



DR. BUU NYGREN *PRESIDENT*

RICHELLE MONTOYA *VICE PRESIDENT*

The Navajo Nation | Yideeskáądi Nitsáhákees

October 30, 2023

MEMORANDUM

BRD-24-0028

TO: All Navajo Nation Departments/Programs/Chapters

FROM:

A handwritten signature in black ink, appearing to read "Notah C. Silversmith", written over a horizontal line.

Notah C. Silversmith, Department Manager
Business Regulatory Department
Division of Economic Development

THRU:

A handwritten signature in black ink, appearing to read "Tony Skrelunas", written over a horizontal line.

Tony Skrelunas, Division Director
Division of Economic Development

SUBJECT: **Business Procurement Clearance Requirements**

This memo provides guidance and instruction to the Navajo Nation government regarding submission for and receipt of Procurement Clearances pursuant to the Navajo Business and Procurement Act ("NBPA").¹ Below provides the required information, expiration, and estimated response time for a Procurement Clearance request.

Required Navajo Business and Procurement Act compliance

The Navajo Nation must obtain Procurement Clearances prior to engaging in any matter with a party² to verify whether the that party "procures clear" to do business or enter in any transaction with the Navajo Nation; including to determine if a party is eligible to receive certification under the Navajo Business and Opportunity Act.³ To procure clear, there must be no evidence of deficient business practices, unlawful criminal action, or debt owed to the Navajo Nation. If a party does not procure clear, it is ineligible to transact or do business with the Navajo Nation. However, the NBPA does allow a party to remove an ineligibility or offset a debt owed through acts of compliance, offset, or complete payment of debt.

¹ 12 N.N.C § 1501 (2014).

² 12 N.N.C § 1505 (2014) (A party is any "individual, business, corporation, partnership or other entity" such as a "contractor, grantee, consultant, broker, dealer, vendor, supplier, permittee, lessee, easement or loan recipient, etc.").

³ 12 N.N.C § 1505 (No party shall be eligible to do business with the Navajo Nation; receive Navajo Nation Business Opportunity Act certification; or be granted an easement, permit, lease, or loan from the Navajo Nation if found ineligible.).

Required information for a request

For a timely response to a valid request, provide the below listed owner and business information in a memo to the appropriate department. Doing so will verify that the party procures clear in its current, former, or any in other identifiable capacity.

Required Owner(s) Information:

- First and Last names (including maiden or former names);
- Social security, federal EIN, or tax ID numbers; and
- List of shareholders, for any Navajo Nation domestic corporation.

Required Business(es) Information:

- Current, operational name and any trade names;
- Former business name(s), if applicable;
- List of officers of the business; and
- Federal EIN.

Request expiration and estimated response time

Procurement Clearance shall be requested from the below listed departments:

NAME	VALID FOR	EST. RESPONSE TIME
Accounts Receivable, OOC	30 calendar days	2 business days
Office of the Navajo Tax Commission	Yearly quarter in which issued	10 business days

Please reach out to each department to determine the appropriate contact to whom a Procurement Clearance request should be made.

The estimated response time is provided to help a requester develop a timeframe in which to request a Procurement Clearance and meet its deadline. The Business Regulatory Department strongly recommends all requests for Procurement Clearances be made allowing additional time for response than the minimum estimated response time above. If you have any questions, contact our office at businessregulatory@navajo-nsn.gov or (928) 871-6714. Thank you.

CC: BRD Chrono.File.FY'24



DR. BUU NYGREN *PRESIDENT*

RICHELLE MONTOYA *VICE PRESIDENT*

The Navajo Nation | Yideeskáądi Nitsáhákees

January 1, 2024

MEMORANDUM

TO : Roberta Holyan, Delegated Accounting Manager
Accounts Receivable Section, OOC
ARdocs@nnooc.org

FROM : *Signed Name*
Requester's Name, Position
Department
Division

SUBJECT : Procurement Clearance Request

This memorandum serves as a request for a procurement clearance pursuant to the Navajo Business & Procurement Act, 12 NNC, § 1501. The procurement clearance is on the following individual(s) and/or business:

Business name or Operation Name
Owner name/Contact name
Mailing Address
City, State, Zip code
Social Security, EIN, or TIN

Note: Project Name

If you have any questions, (add contact information, email address and/or phone number).
Thank you.

