Business Regulatory and the Office of the Controller have been authorized to develop Navajo Nation Procurement Rules and Regulations; and**
- 6. Pursuant to 12 N.N.C. §320 (as amended by CJY-68-01), the Budget and Finance Committee of the Navajo Nation Council has final authority to adopt the newly developed Navajo Nation Procurement Rules and Regulations; and**
- 7. The Navajo Nation Procurement Rules and Regulations will establish rules, procedures, and guidelines relating to the procurement of all Goods, including supplies and services, including, but not limited to, the procurement of information technology, and construction. These Regulations are designed to achieve maximum practicable uniformity in purchasing throughout the Navajo**

**RESOLUTION OF THE
GOVERNMENT SERVICES COMMITTEE
OF THE NAVAJO NATION COUNCIL**

**Recommending That the Navajo Nation Council Adopt
the Navajo Nation Privacy and Access To Information Act**

WHEREAS:

1. Pursuant to 2 N.N.C. §341, the Government Services Committee is established and continued as a standing committee of the Navajo Nation Council with the authority, to monitor and coordinate the activities of all divisions and department of the Executive Branch; and

2. Pursuant to 2 N.N.C. §343(B)(5), the Committee is authorized to recommend legislation to the Navajo Nation Council on matters within the Committee's jurisdiction; and

3. The Government Services Committee of the Navajo Nation Council recognizes that a democratic form of government requires that information related to government operations be accessible to the public, while respecting individuals right to privacy. As such, a generally applicable Navajo Nation Privacy and Access to Information Act is necessary to provide the general public with a means to access records and information relating to the operation of the Navajo Nation while preserving the privacy interests of individuals and entities.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Government Services Committee of the Navajo Nation Council hereby recommends that the Navajo Nation Council amend Title II of the Navajo Nation Code by adopting the Navajo Nation Privacy Act and Access to Information Act as provided in Exhibit "A", attached hereto and incorporated herein.

2. The Government Services Committee of the Navajo Nation Council further recommends that inclusive training sessions be provided to all Navajo Nation governmental entities and political subdivisions regarding the implementation of the Navajo Nation Privacy and Access to Information Act.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Government Services Committee of the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same as passed by a vote of 6 in favor, 0 opposed and 0 abstained, this 13th day of April 1999.



Ervin M. Keeswood, Sr., Chairperson
Government Services Committee

Motion: Johnny Naize
Second: Orlanda S. Hodge

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Title 2. Navajo Nation Government

Chapter 1. Establishment

Subchapter 4. Privacy and Access to Information

§81. Short Title

This Act shall be referred to as the "Navajo Nation Privacy Act."

§82. Declaration of Public Policy

The Navajo Nation Council finds and declares it the policy of the Navajo Nation that a democratic form of government requires that information related to government operations be accessible to the public, while recognizing that individuals have a right to privacy. It is the intent of the law that the general public be provided a means to access records and information relating to the operation of the Navajo Nation while preserving the privacy interests of individuals and entities.

§83. Definitions

As used in this subchapter:

- A. "*Governmental entity*" means any administrative, advisory, executive judicial or legislative office or body of the Navajo Nation or its political subdivisions, including without limitation all commissions, corporations and other instrumentalities whose boards of directors are appointed or elected by the Navajo Nation or its political subdivisions. Governmental entity includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, the Navajo Nation to carry out the public's business.
- B. "*Person*" means any individual, nonprofit or profit corporation, partnership, sole proprietorship or other type of business organization.
- C. "*Protected record*" means any record containing data on persons or governmental entities that is private or otherwise protected as provided by 2 N.N.C. § 85.
- D. "*Public record*" means any record that is not private or otherwise protected and that is not exempt from disclosure as provided in 2 N.N.C. § 84.
- E. "*Record*" means all books, letters, documents, papers, maps, plans, photographs, films, cards, tapes, recordings, electronic data or other documentary materials regardless of physical form or characteristics which are prepared, owned, received or retained by a governmental entity and where all of the information in the original is reproducible by photocopy or other mechanical or electronic means. "Record" does not mean:
 - 1. Materials that are legally owned by an individual in his private capacity;
 - 2. Materials to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by a governmental entity;
 - 3. Junk mail or commercial publications received by a governmental entity or an official or employee of a governmental entity;
 - 4. Books and other materials that are cataloged, indexed or inventoried and contained in the collections of libraries open to the public;
 - 5. Daily calendars and other personal notes prepared by the originator for the originator's personal use or for the personal use of an individual for whom he is working;
 - 6. Computer programs that are developed or purchased by or for any governmental entity for its own use; or
 - 7. Notes or internal memoranda prepared as part of the deliberative process by a member of the judiciary or any other body charged by law with performing a quasi-judicial function.
- F. "*Right to Privacy*" means the right of a person to be free from unwarranted intrusion by a governmental entity.

§84. Records that must be disclosed:

- A. The following records are public except to the extent they contain information expressly permitted to be treated as protected as provided for 2 N.N.C. § 85:
 - 1. Laws;
 - 2. Names, gender, job titles, job description, business addresses, business telephone numbers, number of hours worked per pay period, dates of employment, relevant

education, previous employment and similar job qualifications of the governmental entity's current and former employees and officers excluding:

