

RESOLUTION OF THE  
NAVAJO NATION COUNCIL

Amending the Navajo Nation Business Preference Law,  
Title 5, Chapter 2, Sections 201 to 217

WHEREAS:

1. Pursuant to 2 N.N.C. §102 (A), the Navajo Nation Council is the governing body of the Navajo Nation; and

2. Pursuant to 2 N.N.C. §721, the Navajo Nation Council established the Economic Development Committee as a standing committee of the Navajo Nation Council; and

3. Pursuant to 2 N.N.C. §724 (F)(1), the Economic Development Committee of the Navajo Nation Council recommends the adoption or amendment of such laws relating to business and commerce within the Navajo Nation to the Navajo Nation Council; and

4. The Navajo Nation Council, by Resolution CJY-59-85, directed the Economic Development Committee of the Navajo Nation Council and the Division of Economic Development, with the assistance of the Office of the President and the Department of Justice and such other divisions, departments and programs of the Nation as deemed appropriate, to prepare and present proposed legislation concerning the regulation of business activities on the Navajo Nation during or before the 1995 Summer Session of the Navajo Nation Council; and

5. Since passage of Resolution CJY-59-85, a number of public hearings were held on the issues of whether amendments should be permitted within the Navajo Nation Code for the improvement of, and in accordance with the prevailing conditions of the private sectors of the Navajo Nation; and

6. The Navajo Nation has an immediate need to develop additional sources of revenue to meet budget shortfalls and support the Navajo people at a time when so called welfare reform measures threaten the very existence of many Navajo families and certified Navajo-owned firms; and

7. On a monthly average, at least 200 certified firms have benefited in some manner from the provisions of the Navajo Nation Business Preference Law, 5 N.N.C. §202 et seq., since its original adoption; and

8. It is in the best interest of the Navajo Nation to adopt the proposed amendments, thus creating an equitable system of acquisition of goods and services which shall include the guiding principles, supporting policies and procedures within the Navajo Nation in a more effective and efficient manner; and

9. The Economic Development Committee of the Navajo Nation Council, the Division of Economic Development and the Department Justice have jointly drafted the amended proposed legislation to the Navajo Nation Business Preference Law, now entitled the Navajo Nation Business Opportunity Act, attached hereto and incorporated as Exhibit "A"; and

10. The amended proposed Navajo Nation Business Opportunity Act was presented for adoption before a Special Session of the Navajo Nation Council convened on August 9, 2001; and

11. After review and consideration it was discovered that the document consisted of several grammatical errors that needed to be corrected before any action could be taken. The Navajo Nation Council tabled the amended and newly entitled Navajo Nation Business Opportunity Act and directed the Division of Economic Development to make all the necessary corrections and resubmit the proposed legislation to the Navajo Nation Council at its 2001 Fall Session; and

12. During the 2001 Fall Session of the Navajo Nation Council, the proposed amended Navajo Nation Business Opportunity Act was again presented for review and adoption. However, it was discovered that the proposed legislation was not properly formatted as required by the Navajo Nation Council and it was then deferred back to the Economic Development Committee of the Navajo Nation Council for further clarification and correction; and

13. Pursuant to the recommendation by the Navajo Nation Council, the proposed amended legislation was presented before the Economic Development Committee of the Navajo Nation Council; and

14. In the best interest of economic development within the Navajo Nation, the Economic Development Committee of the Navajo Nation Council approves and recommends to the Navajo Nation Council per Resolution EDCJA-09-02, to amend the Navajo Nation Business Opportunity Act, as attached hereto and incorporated as Exhibit "B".

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Nation Council hereby supports the proposed Amendments to the Navajo Nation Business Preference Law, 5 N.N.C. §201 et seq., now entitled the Navajo Nation Business Opportunity Act, attached hereto and incorporated herein as Exhibit "A".

2. The Navajo Nation Council hereby approves the amendments to the Navajo Nation Business Opportunity Act, 5 N.N.C. §§201-216, attached hereto as Exhibit "A".

3. The Navajo Nation Council hereby declares that all references to the Navajo Nation Business Law in laws of the Navajo Nation, including the Navajo Nation Procurement Act, 12 N.N.C. §301 et seq., shall now mean the Navajo Nation Business Opportunity Act.

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 59 in favor, 11 opposed and 0 abstained, this 19th day of April 2002.



Edward T. Begay, Speaker  
Navajo Nation Council

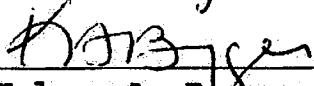
April 24, 2002

Date

Motion: Tom LaPahe  
Second: Willie Grayeyes

**ACTION BY THE NAVAJO NATION PRESIDENT:**

- 1. I hereby give notice that I will not veto the foregoing legislation, pursuant to 2 N.N.C. Section 1005 (C) (10), on this 20<sup>th</sup> day of April 2002.

  
 \_\_\_\_\_  
 Kelsey A. Begaye, President  
 Navajo Nation

- 2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. Section 1005(C)(10) this \_\_\_\_\_ day of \_\_\_\_\_ 2002 for the reason(s) expressed in the attached letter to the Speaker.

\_\_\_\_\_  
 Kelsey A. Begaye, President  
 Navajo Nation

**TITLE FIVE**

***Commerce and Trade***

**CHAPTER**

**SECTION**

**2. Navajo Nation Business Opportunity Act**

**201**

***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**
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- 209. Monitoring And Enforcement**
- 210. Imposition Of Sanctions**
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- 216. Periodic Review And Amendments**

**§ 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 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;
3. The unemployment rate of the Navajo Nation is approximately 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; and,
5. There is a need within the Navajo Nation to accelerate business development and economic growth within the Navajo Nation.

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

D. It is not the intent of this Act to require the Navajo Nation 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 businesses for contracts, subcontracts, grants and subgrants sponsored by the Navajo Nation and all public and private entities.

F. The provisions of this Act shall be applied as an affirmative action law to promote economic development on 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.

## **§ 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 under bid 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 an 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 having 51% or more ownership of any commercial, industrial, or other economic entity or organization, but not having a material participation in decision-making role in 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;
  - 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 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. *"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.

### **§ 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 the Navajo Nation Government including its enterprises and political subdivisions and chapters and private business entities who acquire goods or services through contracts with the Navajo Nation. This 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, this Act and its rules and regulations shall be construed in accordance with federal Indian preference laws and regulations. If federal or state funded contracts provide for the application of Indian preference rather than the provisions of this Act, the contract-letting or procuring entity shall attempt to negotiate

an agreement to apply the provisions of this Act. If federal or state law expressly precludes the application of the provisions of the Act, the application of Indian preference shall be applied and shall not constitute a violation of this Act.

E. *Required Navajo Business and Employment Preference Compliance.* The Navajo Nation government, its political subdivisions, enterprises, and Chapters whether located on or off the Navajo Nation shall comply with this Act and the Navajo Nation Preference in Employment Act. Subcontractors, brokers, agents, subsidiaries, successors and assigns shall also comply with this Act to the same extent as applicable to prime contractors.

F. *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.

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

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**

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 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 51% to 99% Navajo or 51% to 100% other Indian owned and controlled business or 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.

### **§ 205. Navajo Business Opportunity Procedures In Bidding And Procurement**

A. *Bid or Request for Proposal Solicitation.* The procuring party shall first prepare a bid or request for proposal solicitation that shall include the following:

1. The goods or services being procured, and
2. The necessary qualifications of contractors or suppliers needed to provide the goods or services;

B. *Advertisement and notice.* After preparing a bid or request for proposal solicitation, the procuring entity shall:

1. Provide notice or invitation to bid in a newspaper having general circulation and distribution within the Navajo Nation, or
2. Provide notice or invitation to bid by mail or telefax to certified businesses listed on the Navajo Nation Business Source List compiled and maintained by the Business Regulatory Department; and
3. The notice or invitation to bid shall include:
  - a. The requirements and specifications of the goods or services requested;
  - b. The deadline dates for submission of bids or proposals, bid openings, award and any other significant dates; and
  - c. The necessary qualifications of the business to provide goods or services.