Chapter 15. Navajo Business and Procurement Act

Section

- 1501. Title
- 1502. Purpose
- 1503. Definitions
- 1504. Eligibility and compliance under the Act
- 1505. Ineligibility
- 1506. Removal of ineligibility
- 1507. Right of offset
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- 1511. Delegation of authority/responsibility for monitoring and enforcement
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- 1514. Express exceptions under the Act
- 1515. No waivers or other exceptions
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§ 1501. Title

This Act shall be known and cited as the Navajo Business and Procurement Act.

History

CD-62-86, December 11, 1986.

Library References

Indians Ⓒ24, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 1502. Purpose

The purpose of this Act is to protect the resources and financial integrity of the Navajo Nation and to promote sound governmental practices. Therefore, compliance with this Act shall be a condition precedent to transacting or granting any business opportunity, contract, procurement activity; or processing any easement, permit, lease transaction; or considering any loan application by or from the Navajo Nation to any individual, business, corporation, partnership, or other entity other than the Navajo Nation.

History

CD-62-86, December 11, 1986.

Library References

Indians Ⓒ24, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 1503. Definitions

A. For purposes of this Chapter, "Navajo Nation" shall be defined as:

1. The Navajo Nation Council, its standing committees, and Navajo Nation Council Delegates;
2. The President and Vice-President of the Navajo Nation;
3. All committees, boards, and commissions of the Navajo Nation government;
4. All certified chapters of the Navajo Nation;
5. All grazing committees, land boards, and farm boards of the Navajo Nation;
6. All divisions, departments, and programs operating under the authority of and within the Executive Branch of the Navajo Nation government;
7. All programs under and within the Judicial Branch of the Navajo Nation government;
8. All enterprises of the Navajo Nation; Navajo Community College, Crownpoint Institute of Technology, and any other entity owned in whole or part by the Navajo Nation; and
9. All other programs and entities who receive at least fifty-one percent (51%) of their funding either directly from the Navajo Nation government or are authorized by the Navajo Nation government to receive federal or state grants or other monies on behalf of the Navajo Nation.

B. "Business" shall mean any individual or association of individuals engaged in commerce, trade, or the buying and selling of commodities or services whether or not for profit; and shall include each person associated with such business for eligibility purposes.

C. "Business Opportunity" shall mean:

1. The availability of any opportunity from the Navajo Nation to engage in or provide governmental or administrative services; procurement, business, commerce or trade activities, or the buying and selling of commodities or services; or

2. The receipt of any business certification or advantage pursuant to the Navajo Nation Business Opportunity Act; or

3. The receipt of any contract, lease, easement, permit, loan, monies, or funds from the Navajo Nation not expressly exempted.

D. "Contract" shall include but not be limited to any subcontract; or grant/subgrant of funds for a specific purpose.

E. "Corporation" shall mean any corporate or chartered entity formed under any Navajo Nation, state, or federal law; and shall include for eligibility identification purposes, all of its board of directors, officers, and controlling shareholders (persons owning of record or beneficially at least twenty-five percent (25%) of the issued and outstanding stock or beneficial interest of the corporation).

F. "Delinquent Accounts Receivable" shall mean any monetary amount owed to the Navajo Nation which is not expressly exempted and is at least thirty (30) days past due.

G. "Easement" shall mean any right-of-way or limited right to use Navajo Nation realty including any transfer, assignment, or extension thereof.

H. "Individual" shall mean any natural person and shall include the person's spouse pursuant to applicable principles of community property law.

I. "Lease" shall mean any lease, sublease or operating agreement (or any transfer, assignment or extension thereof) for the possession and use of Navajo Nation realty excluding homesite leases.

J. "Other Entity" shall mean any other individual, business, company or other organization or entity not covered in Subsections (B),(E),(H), and (K) excluding the federal government and its instrumentalities; and shall include each associated individual for eligibility identification purposes.

K. "Partnership" shall mean any partnership formed under any Navajo Nation or state law or any group of two (2) or more individuals who hold themselves out as a partnership, formally or informally, including but not limited to joint venture partners, brokers, dealers, etc., and shall include each individual partner for eligibility identification purposes.