- a. Undercover law enforcement personnel; and
 - b. Investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety.
3. Inter-office memoranda;
 4. Final opinions, including concurring and dissenting opinions, and orders that are made by a governmental entity in an administrative, adjudicative or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they contain information that is protected;
 5. Final interpretations of statutes or rules by a governmental entity;
 6. Information contained in or compiled from a transcript, minutes or report of the open portions of a meeting, excluding executive sessions, of a governmental entity, including the records of all votes of each member of the governmental entity;
 7. Judicial records unless a court orders the record to be restricted under the rules of civil or criminal procedure or unless the records are protected under this subchapter;
 8. Records filed with or maintained by governmental entities that give public notice of:
 - a. Titles or encumbrances to real property, including homesite permits, land use permits and grazing permits; or
 - b. Restrictions on the use of real property.
 9. Records filed with or maintained by governmental entities that evidence incorporations, name changes and uniform commercial code filings;
 10. Documentation of the compensation that a governmental entity pays to a contractor or private provider; and
 11. Data on individuals that would otherwise be protected under this subchapter if the individual who is the subject of the record has given the governmental entity written permission to make the records available to the public.
- B. The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under 2 N.N.C. § 85:
1. Administrative staff manuals, instructions to staff and statements of policy;
 2. Records documenting a contractor's or private provider's compliance with the terms of a contract with a governmental entity;
 3. Contracts entered into by a governmental entity;
 4. Any account, voucher or contract that deals with the receipt or expenditure of funds by a governmental entity;
 5. Correspondence by and with a governmental entity in which the governmental entity determines or states an opinion upon the rights of the Nation, a political subdivision, the public or any person;
 6. Empirical data if contained in drafts if:
 - a. The data is not reasonably available to the requester elsewhere in similar form; and
 - b. The governmental entity is given a reasonable opportunity to correct any errors or make non-substantive changes before release.
 7. Drafts that are circulated to anyone other than a governmental entity, a federal agency if the governmental entity and the federal agency are jointly responsible for implementation of a program or a contractor or private provider;
 8. Drafts that have never been finalized but were relied upon by the governmental entity in carrying out action or policy;
 9. Arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;
 10. Search warrants after execution and filing of the return, except that, for good cause, a court may order restricted access to search warrants prior to trial;
 11. Records that would disclose information relating to formal charges or disciplinary action against a past or present governmental entity employee if:
 - a. The disciplinary action has been completed and all time periods for administrative appeal have expired; and
 - b. The formal charges were sustained.

- C. The list of public records in this section is not exhaustive and should not be used to limit access to records.

§85. Protected records

- A. The following records are private or otherwise protected and shall not be considered public for purposes of required disclosure:
1. Records concerning an individual's eligibility for social services, welfare benefits or the determination of benefit levels;
 2. Records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation or similar medical data, including psychiatric or psychological data;
 3. Records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, social security number, insurance coverage, marital status or payroll deductions;
 4. Records concerning a current or former employee of, or applicant for employment with, a governmental entity, including performance evaluations and personal status information such as race, religion or disabilities, but not including records that are public under 2 N.N.C. § 84(A)(2) or (B)(11);
 5. Records describing an individual's finances, except that the following are public:
 - a. Records described in 2 N.N.C. § 84(A);
 - b. Navajo Nation Economic Disclosure Statements filed with the Ethics and Rules Office by elected public officials and candidates for elected public office, pursuant to 2 N.N.C. § 3762;
 - c. Loan applications for Navajo Nation loans to elected public officials and appointed public officials submitted to the Government Services Committee for approval, pursuant to Section 7(c) of the Personal Loan Operating Policies and Guidelines, approved by Resolution CLO-19-88; or
 - d. Records that must be disclosed in accordance with another statute or duly adopted rules and regulations of a governmental entity.
 6. Attorney-client privileged information, materials and work-products, including the mental impressions or legal theories of an attorney or other representative of a governmental entity;
 7. The negotiating position of the Navajo Nation before a contract, lease or other agreement is entered into;
 8. Records prepared by or on behalf of a governmental entity solely in anticipation of litigation that are not available under the rules of discovery;
 9. Information, research and discussions conducted by the public bodies of the Navajo Nation during executive sessions;
 10. Memoranda prepared by staff and used in the decision-making process by a judge or a member of any other body charged by law with performing a Quasi-judicial function;
 11. Information received in response to an invitation for bids or request for proposals before a contract is awarded. Such information will also remain unavailable to the general public after a contract is entered into provided that the information contained in the bid or proposals is proprietary in nature or otherwise to remain confidential at the request of the person submitting the bid or proposal;
 12. Information contained within or related to a contract, lease or other agreement which is proprietary in nature or otherwise to remain confidential at the request of any party to the contract, lease or other agreement;
 13. Records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;
 14. Records which are sealed or otherwise protected by court order due to the sensitive nature of the record in which the privacy interest of the person outweighs the public interest in the information;
 15. Records to which access is restricted pursuant to court rule or as a condition of participation in a state or federal program or for receiving state or federal funds;
 16. Drafts, unless otherwise classified as public;
 17. Information related to the location of an individual member of any threatened or endangered species, such that that individual member could be placed further at risk;

18. Information which cannot be released without interfering with an individual's right to exercise or practice his chosen religion;
 19. Information otherwise protected by applicable laws;
 20. Other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy.
- B. Upon request, a governmental entity shall disclose a private or otherwise protected record as provided for in 2 N.N.C. § 86.

§86. Access to protected documents

Upon request, protected records will be available for disclosure as follows:

- A. Information shall be available for criminal and civil law enforcement for prosecution purposes, internal audit, as a result of a court order, to further an individual's medical treatment and to address public health needs.
- B. Information relating to an individual shall be available to the individual who is the subject of the record, or if a minor, shall be available to the parent or guardian subject to any applicable court order.
- C. Individual records may be released to third parties with the written permission, by means of a notarized release, of the individual who is the subject of those records, or his or her parent or legal guardian if a minor.
- D. Individual records may be used for statistical and other purposes provided that any information which could be used to identify the individual specifically is removed or withheld.
- E. Information about an individual will always be available to other Navajo Nation governmental entities subject to the general restrictions above.
- F. Before releasing a protected record, the governmental entity shall obtain evidence of the requester's identity.
- G. Before releasing a protected record, the governmental entity shall inform the requester that he or she is prohibited from disclosing or providing a copy of the protected record to any other person and shall obtain the requester's written acknowledgment of this prohibition.