**C. *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.

**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.

**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 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.

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.

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.

H. *Minimum Subcontract and Procurement Percentage Requirements.* The Business Regulatory Department, subject to the approval of the Economic Development Committee, shall have the authority to require all procurement 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.

I. *Prior Approval of Modifications.* Any contract modification that results in a higher cost or price in excess of 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.

J. *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.

#### **§ 206. Waivers**

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

#### **§ 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.
3. Publishing, maintaining and making available approved rules, regulations, guidelines and forms including provisions of this Act, to ensure that all Navajo Nation entities, 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 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.

**§ 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.
- E. All certification information shall be kept confidential and 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 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 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 Civil 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.

### **§ 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 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.

G. 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.

**§ 211. Appeals**

A. *Divisions Reviews.* If a business is denied priority certification or a party is adversely affected by a decision herein, 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 ten (10) days of the date of the written adverse decision. The written notice of appeal shall:

1. Identify the business that was denied certification or license or adversely affected by a decision made pursuant to this Act; and
2. Provide a short statement indicating the nature and circumstances of the denial or decision; and
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 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.

*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.

#### **§ 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.

#### **§ 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.

**§ 214. Effective Date**

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

**§ 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.

**§ 216. 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.

TITLE FIVE

**Commerce and Trade**

CHAPTER	SECTION
2. Navajo Nation Business Preference <del>Law</del> <u>Opportunity Act</u>	201
4. Navajo Private Industry Council	504

Cross References

~~Requirement that tribal agencies purchase materials, equipment and services from Navajo small businessmen when feasible, see 2 N.T.C § 5.~~

~~State law. Commerce and trade, generally.~~

~~New Mexico N.M.S.A. 1978 § 57-1-1 et seq.~~

*Chapter 2. Navajo Nation Business Preference ~~Law~~ Opportunity Act*

~~New Section~~

- 201. Title; Findings; Legislative Purpose And Intent
- 202. Definitions
- 203. ~~Jurisdiction; Application; And Scope Of Coverage;~~ Compliance Requirements And Violations
- 204. Required Business And Contracting Preference Priorities; Business Certification, Requirements
- 205. Navajo Business Preference Opportunity Procedures In Bidding And, Procurement ~~And Negotiation~~
- 206. No Waivers
- 207. Implementation And Compliance With Navajo Nation Business Preference Opportunity Provisions; Specific Duties And Responsibilities
- 208. Certification Of Preference for 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. Construction Contract Assessment Fee~~
- 2154. Effective Date

- 2165. Prior Inconsistent Law Superseded
- ~~217.~~ ~~Deposit Of Fees And Fines Collected~~
- 2186. Periodic Review And Amendments



~~Former Chapter 2. "Assistance to Navajo Small Businesses," former Chapter 2 of Title 6, which included "Subchapter 1. Preference for Navajo owned Business Generally," [§§ 201-216], and "Subchapter 8. Preference for Navajo Owned Small Business" [§ 251] was superseded by Tribal Council Res. CJY 59-85 passed July 30, 1985, enacting the Navajo Nation Business Preference Law.~~

**§ 201. Title; Findings, legislative purpose and intent**

A. This chapter ~~Act~~ shall be known and cited as the Navajo Nation Business Preference Opportunity Law Act; Title 5, Navajo Tribal Nation Code, sections 201 through 2187.

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

BC. The purpose of this chapter ~~Act~~ is to ~~promote and support the attainment of:~~

1. Promote the ~~E~~conomic 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. ~~Establishment of a sound and productive local Navajo free enterprise system~~ Promote competitive bidding and contracting opportunities among Navajo businesses;

3. ~~Provision of maximum employment opportunities for Navajo persons; and~~  
Develop a dynamic and self sustaining private sector for the Navajo Nation;
4. ~~Fair, reasonable, and efficient provision of qualities goods and services for the benefit and needs of~~ Increase Navajo business and employment opportunities for the Navajo people; ~~and,~~
5. Provide for business certification in accordance with current Navajo Nation laws.

~~CD. It is not the intent of this Act to require chapter to require that preference be given to, qualified Navajo and other Indian owned economic enterprises in the award of all contracts, subcontracts, grants, subgrants, general procurement contracts, and personal services contracts, including those which are let or administered by the Navajo Nation, its enterprises, Chapters, lessees, and permittees; and by all other persons, firms, enterprises, organizations and governmental or other entities conducting or in any manner participating in any business, commercial, industrial or other general, as distinguished from individual private economic activity within or otherwise subject to the jurisdiction of the Navajo Nation to contract with non-qualified Navajo businesses.~~

~~DE. The provisions of this chapter shall be observed and implemented by all contracting and procuring entities subject hereto, as an affirmative action law of the Navajo Nation, according to its purposes and provisions, together with other properly applicable laws of the Navajo Nation and of the United States and other competent jurisdictions recognized by the Navajo Nation as appropriate in each instance. This shall include the affirmative obligation of every contracting and procuring entity subject hereto to provide prior notice of accurate contract and procurement specifications and required qualifications; and to make prior determinations of maximum feasible cost or price, based upon applicable prototype estimate and current market conditions. It is the intent of this Act to grant first opportunity and contracting preference to qualified Navajo businesses for contracts, subcontracts, grants and subgrants sponsored by the Navajo Nation and all public and private entities.~~

~~EF. In all instances hereunder, the Navajo Tribe reserves the right to determine the nature, composition and qualification of any and all entities, organizations, firms or associations applying for certification as eligible for Navajo Business Preference; and to require such proof as it deems necessary to substantiate that any such entity, organization, firm or association is actually Navajo or other Indian-owned and controlled and otherwise in compliance with the requirements of this law. The provisions of this Act shall be applied as an affirmative action law to promote economic development on 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.~~

Source: Tribal Council Res. CJY-59-85, Exhibit C, §1, passed July 30, 1985.

## **§ 202. Definitions**

A. For all purposes as used in of this chapter Act, the following definitions shall be applicable:

~~1 A. "Bid Shopping Navajo Indian" or "Navajo" is defined as a person who is an enrolled member of the Navajo Tribe 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 under bid any competitor.~~

~~2B. "Bidders Other Indian" 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 an Indian other than Navajo who is an enrolled member of a federally recognized Indian Tribe within the United States.~~

~~3C. "Broker Qualified Economic Entities, Firm or Organization" is defined as including buyers and sellers of goods and personal services as well as including agents/negotiators between buyer and seller, without having who do not have custody of property or will not personally performing the contract to provide the goods or services to include all lawful business enterprises organized and operated for profit, recognized by and under the Jurisdiction laws and regulations of the Navajo Nation,~~

~~whether by a designated individual or associates and whether an incorporated or an unincorporated entity. Definition of more common forms of business activities and organizations for purposes of this chapter is not intended to include other lawfully organized and recognized forms of business enterprise which otherwise comply with the requirements of this chapter for eligibility for Navajo Nation Business Preference "Qualification" of such entities for performance specified in each case shall be determined by demonstrable capability for such performance, and compliance with all other requirements therefor, under the laws of the Navajo Nation and other competent jurisdictions recognized or adopted by the Navajo Nation.~~

~~4D. "Dealer Owned and Controlled" is defined as one who buys to sell for resale, not one who buys to keep, or makes to sell 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 encompass active decision-making operations, profit sharing and actual management control.~~

