

A. The vote on a referendum/initiative election shall be binding and have the effect of law.

B. Legislation adopted by a referendum/initiative election shall be incorporated in, and published as a part of the Navajo Nation Code, or any successor to the Code.

C. Legislation adopted by a referendum/initiative election shall be amended or repealed only:

1. By the outcome of a vote on a subsequent referendum or initiative election concerning the same subject matter as that of the referendum/initiative which originally adopted the legislation; or

2. For a Navajo Nation-wide referendum or initiative election, by three-fourths (3/4) vote of the full membership of the Navajo Nation Council at a regular session of the Navajo Nation Council.

History

CMY-30-03, May 2, 2003.

Cross References

Chapter referendum, see 26 N.N.C. §§ 103, 1003 and 2001 of the *Navajo Nation Local Governance Act*.

Title 12

Fiscal Matters

United States Code

Care and investment of Indian monies, see 25 U.S.C. § 151 *et seq.*

Disbursement of monies to Indians, see 25 U.S.C. § 111 *et seq.*

Use of Navajo Tribal funds on deposit in United States Treasury, see 25 U.S.C. § 637.

Code of Federal Regulations

Financial activities, 25 CFR § 101.1 *et seq.*

Chapter 1. Office of the Auditor General

§ 1. Establishment

There is established the Office of the Auditor General under the Navajo Nation Council.

History

CJY-60-91, July 19, 1991.

CF-4-85, February 5, 1985.

ACO-132-84, October 11, 1984.

§ 2. Purpose

A. The purpose of the Office of the Auditor General shall be to provide continuing professional audit and management services to the Navajo Nation government with regard to the adequacy of management and accounting systems, procedures, practices and internal controls, including but not limited to:

1. Conducting financial audits and reviews of financial records of chapters, related Navajo Nation entities and contractors to the Navajo Nation in accordance with government auditing standards;

2. Conducting performance audit reviews of Navajo Nation government programs, departments and divisions;

3. Providing management advisory services to the Navajo Nation;

4. Assisting the Office of the Prosecutor and Ethics and Rules Office in the investigation of possible fraud and/or misappropriation of assets of the Navajo Nation; and

5. Assisting in the building of an effective, responsive, strong and accountable government.

B. The Office of the Auditor General may, from time to time, perform professional services for organizations and entities not accounted for by the Department of Financial Services of the Navajo Nation and obtain revenue therefore, payable to the Navajo Nation government.

History

CD-80-02, December 30, 2002.

CJY-60-91, July 19, 1991.

CF-4-85, February 5, 1985.

ACO-132-84, October 11, 1984.

§ 3. Staffing, organization and scheduling of work

A. There are established the positions of the Auditor General, other auditors, systems analysts, support staff and such other positions as may be necessary to carry out the purpose of the Office of the Auditor General.

B. The Auditor General shall be appointed by the Speaker, Navajo Nation Council, at a negotiated salary subject to confirmation by the Navajo Nation Council and shall serve at the pleasure of the Navajo Nation Council. The

Auditor General shall be an actively licensed Certified Public Accountant, Certified Internal Auditor and/or other comparable certification to fulfill the purpose of the office. The Auditor General shall be bound by a professional code of ethics and standards of the accounting and auditing profession as regulated by the Board of Accountancy of the licensing state or other applicable licensing agency. The Auditor General shall be knowledgeable in performance, compliance and financial auditing, public administration, and governmental financial and fiscal policies. The Auditor General may be removed at any time by majority vote of the Navajo Nation Council.

All other personnel shall be hired and compensated pursuant to Navajo Nation policies and procedures relating to qualifications, experience, Navajo preference, salaries, etc., and subject to workload requirements and budgetary constraints.

C. The Speaker, Navajo Nation Council, may appoint an Acting Auditor General to serve during the vacancies of the Auditor General, pending formal action by the Navajo Nation Council. Such Acting Auditor General shall be subject to the same professional requirements required of the Auditor General in § 3(B), above.

D. An organizational chart of the Office of the Auditor General is provided in the office's current Plan of Operation. This chart is subject to future changes in scope and budgetary restrictions.

E. The scheduling of the audits for any fiscal year will be done in accordance with sound professional practice, giving priority, to the extent practicable, where requested or when the interests of the Navajo Nation so require.

History

CD-80-02, December 30, 2002.

CJY-60-91, July 19, 1991.

CF-4-85, February 5, 1985.

ACO-132-84, October 11, 1984.

Note. Slightly reworded for purposes of statutory form.

§ 4. Duties, responsibilities and authority of the Auditor General

The Auditor General is authorized and directed to:

A. Formulate, implement and maintain continuing audit programs and take such action as may be deemed necessary for the accomplishment of the purpose of the office.

B. Establish and maintain all necessary liaison and communication with the officials of the Navajo Nation government, entities, and chapters, mineral and business lease operators and state and federal agencies for the furtherance and accomplishment of the purpose of the office.

C. Coordinate with the Division of Community Development and the Office of the Controller in the development of accounting, financial-related and audit regulations for use by the chapters; and work with the Office of the Prosecutor and Ethics and Rules Office, if necessary, to secure records necessary for completing chapter audits and in the investigation of possible fraud and/or misappropriation of assets of the Navajo Nation.

D. Be responsive to the requests of management for specific information, review or audit of any aspect of Navajo Nation and chapter operation.

E. Prepare and present to the Budget and Finance Committee of the Navajo Nation Council, and to the appropriate elements of management, clear and concise reports of the results of internal audit reviews and examinations, prepared in accordance with generally accepted auditing standards and governmental auditing standards as promulgated by the Comptroller General of the United States.

F. Serve as one of the principal advisors to the Navajo Nation Council regarding accounting, systems and procedures, program, departmental and divisional operations and financial and business matters.

G. Participate in management decisions when new fiscal procedures are being established or existing fiscal procedures modified and also in various task forces, committees and commissions.

H. Exercise supervisory control and direction of all personnel within the office and maintain the highest standards of audit quality, ethics, independence and confidentiality. Review, modify and approve audit programs, audit reports and recommendations. Schedule and prioritize audits.

I. Represent the Office of the Auditor General in executive and legislative planning.

J. Represent the Navajo Nation government within the areas of responsibility and authority of the office and as authorized by the Office of the Speaker, Navajo Nation Council, in relations with all persons and organizations outside the Navajo Nation, and in matters relating to cooperative activities with state or federal agencies, pertaining to audit. Interface with the Navajo Nation's independent auditors.

K. Provide, to the extent necessary, training programs and library resources for the development of a well-qualified professional audit staff. Maintain a continuing education program designed to qualify staff personnel to meet the governmental auditing standards.

L. Conduct limited examinations of specific financial transactions and provide other administrative support services to the Navajo Nation government as and when requested and as directed by the Navajo Nation Council.

M. Enter into agreements, as deemed necessary with Navajo Nation, state or federal departments or offices for the sole purpose of accomplishing the objectives of the office, subject to review by and approval of the Intergovernmental Relations Committee.

N. Update the Plan of Operation and policy guidelines for the Office of the Auditor General as and when necessary, to implement the objectives and policies of the Navajo Nation administration.

O. Conduct audit follow-ups and take other necessary actions to assist in the implementation of audit recommendations in accordance with requests therefore and the directions of the Navajo Nation Council.

P. While conducting audits (financial, performance and compliance) and operations appraisals of Navajo Nation programs, divisions, or chapters, give emphasis to: effectiveness, accountability, responsiveness to the needs of the Navajo people, adherence to goals and objectives, policies and plans of operation; safeguarding of Navajo Nation assets and properties; proper use of labor, equipment, funds and properties; services to the community; compliance with applicable Navajo Nation, state and federal laws, agreements, policies or procedures; and adequacy and efficiency of personnel.

Q. Conduct, or participate in the conduct of, examinations of financial statements of Navajo Nation affiliated entities, contractors to the Navajo Nation and others, in accordance with generally accepted auditing standards.

R. Conduct operations audits of Navajo Nation programs, divisions, departments and Navajo Nation affiliated entities as requested by such entities or by the Navajo Nation Council.

S. Delegate authority to members of the staff as and when necessary.

T. Report directly to the Speaker, Navajo Nation Council, on all operational issues and be responsible thereto for the accomplishment of the purposes of the office.

U. In general, do everything necessary and convenient and assume such other duties and responsibilities as may be deemed advisable, to accomplish the purpose of this office in the best interest of the Navajo Nation.

V. Serve as the sole authority within the Navajo Nation for issuance of audit reports or reports covering limited examinations of specific financial transactions.

History

CD-80-02, December 30, 2002.

CJY-60-91, July 19, 1991.

CF-4-85, February 5, 1985.

ACO-132-84, October 11, 1984.

Note. Slightly reworded.

§ 5. Disclosure of records

A. Officials and employees of all Navajo Nation programs, divisions, entities, chapters, and enterprises shall make their books and records available to the staff of Office of the Auditor General upon request and extend every courtesy and cooperation to such representatives while they are performing their official duties.

B. The requested information shall be made available within a reasonable period of time.

History

CD-80-02, December 30, 2002.

CJY-60-91, July 19, 1991.

CF-4-85, February 5, 1985.

ACO-132-84, October 11, 1984.

Note. Slightly reworded.

§ 6. Audit reports, actions and follow-ups

A. The Auditor General shall submit all Navajo Nation program, division, chapter, and enterprise audit reports with findings and recommendations to the Budget and Finance Committee of the Navajo Nation Council for their review. Upon receipt of the reports, review shall begin within a reasonable period of time so as to implement the audit recommendation(s) in a timely manner.

B. The Office of the Auditor General shall conduct such post-audit follow-ups as are deemed necessary. The results of such post-audit follow-ups shall be similarly reported as specified by (A), above.

History

CO-96-99, October 20, 1999.

CJY-60-91, July 19, 1991.

CF-4-85, February 5, 1985.

ACO-132-84, October 11, 1984.

§ 7. Procedures for addressing audit findings and implementing recommendations

A. Within 10 working days after receipt of the final draft of an audit report from the Office of the Auditor General, the audited program will submit written comments to the Auditor General that present the audited program's overall response to the final draft of the audit report. The audited program may request an extension of up to five working days for justified reasons and approval by the Auditor General. Failure of an audited program to submit a response shall be deemed to constitute an acceptance of the final draft of the audit report by the program. The response should not exceed five pages and should generally describe how audit findings made in the final draft of the

audit report will be corrected. If the audited program disputes any portion of the final draft of the audit report, the response shall state the reasons therefor.

The term "audited program", as used, includes all Navajo Nation programs, divisions, chapters, enterprises, or other entities of Navajo Nation government.

B. A copy of the audited program's response will be published as part of the audit report issued to the Budget and Finance Committee, the standing committee having oversight responsibility for the audited program, the Navajo Nation Council and public.

C. Within 30 calendar days after the release of the audit report, the audited program will submit a corrective action plan to the Auditor General. The corrective action plan will address each finding presented in the report in one of the following ways:

1. Audited program agrees with the audit findings and will immediately implement the recommendations within a stated time period.

2. Audited program agrees with the audit findings but considers that immediate implementation of the recommendation is not feasible. Audited program will state the reasons why implementation should be delayed and the expected time frame for implementation.

D. Upon receipt of the audited program's corrective action plan, the Auditor General shall review the plan to determine its effectiveness. Upon approval of the plan the Auditor General shall present the audit report, and the audited program shall present the corrective action plan to the Budget and Finance Committee for review. The Auditor General will comment and identify any potential deficiencies in the corrective action plan, if warranted. The Budget and Finance Committee will approve the audit report and the corrective action plan by resolution.

E. The standing committee or committees having oversight responsibility for the audited program shall be served with copies of the audit report and the corrective action plan. The oversight committee may request the Auditor General to brief them on the audit report.