§87. Segregation of records

- A. Notwithstanding any other provision in this subchapter, if a governmental entity receives a request for access to a record that contains both information that the requester is entitled to inspect and information that the requester is not entitled to inspect, and, if the information the requester is entitled to inspect is intelligible and able to be segregated, the governmental entity:
 1. Shall allow access to information in the record that the requester is entitled to inspect under this subchapter; and
 2. May deny access to information in the record if the information is exempt from disclosure to the requester, issuing a notice of denial as provided in 2 N.N. C. § 89.
- B. If there is more than one subject of a protected record, the portion of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect.

§88. Procedures

- A. Every person has the right to inspect a public record free of charge, and the right to take a copy of a public record during normal working hours, subject to subsection (H).
- B. All records are public unless otherwise expressly provided by statute.
- C. A person making a request for a record shall furnish the governmental entity with a written request containing his name, mailing address, daytime telephone number, if available, and a description of the records requested that identifies the record with reasonable specificity. The request for information shall be addressed to the governmental entity primarily responsible for compiling such records.
- D. A governmental entity is not required to create a record in response to a request. However, upon request, a governmental entity shall provide a record in a particular format if:
 1. The governmental entity is able to do so without unreasonably interfering with the governmental entity's duties and responsibilities; and
 2. The requester agrees to pay the governmental entity for its additional costs actually incurred in providing the record in the requested format.

- E. Nothing in this section requires a governmental entity to fulfill a person's records request if the request unreasonably duplicates prior records requests from that person.
- F. Within 90 days, the governmental entity shall respond to the request by:
 - 1. Approving the request and providing the record;
 - 2. Denying the request by providing a written explanation of why the record is protected from disclosure. In making such determinations, the governmental entity shall consult with the Department of Justice; or
 - 3. Notifying the requester that it does not maintain the record and providing, if known, the name and address of the governmental entity that does maintain the record.
- G. In the event that the governmental entity determines that the requested record is protected from disclosure, or fails to respond to the request within the 90 day period, the requesting party may make application to the District Court, as defined at 7 N.N.C. § 253, in accordance with the proper processes of the Court for an order compelling the release of the record.
 - 1. This application must meet the notice and filing requirements of the Navajo Nation Sovereign Immunity Act, 1 N.N.C. § 551 et seq.
 - 2. Any person who may have an interest in maintaining the confidentiality of the record may appear and demonstrate the need for maintaining the confidentiality of such record.
 - 3. In determining the availability of any record requested, the District Court shall apply the standards set forth in 2 N.N.C. §§ 84 and 85.
- H. The Navajo Nation may assess the reasonable costs for photocopying and other activities associated with providing the record against the person requesting the record.
- I. The implementation of the Navajo Nation Privacy and Access to Information Act shall be subject to rules and regulations duly adopted by the Government Services Committee. Records released may be subject to reasonable restrictions on use, pursuant to such rules and regulations of the Government Services Committee.

§89. Denials

- A. If the governmental entity denies the request in whole or in part, it shall provide a notice of denial to the requester either in person or by sending the notice to the requester's address.
- B. The notice of denial shall contain the following information:
 - 1. A description of the record or portions of the record to which access was denied, provided that the description does not disclose protected information;
 - 2. Citations to the provisions of this subchapter, court rule or order, state or federal statute or regulation that exempt the record or portions of the record from disclosure, provided that the citations do not disclose protected information;
 - 3. A statement that the requester has the right to make application to the District Court for an order releasing the record and the time limits for filing the application.
- C. Unless otherwise required by a court of competent jurisdiction, a governmental entity may not destroy or give up custody of any record to which access was denied until the period for an appeal has expired or the end of the appeals process.

§90. Ordinances Adopted in Compliance with Subchapter

- A. Each governmental entity may adopt an ordinance or a policy applicable throughout its jurisdiction relating to information practices including access, denials, segregation and appeals.
- B. If any governmental entity does not adopt and maintain an ordinance or policy, then that governmental entity is subject to this subchapter.
- C. Notwithstanding the adoption of an ordinance or policy, each governmental entity is subject to 2 N.N.C. §§ 83, 84 and 85.
- D. Each ordinance or policy shall establish access criteria, procedures and response times for requests to inspect or obtain records of the governmental entity and time limits for appeals.
- E. Each ordinance or policy shall establish an appeals process for persons aggrieved by, the access decisions, allowing petition for judicial review to the District Court as set forth at 2 N.N.C. § 88(G).

§91. Criminal Penalties

- A. A public employee or other person who has lawful access to any protected record under this subchapter, who intentionally discloses or provides a copy of a protected record to any other

person is guilty of an offense and upon conviction thereof shall be punished by a fine of not less than \$1000 nor more than \$5000.

- B. It is a defense to prosecution under subsection (A) that the actor released protected information in the reasonable belief that the disclosure of the information was necessary to expose a violation of law involving government corruption, abuse of office or misappropriation of public funds or property.
- C. A person who, by false pretenses, bribery or theft, gains access to or obtains a copy of any protected record to which he is not legally entitled is guilty of an offense and upon conviction thereof shall be punished by a fine of not less than \$1000 nor more than \$5000. No person shall be guilty who receives the record, information or copy after the fact and without prior knowledge of or participation in the false pretenses, bribery or theft.
- D. A public employee who intentionally refuses to release a record the disclosure of which the employee knows is required by law or by final unappealed order from a governmental entity or a court is guilty of an offense and upon conviction thereof shall be punished by a fine of not less than \$1000 nor more than \$5000.