~~5E. "Established Business" is defined as an economic entity, firm or other organization, engaged in business activities with ownership, or custody and control of an existing adequate inventory and/or personally providing professional services with a published address and telephone number and making significant contributions to the Navajo economy, with a substantial portion of its business principally located within the jurisdiction of the Navajo Nation.~~

~~6F. "Front Substantial Portion of Business" is defined as a business having 51% or more ownership of any commercial, industrial, or other economic entity or organization, but not having a material participation in decision-making role in operations, profit-sharing and actual management control shall be determined by Commerce Department from such factors as percentage of total business activity, prior business activity, dollar amount of business activity, and similar appropriate factors.~~

~~7G. "Navajo Indian" or "Navajo Principal Business Location" is defined as a person who is an enrolled member of the Navajo Nation shall require the continuous maintenance and staffing of a place or office of business with currently published~~

~~address and telephone number readily accessible to the general public during all regular business times at or through which a substantial portion of the business operations are conducted; and at or through which all information and transactions appropriate thereto may be as readily obtained and conducted, as at any other office or location of that business, so as to subject that business to the jurisdiction, laws, rules and regulations of the Navajo Nation, to the full extent of its operations and business conducted hereunder.~~

~~8H. "Navajo Nation Tribal Enterprise" shall mean a business entity established and wholly owned by the Navajo Nation or a duly authorized governmental body thereof, operating under a Plan of Operation as lawfully approved by the Navajo Tribal Council or by its Advisory Committee 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, Tohajiilee, and Ramah, or of Navajo-dependent Indian Communities;~~
  - ~~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.~~

~~9I. "Other Indian Prime Contractor" is defined as an Indian other than Navajo who is an enrolled member of a federally recognized Indian Tribe within the United States any party, or entity which undertakes, offers to undertake or purports to have the capacity to undertake contracting for a specified price, as the entity responsible for the satisfactory~~

~~completion of the contracted project, and includes general contractors and management, consultant, professional, development, agency and other supervisory persons, entities or firms, whichever are authorized and responsible for project coordination, completion, supervision or subcontracting in each instance.~~

40J. "Owned and Controlled Subcontractor" 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 role in operations, profit-sharing and actual management control 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.

41K. "Prime Contractor Broker" is defined as including buyers and sellers of goods and personal services as well as agents/negotiators between buyer and seller, without having custody of the property or personally performing the contract to provide goods or services 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 as the entity responsible for the satisfactory completion of the contracted project, and includes general contractors and management, consultant, professional, development, agency and other supervisory persons, entities or firms, whichever are authorized and responsible for the management, project coordination, completion, supervision or subcontracting in each instance for the contracted project.

42L. "Procuring Party Economically Feasible" is generally defined for all purposes used in this chapter, as a cost or price which is reasonable, i.e. bears a reasonable relationship to the determinable current available market price or knowledgeable estimate of projected prototype cost as the party that initiates the proceeding to cause a project to be bid for contracting.

43M. "Prospective bidders" As used herein, "Conflicts of Interest" and all other terms pertaining thereto, are defined as currently set forth under the Definitions provided in the Navajo Nation Ethics in Government Act (2 N.T.C. §§ 3751-3761), as lawfully amended from time to time 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.

Source: Tribal Council Res. CJY-59-85, Exhibit C §2, passed July 30, 1985.

**§ 203. Jurisdiction; application and scope of coverage; compliance with requirements and violations**

A. *General Jurisdiction.* The Navajo Nation has the inherent sovereign authority jurisdiction to authorize and regulate business activities including the conduct of business entities by Indians and/or non-Indians within the general jurisdiction of the Navajo Nation, as declared by enactment of the Navajo Tribal Council, and in accordance with applicable federal law defined in 7 N.N.C. § 254.

B. *Application.* This Act shall apply uniformly to the Navajo Nation Government including its enterprises and political subdivisions and chapters and private business entities who acquire goods or services through contracts with the Navajo Nation. This 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).

BC. *Inapplicability Applicable to Business Activities Under Leases and Other Transactions.* ~~This Act provisions of this chapter do 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 which that are governed by other applicable laws and regulations under the jurisdiction of the Navajo Nation and the United States; provided that the provisions of this chapter as amended from time to time, together with all rules and regulations lawfully adopted hereunder, shall apply to all contracting, subcontracting and procurement activities conducted thereunder; and all~~

~~applicable provisions of this chapter shall be incorporated by law within all such leases, subleases, permits, licenses and transactions, whether or not expressly provided therein. This Act shall not apply to activities of private persons who contract for goods or services for their individual use or benefit.~~

~~GD. *Implementing Federal Indian Preference Laws and Regulations.* To the fullest reasonable extent, this Act and its provided or permitted under all applicable federal Indian preference laws and regulations, this Navajo Nation Business Preference Law, together with all appropriate rules and regulations adopted hereunder, shall be construed in accordance with federal Indian preference laws and regulations. If federal or state funded contracts provide for the application of Indian preference rather than the provisions of this Act, the contract-letting or procuring entity shall attempt to negotiate an agreement to apply the provisions of this Act. If federal or state law expressly precludes the application of the provisions of the Act, the application of Indian preference shall be applied and shall not constitute a violation of this Act as implementing laws, rules and regulations in accordance therewith.~~

~~DE. *Required Navajo Business and Employment Preference Compliance.* Every person, business or other economy entity, enterprise or organization conducting or engaging or otherwise participating in any business or other economic activity for profit under the jurisdiction of ~~t~~The Navajo Nation government, its political subdivisions, enterprises, and Chapters whether located on or off the Navajo Nation as provided herein shall comply with this Act all applicable Navajo Nation Business and the Navajo Nation Preference in Employment Act laws and all applicable rules and regulations properly adopted thereunder in order to maintain certification for business preference priority as provided by this chapter. The conduct or other engagement or participation in such activities in violation or noncompliance with any applicable provisions and requirements hereunder is unlawful; and any person, business or other entity subject hereto, which is lawfully determined to be in violation thereof and/or noncompliance therewith, shall also be subject to the imposition of such actions, penalties and/or sanctions which are provided by this chapter and by all other applicable laws, rules and~~



~~regulations of the Navajo Nation and of any other competent jurisdiction, recognized or adopted by the Navajo Nation.~~

~~Subcontractors, brokers, agents, subsidiaries, successors and assigns shall be fully subject to all requirements and provisions of this chapter, also comply with this Act to the same extent as applicable to prime contractors and principal organizations and entities. Prime contractors or principals shall also be and remain responsible for compliance herewith by their subcontractors, brokers, agents, subsidiaries, successors and assigns, and shall also be subject to the same sanctions, penalties and conditions for their violation or noncompliance herewith. The provisions of this chapter shall apply to the extent that any branch, division or subsidiary of any entity is conducting any business activity within the jurisdiction of the Navajo Nation.~~

~~EF. 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 authorized and/or required to be made under any provision of this chapter Act, or of any rule or regulation lawfully adopted hereunder, and any entity authorizing or knowingly permitting such omission, falsification or other misrepresentation shall be subject to all applicable sanctions and penalties provided under this chapter Act and any other applicable laws or, regulations or procedure of the Navajo Nation and of any other competent jurisdiction pertaining thereto.~~

~~EG. Bid-Shopping Prohibited. Bid shopping as defined in section 202(A) shall be prohibited. All parties subject to the jurisdiction and provisions of this chapter are prohibited from engaging in bid shopping, which is defined for all purposes herein as any practice involving the solicitation or communication of any competitor's bid prior to and after bid opening, thereby providing an opportunity to underbid any competitor. In addition to subjecting violators of this provision to all penalties and sanctions provided herein, such practice shall be grounds for nullifying and voiding any bid award obtained thereby, and subject to remedies for loss and damages sustained thereby by any party, not knowingly participating therein.~~