F. Six months after the submission of the corrective action plan, the audited program will provide to the Auditor General a written report on the status of all recommendations.

1. The status report shall describe actions taken to implement the corrective action plan and the results of those actions. The report should disclose any problems that have affected the audited program's ability to implement the corrective action plan in a timely manner and state how the audited program plans to address these problems.

2. The Auditor General will review the implementation status report and, if warranted, will conduct test work to verify actions taken and/or problems encountered. The Auditor General will provide a copy of the status report along with the Auditor General's opinion regarding the

success of the audited program's implementation effort to the Budget and Finance Committee and the standing committee or committees having oversight responsibility for the audited program.

G. 12 months after the release of the audit report, the Auditor General will conduct a follow-up review to document the status of the implementation. The audited program shall provide data and information, as requested by the Auditor General, to verify action taken. The Auditor General shall issue a written report on the audited program's progress in implementing the corrective action plan. As part of the follow-up report, the Auditor General shall recommend action to be taken by the Budget and Finance Committee and present the report to the standing committee or committees having oversight responsibility for the audited program.

H. The Auditor General shall report the results of the follow-up review and the status of the correction plan to the Budget and Finance Committee.

I. Based on the follow-up review and any recommendations made by the standing committee having oversight responsibility for the audited program, the Budget and Finance Committee will determine what actions should be taken.

History

CD-80-02, December 30, 2002.

CO-96-99, October 20, 1999.

Note. New § 7, previous § 7 now found at 12 N.N.C. § 10.

§ 8. Duties of audited programs

Once audit findings and a corrective action plan are approved by the Budget and Finance Committee, the Navajo Nation program, division, chapter, enterprise or entity which is the subject of the corrective action plan shall have a duty to implement the corrective action plan according to the terms of the plan.

History

CO-96-99, October 20, 1999.

§ 9. Sanctions for failure to implement plan

A. Whenever the Auditor General determines through the periodic review established in § 6 or § 7 that program, division, chapter, enterprise or entity has failed to implement the corrective action plan approved by the Budget and Finance Committee within the time table set by the corrective action plan or the Auditor General, the Auditor General shall immediately report that failure to the Controller of the Navajo Nation and to the Budget and Finance Committee.

B. As a sanction for failure to implement the corrective action plan, the Controller shall cause ten percent (10%) of monies payable from any governmental fund of the Navajo Nation as defined at 12 N.N.C. § 810(S) to be withheld after the recommended sanction is approved by the Budget and Finance

Committee and issued to the program, division, chapter, enterprise or entity until such time as the program, division, chapter, enterprise or entity demonstrates to the Auditor General that the corrective action plan has been implemented. Once proof of implementation of the corrective action plan has been demonstrated, the Auditor General shall immediately report this compliance to the Controller who shall then release all withheld funds to the program, division, chapter, enterprise or entity.

C. In addition, the director of any program, division, or entity of the Navajo Nation which fails to implement a corrective action plan, as reported by the Auditor General, shall have twenty percent (20%) of their salary withheld by the Controller after the recommended sanction is approved by the Budget and Finance Committee until such time as the program, division, enterprise or entity which is subject to his or her direction demonstrates to the Auditor General that the corrective action plan has been implemented. Whenever the audited program is a chapter of the Navajo Nation, twenty percent (20%) of any payment prospectively due the chapter officials shall be withheld by the Controller and the chapter government. Once proof of implementation of the corrective action plan has been demonstrated, the Auditor General shall immediately report this compliance to the Controller and, where applicable, the chapter government, who shall then release the withheld salary to the director of the program, division, enterprise, or entity or to the chapter official.

D. Any director or chapter official whose salary or other payments are withheld pursuant to § 9(C) shall have the right to have the withholding reviewed by the Navajo Nation Office of Hearings and Appeals. Review shall be limited to a determination of whether the audit recommendation or corrective action plan bears a rational relationship to the audit report, was approved by the Budget and Finance Committee, whether the corrective action plan was implemented within established time tables and whether the time tables for implementation were reasonable. The withholding of salary shall be upheld if there is a preponderance of evidence in support of these factors. The decision of the Office of Hearings and Appeals shall be final and no appeal shall lie to the courts of the Navajo Nation.

History

CD-80-02, December 30, 2002.

Note. Previous reference to 12 N.N.C. § 810(R) at Subsection B corrected to 12 N.N.C. § 810(S) to reflect amendments made to 12 N.N.C. § 810 by Resolutions CMY-22-04 and CAP-18-04.

CO-96-99, October 20, 1999.

Annotations

1. Appellate review prohibited

"As the Council has explicitly prohibited appellate review of the sanctions assessed in this case, there is no appellate jurisdiction to preserve or protect. The Court therefore lacks jurisdiction to issue a writ of prohibition in this case." *Budget and Finance Committee v. Office of Hearings and Appeals*, No. SC-CV-63-05, slip op. at 5 (Nav. Sup. Ct. January 4, 2006).

§ 10. Amendment of the Plan of Operation

This Plan of Operation may be amended from time to time by the Navajo Nation Council upon the recommendation of the Intergovernmental Relations Committee of the Navajo Nation Council. The request for amendment shall be originated by the Auditor General.

History

CO-96-99, October 20, 1999.

CJY-60-91, July 19, 1991.

CF-4-85, February 5, 1985.

ACO-132-84, October 11, 1984.

Chapter 2. Office of the Controller

History

Subchapters 3, 5, 7, 9, and 11 repealed by CF-5-73, February 1, 1973. Repealed sections were derived from CJN-60-71, June 8, 1971, and the 1972 Budget.

§ 201. Establishment; purpose; composition

A. There is established the Office of the Controller within the Executive Branch of the Navajo Nation.

B. The purpose of the Office of the Controller shall be the formulation, implementation and execution of the financial plans and policies of the Navajo Nation in order that accurate and complete accounts and reports be rendered, the assets of the Navajo Nation be properly protected and modern methods of financial management be implemented.

C. There shall be, within the Office of the Controller:

1. Two secretaries;
2. A systems and procedures analyst;

3. Three accounting managers, one of which shall oversee an Accounts Receivable Department and a Budget Control Department; one of which shall oversee an Accounts Payable Department and a General Accounting Department; and one of which shall oversee a Cashier's Department, a Payroll Department and an Office Services Department.

History

CF-5-73, February 1, 1973.

1972 Budget, Div. 4, Dept. 10, §§ I, II, V.

§ 202. Controller; Acting Controller; other personnel

A. There is established the position of Controller, and such other positions as may from time to time be budgeted by the Navajo Nation Council, or by any other source acceptable to the President, Navajo Nation.

B. The Controller shall be appointed by the President of the Navajo Nation, at a negotiated salary with the approval of the Navajo Nation Council and shall serve at the pleasure of the Navajo Nation Council. The President of the Navajo Nation, with the consent of the Budget and Finance Committee, may appoint an Acting Controller to serve during vacancies of the Controller pending formal action by the Navajo Nation Council.

C. All other personnel shall be hired and compensated pursuant to usual Navajo Nation policies and procedures.

History

1972 Budget, Div. 4, Dept. 10, § III.

Note. Slightly reworded for purposes of statutory form. The Advisory Committee is no longer a standing committee of the Navajo Nation Council. The Budget and Finance Committee has been delegated oversight authority for the Division of Finance, including the Office of the Controller. See 2 N.N.C. § 374(B) (16).

Cross References

Budget and Finance Committee of the Navajo Nation Council, 2 N.N.C. § 374(B) (16).

§ 203. Duties, responsibilities and authority of Controller

The Controller shall:

A. Report directly to the President of the Navajo Nation, on operational matters of the Office of the Controller.

B. Report to the Navajo Nation Council and its committees concerning the financial condition of the Navajo Nation and be solely responsible to the Council and the Budget and Finance Committee concerning the propriety of financial transactions, and compliance with Council or committee directives.

C. Formulate overall financial policy and procedures for the Navajo Nation Council and take such action as is necessary for the accomplishment and enforcement thereof.

D. Exercise supervisory control and direction of all sections and divisions under the Controller.

E. Represent all areas of the Controller's responsibility at executive level planning.

F. Develop and coordinate programs of financial management at all levels within the Navajo Nation government.

G. Represent the Navajo Nation government in the areas of the Controller's responsibility.

H. Delegate authority to subordinates as required for efficient operation.

I. Serve as Chairperson, Investment Committee for the administration of the Navajo Nation's investment programs, and be responsible to the Navajo Nation Council and the Budget and Finance Committee for the proper execution of the investment program.

J. Plan and conduct program and budget development and review.

K. Act as an advisor to the Budget and Finance Committee.

History

1972 Budget, Div. 4, Dept. 10, § IV.

Chapter 3. Navajo Nation Procurement Act

Subchapter 1. General Provisions

§ 301. Purposes, Rules of construction

A. Interpretation. This Act shall be construed and applied to promote its underlying purposes and policies.

B. Purposes and Policies. The underlying purposes and policies of this Act are:

1. To simplify, clarify, and modernize the law governing procurement by the Navajo Nation, to foster effective broad-based competition within the free enterprise system to the extent consistent with the purposes and provisions of the Navajo Nation Business Opportunity Act, 5 N.N.C. § 201 *et seq.*;

2. To permit the continued development of procurement policies and practices;

3. To provide for consistent procurement practices;

4. To provide for increased public confidence in the procedures followed in public procurement;

5. To ensure the fair and equitable treatment of all persons who deal with the procurement system of the Navajo Nation;

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

7. To provide safeguards for the maintenance of a procurement system of quality and integrity.

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

Revision Note. Slightly reworded for purpose of statutory form.

§ 302. Requirement of good faith

This Act requires all parties involved in the negotiation, performance, or administration of Navajo Nation contracts to act in good faith.

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

§ 303. Application of this Act

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

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

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

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

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

§ 304. Severability

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

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

§ 305. Construction against implicit repealer

Since this Act is a general act, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction of the subsequent legislation can be reasonably avoided.

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

§ 306. Effective date

This Act shall become effective upon passage by the Navajo Nation Council.

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

§ 307. Determinations

Written determinations required by this Act shall be retained in the appropriate official contract file of the Director, Division of Finance, Purchasing Department or authorized designee or the purchasing agency for the period of three years, unless a different period of time is required by federal or state contract or grant requirements.

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

§ 308. Definitions

A. The words used in this Act shall have their ordinary meanings unless:

1. The context in which they are used clearly requires a different meaning; or

2. A different definition is prescribed for a particular provision.

B. "Architect-Engineer and Land Surveying Services" are those professional services within the scope of the practice of architecture, professional engineering, or land surveying, as defined by the laws the Navajo Nation, or in the absence of Navajo law, the states in which the professional services are to be performed.

C. "Bid" means an offer to perform a contract for the performance of work and labor and/or the delivery of goods at a specified price.

D. "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

E. "Change Order" means a written order signed by the procurement officer or authorized designee, directing the contractor to make changes as authorized by a contract without the consent of that contractor.

F. "Construction" means the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

G. "Contract" means all types of Navajo Nation agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, or construction. The term contract does not include agreements, including prime contracts and grants, between the Navajo Nation and federal, state, and local governments for the provision of governmental services to Navajos and other persons within the Navajo Nation.

H. "Contract Modification" means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

I. "Contractor" means any person having a procurement contract with a division, department, office, or program of the Navajo Nation.

J. "Cost-Reimbursement Contract" means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this Act, and a fee, if any.

K. "Data" means recorded information, regardless of form or characteristic.

L. "Designee" means a duly authorized representative of a person.

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

N. "Established catalogue price" means the price included in a catalogue, price list, schedule, or other form that:

1. Is regularly maintained by a manufacturer or contractor;
2. Is either published or otherwise available for inspection by customers; and
3. States prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

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

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

Q. "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

R. "May" denotes the permissive.

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

T. "Political Subdivision" means governmental units of the Navajo Nation which are created by Navajo Nation law and include the chapters and townsites of the Navajo Nation.