§92. Civil Penalties

- A. A non-Indian who has lawful access to any protected record under this subchapter, who intentionally discloses or provides a copy of a protected record to any other person is subject to civil penalties of not less than \$1000 nor more than \$5000.
- B. It is a defense to a civil action under subsection (A) that the non-Indian actor released protected information in the reasonable belief that the disclosure of the information was necessary to expose a violation of law involving government corruption, abuse of office or misappropriation of public funds or property.
- C. A non-Indian person who by false pretenses, bribery or theft, gains access to or obtains a copy of any protected record to which he is not legally entitled is subject to civil penalties of not less than \$1000 nor more than \$5000. No person shall be subject to civil penalties who receives the record, information or copy after the fact and without prior knowledge of or participation in the false pretenses, bribery or theft.
- D. A non-Indian public employee who intentionally refuses to release a record the disclosure of which the employee knows is required by law or by final unappealed order from a governmental entity or a court is subject to civil penalties of not less than \$1000 nor more than \$5000.
- E. Any non-Navajo person within the Navajo Nation's jurisdiction, as defined at 7 N.N.C. § 254, having been found to be in repeated violation of this subchapter may be subject to the exclusionary provisions of the Navajo Nation, as provided at 17 N.N.C. § 1901 et seq.

RESOLUTION OF THE
NAVAJO NATION COUNCILAdopting the Navajo Nation Privacy and Access to Information Act

WHEREAS:

1. Pursuant to 2 N.N.C. §102 (A) and (B), the Navajo Nation Council is the governing body of the Navajo Nation and all powers not delegated are reserved to the Navajo Nation Council; and

2. Pursuant to 2 N.N.C. §341, the Government Services Committee of the Navajo Nation Council is established and continued as a standing committee of the Navajo Nation Council with the authority to monitor and coordinate the activities of all divisions and departments of the Executive Branch. In addition, pursuant to 2 N.N.C. §343 (B) (5), the Committee is authorized to recommend legislation to the Navajo Nation Council on matters within the Committee's jurisdiction; and

3. The Government Services Committee of the Navajo Nation Council, by Resolution GSCAP-27-99, attached hereto and incorporated herein as Exhibit "B", has recommended that the Navajo Nation Council adopt the Navajo Nation Privacy and Access to Information Act, set forth at 2 N.N.C. Subchapter 4, §§81-91; and

4. Pursuant to 2 N.N.C. §571, the Judiciary Committee of the Navajo Nation Council is established and continued as a standing committee of the Navajo Nation Council with oversight responsibilities for the operation of the Judicial Branch. In addition, pursuant to 2 N.N.C. §574 (E) (2), the Committee is authorized to review legislation and make recommendations regarding any proposed or current laws, procedures and regulations affecting or creating any impact on the Judicial Branch; and

5. The Judiciary Committee of the Navajo Nation Council, by Resolution JCAP-4-99, attached hereto and incorporated herein as Exhibit "C", has recommended that the Navajo Nation Council adopt the Navajo Nation Privacy and Access to Information Act, set forth at 2 N.N.C. Subchapter 4, §§81-91; and

6. The Navajo Nation Council recognizes that a democratic form of government requires that information related to government operations be accessible to the public, while respecting individuals right to privacy. As such, a generally applicable Navajo Nation Privacy and Access to Information Act is necessary to provide the general public with a means to access records and information relating to the operation of the Navajo Nation while preserving the privacy interests of individuals and entities.

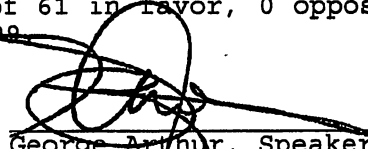
NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Nation Council hereby amends Title 2 of the Navajo Nation Code by adopting the Navajo Nation Privacy and Access to Information Act, as provided in Exhibit "A", attached hereto and incorporated herein.

2. The amendments contained in this resolution shall become effective upon the certification of this resolution by the Speaker of the Navajo Nation Council.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 61 in favor, 0 opposed and 0 abstained, this 23rd day of April 1998.


George Arthur, Speaker Pro Tem
Navajo Nation Council

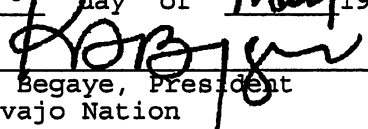
APR 26 1998

Date Signed

Motion: Ralph Bennett
Second: Nelson Gorman, Jr.

ACTION BY THE NAVAJO NATION PRESIDENT:

I hereby give notice that I will not veto the foregoing legislation, pursuant to N.N.C. §1005 (C) (10), on this 24 day of May 1999.


Kelsey A. Begaye, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (10), this ___ day of _____, 1998 for the reason(s) expressed in the attached letter to the Speaker.

Kelsey A. Begaye, President
Navajo Nation

NAVAJO NATION CODE ANNOTATED

Title 5A Navajo Uniform Commercial Code

Article	Section
Description of Articles	1-101
1. General Provisions	2-101
2. Sales	3-101
3. Commercial Paper	4-101
4. [Reserved]	5-101
5. [Reserved]	6-101
6. [Reserved]	7-101
7. [Reserved]	8-101
8. [Reserved]	9-101
9. Secured Transactions; Sales of Accounts and Chattel Paper	

Note. The numbering of Navajo Uniform Commercial Code sections remains as close to the original Uniform Commercial Code as possible to maintain the principle of uniformity.

Description of Articles

Article 1

Article 1 of the UCC is a general article which defines terms which are used throughout the UCC. (This section of the Navajo UCC has been substantially unchanged with the exception of the addition of § 1-110 which excludes certain types of barter transactions from the Navajo UCC.)