~~GH. Conflicts of Interest: Disqualification. No member official or employee of any the Navajo Nation governmental agency or entity of the Navajo Nation which is authorized or delegated to implement any provision of this chapter Act shall promote, approve or otherwise participate in any matter pending before that agency or entity, in which such person official or employee or any member of their his or her immediate family has an economic or other special interest according to the definition and provision of pursuant to the Navajo Nation Ethics in Government Law and the rules and regulations duly adopted thereunder. The failure or refusal of such person or persons official or employee to abstain from such participation as required thereunder, shall render void any approval or action taken by the Tribal agency Navajo Nation Government or entity in which such person(s) official or employee participated, to the extent such action is favorable to the business entity in which such person or persons official or employee had an interest voidable and, The official(s) or employee(s) in conflict shall be subject in addition to the imposition to all other applicable sanctions and penalties provided therein by law.~~

~~HI. Other Violation or Non-compliance With Chapter; Sanctions, Penalties and Appeals Navajo Nation Business Requirements. Any applicant for certification for any preference eligibility as required under the provisions of this chapter and the rules and regulations adopted hereunder and any person or entity otherwise subject hereto who is alleged or determined to be in violation of any provisions of this chapter or any rules or regulations duly adopted hereunder shall have the right to such hearing and/or review of any adverse determination or other official action hereunder in accordance with this and all applicable laws, rules and regulations of the Navajo Nation. No business shall operate within the Navajo Nation without prior authorization, license or permit as required by the Navajo Nation.~~

~~Source: Tribal Council Res. CJY-59-85, Exhibit C, §3, passed July 30, 1985. Revision Note: Subsection (d): First paragraph added. Tribal Council Res. CJY-59-85 inadvertently omitted the first paragraph of this Subsection. See Advisory Committee Res. CJN-112-85, Exhibit B, §3.4 and Exhibit C, which recommended an "addition to §3.4 [§203 (d)]" not a substitution.~~

**§ 204. Required business and contracting preference priorities certification, requirements**

~~A. Preference Priorities. Application for or award of any business preference as provided under this chapter of the Navajo Nation is conditioned upon and constitutes submission by any entity, firm or other organization to the jurisdiction and laws of the Navajo Nation with respect to any business activity conducted thereby. All references to levels of Navajo Business Preference under this chapter shall refer to the following ranking of preference-eligible entities, beginning with the highest priority level. 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 Wholly, (100%) Navajo-owned and controlled private economic entity, firm or organization, which is an established business, having its principally place of located, and with a substantial portion of its business on or off activity being conducted, within the jurisdiction of the Navajo Nation.~~
- ~~2. Priority #2. Certification shall be granted to Any other (at least 51%) to 99% Navajo or 51% to 100% other Indian owned and controlled business or wholly (100%) Navajo Tribal Nation Indian-owned and controlled economic enterprise, firm or organization, which is an established business, having its principally place located, and with a substantial portion of its business activity being conducted, within the jurisdiction of on or off the Navajo Nation.~~
- ~~(3) Priority #3. Any other wholly (100%) Navajo-owned and controlled private economic entity, firm or organization, which is an established business located outside of the jurisdiction of the Navajo Nation but with a, substantial portion of its business activity being conducted within and under the jurisdiction of the Navajo Nation.~~
- ~~(4) Priority #4. Any other (at least 51%) Navajo or other Indian-owned and controlled private economic entity, firm or organization, which is an established~~

~~business located outside of the jurisdiction of the Navajo Nation but with a substantial portion of its business activity being conducted within and under the jurisdiction of the Navajo Nation.~~

~~B. Obtaining a Priority Certification and Required Compliance with Navajo Employment Preference Laws. To be certified as eligible for any Navajo Nation Business Preference as provided by receive a priority certification under this chapter Act, any the business individual, organization, firm, enterprise or other economic entity must satisfactorily also, as a condition to the award of such preference, demonstrate full compliance with all applicable requirements of the Navajo Employment Preference laws, rules and regulations of the Navajo Nation that the business meets the requirements of §204 (A)(1) or (2).~~

~~C. Required Subcontracting Broker or Dealer Approved Plan of Compliance. To be certified as eligible for any Navajo Nation Business Preference as provided by this chapter, for subcontracting, brokerage or dealership activities, any business individual, organization, firm, contractors, enterprise or other economic entity must, as a condition to eligibility for such preference, submit for prior approval, a current plan for such subcontracting/brokerage or dealership activity, which is determined by Commerce Department to be in accordance with all applicable preference provisions hereunder and must otherwise be and remain in compliance therewith 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 chapter Act shall be certified only for those types of business activities for which brokers and dealers normally conduct are customarily used in the ordinary course of business throughout the United States, and shall be subject to pre qualification by the contract-letting, purchasing or procuring entity requiring requesting such broker and/or dealer's services, as provided herein. Certification of brokers and dealers shall further be limited to those having an established business as defined in § 202 of this chapter herein and.~~

~~Further, brokers shall be certified Navajo Business Preference only with regard to for the brokerage services being performed in each instance and the. eCertification of any broker or dealer shall not thereby qualify any other entity, firm or organization selected or represented by the broker and/or dealer in any manner thereof. Such other entities, firms or organizations shall in all instances remain be individually subject to the Navajo Business Preference provisions and conditions set forth herein.~~

E. *Partnership Certification.* To be certified as eligible for any Navajo Business Preference 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 Preference Opportunity is sought, regardless of the number of general or limited partners.

F. *Joint Venture Certification.* To be eligible for any Navajo Business Preference 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 Preference Opportunity is sought, with profits to be divided from each venture in proportion to such respective interest.

Source: Tribal Council Res. CJY-59-85, Exhibit C, §4, passed July 30, 1985.

**§ 205. Navajo Business Preference Opportunity procedures in bidding, and procurement and negotiation**

~~A. All contracting, subcontracting and procurement procedures required or authorized for all Tribal, federal state or other projects, contracts, subcontracts, procurement, grants or subgrants shall, to the extent subject to the jurisdiction of the Navajo Nation, incorporate and be conducted in full compliance with the Navajo Nation Business Preference provisions of this section and Commerce Department rules and regulations lawfully adopted hereunder, as amended from time to time, including appropriate prebid and pre qualification requirements thereof.~~

~~(1) *Required Notice to Certified Entities of Intent To Solicit Bids and Proposals; Source Lists; Determination of Qualifications.* Every contract letting or procuring party shall~~

~~give notice of its intent to solicit bids and proposals as required by Navajo Tribal and applicable laws, together with the specifications and qualifications applicable to any bid, procurement, purchase or contract which is subject to this chapter to all persons, business enterprises, contractors, subcontractors and other entities and organizations as listed in the Commerce Department's current available Source List as certified for Navajo Business Preference and as claiming qualification for the business or contracting classification(s) specified for each contract.~~

~~a. Such parties shall provide a true and correct written copy of such required notices to the Commerce Department, together with a correct and complete list of all persons and entities notified, including the dates and manner of such notices, prior to bid opening, procurement or other contract award. Bid or Request for Proposal Solicitation. The procuring party shall first prepare a bid or request for proposal solicitation that shall include the following:~~

- ~~1. The goods or services being procured, and~~
- ~~2. The necessary qualifications of contractors or suppliers needed to provide the goods or services;~~

~~(2) Initial Determination of Qualifications by Contracting or Procuring Party. In all such instances, the contract-letting or procuring party may, and where required by the current applicable rules and regulations of the Commerce Department, shall predetermine the qualifications of all parties submitting notification of their intent to submit bids and proposals therefor, prior to the conduct of bidding or other procurement procedures.~~