U. "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any goods and/or services, unless excluded from coverage by some other provision of Navajo Nation law. It also includes all functions that pertain to the obtaining of any goods and/or services, including description of

requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

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

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

X. "Purchase description" means the words used in a solicitation to describe the supplies, services, or construction to be purchased, and includes specifications attached to, or made a part of the solicitation.

Y. "Purchasing agency" means any division, department, office, program, and political subdivisions of the Navajo Nation, other than the Division of Finance, Purchasing Department which is authorized by this Act or its implementing regulations, to enter into contracts.

Z. "Regulation" means, for purposes of this Act, the regulations adopted by the Budget and Finance Committee to regulate the procurement of goods and services by the divisions, departments, programs and offices of the Navajo Nation government.

AA. "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

BB. "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

CC. "Responsive bidder" means a person who has submitted a bid which conforms in all material respects to the invitation for bids.

DD. "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.

EE. "Shall" denotes the imperative.

FF. "Supplies" means all property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

§ 309. Public access to procurement information

Procurement information shall be available to the public to the extent provided by the Navajo Nation Privacy and Access to Information Act, 2 N.N.C. § 81 *et seq.*

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

§ 310. Collection of data concerning public procurement

The Director, Division of Finance, Purchasing Department shall cooperate with the Division of Finance in the preparation of statistical data concerning the procurement, usage, and disposition of all supplies, services, and construction, and employ such trained personnel as may be necessary to carry out this function. All divisions, departments, offices, programs, and political subdivisions of the Navajo Nation, shall furnish such reports as the Director, Division of Finance, Purchasing Department or authorized designee may require concerning usage, needs, and stocks on hand, and the Director, Division of Finance, Purchasing Department or authorized designee shall have the authority to prescribe forms to be used by the divisions, departments, offices, programs, and political subdivisions of the Navajo Nation, in requisitioning, ordering, and reporting of supplies, services, and construction.

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

§ 311. Retention of procurement records

All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the Government Services Committee. Inspection of all retained documents shall be governed by the Navajo Nation Privacy and Access to Information Act, 2 N.N.C. § 81 *et seq.*

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

§ 312. Reporting of anti-competitive practices

When for any reason, collusion or other anti-competitive practices are suspected in contracting provided under this Act, a notice of the relevant facts shall be transmitted to the Attorney General.

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

Subchapter 2. Regulations Required by this Act

§ 320. Navajo Nation Procurement Regulations

A. Regulations shall be developed by the Division of Finance, Purchasing Department, in consultation with the Business Regulatory Department, Department of Justice and Office of Legislative Counsel, and adopted by the Budget and Finance Committee of the Navajo Nation Council within one year of the passage of this Act, and shall be reviewed for potential revision at least every two years. Navajo Nation procurement regulations shall be consistent with the provisions of the Navajo Nation Business Opportunity Act, 5 N.N.C. § 201 *et seq.*

B. The Budget and Finance Committee shall not delegate its power to promulgate procurement regulations.

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

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

Subchapter 3. Source Selection and Contract Formation

§ 330. Methods of source selection

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

- A. 12 N.N.C. § 332 (Competitive Sealed Proposals);
- B. 12 N.N.C. § 333 (Small Purchases);
- C. 12 N.N.C. § 334 (Emergency Procurement);
- D. 12 N.N.C. § 335 (Sole Source Procurement); or
- E. 12 N.N.C. § 346 (Architect-Engineer and Land Surveying Services).

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

§ 331. Competitive Sealed Bidding

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

A. Invitation for bids. An invitation for bids shall include a purchase description, and all contractual terms and conditions applicable to the procurement. Purchase descriptions, terms and conditions, and specifications for goods and services shall not be unduly restrictive. The invitation for bids shall set forth the criteria to be used in evaluation of bids which are submitted. The invitation for bids shall refer to the preference of Navajo and Indian-owned businesses under the Navajo Nation Business Opportunity Act., 5 N.N.C. § 201 *et seq.*

B. Public Notice. Adequate public notice of the invitation for bids shall be issued a reasonable time prior to the date set for the opening of bids. Certified entities under the Navajo Nation Business Opportunity Act shall be provided such notice as set forth in the Navajo Nation Business Opportunity Act. Such notice may include publication in a newspaper of general circulation a reasonable time prior to bid opening.

C. Bid Opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The opening of bids shall be performed a manner consistent with the Navajo Nation Business Opportunity Act. The amount of each bid, and such other relevant information as may be specified by regulation, together with the name of each bidder shall be recorded; the record and each bid shall be open to public inspection, to the extent permitted by the Navajo Nation Privacy and Access to Information Act, 2 N.N.C. § 81 *et seq.*

D. Bid Acceptance and Bid Evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized by the Navajo Nation Business Opportunity Act, or other provisions of law. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. The criteria affecting the bid price and considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. No criteria may be used in bid evaluation that are not set forth in the invitation for bids.

E. Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted in accordance with regulations promulgated by the Budget and Finance Committee. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the Navajo Nation or fair competition shall be permitted. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Director, Division of Finance, Purchasing Department or authorized designee or head of a purchasing agency.

F. Award. The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. In the event all bids in a procurement exceed available funds as certified by the appropriate fiscal officer, and the low responsive and responsible bid does not exceed such funds by more than five percent (5%), the Director, Division of Finance, Purchasing Department or authorized designee, or the head of a purchasing agency, is authorized in situations where time or economic considerations preclude re-solicitation of work of a reduced scope to negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds.

G. Multi-Step Sealed Bidding. When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

§ 332. Competitive sealed proposals

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

B. Request for Proposals. Proposals shall be solicited through a request for proposals. A request for proposals shall be issued and shall include a purchase description, and all contractual terms and conditions applicable to the procurement. Purchase descriptions, terms and conditions, and specifications for goods and services shall not be unduly restrictive. The request for proposals shall set forth the criteria to be used in evaluation of proposals which are submitted. The request for proposals shall refer to the preference of Navajo and Indian-owned businesses under the Navajo Nation Business Opportunity Act, 5 N.N.C. § 201 *et seq.*

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

D. Opening of Proposals. The opening of proposals shall be performed in a manner consistent with the Navajo Nation Business Opportunity Act, 5 N.N.C. § 201 *et seq.*. Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared in accordance with regulations promulgated by the Budget and Finance Committee, and shall be open for public inspection after contract award, to the extent provided in the Navajo Nation Privacy and Access to Information Act, 2 N.N.C. § 81 *et seq.*

E. Evaluation Factors. The request for proposals shall state the relative importance of price and other evaluation factors. The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive offeror whose proposal meets the requirements and criteria set forth in the request for proposals. In the event all proposals in a procurement exceed available funds as certified by the appropriate fiscal officer, and the low responsive and responsible proposal does not exceed such funds by more than five percent (5%), the Director, Division of Finance, Purchasing Department or authorized designee, or the head of a purchasing agency, is authorized in situations where time or economic considerations preclude re-solicitation of work of a reduced scope to negotiate an adjustment of the proposal price, including changes in the proposal requirements, with the low responsive and responsible offeror, in order to bring the proposal within the amount of available funds.

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

G. Award. Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the Navajo Nation taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made, and shall be made public to the extent provided in the Navajo Nation Privacy and Access to Information Act, 2 N.N.C. § 81 *et seq.*

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

§ 333. Small purchases

A. Applicability. Any procurement not exceeding fifty thousand dollars (\$50,000) may be made using small purchase regulations adopted by the Budget

and Finance Committee, provided, however, that procurement requirements shall not be artificially divided so as to constitute a small purchase under this Section. Certified entities under the Navajo Nation Business Opportunity Act shall receive preference in small purchases.

B. Review and Signature Requirements. Small purchases shall require only the following signatures and reviews: program director, division director or other procurement officer and appropriate representative of the Attorney General's Office (or Office of Legislative Counsel, for small purchases within the Legislative Branch). No oversight committee approval shall be required for these contracts.

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

§ 334. Emergency procurement

Notwithstanding any other provision of law, the Director, Division of Finance, Purchasing Department, the head of a purchasing agency, or a designee of either officer may make or authorize others to make emergency procurement when there exists a threat to public health, welfare, or safety under emergency conditions as defined in regulations promulgated by the Budget and Finance Committee; provided that such emergency procurement shall be made with such competition as is practicable under the circumstances. A written determination of emergency shall be made by the executive director of the affected division, in concert with the Director, Division of Finance, Purchasing Department or authorized designee, and a representative of the Attorney General's Office (or the Office of Legislative Counsel for emergency procurements by the Legislative Branch). To the extent possible, certified entities under the Navajo Nation Business Opportunity Act, 5 N.N.C. § 201 *et seq.*, shall receive preference in emergency procurement. The written determination and the selection of the particular contractor shall be included in the contract file. No oversight committee approval shall be required for these contracts.

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

§ 335. Sole source procurement

A contract may be awarded for goods and/or services without competition when, under regulations promulgated by the Budget and Finance Committee, the executive director of the affected division or other procurement officer, in concert with the Director, Division of Finance, Purchasing Department or authorized designee, and a representative of the Attorney General's Office, or the Office of Legislative Counsel for procurements by the Legislative Branch, determines in writing that there is only one source for the required goods and/or services. Certified entities under the Navajo Nation Business Opportunity Act, 5 N.N.C. § 201 *et seq.* shall receive preference in sole source

procurement. The written determination and the selection of the particular contractor shall be included in the contract file. No oversight committee approval shall be required for these contracts.

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

§ 336. Record of small purchases, sole source procurement and emergency procurement

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

1. Each contractor's name;
2. The amount and type of each contract; and
3. A listing of the supplies, services, or construction procured under each contract.

B. Submission to Navajo Nation Council. A copy of such record shall be submitted to the Navajo Nation Council on an annual basis. The record shall be available for public inspection to the extent provided by the Navajo Nation Privacy and Access to Information Act, 2 N.N.C. § 81 *et seq.*

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

§ 337. Cancellation of invitations for bids or requests for proposals

An invitation for bids, a request for proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, or when it is in the best interests of the Navajo Nation in accordance with regulations promulgated by the Budget and Finance Committee. The reasons therefor shall be made part of the contract file.

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

§ 338. Responsibility of bidders and offerors

A. Determination of Nonresponsibility. A written determination of nonresponsibility of a bidder or offeror shall be made in accordance with regulations promulgated by the Budget and Finance Committee. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.

B. Right of Nondisclosure. Information furnished by a bidder or offeror pursuant to this Section shall only be disclosed in accord with the provisions of the Navajo Nation Privacy and Access to Information Act, 2 N.N.C. § 81 *et seq.*

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

§ 339. Pre-qualification of suppliers

Prospective suppliers may be pre-qualified for particular types of supplies, services, and construction in accordance with regulations promulgated by the Budget and Finance Committee. Solicitation mailing lists of potential contractors shall include but shall not be limited to such pre-qualified suppliers.

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

Subchapter 4. Procurement of Construction Services

§ 340. Responsibility for selection of methods of construction contracting management

The Budget and Finance Committee, in consultation and coordination with the Transportation and Community Development Committee, shall promulgate regulations providing for as many alternative methods of construction management as it may determine to be feasible. These regulations shall:

A. Set forth criteria to be used in determining which method of construction contracting management is to be used for a particular project;

B. Grant to the Director, Division of Finance, Purchasing Department or authorized designee, or the head of the purchasing agency responsible for carrying out the construction project the discretion to select the appropriate method of construction contracting management for a particular project; and

C. Require the procurement officer or authorized designee to execute and include in the contract file a written statement setting forth the facts which led to the selection of a particular method of construction contracting

management for each project.