Article 2

Article 2 of the UCC governs the sale of personal property ("goods"). Goods means all things which are moveable at the time of their identification in the contract of sale. Goods do not include: (i) intangibles, such as patent rights; (ii) real property, such as houses and land; or (iii) services such as legal or accounting work.

Article 2 codifies contract law as applied to the sales of personal property. It deals with the four basic questions of contract law: (1) Is there sufficient agreement to be a contract?; (2) What are the terms of the contract?; (3) Have the parties properly performed their duties under the contract?; and (4) What are the remedies for breach of those duties? Although Article 2 establishes some rules which apply to all sales contracts, for the most part the rules in Articles 2 apply only where the parties themselves have not made their intentions clear. For example, one rule which applies to all contracts under Article 2 is that contracts for goods valued at more than five hundred dollars

NAVAJO UNIFORM COMMERCIAL CODE

(\$500.00) must be in writing to be enforceable (the Navajo UCC exempts certain barter transactions from this requirement under § 1-110).

Article 2 governs the formation of the contract, such as when an offer to sell or purchase has been made, how to change such an offer and how to accept it. For example, if a business makes an offer by mail to sell shoes and does not specify how the offer can be accepted, the offer can be accepted by any "reasonable means". Thus, the offer could be accepted by mail, telegram or even a telephone call if those methods were found to be reasonable.

Article 2 governs certain of the terms in a contract if the parties have not agreed on that term or have failed to provide for a situation. These terms include price, time of delivery, the point at which the risk of loss passes, warranties concerning the goods and remedies for failure to perform. For example, if the parties fail to agree upon or forget to include the place and time of delivery for the goods, the UCC states that the goods will be delivered at the seller's place of business and the time allowed for delivery will be "a reasonable time" as determined by prior dealings between the parties and industry custom.

Article 2 also governs the performance of the obligations under the contract. The questions which arise in this area concern the seller's obligation to deliver "conforming" goods, the buyer's obligation to accept "conforming" goods, the buyer's right to inspect the goods and the buyer's obligation to pay for the goods. For example, unless the parties agree otherwise, the buyer is obligated to pay for the goods at the time and place the goods are received.

Finally, Article 2 sets out the remedies for either party upon the failure of the other party to adequately perform its obligations. The remedies must deal with situations, for the seller, in which the buyer refuses to accept delivery, cancels the order, refuses to pay or becomes insolvent. For the buyer, these situations include those in which the seller has failed to deliver, has delivered "non-conforming" goods, or has delivered goods which causes an injury. For example, unless otherwise agreed by the parties, if during the course of several shipments the buyer refuses to make a payment when due: (i) the seller may withhold future delivery; (ii) may resell the remaining goods and sue to recover damages; or (iii) may sue to recover the full purchase price.

Article 3

Article 3 of the UCC deals with negotiable instruments, which include drafts, business and personal checks, certificates of deposits and promissory notes. Article 3 does not apply to money, documents of title or investment securities such as stocks and bonds. Commercial paper is frequently used as a cash substitute. Thus, a check could be used as a medium of payment instead of cash or a note maybe used as a deferred methods of payment.

Article 3 sets out the obligations and liabilities of the persons who issue negotiable instruments and those who are involved in their transfer. In the case of a check, they would include the person who writes the check, his bank, the banks who process the check, the bank which finally accepts the check and the person or company to whom the check is written. The type of situations for which Article 3 sets out rules include those in which the check is drawn on insufficient funds or the signature is forged.

NAVAJO UNIFORM COMMERCIAL CODE

Article 9

Article 9 of the UCC governs the creation and enforcement of security interests. A security interest is an interest of a creditor in specific property ("collateral") owned by a debtor. A security interest permits the secured creditor after default to sell particular collateral and to apply the proceeds of its sales to the payment of his secured debt. In contrast to a secured creditor, an "unsecured" creditor (i.e., a creditor without a security interest) has only general rights against the property of the debtor after the secured creditors have been paid, and an unsecured creditor has no rights against any particular property of a debtor. The most common examples of a security interest arise from the purchase of a vehicle such as a car or tractor by an individual. However, security interests are very important for business in financing the acquisition of capital equipment, such as machines, as well as the purchasing of inventory and selling goods on credit.

Article 9 facilitates the purchase of goods by improving the chances of a creditor's being repaid and thus encouraging him to sell goods on credit or, in the case of a bank, to lend money. It represents a comprehensive scheme of regulation of security interests in personal property. Article 9 does not regulate transactions in land or improvements. The Article establishes a central filing system so that creditors can determine the extent of the obligations of a debtor to other creditors and establishes procedures for a creditor to enforce a security interest in the case of a debtor's failure to pay. (The enactment of this article does not affect Navajo repossession law.)

A large part of Article 9 is concerned with establishing the priority of secured parties against each other or other creditors of the debtor. For example, if two creditors are depending on the same "collateral" of the debtor to "secure" their loans, then, generally, the first creditor to "file" a notice of his interest will have the right to have his loan repaid first from the sale of the collateral. However, Article 9 establishes special priority rules for secured parties who loan the money to "purchase" the collateral. This rule encourages the purchase of capital equipment by giving priority protection to loans or credit extended for the initial purchase of goods.

History

CJA-1-86 January 29, 1986.

Note. A "Background and Executive Summary of the Proposed NUCC" which included "The NUCC Development Process" and "The

Purpose of the NUCC" was incorporated in CJA-1-86. However, for codification purposes, only the "Description of Articles 1, 2, 3 and 9" has been provided.