~~The contract-letting or procuring party shall in all instances initially determine whether a particular certified entity is qualified to provide the products, materials and/or services as specified by the contract-letting or procuring party, which determination shall be subject to the concurrence of the Commerce Department of the Navajo Nation as follows:~~

~~(A) By approval of the Commerce Department of prebidding or pre procurement qualification conducted as provided herein; or~~

~~(B) If no appropriate prebidding or pre procurement qualification is required or conducted, then by final approval from the Commerce Department as required by applicable law of the Navajo Nation, and~~

~~(C) Provided further, that with respect to any transaction which is subject to the provisions of this chapter, upon a determination by the Commerce Department that reasonable cause exists to believe that any contract letting or procuring party's determination of such qualifications was arbitrary and capricious or otherwise to the detriment of, or exclusion from, participation or award to any entity certified hereunder and qualified for Navajo Business Preference, then the burden shall be upon the contract letting or procuring entity to demonstrate that its determination was in fact reasonable and in accordance with the purposes and provisions of this chapter, prior to final approval of such contract or procurement.~~

B. Advertisement and notice. After preparing a bid or request for proposal solicitation, the procuring entity shall:

1. Provide notice or invitation to bid in a newspaper having general circulation and distribution within the Navajo Nation, or
2. Provide notice or invitation to bid by mail or telefax to certified businesses listed on the Navajo Nation Business Source List compiled and maintained by the Business Regulatory Department; and
3. The notice or invitation to bid shall include:
  - a. The requirements and specifications of the goods or services requested;
  - b. The deadline dates for submission of bids or proposals, bid openings, award and any other significant dates; and
  - c. The necessary qualifications of the business to provide goods or services.

C. Initial Determination of Maximum Feasible Price or Cost by Contracting or Procuring Party. The determination of economic feasibility, whether an established market price or prototype cost is determinable and if so, whether it is reasonable and appropriate as the maximum feasible price or cost, in accordance with appropriate Commerce Business Regulatory Department rules and regulations, shall be made by

~~the contracting or procuring party prior to soliciting bids and proposals; provided that upon a determination by the Commerce Department that reasonable cause exists to believe that a contracting or procuring party's determination was arbitrary and capricious or is contrary to the purposes or provisions of this chapter, the burden shall be on the contracting or procuring party to demonstrate that its decision was reasonable and in accordance with the purposes and provisions of this chapter, prior to final approval of such contract or procurement. 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.~~

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.

~~(4) Required Adherence to Preference Priority.~~ In no event shall any contracting or procuring party subject to the provisions of this chapter award any procurement, bid or contract to a non-Indian owned and controlled entity, at a price equal to or greater than a price offered by a qualified Navajo or other Indian owned and controlled entity, respectively, which is certified for Navajo Business Preference eligibility hereunder.

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 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.

~~(5) *Eligibility for Bidding and Negotiation for Prime Contracts.* The following method of providing preference shall be followed in all bids for prime contracts which are subject to this chapter, for which there is available one or more Navajo or other Indian-owned and controlled entity which has been certified as preference-eligible by the Commerce Department and which is qualified to perform the contract specifications:~~

~~(A) First bid shall be open to all qualified economic entities, firms or organizations which are currently certified under the provisions of this chapter as established businesses entitled to a Navajo Business Preference priority as provided in section 204 hereof. Award shall first be made to the qualified economic entity submitting the lowest bid among those entities which are currently certified for the highest preference priority as provided by section 204(a) (1) hereof so long as that entity's bid, after an opportunity~~

~~for negotiation, is not greater than the maximum feasible cost or price as determined by the contract letting party pursuant to section 205 (3) hereof.~~

~~If no qualified economic entity which is certified for the highest Navajo Business Preference priority as provided by section 204(a) (1) hereto submits any bid; or if no such entity, after opportunity for negotiation, submits a responsive bid which is within the established maximum feasible cost or price, then award shall be made to the qualified economic entity submitting the lowest bid among those certified for the next highest preference priority under section 204(a) (2), (3) and (4) hereof, so long as that entity's bid is not greater than the established maximum feasible cost or price and is not more than five percent (5%) higher than the lowest acceptable bid submitted.~~

~~(B) If no qualified economic entity, which is certified as eligible to participate under the provisions of paragraph (A) above, submits a responsive bid which is entitled to award thereunder, then bidding may be opened subject to the identical specifications, qualifications and maximum feasible cost or price as in any prior bid; conducted under paragraph (A) above, among all interested and qualified economic entities, whether or not certified hereunder for Navajo Business Preference priority; and provided that, to the extent permitted by applicable law, any certified entities participating therein shall be entitled to the same Business Preference priorities set forth in paragraph (A) above. To the greatest extent possible, notice and opportunity to bid shall be extended by the contract letting or purchasing entity to qualified established business entities as defined in section 202(5), (6) and (7) of this chapter.~~

~~Any modifications to the specifications, qualifications or maximum feasible cost or price which is made subsequent to the conduct of any bid or negotiation under paragraph (A) above, and which did not result in the award of that entire contract or procurement, shall be rebid or renegotiated pursuant to the same provisions of paragraph (A) above, prior to any subsequent bid or negotiation authorized hereunder.~~

~~(C) Notwithstanding any provisions of this chapter, in the event that federal law prohibits bid or procurement preference based upon Tribal affiliation or prohibits negotiation with other than the party which submitted the lowest bid or price offer, then:~~

~~(i) First bid shall be open to all Navajo and other Indian owned and controlled entities; and award shall be made to the entity offering the lowest price, so long as the entity's bid or price is not greater than the maximum acceptable price determined by the contract letting or procuring party, pursuant to section 206(3) hereof.~~

~~(6)F. Navajo Preference Subcontracting Requirements. Prior to final contract award the bid opening, every prime contractors shall submit to the Commerce Business Regulatory Department a subcontracting plan which identifies all subcontractors and suppliers which will be used and the steps taken to comply with this chapter and Commerce Department regulations adopted thereunder in selecting such subcontractors and supplier.~~

~~Every subcontracting plan shall include all leasing or procurement proposals for equipment to be used in performance of the contract, to include specific justification for approval by Commerce Department, where such performance could be accomplished by subcontract, with or procurement from, a qualified and available Navajo source.~~

~~As a condition to participation when open bidding is permitted or required, any non-Indian owned or controlled firm, entity or organization may be required to provide and conduct a training program for Navajo contractors, certified by Commerce Department as appropriate to develop such Navajo participants for qualification as general contractors. 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.~~

~~(7)G. Prime and Subcontractor Performance Security Bonding: Permitted Alternatives. The prime contractor shall obtain ~~may determine means other than surety bonding or other performance security from~~ to require of subcontractors to adequately 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 ~~final decision on whether~~~~

~~an alternate~~ the form of performance security ~~is sufficient shall rest with~~ ~~t~~The prime contractor shall, ~~provided that the prime contractor maintains guaranteed security and~~ ~~be ultimately liability~~ for the subcontractor's performance of subcontractors.