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

§ 341. Bid security

A. Requirement for Bid Security. Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the procurement officer or authorized designee to exceed the amount established by regulation of the Budget and Finance Committee. Bid security shall be a bond provided by a surety company authorized to do business within the Navajo Nation, or the equivalent in cash, or otherwise supplied in a form satisfactory to the Navajo Nation. Nothing herein prevents the requirement of such bonds on construction contracts under the amount set by the Budget and Finance Committee when the circumstances warrant.

B. Amount of Bid Security. Bid security shall be in an amount equal to at least ten percent (10%) of the amount of the bid.

C. Rejection of Bids for Noncompliance with Bid Security Requirements. When the invitation for bids requires security, noncompliance requires that the bid be rejected unless, pursuant to Budget and Finance Committee regulations, it is determined that the bid fails to comply in a insubstantial manner with the security requirements.

D. Withdrawal of Bids. After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids, except as provided in 12 N.N.C. § 331 (Competitive Sealed Bidding, Correction or Withdrawal of Bids; Cancellation of Awards). If a bidder is permitted to withdraw its bid before award, no action shall be had against the bidder or the bid security.

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

§ 342. Contract performance and payment bonds

A. When Required-Amounts. When a construction contract is awarded in excess of fifty thousand dollars (\$50,000), the following bonds or security shall be delivered to the Navajo Nation and shall become binding on the parties upon the execution of the contract:

1. A performance bond satisfactory to the Navajo Nation, executed by a surety company or otherwise secured in a manner satisfactory to the Navajo Nation, in an amount equal to one hundred percent (100%) of the price specified in the contract; and

2. A payment bond satisfactory to the Navajo Nation, executed by a surety company or otherwise secured in a manner satisfactory to the Navajo Nation, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent (100%) of the price specified in the contract.

B. Reduction of Bond Amounts. The Budget and Finance Committee may promulgate regulations that authorize the Director, Division of Finance, Purchasing Department or authorized designee or head of a purchasing agency to reduce the amount of performance and payment bonds to fifty percent (50%) of the contract price for each bond.

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

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

§ 343. Bond forms and copies

A. Bond Forms. The Budget and Finance Committee shall promulgate by regulation the form of the bonds required by this Act.

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

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

§ 344. Contract clauses and their administration

A. Contract Clauses. The Budget and Finance Committee shall promulgate regulations requiring the inclusion in Navajo Nation construction contracts of clauses providing for adjustments in prices, time of performance, or other contract provisions, as appropriate, and covering the following subjects:

1. The unilateral right of the Navajo Nation to order in writing:
 - a. Changes in the work within the scope of the contract; and
 - b. Changes in the time of performance of the contract that do

not alter the scope of the contract work;

2. Variations occurring between estimated quantities of work in a contract and actual quantities;

3. Suspension of work ordered by the Navajo Nation; and

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

a. When the site conditions within the contract are specifically negotiated;

b. When the contractor provides the site or design; or

c. When the parties have otherwise agreed with respect to the risk of differing site conditions.

B. Price Adjustments.

1. Adjustments in price pursuant to clauses promulgated under Subsection (A) of this Section shall be computed in one or more of the following ways:

a. By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

b. By unit prices specified in the contract or subsequently agreed upon;

c. By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

d. In such other manner as the contracting parties may mutually agree; or

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

2. A contractor shall be required to submit cost or pricing data if any adjustment in contract price is proposed.

C. Additional Contract Clauses. The Budget and Finance Committee shall promulgate regulations requiring the inclusion in Navajo Nation construction contracts of clauses providing for appropriate remedies and covering the following subjects:

1. Liquidated damages as appropriate;
2. Specified excuses for delay or nonperformance;
3. Termination of the contract for default; and
4. Termination of the contract in whole or in part for the convenience of the Navajo Nation.

D. Modification of Required Clauses. The Director, Division of Finance, Purchasing Department or the head of a purchasing agency may vary the clauses promulgated by the Budget and Finance Committee under Subsection (A) and Subsection (C) of this Section for inclusion in any particular Navajo Nation construction contract, provided that any variations are supported by a written determination that states the circumstances justifying such variations, and provided that notice of any such material variation be stated in the invitation for bids or request for proposals.

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

§ 345. Fiscal responsibility

Every contract modification, change order, or contract price adjustment under a construction contract with the Navajo Nation in excess of ten percent (10%) of the original contract amount shall be subject to prior written certification by the fiscal officer of the entity responsible for funding the project or the contract, or other official responsible for monitoring and reporting upon the status of the costs of the total project budget or contract budget, as to the effect of the contract modification, change order, or adjustment in contract price on the total project budget or the total contract budget. In the event that the certification of the fiscal officer or other responsible official discloses a resulting increase in the total project budget and/or the total contract budget, the procurement officer or authorized designee shall not execute or make such contract modification, change order, or adjustment in contract price unless sufficient funds are available therefor, or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the total project budget and/or total contract budget as it existed prior to the contract modification, change order, or adjustment in contract price under consideration; provided, however, that with respect to the validity, as to the contractor, of any executed contract modification, change order, or adjustment in contract price which the contractor has reasonably relied upon, it shall be presumed that there has been compliance with the provisions of this Section.

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

§ 346. Architect-engineer and land surveying services

A. Applicability. Architect-engineer and land surveying services shall be procured as provided in this Section except as authorized by 12 N.N.C. § 333 (Small Purchases), 12 N.N.C. § 334 (Emergency Procurement), and 12 N.N.C. § 335 (Sole Source Procurement).

B. Policy. It is the policy of the Navajo Nation to publicly announce all requirements for architect-engineer and land surveying services and to negotiate contracts for architect engineer and land surveying services on the basis of demonstrated competence and qualification for the type of services required, and at fair and reasonable prices.

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

D. Negotiation. The procurement officer shall negotiate a contract with the highest qualified firm for architect-engineer or land surveying services at compensation which the procurement officer or authorized designee determines in writing to be fair and reasonable to the Navajo Nation. In making this decision, the procurement officer or authorized designee shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. Should the procurement officer or authorized designee be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price the procurement officer or authorized designee determines to be fair and reasonable to the Navajo Nation, negotiations with that firm shall be formally terminated. The procurement officer shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the procurement officer or authorized designee shall formally terminate negotiations. The procurement officer or authorized designee shall then undertake negotiations with the third most qualified firm. Should the procurement officer or authorized designee be unable to negotiate a contract at a fair and reasonable price with any of the selected firms, the procurement officer or authorized designee shall select

additional firms in order of their competence and qualifications, and the procurement officer or authorized designee shall continue negotiations in accordance with this Section until an agreement is reached.

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

Note. At Subsection (A), citations to 12 N.N.C. §§ 333-335 corrected.

Subchapter 5. Contract Administration

§ 350. Contract clauses and their administration

A. Contract Clauses. The Budget and Finance Committee may promulgate regulations permitting or requiring the inclusion of clauses providing for adjustments in prices, time of performance, or other contract provisions as appropriate covering the following subjects:

1. The unilateral right of the Navajo Nation to order in writing:

a. Changes in the work within the scope of the contract; and

b. Temporary stopping of the work or delaying performance;

and

2. Variations occurring between estimated quantities of work in a contract and actual quantities.

B. Price Adjustments.

1. Adjustments in price pursuant to clauses promulgated under Subsection (A) of this Section shall be computed in one or more of the following ways:

a. By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

b. By unit prices specified in the contract or subsequently agreed upon;

c. By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

d. In such other manner as the contracting parties may mutually agree; or

e. In the absence of agreement by the parties, by a unilateral determination by the Navajo Nation of the costs attributable

to the events or situations under such clauses with adjustment of profit or fee, all as computed by the Navajo Nation in accordance with applicable sections of the regulations promulgated by the Budget and Finance Committee.

2. A contractor shall be required to submit cost or pricing data if any adjustment in contract price is proposed.

C. Additional Contract Clauses. The Budget and Finance Committee may promulgate regulations including, but not limited to, regulations permitting or requiring the inclusion in Navajo Nation contracts of clauses providing for appropriate remedies and covering the following subjects:

1. Liquidated damages as appropriate;
2. Specified excuses for delay or nonperformance;
3. Termination of the contract for default; and

4. Termination of the contract in whole or in part for the convenience of the Navajo Nation.

5. Modification of Clauses. The Director, Division of Finance, Purchasing Department or authorized designee or the head of a purchasing agency may vary the clauses promulgated by the Budget and Finance Committee under Subsection (A) and Subsection (C) of this Section for inclusion in any particular Navajo Nation contract; provided that any variations are supported by a written determination that states the circumstances justifying such variation and provided that notice of any such material variation be stated in the invitation for bids or request for proposals.

D. Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for such purposes.

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

§ 351. Right to inspect plant

The Navajo Nation may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the Navajo Nation.

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

§ 352. Right to audit records

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

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

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

§ 353. Types of contracts

Subject to the limitations of this Section, any type of contract which will promote the best interests of the Navajo Nation may be used; provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited.

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

§ 354. Multi-term contracts

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

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

§ 355. Cost principles regulations required

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

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

Subchapter 6. Legal and Contractual Remedies

§ 360. Authority to resolve protested solicitations and awards

A. Right to Protest. Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Director, Division of Finance, Purchasing Department or the head of a purchasing agency. The protest shall be submitted in writing within 14 days after such aggrieved person knows or should have known of the facts giving rise thereto.

B. Authority to Resolve Protests. The Director, Division of Finance, Purchasing Department, the head of a purchasing agency, or a designee of either officer, with the approval of the Attorney General's Office, shall have the authority to settle and resolve a protest of an aggrieved bidder, offeror, or contractor, actual or prospective, concerning the solicitation or award of a contract.

C. Decision. If the protest is not resolved by mutual agreement, the Director, Division of Finance, Purchasing Department, the head of a purchasing agency, or a designee of either officer shall promptly issue a decision in writing. The decision shall:

1. State the reasons for the action taken; and
2. Inform the protestant of its right to administrative review as herein provided.

D. Notice of Decision. A copy of the decision under Subsection (C) of this Section shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.

E. Finality of Decision. A decision under Subsection (C) of this Section shall be final and conclusive, unless fraudulent or the person adversely

affected by the decision appeals administratively in accordance with 12 N.N.C. §§ 362 and 363.

F. Stay of Procurement During Protests. In the event of a timely protest under Subsection (A) of this Section, or under 12 N.N.C. §§ 362 and 363, the Navajo Nation shall not proceed further with the solicitation or with the award of the contract until the Director, Division of Finance, Purchasing Department, after consultation with the Attorney General's Office (or Office of Legislative Counsel, in the case of a Legislative Branch procurement) and the head of the using agency or the head of a purchasing Agency, makes a written determination that the award of that contract without delay is necessary to protect substantial interests of the Navajo Nation.

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

§ 361. Authority to debar or suspend

A. Authority. After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Director, Division of Finance, Purchasing Department or the head of a purchasing agency, after consultation with the using agency and the Attorney General (or Office of Legislative Counsel, in the case of a Legislative Branch procurement) shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three years. The same officer, after consultation with the using agency and the Attorney General (or Office of Legislative Counsel, in the case of a Legislative Branch procurement) shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three months. The authority to debar or suspend shall be exercised in accordance with regulations promulgated by the Budget and Finance Committee.

B. Causes for Debarment or Suspension. The causes for debarment or suspension include the following:

1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

2. Conviction for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a Navajo Nation contractor;

3. Conviction under antitrust statutes arising out of the submission of bids or proposals;

4. Violation of contract provisions, as set forth below, of a character which is regarded the Director, Division of Finance, Purchasing

Department or the head of a Purchasing agency, with concurrence of the Attorney General (or Office of Legislative Counsel, in the case of a Legislative Branch procurement) to be so serious as to justify debarment action:

a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

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

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

C. Decision. The Director, Division of Finance, Purchasing Department or authorized designee or the head of a purchasing agency shall issue a written decision to debar or suspend. The decision shall:

1. State the reasons for the action taken; and

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

D. Notice of Decision. A copy of the decision under Subsection (C) of this Section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.