Article 1. General Provisions

Part 1. Short Title, Construction, Application, and Subject Matter of the Code

Section
1-101. Short title

- Section**
- 1-102. Purposes; rules of construction; variation by agreement
 - 1-103. Supplementary general principles of law applicable
 - 1-104. Construction against implicit repeal
 - 1-105. Territorial application of the Code; parties' power to choose applicable law
 - 1-106. Remedies to be liberally administered
 - 1-107. Waiver or renunciation of claim or right after breach
 - 1-108. Severability
 - 1-109. Section captions
 - 1-110. Special limitations on the application of the Code
 - 1-111. Administration of the NUCC; regulations

Part 2. General Definitions and Principles of Interpretation

- 1-201. General definitions
- 1-202. Prima facie evidence by third party documents
- 1-203. Obligation of good faith
- 1-204. Time; reasonable time; "seasonably"
- 1-205. Course of dealing and usage of trade
- 1-206. Statute of Frauds for kinds of personal property not otherwise covered
- 1-207. Performance or acceptance under reservation of rights
- 1-208. Option to accelerate at will
- 1-209. Subordinated obligations

Part 1. Short Title, Construction, Application, and Subject Matter of the Code

§ 1-101. Short title

This Navajo Uniform Commercial Code (5A N.N.C. § 1-101 *et seq.*) shall be known and may be cited as the "Navajo Uniform Commercial Code".

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. The Code makes no substantive change to this section except deleting references to Articles not adopted by the Navajo Nation.

Commentary. Each Article of the Code (except this article) may also be cited by its own short title. See §§ 2-101, 3-101 and 9-101.

Special Plain Language Comment

This provision provides a method of naming parts of the Navajo Uniform Commercial Code (the "Code").

§ 1-102. Purposes; rules of construction; variation by agreement

A. The Code shall be liberally construed and applied to promote its underlying purposes and policies.

B. Underlying purposes and policies of the Code are:

1. To simplify, clarify and modernize the law governing commercial transactions;
2. To permit the continued expansion of commercial practices through custom, usage and agreement of the parties; and
3. To make uniform the law of commercial transactions throughout the Navajo Nation.

C. The effect of provisions of this Code may be varied by agreement, except as otherwise provided in this Code and except that the obligations of good faith, diligence, reasonableness and care prescribed by this Code may not be disclaimed by agreement, but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

D. The presence in certain provisions of this Code of the words "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under Subsection (C).

E. In this Code unless the context otherwise requires:

1. Words in the singular number include the plural, and in the plural include the singular; and
2. Words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.

F. The "Official Comments" and the "Special Plain Language Comments" are informational only and not binding on the courts, since they do not purport to be comprehensive statements of the meaning and effect of the statute to which they refer.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. The Code adds a new section, "Special Plain Language Comments", to facilitate use of the Code, but new Subsection (F) makes clear that such comments and the Official Comments are not the law.

Commentary. 1. Subsections (A) and (B) are intended to make it clear that:

This Code is drawn to provide flexibility so that, since it is intended to be a semi-permanent piece of legislation, it will provide its own machinery for expansion of commercial practices. It is intended to make it possible for the law embodied in this Code to be developed by the courts in the light of unforeseen and new circumstances and practices. However, the proper construction of the Code requires that its interpretation and application be limited to its reason.

The Code should be construed in accordance with its underlying purposes and policies. The

text of each section should be read in the light of the purpose and policy of the rule or principle in question, as well as of the Code as a whole, and the application of the language should be construed narrowly or broadly, as the case may be, in conformity with the purposes and policies involved.

2. Subsection (C) states affirmatively at the outset that freedom of contract is a principle of the Code: "the effect" of its provisions may be varied by "agreement". The meaning of the statute itself must be found in its text, including its definitions, and in appropriate extrinsic aids; it cannot be varied by agreement. But the Code seeks to avoid the type of interference with evolutionary growth found in *Manhattan Co. v. Morgan*, 242 N.Y. 38, 150 N.E. 594 (1926). Thus, private parties cannot make an instrument negotiable within the meaning of Article 3 except as provided in § 3-104; nor can they change the meaning of such terms as "bona fide



MEXICAN WATER CHAPTER

PURCHASE REQUISITION

ORDERING DEPT.	DEPT. #	SHIP TO:	BILL TO:	DATE OR REQN	DATE REQUESTED
TELEPHONE					
PURPOSE OR USE				ACCOUNT NO.	SUB-ACCOUNT

CONTACT PERSON:

ITEM	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT

SUGGESTED VENDORS:

- 1 _____
- 2 _____
- 3 _____

TOTAL

FUNDS AVAILABLE	DATE
-----------------	------

ACKNOWLEDGMENT:

ORDERED BY:

APPROVED BY: CHAPTER MANAGER

CHAPTER OFFICIAL

TO BE COMPLETED BY PURCHASING SERVICES

CONF <input type="checkbox"/>	F.O.B. DESTINATION <input type="checkbox"/>	R&P
NON CONF. <input type="checkbox"/>	OTHER _____	TERMS: 2% 10 DAYS <input type="checkbox"/>
PER PHONE QUOTE <input type="checkbox"/>	VIA Y.D. <input type="checkbox"/>	2% 10TH PROX <input type="checkbox"/>
ORAL QUOTE <input type="checkbox"/>	OTHER _____	NET 30 <input type="checkbox"/>
WRITTEN QUOTE <input type="checkbox"/>		OTHER <input type="checkbox"/>

VENDOR NO.	DATE ORDERED	P.O. NUMBER
	BY:	



MEXICAN WATER CHAPTER

PURCHASE REQUISITION

ORDERING DEPT.	DEPT. #	SHIP TO:	BILL TO:	DATE OR REQN	DATE REQUESTED
TELEPHONE					
PURPOSE OR USE				ACCOUNT NO.	SUB-ACCOUNT

CONTACT PERSON:

ITEM	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT

SUGGESTED VENDORS:	TOTAL	
1	FUNDS AVAILABLE	DATE
2	ACKNOWLEDGMENT:	
3		
ORDERED BY:		
		CHAPTER OFFICIAL

TO BE COMPLETED BY PURCHASING SERVICES

CONF <input type="checkbox"/>	F.O.B. DESTINATION <input type="checkbox"/>	R&P
NON CONF. <input type="checkbox"/>	OTHER _____	TERMS: 2% 10 DAYS <input type="checkbox"/>
PER PHONE QUOTE <input type="checkbox"/>	VIA Y.D. _____ <input type="checkbox"/>	2% 10TH PROX <input type="checkbox"/>
ORAL QUOTE <input type="checkbox"/>	OTHER _____	NET 30 <input type="checkbox"/>
WRITTEN QUOTE <input type="checkbox"/>		OTHER <input type="checkbox"/>

VENDOR NO.	DATE ORDERED	P.O. NUMBER
		BY:



MEXICAN WATER CHAPTER

Red Mesa TP #1019, HC 61 Box 38

Teec Nos Pos, Arizona 86514

Telephone: (928) 674-3641

Fax No.: (928) 674-3641

DATE	PO NUMBER

RECEIVING REPORT

Terms: _____
 F.O.B: _____
 Purchasing Contact: _____
 Account No.: _____

Requisition No.: _____
 Quote Date/No.: _____
 Expected Delivery Date: _____

V
E
N
D
O
R

S
H
I
P
T
O

ACCOUNT NO. 1	PERCENTAGE	AMOUNT	ACCOUNT NO. 2	PERCENTAGE	AMOUNT
	%			%	

NO.	QUANTITY	UNIT	DESCRIPTION	RECEIVED	ACCEPT	REJECT

PARTIAL COMPLETE PURCHASE ORDER

 Chapter Manager

 Date

MEXICAN WATER CHAPTER

1. Location Code:

This is your 93) three digit Department Code.

2. Received:

The total amount received including damaged or rejected item(s).

3. Accepted: The number or items accepted.

4. Q Code:(Approved)

A = Good

B = Fair

C = Poor, but retained

5. Rejected: The number of items rejected.

6. Q Code: (Rejected)

D = Damaged rejected and returned

E = Damaged rejected and discarded

7. Partial or Complete Purchase Order:

Indicate if Partial or Complete Order. If Partial, make a copy of original Receiving Report and submit copy with invoice to Chapter Secretary/Treasurer. Use original only for complete order.

8. Received by: Signature or Receiving Clerk

9. Date: Dated signed or approved.

10. Carrier:

VNT - Vendor Truck

UPS - United Parcel Services

ICC - Common Carrier

LCC - Local Carrier

RMM - Regular Mail

NNP - Navajo Nation Pick-up

AEX - Air Express

OTH - Other

11. Way Bill/Shipping No.:

The way Bill or Shipping reference number.

Send Receiving Reports along with invoices to Chapter Secretary/Treasurer complete or partial for payment.

MEXICAN WATER CHAPTER

Red Msa TP #1019, HC 61 Box 38, Teec Nos Pos, AZ 86514
Telephone: (928) 674-3641; Fax No.: (928) 674-3641

VERBAL QUOTATION

DATE: _____

VENDOR: _____

Person Contact: _____

The Mexican Water Chapter is requesting for quotations on the following items:

ITEM NO.	QUANTITY	UNIT	DESCRIPTION	PRODUCT NO.	UNIT PRICE	TOTAL COST
TOTAL:						

Requested By: _____
Office Specialist

MEXICAN WATER CHAPTER
AUTHORIZED LOCAL EMERGENCY RESPONSE TEAM
PLAN OF OPERATION

I. ESTABLISHMENT

The authorized Local Emergency Response Team (ALERT) is hereby established as an emergency response unit within the chapter government.

II. PURPOSE

To coordinate available resource for effective and efficient response to emergency/disaster. To save lives, avoid injuries, and minimize economic loss by implementing a comprehensive emergency management plan at the local level.

III. OBJECTIVES

To develop and organized, comprehensive emergency management system capable of effective and efficient treatment of potential and actual emergency situations.

IV. MEMBERSHIP

A. The Authorized Local Emergency Response Team may consist of the following:

1. The Chapter President and/or delegated representative
2. Community Health Representative
3. Community Member
4. Professional members of the community (3 People)

B. Selection of membership will be made through local chapter procedures with a certified resolution

C. The authorized Local Emergency Response Team shall consist of six (6) members

D. Term of membership will be on staggered four (4) terms

E. Members of A.L.E.R.T. shall be certified in Cardiopulmonary Resuscitation (C.P.R.) and First Aid. Must attend mandatory training that will be made available to them.

F. Three consecutive unexcused absences will be cause for removal.

V. DUTIES AND RESPONSIBILITIES OF A.L.E.R.T.

The primary responsibility of the A.L.E.R.T. is to ensure that local emergency response plan is in place at their chapter, which consists of:

A. MITIGATION

1. Conduct community assessments, establish coordination of resources, develop plan of action for preventive programs and develop policies to govern local response procedures.
2. Determine the community's vulnerability to disasters
3. Identify facilities, agencies, personnel, and resources to support A.L.E.R.T. activities

4. Survey communications and auxiliary power needs, identify and provide facilities and equipment to meet these needs
5. Analyze Emergency Operation Center (E.O.C.) location in relations to potential hazards and disaster conditions select and equip alternate E.O.C.
6. Develop a public information program
7. Develop a BASIC PLAN to implement in case of emergency
8. Review Navajo nation and County ordinances and regulations.
9. Review funding sources and recommend funding usage for emergency management activities and ensure accountability of all funds.