~~(8) Navajo Preference Procurement Requirements. Where not otherwise prohibited by applicable law any procurement of \$2,500 or less may be let using methods of bids, request for proposals, negotiations or assignments of open purchase orders, so long as qualified and available wholly and other Navajo-owned firms, respectively, are given reasonable notice and first opportunity.~~

~~(9)H. Minimum Subcontract and Procurement Percentage Requirements. The Commerce Business Regulatory Department, subject to the approval of the Economic and Community Development Committee, shall have the authority to require all procurement 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.~~

~~(10)I. Required Prior Approval of Modifications. Any contract modification proposed by a contracting, subcontracting or procuring entity subsequent to award thereof, pursuant to the provisions of this section, which that results in a higher cost or price in excess of 20% of the original amount ~~to~~ of the contract letting or if the procuring entity party or which, in the opinion of the Commerce Department, substantially modifies such project, activity or transaction, shall be subject to review and approval by the Commerce Business Regulatory Department, to ensure that such modifications are not contrary to the purposes, intent or other provisions of ~~this chapter~~ other applicable laws.~~

J. 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.

Source: Tribal Council Res. CJY-59-85, Exhibit C, §5, passed July 30, 1985

## § 206. No Waivers

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

Source: ~~Tribal Council Res. CJY-59-85, Exhibit C, §6, passed July 30, 1985~~

## § 207. Implementation and Compliance with Navajo Nation Business Preference Opportunity provisions; specific duties and responsibilities

A. ~~Economic and Community Development Committee.~~ The Economic and Community Development Committee of the Navajo ~~Tribal Council~~ Nation Council shall have the following ~~duties, responsibilities and authority in accordance with all provisions of this chapter, and shall:~~ to review, amend, modify and approve proposed rules and regulations for implementation of this Act.

~~(1) Direct such actions, investigations and reports as authorized and as the Committee deems necessary or appropriate to determine and obtain compliance with all provisions hereunder; conduct such hearings, make such findings, determinations and decisions and impose such sanctions and conditions provided hereunder as the Committee determines most appropriate in accordance with such findings, determinations and decisions.~~

~~(2) Pending adoption of other applicable administrative laws and procedures by the Navajo Tribal Council; prepare, adopt, abide by and apply to all parties and entities involved, appropriate hearing and procedural rules in compliance with due process and due consideration for other applicable rights of all parties and suited to the fair and orderly conduct of the Committee's duties and responsibilities, in accordance with the purposes, intent and other provisions of this chapter and other applicable laws and traditional customs of the Navajo People pertaining thereto. Subject to the above requirements, such hearings and proceedings, however, need not be governed by unduly restrictive formal rules of evidence or procedure.~~

~~(3) Whenever deemed necessary or appropriate by either the Economic and Community Development Committee or by the Advisory Committee or by the Chairman~~

~~of the Navajo Tribal Council, the Chairman, subject to confirmation by the Advisory Committee of the Navajo Tribal Council, shall appoint a Navajo Business Preference Hearing Board, consisting of not less than three (3) nor more than five (5) disinterested members, who shall thereupon select their Chief Hearing Officer from among their members. Such duly constituted Navajo Business Preference Hearing Board shall further be authorized by the Advisory Committee of the Navajo Tribal Council to serve in place of the Economic and Community Development Committee for the purpose of conducting such hearings and making such findings and determinations as provided in this chapter, in accordance with the rules or hearing procedures adopted hereunder; and the Advisory Committee of the Navajo Tribal Council shall further authorize said Hearing Board to either impose such appropriate sanctions and conditions as provided under section 210 hereof, or to make written recommendations therefor to the Economic and Community Development Committee based upon said findings and determinations.~~

*B. Division of Economic Development.* ~~The Division of Economic Development of the Navajo Nation shall have the following duties, responsibilities and authority in accordance with all be responsible for administering, enforcing and implementing the provisions of this chapter, and shall herein:~~

~~(1) Provide such support and assistance as required or appropriate to the duties and responsibilities of the Economic and Community Development Committee of the Navajo Tribal Council.~~

~~(2) Provide such supervision and direction of all functions and activities conducted by or on behalf of Commerce and other departments of the Division of Economic Development as necessary and appropriate to accomplish the purposes, intent and other provisions of this chapter; including review and approval of all rules and regulations, together with all amendments proposed for adoption for recommendation to the Economic and Community Development Committee, as provided in paragraph (1) above.~~

~~C. Commerce Business Regulatory Department. In accordance with and subject to all provisions of this chapter and applicable Committee, Division and Department Plans of Operation and as otherwise directed by the Navajo Tribal Council or by any duly delegated Committee thereof, the Commerce Business Regulatory Department, within the Division of Economic Development, shall have the following duties, responsibilities and authority be responsible for:~~

- ~~1. Developing and maintaining a certification program for purposes of to determine the appropriate certification priority eligibility of business entities, subject to the provisions of this chapter, for any Navajo Nation Business Preference, to the extent covered by the provisions of this chapter.~~
- ~~2. Issue such Promulgating rules and regulations as are appropriate and necessary for the effective to implementation of this chapter Act. All proposed rules and regulations shall be published for public comments at least sixty (60) ninety (90) days prior to submission to the Economic and Community Development Committee of the Navajo Tribal Nation Council for final review and approval.~~
- ~~3. Publishing, maintaining current and making available such approved rules, regulations, guidelines and forms for distribution, together with all current including provisions of this chapter, as amended from time to time Act, to ensure that all responsible and affected Tribal Navajo Nation entities, other governmental, private and other business entities and the Navajo People remain are kept fully informed of all current policies, requirements, laws, rules, regulations and procedures for maintaining compliance herewithto.~~
- ~~4. Regularly reviewing such rules and regulations, in cooperation coordination with other responsible Tribal Navajo Nation entities and agencies authorized hereunder, for appropriate compliance applicability to current economic and market conditions and their current relevance to the interests of the Navajo People and the Navajo Nation business sector and government and the purposes, intent and other provisions of this chapter and any amendments, additions or deletions adopted in accordance herewith Act.~~

5. ~~Implement, facilitate, monitor and e~~Enforcing compliance with the Navajo Nation Business Preference provisions of this chapter Act, in accordance with its stated purposes and intent and pursuant to the intent of this Act and the rules, and regulations and guidelines adopted as provided hereinto; Review, determine and requireing applicability of Navajo Nation Business Preference provisions of this chapter Act to any proposed contract, subcontract or other transaction by or on behalf of the Navajo Nation, as part of required ~~departmental~~ clearance procedures, prior to ~~submission for approval by the Budget and Finance appropriate oversight~~ Ccommittee or authority; and ~~signature of the Chairman or Vice Chairman and requiring such prebid, meetings and/or preconstruction or pre qualification requirements as deemed needed and appropriate for to compliancey with the provisions of this chapter Act and with the rules and regulations adopted hereunder.~~
6. ~~Work closely~~ Coordinating efforts with the federal agencies which have regulations that requireing Indian preference or maximum utilization of minority business enterprises and ~~seek to coordinate these requirements, monitoring efforts and sanctioning activities.~~
7. ~~Compile and keep updated and available a published~~ Maintaining and publishing a current Source List of all certified Priority #1 and #2 business entities, persons, firms, enterprises, or organizations or other entities currently certified by the Commerce Department for the preference priorities as provided by this chapter. By including an entity on such a Source List, the ~~Commerce~~ 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 chapter Act.



8. Providing, in accordance with its responsibilities, capabilities and available resources, in coordination with those of other responsible and appropriate Tribal 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 chapter Act and the current rules and regulations adopted hereunder.