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

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

§ 362. Administrative review

The Office of Hearings and Appeals shall have the jurisdiction to hear and decide appeals of decisions under this Act.

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

Revision Note. Slightly reworded for purpose of statutory form.

§ 363. Scope of administrative review

A. The Office of Hearings and Appeals shall have jurisdiction to review and determine de novo:

1. Any protest of a solicitation or award of a contract by an aggrieved actual or prospective bidder or offeror, or a contractor; and

2. Any appeal by an aggrieved party from a determination by the Director, Division of Finance, Purchasing Department, the head of a purchasing agency, or a designee of either officer authorized by this Act.

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

C. Decision. The decision of the Office of Hearing and Appeals shall make a determination based on the preponderance of the evidence on the issue of whether the actions of the Division of Finance, Purchasing Department or other purchasing agency were consistent with the provisions of this Act and the procurement regulations promulgated by the Budget and Finance Committee. The solicitation or award of a contract shall be upheld unless it is shown by a preponderance of the evidence that the actions of the Division of Finance, Purchasing Department or other purchasing agency violated a specific provision of this Act or the procurement regulations promulgated by the Budget and Finance Committee.

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

Revision Note. Slightly reworded for purpose of statutory form.

§ 364. Presumed finality of decisions

Determinations by the Office of Hearings and Appeals shall be final and conclusive.

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

Subchapter 7. Compliance with Federal Requirements

§ 370. Compliance with federal requirements

Where a procurement involves the expenditure of federal assistance or contract funds, the Division of Finance, Purchasing Department shall comply with such federal law and authorized regulations which are mandatorily applicable and which are not presently reflected in this Act.

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

Revision Note. Slightly reworded for purpose of statutory form.

Subchapter 8. Amendment

§ 371. Amendments

This Act may be amended by the Navajo Nation Council at any time.

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

Chapter 4. General Provisions

§ 501. Navajo Nation fiscal year

The Fiscal Year of the Navajo Nation shall, beginning on October 1, 1996, commence on October 1 of each year and end on September 30 of the following year.

History

CF-22-96, February 27, 1996.

CS-57-89, September 14, 1989.

CF-17-77, February 8, 1977.

Note. Previous reference to "September 31" corrected to "September 30".

Chapter 5. Deposit of Funds

§ 601. Deposit of Navajo Nation funds

A. Navajo Nation funds in custody of the Navajo Nation may be deposited in an approved depository.

B. The individual depositories shall be subject to the approval of the Budget and Finance Committee of the Navajo Nation Council, the Navajo Nation Council and the General Superintendent.

History

CO-64-58, October 10, 1958.

Note. The Advisory Committee is no longer a standing committee of the Navajo Nation Council. See 2 N.N.C. § 374(B)(1) for the fiscal management authority of the Budget and Finance Committee and the Navajo Nation Council.

Previously approved depositories. ACJY-194-70, July 14, 1970; ACN-77-53, November 17, 1953.

CS-35-54, September 7, 1954.

1922-1951 Res. p. 368, October 14, 1949.

Cross References

See generally, Office of the Controller, 12 N.N.C. § 201 *et seq.*

Appropriations Act, 12 N.N.C. § 800 *et seq.*

United States Code

Deposit of Indian monies, see 25 U.S.C. § 151 *et seq.*

§ 602. Bank balances

It shall be the policy of the Navajo Nation to maintain bank balances sufficient to provide for the operating requirements of the Navajo Nation in accordance with sound business practices.

History

CO-64-58, October 10, 1958.

CS-35-54, September 7, 1954; CJ-60-53, July 31, 1953; 1922-1951 Res. p. 642, July 12, 1951; and ACN-77-53, November 17, 1953, limited amount of deposit in any one approved depository.

Cross References

See generally, Office of the Controller, 12 N.N.C. § 201 *et seq.*

Appropriations Act, 12 N.N.C. § 800 *et seq.*

Chapter 7. Appropriations

History

CMY-22-04, May 21, 2004.

CAP-18-04, April 23, 2004.

CN-97-98, November 24, 1998.

CO-89-98, October 20, 1998.

Note. Section 801 was deleted.

§ 800. Purpose

The Navajo Nation government has a fiduciary responsibility to account for public funds, to manage finances wisely, and to plan for the adequate funding of services desired by the Navajo People, including the provision and maintenance of public facilities. This Act is designed to establish the policies and procedures for the preparation, adoption and implementation of the annual Navajo Nation Comprehensive Budget. In order to achieve this purpose, this Act has the following objectives for the Comprehensive Budget's performance:

A. To fully protect the Navajo Nation government's policy making ability by ensuring that important policy decisions are made in a manner consistent with rational planning.

B. To provide sound principles to guide the important fiscal decisions of the Navajo Nation, including the adoption of Generally Accepted Accounting Principles.

C. To set forth principles to efficiently fund the cost of government within available resources, to the extent consistent with services desired by the public or mandated by Navajo law, and which minimize financial risk.

D. To employ policies which distribute the costs of government services between the branches, divisions, departments, and programs and which provide available funds to operate desired programs.

E. To provide for essential public facilities and provide for the maintenance of the Navajo Nation's existing public facilities.

History

CN-97-98, November 24, 1998.

CO-89-98, October 20, 1998.

§ 810. Definitions

For the purposes of this Act and sections of this Act, the following definitions shall apply:

A. "Appropriation" means the legislative act of designating funds, excluding externally restricted funds, for a specific purpose in accordance with the applicable budgeting principles, policies and procedures contained in

this Chapter.

B. "Branch Chief" means the President, Speaker, and Chief Justice of the Navajo Nation.

C. "Budget Impact Analysis" means an assessment by the Office of Management and Budget of the fiscal consequences of funding or failing to fund a particular branch, division, department, program, office, entity or activity.

D. "Budget Reallocation" means the redesignation of appropriated or budgeted funds from one account to another account or to a newly-created account for a different use or purpose.

E. "Capital Budget" means the amounts appropriated for the current year of the Capital Improvement Plan.

F. "Capital Improvement" means a major project undertaken by the Navajo Nation that is generally not recurring on an annual basis and which fits within one or more of the following categories:

1. All projects requiring debt obligation or borrowing;
2. Any acquisition or lease of land;
3. Purchase of major equipment or vehicles, with a life expectancy of five years or more, valued in excess of an amount to be established by the Controller;
4. Major building improvements that are not routine maintenance expenses and that substantially enhance the value or extend the useful life of a structure;
5. Construction of new buildings or facilities including engineering, design, and other pre-construction costs with an estimated cost in excess of an amount to be determined by the Controller; and/or
6. Major equipment or furnishings required to furnish new buildings or other projects, the cost of which is above a certain amount to be established by the Controller.

G. "Capital Improvement Plan" means a recurring multi-year plan for capital improvements identifying each capital improvement project, the expected beginning and ending date for each project, the amount to be expended in each year, and the method of financing those expenditures.

H. "Comprehensive Budget" means a budget which includes a Capital and an Operating Budget covering all governmental proprietary and fiduciary funds for each annual fiscal year.

I. "Condition of Appropriation or Expenditure" means a specific contingency placed on an appropriation by the Navajo Nation Council at the time the appropriation is made creating legal conditions precedent to the expenditure of funds. Appropriated funds or any other funds received by the Navajo Nation on which a condition of appropriation or expenditure is placed

may not be lawfully expended until the condition of appropriation or expenditure is met. It is the responsibility of the Controller to ensure that funds are expended in accordance with the conditions placed on the appropriation or expenditure.

J. "Financing" means the act of identifying and acquiring the funds necessary to accomplish the Capital Improvement Plan. It shall include, among other things, lease/purchase arrangements, multi-year purchase contracts, bond issuance and grants.

K. "Fiscal Year" means the fiscal year of the Navajo Nation as established by the Navajo Nation Council.

L. "Governmental Unit" means any subdivision of the Navajo Nation government, including chapters or other local units of government.

M. "Legislative Concern" means a comment, directive or recommendation made by the Navajo Nation Council, by virtue of its legislative oversight authority and pursuant to its authority as the governing body of the Navajo Nation, raising an issue of concern with respect to the internal functioning of the three Branches. Such concerns are advisory in nature, but do not create legal conditions precedent to the expenditure of appropriated funds. In order for a particular legislative concern to be appended to a budget resolution, it must be voted upon and adopted by a majority of the Navajo Nation Council. Legislative concerns which are not voted upon, will not be appended to the budget resolution, but will be referred to the appropriate Branch Chief in memorandum form by the Speaker of the Navajo Nation Council.

N. "Local Government Projects" means government improvement projects that include, but are not limited to, house wiring, bathroom additions and projects that address individual or community needs but which may not meet the requirements for, or definition of, capital improvement projects.

O. "Object Code Transfer" means the transfer of appropriated funds from one object code to another object code within the same account while still maintaining the original intent of the appropriation account.

P. "Operating Budget" means a plan of financial operation embodying an estimate of proposed expenditures for a fiscal year and the proposed means of financing them (i.e., revenue estimates).

Q. "Program Budget" means an account, designated by the Office of Management and Budget, or series of accounts, related to a specific function, objective, or purpose.

R. "Spending Authority" means the legislative act by the Navajo Nation Council of authorizing the expenditure of appropriated funds which have been accepted by the Navajo Nation through the appropriate approval process.

S. All funds of the Navajo Nation government shall be classified and defined as follows:

1. "Government Fund Types." Governmental funds are those groups of accounts which account for most governmental functions of the Navajo

Nation. The acquisition, use and balances of the Navajo Nation's expendable financial resources and the related liabilities (except those accounted for in proprietary funds and the long-term obligations account group) are accounted for through governmental funds. The measurement focus is based upon determination of changes in financial position, rather than upon net income determination. The following are the Navajo Nation's governmental fund types:

a. "General Fund." This Fund is the general operating fund of the Navajo Nation. It is used to account for all financial resources except those required to be accounted for in another fund.

b. "Special Revenue Fund." This Fund is used to account for the proceeds of specific revenue sources (other than expendable trusts or major capital projects) that are legally restricted to expenditures for specified purposes. This Fund includes externally restricted funds which is defined as funds received by the Navajo Nation from sources other than the Navajo Nation for a specific purpose.

c. "Capital Projects Fund." This Fund is used to account for the financial resources and expenditure for the acquisition or construction of those capital improvements defined in Subsection (F) above (other than those financed by proprietary funds and fiduciary funds).

2. "Proprietary Fund Types." Proprietary funds are used to account for the Navajo Nation's ongoing organizations and activities which are similar to business operations in the private sector. The measurement focus is upon determination of net income and capital maintenance. The following are the Navajo Nation's proprietary fund types:

a. "Enterprise Fund." This Fund is used to account for Navajo Nation operations that are financed and operated in a manner similar to private business enterprises—where the intent is that the costs of providing goods or services to the public be financed or recovered primarily through user charges: or where a periodic determination of revenues earned, expenses incurred, and/or net income is appropriate for accountability purposes.

b. "Internal Service Fund." This Fund is used to account for the financing of goods or services provided (inter and intergovernmental)¹ on a cost-reimbursement basis.

3. "Fiduciary Fund Types." Fiduciary funds are used to account for assets held by the Navajo Nation in a trustee capacity or as an agent for individuals, private organizations, other governmental units, and/or other funds. These funds include but are not limited to expendable and nonexpendable trust funds, and pension trust funds, etc. Expendable trust funds are accounted for in a manner similar to governmental funds. Nonexpendable trust funds and pension trust funds are accounted for in a manner similar to proprietary funds.