L. "Permit" shall mean any permit (excluding grazing and land use permits), license or revocable agreement for the temporary use of Navajo Nation

12 N.N.C. § 1503

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reality or personalty or the grant of authority to allow specific acts including any transfer, assignment, or extension thereof.

M. "Procurement" shall mean the purchase or lease of goods and services by the Navajo Nation.

History

CD-62-86, December 11, 1986. Center" is now the "Crownpoint Institute of Technology" pursuant to ACJA-7-87, January 2, 1987.

Note. Slightly reworded and reorganized for purposes of statutory form. The "Navajo Skill

Library References

Indians Ⓒ24, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

Annotations

1. **Construction and application** *Construction Company, Inc. v. Navajo Nation, et al.*, 7 Nav. R. 96, 98 (Nav. Sup. Ct. 1994).
"The ONLR fits under the definition of Navajo Nation in the Procurement Act." *PC & M*

§ 1504. Eligibility and compliance under the Act

A. The determination of eligibility of an applicant for each and every transaction subject to this Act shall be made initially by the appropriate department or entity of the Navajo Nation, as defined in § 1503(A) which receives an applicant's request for consideration for a business opportunity, procurement activity or loan.

B. As a condition precedent to further review and processing by the Navajo Nation, such eligibility of the applicant shall be confirmed by either:

1. Evidence of compliance verifying the initial eligibility of the applicant in that none of the conditions cited in § 1505(A)-(D) below are applicable; or
2. Evidence of clearance verifying that the applicant has since remedied all applicable bases for previous ineligibility cited in § 1505(A)-(D) below and is now eligible as an applicant in conformance with this Act.

History

CD-62-86, December 11, 1986.

Library References

Indians Ⓒ24, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 1505. Ineligibility

No applicant individual, business, corporation, partnership or other entity shall be eligible to do any business with the Navajo Nation as set forth in § 1502 (i.e., as a contractor, grantee, consultant, broker, dealer, vendor, supplier, permittee, lessee, easement or loan recipient, etc.); or receive any certifica-

FISCAL MATTERS

12 N.N.C. § 1506

tion or advantage under the Navajo Nation Business Opportunity Act; or receive any contract, purchase order (P.O.), request for direct payment (R.D.P.), or other accounts payable order for procurement from the Navajo Nation; or be granted a Navajo Nation easement, permit or lease, or loan of any type from the Navajo Nation if any one of the following circumstances apply:

A. If there is an outstanding money judgment in favor of the Navajo Nation from a court of competent jurisdiction or a valid delinquent accounts receivable debt which is due and owing to the Navajo Nation from that applicant entity either in its present form or in any other identifiable capacity as an individual, business, corporation, partnership or other entity; or

B. If under any transaction, contract or legal relationship with the Navajo Nation, there has been evidence of default of materially deficient business practices or failure to meet a material contractual or financial obligation to the Navajo Nation or failure to materially comply with applicable laws or material delay by that applicant entity either in its present form or in any other identifiable capacity as an individual, business, corporation, partnership or other entity, resulting in monetary or other detriment to the Nation which remains uncured; or

C. If that applicant entity either in its present form or in any other identifiable capacity as an individual, business, corporation, partnership or other entity, has been found to have engaged in unlawful or criminal actions or other activities which adversely reflects on the honesty and moral character of said party(ies) so as to make any dealings with the Navajo Nation undesirable; or

D. If the individual or any individual(s) of the applicant entity either in its present form or in any other identifiable capacity as an individual, business, corporation, partnership or other entity, has been convicted of a criminal offense within the previous ten (10) years under any Navajo Nation, state or federal law for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or committing a criminal offense relating to obtaining a public/private contract or in the performance of such contract.

History

CD-62-86, December 11, 1986.

Library References

Indians §24, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 1506. Removal of ineligibility

A. Any individual, business, corporation, partnership or other entity may remove a determination of ineligibility based on § 1505(A) of this Act by paying in full all outstanding amounts owed to the Navajo Nation. Such payment shall not be contingent in any way on the future eligibility of the party(ies)

12 N.N.C. § 1506

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under this Act. Only upon full and complete payment, will the individual, business, corporation, partnership or entity be considered eligible under § 1505(A) for application for business opportunities, procurement activities and loans from the Navajo Nation.