B. PREPAREDNESS

1. Planning to ensure that most effective and efficient response efforts are in place to minimize damages and prevent crisis
2. Prepare plans and standard operating procedures for emergencies
3. Arrange training programs for crisis management personnel and support staff
4. Stock food and water supplies
5. Stock administrative supplies and equipment
6. Develop and maintain schedule of testing, maintenance and repair of equipment
7. Develop media and rumor control program
8. Develop a set of general guidelines for activities for the E.O.C.

C. RESPONSE

1. Respond to any type of emergencies, human-caused and natural disasters by implementing emergency operations as applicable to the type of incident
2. Activate E.O.C. as required or dictated by disaster condition
3. Coordinate all operations
4. Establish contact with higher level of government
5. Implement mutual aid agreements.
6. Inform resources and emergency services

D. RECOVERY

1. Return all operations back to normal through an active recovery program
2. Prepare necessary damage assessment report
3. Consult appropriate agencies for information about disaster assistance
4. Seek all necessary medical care at the nearest hospital
5. Initiate cleanup activities.

VI. ORDER OF BUSINESS

- A. The designated chairperson shall chair all regular or special meetings. Meeting will be held once a month; special meeting will be at the discretion of A.L.E.R.T.
- B. Standard meeting agenda
 1. Roll Call and Call meeting to order
 2. Minutes read by secretary
 3. Review and approval of agenda
 4. Reports on emergency related activities
 5. Consideration of all business/new business
 6. Adjournment of meeting

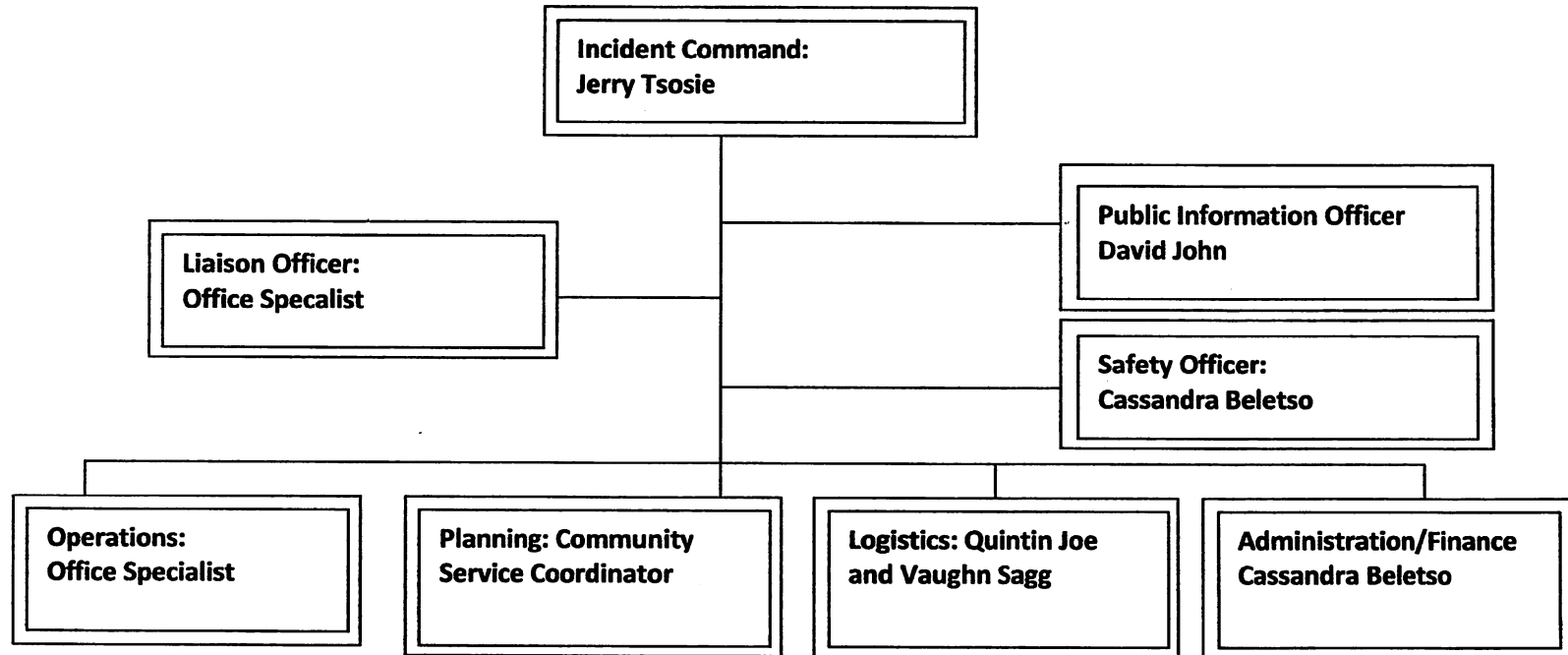
VII. TRAINING AND TECHNICAL ASSISTANCE

Training programs will be made available through applicable Navajo nation and other offices to A.L.E.R.T. when deemed necessary or as requested by the chapter.

VIII. AMENDMENT AND REVISION

This plan of operation may, as deemed necessary, be amended by the local chapter and recommended to the Government Services Committee of the Navajo Nation Council.

MEXICAN WATER CHAPTER ORGANIZATIONAL CHART



MEXICAN WATER CHAPTER

Bid Tabulation

PROJECT NAME: _____ Date of Bid Opening: _____
 Location of Meeting: _____ Time of Bid Opening: _____

CONTRACT	Navajo Preference	Bid Bond	Subcontractor List	5% Bid Guarantee	Calendar Days	BASE BID	Cost Breakdown	ALTERNATE	ALTERNATE	ADDENDUM #1	ADDENDUM #2	ADDENDUM #3	REMARKS

This is to certify that all bids were received sealed, opened in my presence and read aloud:

Signed: _____ Chapter Manager _____ Date _____