4. The foregoing definitions concerning fund types shall not be deemed to create any exceptions to the Navajo Nation Sovereign Immunity

Act.

History

CMY-22-04, May 21, 2004.

CAP-18-04, April 23, 2004.

CN-97-98, November 24, 1998.

CO-89-98, October 20, 1998.

§ 820. Overall budget policies

A. Comprehensive Budget. The Navajo Nation government shall operate pursuant to a Comprehensive Budget.

B. Budget Impact Analysis. All requests for appropriation of Navajo Nation funds shall be subject to budget impact analysis, which shall include, but not be limited to, needs and costs evaluations, based on objective criteria.

C. Long Term Fiscal Viability. The Navajo Nation shall prepare each annual budget to ensure the long-term ability to provide services at levels set by the Navajo Nation government.

D. Balanced Budget. The Navajo Nation budget shall balance revenues and expenditures. Appropriations may not exceed available revenues.

E. Recurring Operating Costs Paid From Recurring Revenues. The Nation shall budget all recurring operating expenses, including maintenance of capital facilities, from recurring revenues. Long-term debt shall not be used to finance recurring operating expenses.

F. Non-Recurring Revenues. The Nation shall restrict non-recurring revenues to budget non-recurring expenditures. In addition, non-recurring revenues will be budgeted only after an examination by the Controller to determine whether or not the revenues are subsidizing an imbalance between recurring revenues and expenditures, and expenditures may be authorized only if a long-term (three-to-five year) forecast shows that the operating deficit will not continue. Otherwise, non-recurring revenues will be added to the Unreserved, Undesignated Fund balance. This provision may be amended or waived only by a two-thirds (2/3) vote of the full Council.

G. Matching Requirements. Funds appropriated to match funds from external sources shall be maintained in separate accounts administered by the Controller. If matching funds are not obtained from the external sources, the appropriated funds shall revert to the Unreserved, Undesignated Fund balance.

H. Long-Term Debt. Annual debt service for long-term debt shall not exceed eight percent (8%) of annual recurring revenue and long-term debt shall not be authorized until the impact of annual debt service on the annual operating budget, including sinking fund contributions, has been analyzed and a determination has been made that debt service payments are in compliance with

this Section.

I. Capital Budget. Development of the Capital Budget shall be coordinated with development of the Operating Budget. All budget requests for capital improvements shall be in compliance with an adopted Capital Improvement Plan and shall not be approved unless in compliance with the Plan.

J. Establishment of Reserves. For the General Fund, the Minimum Fund balance for Unreserved, Undesignated Fund balance shall be maintained at not less than ten percent (10%) of the Navajo Nation's General Fund Operating Budget for the prior fiscal year, excluding expenditures for Capital Improvement projects as determined by the Controller. The Minimum Fund balance may be amended only by two-thirds (2/3) vote of the full membership of the Navajo Nation Council. The Controller shall keep the Office of the President, the Office of the Speaker and the Budget and Finance Committee of the Navajo Nation Council advised at least quarterly as to the status of the Minimum Fund balance for Unreserved, Undesignated Fund balance. Further, Unreserved, Undesignated Fund balance shall not be utilized for funding recurring expenditures or operations of the Navajo Nation government.

K. Receipt of Additional Revenues. Funds received in excess of the initial or current revenue projection shall be deposited into the General Fund Unreserved, Undesignated Fund balance unless otherwise designated by the Navajo Nation Council.

L. Supplemental Appropriations. The Navajo Nation Council may adopt and approve supplemental appropriations to the Annual Comprehensive Budget during the fiscal year. Supplemental appropriations of General Funds within the current fiscal year are permitted, if and when additional sources of revenues above and beyond the initial or current revenue projections are projected and which are also in excess of the reserve amount set forth at § 820(J). Upon notification from the Controller of additional projected funds, the Budget and Finance Committee may convene budget hearings for the purpose of hearing and considering requests for supplemental appropriations. Supplemental appropriations to programs or activities with approved fiscal year operating budgets must be supported by additional recurring revenues for the same fiscal year. The Budget and Finance Committee, at the recommendation of the respective oversight standing committee(s), may recommend supplemental appropriations to the Navajo Nation Council. Supplemental appropriations made from non-recurring revenues shall only be made for non-recurring operations or purposes, as set forth at § 820(F). The Controller of the Navajo Nation shall be responsible for designating recurring and non-recurring revenues and purposes.

M. Office of Management and Budget. The Office of Management and Budget, as authorized by its Plan of Operation as amended, shall be responsible for consolidation and preparation of all phases of the Navajo Nation budget. The Office shall coordinate the overall preparation, adoption and implementation of both the annual operating and capital budgets of the Navajo Nation. All requests for annual operating funds and supplemental funds shall be submitted to the Office of Management and Budget for budget impact analysis and other appropriate action.

N. Appropriations Lapse. Appropriations approved by the Navajo Nation

Council will lapse at the end of the fiscal year unless otherwise designated by the Navajo Nation Council. Appropriations to the chapters of the Navajo Nation shall not lapse at the end of the fiscal year provided that the chapters shall budget those funds in the subsequent fiscal year in accordance with the purposes and conditions originally set forth by the Navajo Nation Council in its appropriations.

O. Distributions to Chapter. Where not otherwise prohibited by existing law, any appropriation intended for distribution to all chapters of the Navajo Nation shall be allocated as follows: fifty percent (50%) of the appropriation shall be divided equally among all chapters and the remaining fifty percent (50%) shall be divided proportionately among the chapters using a percentage equal to that figure which the number of registered voters in each chapter bears to the whole of registered Navajo Nation voters as determined by the most current voter registration figures available as of the date of the appropriation.

P. Navajo Nation Grants. Any entity of the Navajo Nation requesting a grant from the Navajo Nation through the submission of a budget request shall first meet the following requirements:

1. The program receiving the grant shall have an approved plan of operation;
2. The budget request shall be a part of a recommended division or branch budget;
3. The respective oversight committee for the division or branch shall have made an affirmative recommendation on the request.

Q. Local Government Funds are used to address the improvement needs of the local governments that may consist of, but are not limited to, house wiring and bathroom additions. An amount equal to the actual cost of proposed projects but not to exceed twenty-five percent (25%) of that year's capital improvement appropriation will be appropriated into the Local Government Improvement Funds for these projects. Additional amounts may be appropriated from time-to-time or may be obtained from other sources.

History

CJA-07-06, January 27, 2006. Amended § 820(J).

CJY-42-04, July 23, 2004.

CMY-22-04, May 21, 2004.

CAP-18-04, April 23, 2004.

CN-97-98, November 24, 1998.

CO-89-98, October 20, 1998.

§ 830. Budget planning and preparation

A. Budget Format. Prior to initiation of the annual budget process, the Office of Management and Budget shall identify a budget format (i.e., Line-item, Performance, Program, Zero-base, etc.) that will assist the Navajo Nation in correlating budget costs to alternative services levels and alternative policies that will affect those service levels. The budget format identified shall also include quantitative performance measures (i.e., demand, workload, efficiency and effectiveness).

B. Long Term Revenue Projections. The Controller shall prepare an annual long term revenue projection for use by the Navajo Nation government. This long term revenue projection shall include all sources of funds and revenues available for use by the Navajo Nation government within at least the next three fiscal years. The annual long term revenue projection shall be submitted by the Controller to and be reviewed by the Budget and Finance Committee. The Budget and Finance Committee will present the same to the Branch Chiefs by the end of the second quarter of each fiscal year. A written narrative describing the methodology utilized to estimate revenues and a discussion of key variables affecting the actual revenue, including assumptions made, shall be included in the report. If deemed necessary by the Controller, the long-term revenue projection may be changed as economic circumstances require. Changes to the long-term revenue projection shall be reported in the manner set forth in this Paragraph.

C. Annual Revenue Projection. The Controller shall review and recommend an annual fiscal year revenue projection for all revenue generating sources for all governmental, proprietary and fiduciary funds of the Navajo Nation. The annual fiscal year revenue projection shall be submitted for review by the Budget and Finance Committee of the Navajo Nation Council, and will serve as the official revenue estimate at the beginning of the annual budget process for the next fiscal year. The Budget and Finance Committee will present the annual fiscal year revenue projection to the Branch Chiefs by the end of the second quarter of each fiscal year. A written narrative describing the methodology utilized to estimate revenues and discussion of key variables affecting the actual revenue, including assumptions made, shall be included in the report.

D. External Funding Projection. The Office of Management and Budget shall prepare an estimate of all external funding to be received by the Navajo Nation in the upcoming fiscal year and shall present this information to the Budget and Finance Committee and the Controller by the end of the second quarter of each fiscal year.

E. Long Term Expense Projection. The Office of Management and Budget shall prepare an annual long term expense projection which includes all projected expenditures for at least the next three fiscal years for operations, programs, projects and transfer payment to the Navajo people or to outside non-Navajo Nation government entities. Such report shall be presented to the Branch Chiefs and the Budget and Finance Committee by the end of the second quarter of each fiscal year. This report, along with the long term revenue projection and the annual General Fund revenue projections and the external funding projection is intended to provide guidance to the Branches of the Navajo Nation government in preparation and adoption of the Navajo Nation budget for the next fiscal year.

F. Approval of Revenue Projections. The Budget and Finance Committee

shall review the long-term and the fiscal year revenue projections and may approve them by resolution.

G. President's Budget Preparation Message. The President may prepare an annual budget preparation message. This budget preparation message may include the President's vision of expected goals and objectives and broad priorities for the fiscal year Navajo Nation Comprehensive Budget. This Section does not amend, nor is it in addition to, any powers granted to the President pursuant to 2 N.N.C. § 1005.

H. Budget Instructions and Planning Base Amounts. The Office of Management and Budget shall prepare budget instructions for each fiscal year which shall be approved by the Budget and Finance Committee no later than 30 days after the Controller releases the annual revenue projection as delineated at § 830(C). The budget instructions shall include fiscal, operational, policy guidelines, budget development timelines and planning base amounts for each fiscal year for the Executive Branch, the Judicial Branch and the Legislative Branch.

I. Preparation of the Budget. Based upon the priorities and budget ceilings established by the method described in Subsection (H), each branch, division, department, and program of the Navajo Nation government shall prepare a budget request, which shall be submitted to the Office of Management and Budget pursuant to the time lines established in the annual Budget Instructions Manual. Each division, department and program director shall provide training on the budget process for their program field staff and involve said staff in the development of the budget request upon actual needs and identification of unmet needs. This proposed budget shall state the overall goals and objectives and broad priorities for the entire Navajo Nation budget.

History

CJA-10-00, January 28, 2000.

CN-97-98, November 24, 1998.

CO-89-98, October 20, 1998.

§ 840. Budget approval, adoption and certification

A. Oversight Committee and Budget and Finance Committee Review and Approval. Each oversight committee shall review and make recommendations to the Budget and Finance Committee concerning the budget in accordance with the annual budget instructions. The oversight committees may hold public hearings at each agency with programs under their oversight and take testimony on the budget. The oversight committees shall make recommendations concerning the budget and pass resolutions recommending appropriations and conditions of appropriations for activities within their respective areas of oversight to the Budget and Finance Committee pursuant to the time-lines established in the Budget Instructions Manual. Oversight committee recommendations shall not exceed the planning base amounts set pursuant to § 830(H). The Budget and Finance Committee shall consult and negotiate with the respective oversight committees if any changes are to be made before making final recommendations to the Navajo Nation Council. Changes made pursuant to this consultation and

negotiation process shall neither increase nor decrease the planning base amount set for the Executive Branch divisions, the Judicial Branch and Legislative Branch, but shall be limited to internal reallocations of the planning base amounts for the entities. The Budget and Finance Committee shall review and make recommendations concerning the budget according to the annual budget instructions. The Budget and Finance Committee shall make recommendations concerning the budget and submit it to the Navajo Nation Council pursuant to the time lines established in the Budget Instructions Manual.