B. Removal of a determination of ineligibility based on § 1505(B), (C) and (D) shall be set forth in rules and regulations promulgated pursuant to § 1511 herein.

History

CD-62-86, December 11, 1986.

Library References

Indians ⇄24, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 1507. Right of offset

If the applicant entity in its present form or any other identifiable capacity as an individual, business, corporation, partnership or other entity, has an outstanding money judgment against it in favor of the Navajo Nation or a delinquent accounts receivable debt which is due and owing to the Navajo Nation, upon due notice the Navajo Nation may offset its money claim against any amount it owes to or has an account payable to the individual, business, corporation, partnership or other entity.

History

CD-62-86, December 11, 1986.

Library References

Indians ⇄24, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

Annotations

1. Construction and application

"The Navajo Business and Procurement Act permits the Navajo Nation, upon due notice, to offset its money claim against any amount it owes to a business." *PC & M Construction Company, Inc. v. Navajo Nation, et al.*, 7 Nav. R. 58, 59 (Nav. Sup. Ct. 1993).

2. Purpose

"The Navajo Business and Procurement Act was created to enforce the Navajo Nation Collection System in the best interests of the Navajo Nation." *PC & M Construction Company, Inc. v. Navajo Nation, et al.*, 7 Nav. R. 96, 98 (Nav. Sup. Ct. 1994).

§ 1508. Administrative review process

A. Any applicant may file a written appeal within seven (7) calendar days of receipt of a determination of ineligibility or notice of intent to offset with a Hearing Officer appointed for this purpose. The Hearing Officer shall act upon and render a final decision within thirty (30) days from the date of receipt of the protest. All final decisions shall include a statement of findings of fact, conclusions and the reasons therefor.

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12 N.N.C. § 1510

B. The Hearing Officer shall be appointed by the President of the Navajo Nation.

History

CD-62-86, December 11, 1986.

Library References

Indians ⇨24, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

Annotations

- 1. Construction and application**
"The Navajo Business and Procurement Act permits a party to appeal a notice of intent to offset to a hearing officer. That section also requires the hearing officer to make findings of fact, conclusions of law, and a decision." *PC & M Construction Company, Inc. v. Navajo Nation, et al.*, 7 Nav. R. 58, 59 (Nav. Sup. Ct. 1993).

§ 1509. Final appeal

A final decision of the Hearing Officer may be appealed to the Navajo Nation courts. Such appeal shall be limited to questions of law and the Hearing Officer's findings of facts shall be sustained, provided there is some basis in the evidence for such findings.

History

CD-62-86, December 11, 1986.

Library References

Indians ⇨24, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

Annotations

- 1. Construction and application**
"The Navajo Business and Procurement Act provides for an appeal of the hearing officer's decision to the Navajo Nation Supreme Court." *PC & M Construction Company, Inc. v. Navajo Nation, et al.*, 7 Nav. R. 58, 59 (Nav. Sup. Ct. 1993).

§ 1510. Construction of the Act

Eligibility and compliance under this Act shall be construed as an additional requirement which is a condition precedent to the application of other appropriate Navajo Nation laws, rules, regulations and program requirements. Nothing in this Act shall be construed to waive or supersede such other applicable law, program, or Navajo Nation requirements unless said requirements are inconsistent with this Act, in which event § 1512 shall apply. Any action(s) by employees or officials of the Navajo Nation in violation of this statute shall be null and void.

History

CD-62-86, December 11, 1986.

Library References

Indians ⇐24, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 1515. No waivers or other exceptions

No waiver of or other exception to any requirement of this Act shall be granted except by valid resolution of the Navajo Nation Council.

History

CD-62-86, December 11, 1986.
Revision Note. Slightly reworded for purpose of statutory form.

§ 1516. Effective date and amendment

The effective date of this Act shall be thirty (30) days after adoption by the Navajo Nation Council and shall remain in effect until modified or repealed by the Navajo Nation Council.

History

CD-62-86, December 11, 1986.