Source: Tribal Council Res. C/JY-59-85, Exhibit C, §7, passed July 30, 1985

**§ 208. Certification of preference for eligible entities and authorization of business activities**

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

~~4A. Require timely submission of such information and documentation on percentage of ownership and organization structure proof as required herein it deems necessary and appropriate for determining certification or recertification eligibility. The Commerce Department shall deny certification to any entity which fails to provide such information in a timely manner. Certified entities shall be required to immediately submit a detailed and accurate written report disclosing the occurrence of any and all changes in that entity's financial, organizational and/or operational status or composition as previously disclosed to Commerce Department, including ownership, location, personnel, management, control or any other business affairs which may in any manner affect that entitie's eligibility for certification for any Navajo Business Preference priority. The failure of any entity to timely submit such information shall be subject to the provisions, sanctions and penalties set forth in section 203 (e) of this, and shall also constitute grounds for denial of any further recertification. All certification information shall be kept confidential and shall not be disclosed except as necessary in a proceeding under this chapter; provide for certification renewal on an annual basis; as~~

~~well as temporary and/or conditional certification and suspension or decertification. Certification shall be reviewed on the basis of new information or changes in organization or operations of previously certified entities which is material to eligibility for Navajo Business Preference according to the provisions of this chapter; and shall be accomplished in such manner as to avoid any loss of eligibility status to entities entitled thereto.~~

~~2B. Develop criteria for use by the Department in determining when an entity qualifies for each preference priority under this chapter. Commerce Department shall assign preference priority pursuant to section 204(a) (1) through (4) of this chapter and in such manner as to withhold preference priority from "front" organizations which do not, in fact, reflect actual Navajo ownership and control; and to protect qualified Navajo small private businesses from unfair competition by entities with subsidies or other preferential status, such as nonprofit entities, Tribal enterprises and other Navajo or other Indian businesses with markets outside the jurisdiction of the Navajo Nation. 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.~~

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

~~(b) Right To File Protest. Any Navajo or Indian individual, entity, or group of such individuals or entities claiming to be adversely affected by the certification or non certification of any economic entity, firm or organization having completed application therefor, may file a written protest with the Commerce Department. Said protest shall~~

~~be acted upon within thirty (30) calendar days following receipt thereof by the Commerce Department. The Commerce Department shall either confirm certification, or deny, revoke, suspend or modify certification, as it deems appropriate under the provisions of this chapter.~~

~~(c) *Right of Appeal.* Entities adversely affected by decisions of the Commerce Department on certification may appeal such decisions within the (10) calendar days from the date of the Commerce Department action to the Economic and Community Development Committee. The Economic and Community Development Committee shall, with or without further hearing as determined in its discretion, act on the appeal within thirty (30) calendar days. In cases of review of any Commerce Department determination regarding certification eligibility, the Committee shall issue its written determinations and may either order such certification, decertification, suspension or imposition of conditions as the Committee deems appropriate; or order such reconsideration by the Commerce Department as the Committee deems appropriate. The decision of the Economic and Community Development Committee shall be final, subject to appeal to the Navajo Tribal Courts as provided herein.~~

~~Source: Tribal Council Res. CJY-59-85, Exhibit C, §8, passed July 30, 1985~~

## **§ 209. Monitoring and enforcement**

~~A. *Navajo Nation Tribal Review and Approval Process.* All proposed professional services, procurement and construction contracts, procurements, or other transactions being submitted to the Budget and Finance Committee of the Navajo Tribal Council for approval or to the Chairman or Vice Chairman of the Navajo Nation shall first be initially reviewed approved by the Commerce Business Regulatory Department for compliance with the as meeting Navajo Nation Business Preference requirements Act.~~

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

1. ~~The Commerce Department shall have the authority to investigate any alleged violation and/or complaint under this chapter 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 Upon finding of good cause for determination of allegations which, if true, would constitute violation of or noncompliance with any provisions of this chapter or of any rules or regulations lawfully adopted hereunder, the Commerce Department shall investigate such allegations, compiling a complete written report of such investigation, including witness statements; and shall first seek to obtain voluntary compliance and remedial action deemed appropriate under the provisions of this chapter, to obtain voluntary compliance therewithof.~~
3. ~~Initially shall first seek to obtain voluntary compliance and appropriate remedial action deemed appropriate under the provisions of pursuant to this chapter Act, to obtain voluntary compliance therewithof.~~
4. ~~The complaint and hearing process shall be carried out pursuant to procedures drafted by the Commerce Department and approved by the Economic and Community Development Committee for adoption. The procedure shall provide due process but shall not be bound by the Formal Rules of Evidence If voluntary compliance or remediation is not possible, the Department shall render a decision pursuant to this Act.~~
5. ~~The Economic and Community Development Committee shall have the authority to conduct hearings on the matter, and shall sit in the capacity of a quasi-judicial body, with authority to administer oaths and to subpoena witnesses and the production of documents and other objects 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 Tribal Nation Court.*

1. In the case where the Commerce Department determines the existence event of a violation of or noncompliance with this chapter Act which presents the great a probability of continuing material and irreparable harm outweighing the likelihood of which is greater than the harm from suspension of performance, the Executive Director of the Division of Economic Development shall, with appropriate assistance from the Department of Justice of the Navajo Nation, 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 Rules of Civil Procedure of the Navajo Courts.
2. In the event of any If a Navajo Tribal Nation Court orders suspension of performance, Commerce Department the Division of Economic Development shall further take such immediate remedial action as authorized by said Court as appropriate to prevent or minimize to the greatest extent feasible, 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.

Source: Tribal Council Res. C.JY-59-85, Exhibit C, §9, passed July 30, 1985

## **§ 210. Imposition of sanctions**

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

4A. Civil monetary fines not to exceed five hundred dollars (\$500.00) per day, per violation.

2B. Suspension or termination of a party's authorization to engage in business activity on the reservation Navajo Nation; provided that the party shall be given a reasonable

time to remove its equipment and other property it may have on the reservation Navajo Nation and to take such measures to facilitate the satisfaction or assumption of any contractual obligations it has, ~~as approved by the Committee.~~

~~3C. Prohibit the party from engaging in future business activity on the reservation Navajo Nation for a specified period or permanently, in accordance with the provisions and procedures of pursuant to applicable laws of the Navajo Nation.~~

~~4D. Require the party to make such changes in its performance, procedures or policies as is necessary in order to organization or operations to comply with these requirements this Act.~~

~~5E. In accordance with all applicable laws of the Navajo Nation, impose such other sanctions as may be appropriate and necessary to ensure compliance and to remedy any harm done through or damages from violation of the requirements of this chapter Act pursuant to applicable laws.~~

~~6F. Recommend disciplinary action for Navajo Nation Tribal employees found to be deliberately in violation or noncompliance with this chapter Act shall be subject to disciplinary action in accordance with pursuant to the applicable Navajo Tribal Nation Personnel Policies and Procedures Manual.~~

~~7G. Determination that Recommend corrective or remedial action to the President of the Navajo Nation, or the Navajo Nation Council or its appropriate standing committee for Navajo Tribal Nation entities are in violation or noncompliance with this chapter Act shall be referred to the Chairman of the Navajo Tribal Council together with recommendations for appropriate corrective and remedial action by the Chairman and, or Vice Chairman of the Navajo Tribal Council.~~

Source: Tribal Council Res. CJY 59-85, Exhibit C, §10, passed July 30, 1985

## **§ 211. Appeals**

~~Any party complainant or respondent, not a governmental entity or employee of the Navajo Nation, shall have the right to appeal any final adverse decision or the Economic and Community Development Committee to the Navajo Tribal Courts. Such~~

~~appeal shall be limited to questions of law and the Committee's findings of fact shall not be disturbed provided they are supported by any credible evidence upon which reasonable minds may differ. In the event that the Court finds no credible supporting evidence whatever, so that the Committee's findings are determined to be arbitrary or capricious, the Court may remand the matter for rehearing or reconsideration by the Committee as the Court determines to be appropriate. Entities and employees of the Navajo Nation shall be bound by the decisions of the Economic and Community Development Committee as provided herein except that Personnel Grievance procedures shall be available to employees of the Navajo Nation in the same manner as applicable to imposition of other disciplinary actions.~~

A. Divisions Reviews. If a business is denied priority certification or a party is adversely affected by a decision herein, 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 ten (10) days of the date of the written adverse decision. The written notice of appeal shall:

1. Identify the business that was denied certification or license or adversely affected by a decision made pursuant to this Act; and,
2. Provide a short statement indicating the nature and circumstances of the denial or decision; and,
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 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.