B. Navajo Nation Council Budget Deliberations and Adoption. The Speaker of the Navajo Nation Council shall convene a special budget session each year for the purpose of adopting a comprehensive budget for the next fiscal year and approving the Capital Improvement Plan. The Speaker of the Navajo Nation Council, on behalf of the Navajo Nation Council, is authorized to request the attendance of Navajo Nation government officials to provide information to assist the Navajo Nation Council in its deliberations and may exercise subpoena power in the manner prescribed in 2 N.N.C. § 185. Prior to Navajo Nation Council deliberation of the proposed comprehensive budget, the latest external audit of the combined financial statements of the Navajo Nation will be presented to the Navajo Nation Council by the external auditors. The adoption of the annual Navajo Nation comprehensive budget and any other findings, recommendations, mandates, policies and procedures of the Navajo Nation Council shall be enacted by a formal resolution of the Navajo Nation Council. The Navajo Nation Council shall adopt the comprehensive budget no less than 20 days prior to the expiration of each fiscal year.

C. Budget Certification. The Speaker of the Navajo Nation Council shall certify the resolution of the Navajo Nation Council adopting and approving the annual Navajo Nation comprehensive budget, and shall forward the certified resolution and exhibits to the Navajo Nation President for consideration, pursuant to 2 N.N.C. § 1005(C)(10).

History

CJA-10-00, January 28, 2000.

CN-97-98, November 24, 1998.

CO-89-98, October 20, 1998.

§ 850. Budget implementation, monitoring and control

A. Budgetary Monitoring and Expenditure Controls. The Controller and Office of Management and Budget shall monitor actual expenditures versus budgeted expenditures and report to the Budget and Finance Committee with respect to the overall budget status of the Navajo Nation; and to the Branch Chiefs with regard to their respective branches. Such reports shall be made on a quarterly basis. The Controller, with the approval of the Navajo Nation Council, may restrict expenditures by selected expense codes or line items in the event that actual revenues fall significantly behind the projected revenues.

B. Budget Performance Measures. The Office of Management and Budget

shall be responsible for developing a system for evaluating whether requirements have been met for all of Navajo Nation branches, divisions, departments, and programs. Evaluation standards will be developed in consultation with the relevant branch, division, department, and program. The Office of Management and Budget shall include the projected performance measures for each branch, division, department and program in the compilation of the annual budget for submission to the Budget and Finance Committee and the Navajo Nation Council.

C. Program Evaluation. The purpose of a program evaluation is to determine and recommend to the appropriate Branch Chief the recommendations for positive program improvement and whether a program warrants continuation at its current level of activity or modified to a new level or should be discontinued. All Navajo Nation branches, divisions, departments, and programs shall be required to develop a detailed annual plan with performance indicators for each ensuing fiscal year.

D. The Branch Chiefs shall establish a system for periodic policy review and evaluation of program performance within their respective branches.

E. All recipients of Navajo Nation funds shall provide, upon request, any information or data necessary to conduct program performance review and evaluation.

History

CN-97-98, November 24, 1998.

CO-89-98, October 20, 1998.

§ 860. Capital improvement process

A. Administrative Framework.

1. The Capital Improvement Office within the Division of Community Development under the Executive Branch shall be responsible for the administration, coordination and development of the Capital Improvement Plan as defined herein. The Controller and the Office of Management and Budget shall assist the Capital Improvement Office with methods of financing the Capital Improvement Plan.

2. All Capital Improvement funding requests shall be submitted to the Capital Improvement Office, which shall evaluate all requests in accordance with objective criteria approved by the Transportation and Community Development Committee of the Navajo Nation Council.

B. Development of Capital Improvement Plan.

1. The proposed Capital Improvement Plan shall consist of a multi-year plan for capital expenditures, including a detailed one-year capital improvement budget. The proposed Capital Improvement Plan shall include a listing of projects in order of priority and proposed year of construction or acquisition. Data on each project shall include:

- a. The anticipated capital cost of each project;
- b. The anticipated source of capital funds for each project;
- c. The estimated annual operating cost or savings for each project;
- d. The estimated completion data of each project;
- e. The adopted plan or policy, if any, which each project would help to implement;
- f. The viable alternatives that were considered for each project with the reasons the proposed project is the most cost-effective and practical alternative for meeting the stated objective; and
- g. The project's ranking in whatever sequencing/priority setting system is used as a basis for evaluation of capital improvement project proposals.

2. The Capital Improvement Office shall be responsible for the development of a priority ranking system which takes into consideration factors such as project cost, feasibility, project value and benefit to the community as a whole, which shall be presented to the Transportation and Community Development Committee for approval.

C. Approval of the Capital Improvement Plan.

1. The Capital Improvement Plan, as developed by the Capital Improvement Office, is subject to the approval of the Navajo Nation Council upon recommendation of the Transportation and Community Development Committee.

2. The appropriation portion of the Capital Improvement Plan is subject to approval of the Navajo Nation Council upon recommendation of the Budget and Finance Committee. Any modification or amendment affecting the approved Capital Improvement Plan is subject to review and concurrence by the Transportation and Community Development Committee prior to consideration by the Navajo Nation Council.

3. The Transportation and Community Development Committee is authorized to and may convene public hearings for the purpose of obtaining public input with respect to the proposed Capital Improvement Plan. A formal report containing all public comments shall be compiled by the appropriate legislative advisors and made available to the Budget and Finance Committee of the Navajo Nation Council during its deliberations concerning the Capital Improvement Plan.

D. Capital Budget Preparation Calendar.

The Capital Improvement Plan and Capital Budget will be developed in accordance with the following chronological sequence of activities:

1. Establish a process for gathering chapter needs to produce a

needs base budget that truly reflects the chapter needs.

2. By 10 months prior to the beginning of the fiscal year, the Capital Improvement Office shall prepare an inventory list of existing tribally owned facilities for the purpose of determining need for renewal, replacement, expansion, or retirement of the same facilities.

3. By nine months prior to the beginning of the fiscal year, the Capital Improvement Office shall prepare a report for all affected officials on the current status of previously approved capital improvement projects. The report shall contain information on which projects are to be continued, the amount of funds required to continue or complete affected projects, determining the amount of remaining funds from projects completed or discontinued, and summaries as to the progress of previously approved capital improvement projects.

4. By eight months prior to the beginning of the fiscal year, the Capital Improvement Office, Office of Management and Budget, and the Controller shall perform financial analysis and financial programming for the purpose of determining the level of capital expenditures the Navajo Nation can safely afford over the term of the Capital Improvement Plan and to determine the selection and scheduling of funding sources to be designated for the Capital Improvement Plan.

5. By seven months prior to the beginning of the fiscal year, the Capital Improvement Office shall compile and objectively evaluate all capital improvement funding requests. In addition to other eligibility requirements provided in the objective criteria, all requests for capital improvement shall include a statement of need and justification for the project, net effect on the Navajo Nation's operating budget, and its proposed scheduling during the term of the Capital Improvement Plan. The Capital Improvement Office shall place emphasis on relative need and cost in evaluating each capital improvement funding request in conjunction with the priority rating system approved by the Transportation and Community Development Committee.

6. By six months prior to the beginning of the fiscal year, the Capital Improvement Office shall have finalized a six year Capital Improvement Plan for consideration and approval by the Transportation and Community Development Committee. Upon review and approval by the Transportation and Community Development Committee, the Capital Improvement Plan will be submitted to the Office of Management and Budget to be incorporated in the recommended capital budget which shall be made a part of the comprehensive budget for purposes of recommending the Capital Improvement Plan to the Navajo Nation Council.

7. By five months prior to the beginning of the fiscal year, the Office of Management and Budget shall submit the appropriation portion of the capital budget to the Budget and Finance Committee for recommendation to the Navajo Nation Council within the recommended comprehensive budget. Any recommended amendments affecting the Capital Improvement Plan shall be reviewed and concurred by the Transportation and Community Development Committee.

E. Capital Budget Monitoring.

1. The Capital Improvement Office shall maintain a current record on all projects within the recommended Capital Improvement Plan for information purposes.

2. The Office shall submit quarterly progress reports on the capital budget to the Transportation and Community Development Committee and the Budget and Finance Committee.

History

CN-97-98, November 24, 1998.

CO-89-98, October 20, 1998.

§ 870. Local government improvement funds

A. The Local Government Improvement Funds shall be distributed pursuant to rules and regulations adopted and promulgated by the Transportation and Community Development Committee of the Navajo Nation Council. No fund distribution shall occur until 60 days after adoption of these rules and regulations.

B. The rules and regulations to be promulgated under Subsection (A) of this Section must include a provision that funds allocated to a local improvement project must be based on a total projected cost of the project, including, but not limited to, materials, construction cost, fees, clearances, designs and the like.

C. This fund is not subject to the requirements set forth in 12 N.N.C. § 860 for Capital Improvement Projects.

History

CMY-22-04, May 21, 2004.

CAP-18-04, April 23, 2004.

§ 880. Amendments

This Appropriations Act may be amended from time to time by the Navajo Nation Council upon the recommendation of the Budget and Finance Committee of the Navajo Nation Council; provided that amendments to those sections of this Act related to either Capital Improvement Process or the Local Government Improvement Fund shall be upon the recommendation of the Transportation and Community Development Committee of the Navajo Nation Council.

History

CMY-22-04, May 21, 2004.

CAP-18-04, April 23, 2004.

CN-97-98, November 24, 1998.

CO-89-98, October 20, 1998.

Chapter 8. Navajo Nation Permanent Fund

§ 901. Establishment

There is established the "Navajo Nation Permanent Fund" (hereinafter the "Fund"). Each year the Navajo Nation Council shall budget a sum equal to at least twelve percent (12%) of any and all projected revenue of the Navajo Nation including, but not limited to, revenues received from taxes, oil and gas mining/minerals, timber, land rentals, interest/dividends, gain on sale of securities and other revenue producing activities for transfer to the Fund. Additional money may be added to the Fund at any time. Any money deposited into the Fund, plus accrued interest, shall thereafter be used only as provided in this Chapter. In the event actual revenue fails to meet projected revenue, or excess projected revenue, the amount appropriated and transferred shall be adjusted to equal twelve percent (12%) of actual revenue. Transfers may be made in one or more installments.

History

CJY-53-85, July 25, 1985.

§ 902. Investment of the Fund

All amounts deposited in the Fund shall be invested as soon as is reasonably practical in accordance with the following limitations:

A. The funds shall be invested in accordance with the degree of care exercised by reasonable and prudent managers of large investments intended to produce maximum growth of the investments with a high degree of safety. In addition, the Fund may be invested in any other investments approved by the Budget and Finance Committee of the Navajo Nation Council and the Navajo Nation Council.

B. Management of the investments may be delegated to third parties by written contract recommended by the Navajo Bond Financing and Investment Committee and approved by the Budget and Finance Committee of the Navajo Nation Council.

History

CJY-53-85, July 25, 1985.

Note. The Budget and Finance Committee is authorized to review and recommend to the Navajo Nation Council the budgeting, appropriation, investment, and management of all funds. See 2 N.N.C. § 374(B)(1).

§ 903. Definition of principal and income

A. "Fund principal" shall consist of all Navajo Nation Council

contributions made pursuant to the twelve percent (12%) yearly commitment of all revenues of the Navajo Nation, including, but not limited to, revenues received from taxes, oil and gas mining/minerals, timber, land rentals, interest/dividends, gain on sale of securities and other revenue producing activities, plus any additional contributions from any source.

B. "Fund income" shall consist of all earnings generated by the principal of the Fund.

History

CJY-53-85, July 25, 1985.