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.

Source: Tribal Council Res. CJY-59-85, Exhibit C, §11, passed July 30, 1985.

#### **§ 212. Other Tribal Navajo Nation entities and associated agencies**

All Navajo Nation entities, Tribal departments and other agencies involved in any stage of the Tribal contracting, subcontracting or other procurement process shall fully comply with the provisions of this chapter Act and provide support and assistance in securing compliance of others within their areas of jurisdiction and regulation in accordance with applicable law.



Source: Tribal Council Res. CJY-59-85, Exhibit C, §12, passed July 30, 1985.

### **§ 213. Severability**

If any provision of this chapter Act or any rule or regulation adopted hereunderto or the application thereof to any person or circumstance is held found invalid, the remainder of this chapter Act and of the rules and regulations adopted hereunderto or the application of such provision to other persons or circumstances shall not be affected thereby.

Source: Tribal Council Res. CJY-59-85, Exhibit C, §13, passed July 30, 1985.

### **§ 214. Construction contract assessment fee**

~~Construction contracting activities on the Navajo Reservation are so extensive that it will require a monitoring and enforcement agency to assure overall adherence to this Navajo Nation Business Preference Law. In order to meet this obligation, the Commerce Department shall have the authority to assess a reasonable fee, not to exceed one half (1/2) of one percent (i.e. .005) of each approved construction prime contract subject to the provisions of this chapter, from the respective construction contracting letting entity awarding each such prime contract, wherever legally permissible. Funds received from this assessment shall be used to maintain appropriate compliance activities as required by this Navajo Nation Business Preference Law. The Economic and Community Development Committee of the Navajo Tribal Council shall have the authority to periodically determine the fee rate in accordance with the provisions of this chapter and appropriate to current economic conditions. This currently approved fee rate shall be promulgated as part of the current approved rules and regulations as authorized by this chapter.~~

Source: Tribal Council Res. CJY-59-85, Exhibit C, §14, passed July 30, 1985.

### **§ 2154. Effective date**

The effective date of this Navajo Nation Business Preference Law Act shall be July 30, 1985; provided that contracts which are presently in the Tribal process shall be

~~provided thirty (30) days to be finalized, notwithstanding section 215 of the chapter, otherwise all new contracts and contracts not finalized by thirty (30) days hereof shall be subject to the provisions of the chapter the date of its approval by the Navajo Nation Council.~~

~~Source: Tribal Council Res. CJY-59-85, Exhibit C, §15, passed July 30, 1985.~~

**§ 2165. Prior inconsistent law superseded**

~~Upon the effective date of this Navajo Nation Business Preference Law Act, all prior inconsistent enactments, laws, policies, ordinances and regulations of the Navajo Nation are hereby superseded hereby and/or amended to comply herewith, subject to the provisions of section 215 hereof.~~

~~Source: Tribal Council Res. CJY-59-85, Exhibit C, §16, passed July 30, 1985.~~

**§ 217. Deposit of fees and fines collected**

~~All fees, fines, or any cost revenues collected or provided herein shall be revenue to the Navajo Nation and deposited into the Navajo Nation Reserve Funds. revenues, permit fees, and interest shall be collected by the Commerce Department or its authorized representative, and deposited with the Cashier's Office, Financial Services Department for recording and deposit into a revolving account. This account shall be specifically used by the Navajo Business Preference Program/Division of Economic Development for activities directly related to compliance with the enforcement of the Navajo Business Preference Law and authorized activities stated in the Plan of Operation.~~

~~Source: Tribal Council Res. CJY-59-85, Exhibit C, §17, passed July 30, 1985.~~

## **§ 2187. Periodic review and amendments**

~~Theis Navajo Nation Business Preference Law Act~~ may be amended from time to time only by the Navajo Nation Council upon the recommendation of the Economic Development Committee.

~~This chapter is enacted by the Navajo Tribal Council as necessary temporary affirmative action to promote and support the development of such a durable, viable and self-sufficient Navajo business and the economic sector, that continuation of such affirmative action will no longer be necessary nor appropriate. In accordance with this policy, the Advisory Committee of the Navajo Tribal Council, upon recommendation by the Economic and Community Development Committee or when otherwise deemed appropriate and not less than every five (5) years following the effective date of this chapter, shall make and submit a full and comprehensive review of this chapter and recommendations pertaining to all provisions thereof, for proposed amendment and/or rescission thereof by the Navajo Tribal Council, in accordance with the prevailing conditions of the private economic sector of the Navajo Nation and the extent of attainment of the declared purposes and goals set forth in section 201 (b) of this chapter.~~

~~Source: Tribal Council Res. C.JY-59-85, Exhibit C, §18, passed July 30, 1985.~~

**RESOLUTION OF THE  
ECONOMIC DEVELOPMENT COMMITTEE  
OF THE NAVAJO NATION COUNCIL**

**Recommending To the Navajo Nation Council the Amendment Of the  
Navajo Nation Business Preference Law, 5 N.N.C. §201 et. seq.**

**WHEREAS:**

1. Pursuant to 2 N.N.C. §721, the Navajo Nation Council established the Economic Development Committee as a standing committee of the Navajo Nation Council; and

2. Pursuant to 2 N.N.C. §724(F)(1), the Economic Development Committee of the Navajo Nation Council shall recommend the adoption or amendments of such laws relating to business and commerce within the Navajo Nation to the Navajo Nation Council; and

3. The Navajo Nation Council by Resolution CJY-59-85 directed the Economic Development Committee of the Navajo Nation Council and the Division of Economic Development with the assistance of the Office of the President and the Department of Justice and such other divisions, departments and programs of the Nation as deemed appropriate to prepare and present proposed legislation concerning the regulation of business activities on the Navajo Nation during or before the 1995 Summer Session of the Navajo Nation Council and further directed a comprehensive review every five (5) years thereafter; and

4. Since passage of Resolution CJY-59-85, a number of public hearings were held on the issues of whether amendments should be permitted within the Navajo Nation Code in accordance with the prevailing conditions of the private sectors of the Navajo Nation; and

5. The Navajo Nation has an immediate need to develop additional sources of revenue to meet budget short falls and to support the Navajo people at a time when so-called welfare reform measures threaten the very existence of many Navajo families and certified Navajo-owned firms; and

6. On a monthly average, at least 200 certified firms have benefited in some manner from the provisions of the Navajo Nation Business Preference Law, 5 N.N.C. §201 et. seq., since its original adoption; and

**NOW THEREFORE BE IT RESOLVED THAT:**

**1. The Economic Development Committee of the Navajo Nation Council hereby supports the amendments to the Navajo Nation Business Preference Law, 5 N.N.C. §201 et. seq., now entitled Navajo Business Opportunity Act, attached hereto and incorporated herein as Exhibit "A".**

**2. The Economic Development Committee of the Navajo Nation Council hereby approves and recommends to the Navajo Nation Council the amendments to the Navajo Nation Business Opportunity Act, 5 N.N.C. §201 et. seq., attached hereto as Exhibit "A".**

**3. The Economic Development Committee of the Navajo Nation Council hereby declares that all references to the Navajo Business Preference Law in laws of the Navajo Nation, including the Navajo Nation Procurement Act (12 N.N.C. §301 et. seq.) shall now mean the Navajo Business Opportunity Act.**

**CERTIFICATION**

**I hereby certify that the foregoing resolution was duly considered by the Economic Development 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 was passed by a vote of 6 in favor, 0 opposed and 0 abstained, this 16<sup>th</sup> day of January 2002.**

  
**Lawrence R. Platero, Chairperson  
Economic Development Committee**

**Motion: Wilfred Yabeny  
Second: Ralph Bennett**