§ 904. Expenditure of Fund principal

Fund principal shall not be expended except pursuant to a referendum adopted by a two-thirds (2/3) majority of those voting in an election open to all registered Navajo voters or as set forth in § 909 of this Chapter. The Navajo Nation Council may place such a referendum on the ballot of any general or special election by a two-thirds (2/3) vote of the Council.

History

CJY-53-85, July 25, 1985.

Note. Slightly reworded for purposes of statutory form.

§ 905. Expenditure of Fund income

No Fund income shall be expended, except as set forth in §§ 908 and 909 of this Chapter, for a period of 20 years from date of the first Navajo Nation contribution to the Fund. Thereafter, ninety-five percent (95%) of the Fund income may be expended in accordance with a plan for its use covering at least a five-year period adopted by resolution of the Navajo Nation Council provided that the expenditure of income in any fiscal year shall not exceed the income earned during that year. The remaining five percent (5%) of the Fund income shall be reinvested in the Permanent Fund.

History

CJY-53-85, July 25, 1985.

Note. Slightly reworded for purposes of statutory form.

§ 906. Annual audited report

The Fund shall be audited annually by independent outside auditors. Within 90 days of the end of each fiscal year, a report shall be distributed to the Navajo Nation Council and the President of the Navajo Nation. The report shall be written in easily understandable language. The report must include financial statements audited by independent outside auditors, a statement of the amount of money received by the Navajo Nation Permanent Fund from each investment during the period, a statement of investments of the Fund including an appraisal at market value, a description of fund investment activity during

the period covered by the report, a statement of the Fund performance and other information relevant to the management of the Fund.

History

CJY-53-85, July 25, 1985.

Note. Slightly reworded for purposes of statutory form.

§ 907. Amendments

This Chapter may be amended by a majority vote of the Navajo Nation Council except as follows:

A. Sections 903 and 904 may only be amended by referendum adopted in the manner prescribed for the expenditure of Fund principal in § 904.

B. Section 905 may be amended only by ninety percent (90%) vote of all of the members of the Navajo Nation Council.

C. Section 907 may not be amended or repealed until after 40 years from the date of enactment of this Chapter.

History

CJY-53-85, July 25, 1985.

Note. Slightly reworded for purposes of statutory form.

§ 908. Expenses

All expenses directly associated with the administration and management of the Navajo Nation Permanent Fund shall be paid from the Fund income as approved by the Budget and Finance Committee of the Navajo Nation Council and the Navajo Nation Council. Such expenses shall include an investment advisor and management fees, pursuant to a duly approved contract, audit costs, and other related expenses.

History

CJY-53-85, July 25, 1985.

§ 909. Payment of bond obligation

In the event of an imminent default of any Navajo Nation bond obligation, the Navajo Nation Permanent Fund income and principal in that order may be used as a source of payment by two-thirds (2/3) vote of the Navajo Nation Council.

History

CJY-53-85, July 25, 1985.

Chapter 9. Navajo Nation Road Fund Management Plan

History

Previously Reserved.

Previous Chapter 9, "Banking Services" (§ 1001) has been deleted. The deleted section was enacted by CF-6-62, February 16, 1962. See also CAP-29-65, April 8, 1965, CAP-33-65, April 13, 1965.

§ 1001. Establishment

There is hereby established the Navajo Nation Road Fund Management Plan (hereinafter "Fund") for use by the Department of Transportation within the Division of Community Development, and the Transportation and Community Development Committee of the Navajo Nation Council shall provide legislative oversight.

History

CAU-71-01, August 24, 2001.

CJY-56-01, July 19, 2001.

§ 1002. Purpose

The purpose of this Fund is to establish a special fund account, and its necessary sub-accounts, to defray the cost of government services for the development, construction and maintenance of transportation projects that have not been included in the current short-term construction plans by federal government agencies and programs, state, or county highway maintenance programs.

History

CAU-71-01, August 24, 2001.

CJY-56-01, July 19, 2001.

§ 1003. Administration

A. Funding source. The funding source of this Fund shall be funds generated from the Navajo Nation Fuel Excise Tax, and other funds appropriated or allocated by the Navajo Nation Council.

B. Legislative oversight. The Transportation and Community Development Committee of the Navajo Nation Council shall be the legislative oversight for funds appropriated under this Fund.

C. Program management. The Navajo Department of Transportation shall have the authority and responsibility to use the funds for eligible road projects and as matching funds in conformance with § 1004 and with concurrence by the Transportation and Community Development Committee of the Navajo Nation Council.

History

BFAU-43-05, August 16, 2005. Deleted the word Nation in § 1003(C).

CAU-71-01, August 24, 2001.

CJY-56-01, July 19, 2001.

§ 1004. Fund management

A. Fund accounting.

1. The records and books of account for the Fund shall be kept separate from the Navajo Nation General Fund with its own balance sheet and revenue and expenditure statement. The day-to-day Fund accounting shall be performed by the Office of the Controller, in accordance with generally accepted accounting principles.

2. The Navajo Department of Transportation, or any other designated program, shall account for the money spent out of the Fund. Such accounting shall be included as part of the quarterly program reports submitted to the Transportation and Community Development Committee of the Navajo Nation Council and the Navajo Nation Council.

B. Funding eligible projects. The funds shall be used for roads and equipment within the Navajo Nation that cannot be addressed by the federal government agencies, Indian Reservation Roads, state, or county highway or road maintenance programs; and shall be used for eligible matching funds projects.

1. Eligible road maintenance projects:

- a. Pothole repairs;
- b. Blading & graveling of all dirt roads;
- c. Culvert replacement;
- d. Drainage channel maintenance;
- e. Traffic signal & street light maintenance and operation;
- f. Chip sealing; or
- g. Other maintenance required under an interagency agreement.

2. Eligible project development/planning projects:

- a. Feasibility studies including centerline identification;
- b. Survey;
- c. Environmental assessments;
- d. Archaeological assessments; or

e. Planning, engineering & design.

3. Eligible community/economic development access projects:

a. Access roads;

b. Parking lots; or

c. School bus route improvements, school bus stops and shelters.

4. Eligible matching funds projects. The Fund shall be used to meet required matching funds for transportation projects funded by federal, state, or county transportation programs or other public entities, that have not been addressed by the Navajo Nation Capital Improvement Program or other tribal budget programming.

5. Eligible equipment purchases.

a. Motor graders;

b. Sand and gravel crushing equipment;

c. Heavy equipment transport truck; or

d. Equipment to process aggregate materials;

e. Other necessary road maintenance equipment and operating supplies/materials.

C. Funding allocation process.

1. The Navajo Department of Transportation may use the recommendations from any entity in formulating the annual Navajo Nation Road Funding Plan. The Navajo Nation Road Funding Plan shall specify the eligible projects and eligible matching funds projects to be funded.

2. The Navajo Department of Transportation shall submit the Navajo Nation Road Funding Plan to the Transportation and Community Development Committee for annual approval.

3. Expenditures from this Fund shall be budgeted annually in accordance with the annual established Navajo Nation budget policies and procedures.

4. The Navajo Department of Transportation shall have 25% (3% will be utilized for administrative cost, 5% for preliminary studies and 17% for equipment purchases/road maintenance) of total annual Road Fund allocation earmarked for the Navajo Department of Transportation's administration and operation of the Road Management Fund Program to support management, monitoring and evaluation operating expenses, preliminary studies and road maintenance programs.

5. The Navajo Nation Road Fund Management Plan shall not be deemed to waive or amend any requirements of law concerning the recovery of indirect costs, including 2 N.N.C. § 824(B)(9).

6. Equipment ownership: Navajo Department of Transportation shall at all times retain ownership of all equipment purchased under this Fund.

History

BFO-41-07, October 9, 2007. Amended Subsection C(4).

BFAU-43-05, August 16, 2005.

Note (2006). Reference to Navajo Nation Road Inventory was removed from the listing of eligible equipment at § 1004(B)(5)(f) as it appears to have been mistakenly copied from the listing of eligible projects at § 1004(B)(2)(f).

CAU-71-01, August 24, 2001.

CJY-56-01, July 19, 2001.

§ 1005. Rules and regulations

The Navajo Department of Transportation, upon approval by the Transportation and Community Development Committee, is authorized to promulgate rules and regulations from time to time as may be necessary to carry out the provisions and policies of this Fund. The effectiveness and enforceability of the provisions of the Act shall not be dependent upon the adoption of regulations pursuant to this Section.

History

BFAU-43-05, August 16, 2005. Deleted the word Nation.

CAU-71-01, August 24, 2001.

CJY-56-01, July 19, 2001.

§ 1006. [Reserved]

§ 1007. [Reserved]

§ 1008. Effective date

The effective date of the Fund shall be the beginning of Fiscal Year 2003 and shall remain in effect until the Navajo Nation Council terminates this Fund by resolution.

History

CAU-71-01, August 24, 2001.

CJY-56-01, July 19, 2001.

§ 1009. Audit requirements

Independent auditors shall annually audit the Fund as part of the overall audit of the Navajo Nation government.

History

CAU-71-01, August 24, 2001.

CJY-56-01, July 19, 2001.

§ 1010. Amendments

The Navajo Nation Road Fund Management Plan may be amended from time to time by the Budget and Finance Committee of the Navajo Nation Council upon recommendation of the Transportation and Community Development Committee of the Navajo Nation Council.

History

CAU-71-01, August 24, 2001.

CJY-56-01, July 19, 2001.

Chapter 10. Navajo Nation Trust Funds

Subchapter 1. Navajo Nation Trust Fund for Handicapped Services

§ 1101. Establishment

There is established, the "Navajo Nation Trust Fund for Handicapped Services" [hereinafter called the "Fund"], with an initial appropriation of seven million dollars (\$7,000,000) as approved by the Navajo Nation Council. Additional appropriations may be made from time to time by the Navajo Nation Council provided that additional sources of revenue and/or funds are available for appropriation. Any money deposited into the Fund, plus accrued interest, shall be used only as provided hereinafter.

History

CD-68-86, December 12, 1986.

§ 1102. Investment of the Fund

All amounts of money deposited in the Fund shall be invested as soon as practical in accordance with Investment Objectives and Investment Policies of the Navajo Nation as formally adopted by the Budget and Finance Committee of the Navajo Nation Council.

History

CD-68-86, December 12, 1986.

§ 1103. Definition of principal and income

A. "Fund principal" shall consist of all Navajo Nation Council appropriations made pursuant to the Navajo Nation Appropriation Processes and Procedures; and any contributions made by any parties or entities.

B. "Fund income" shall consist of all earnings (interest, dividends, etc.) generated by the principal of the Fund.

History

CD-68-86, December 12, 1986.

§ 1104. Expenditure of Fund principal

Fund principal shall not be expended except pursuant to a referendum adopted by a two-thirds (2/3) vote of all registered Navajo voters. The Navajo Nation Council may place a "Referendum to Expend Fund Principal" on the ballot of any primary, general or special election by a two-thirds (2/3) vote of the full membership of Navajo Nation Council.

History

CD-68-86, December 12, 1986.

§ 1105. Expenditure of Fund income

A. Ninety-five percent (95%) of the Fund income shall be used as Navajo Nation grants to supplement Navajo Nation government and non-Navajo Nation government programs and projects that provide services to Navajo handicapped citizens. Five percent (5%) of the Fund income shall be reinvested in the Fund to cover the rate of inflation.

B. Navajo Nation grants to Navajo Nation government and non-Navajo Nation government programs and projects shall be awarded in accordance with rules and regulations developed by the Office of the President and Vice-President in consultation with the Health and Social Services Committee and the Education Committee of the Navajo Nation Council and approved by the Government Services Committee of the Navajo Nation Council.

History

CMA-16-90, March 29, 1990.

CD-68-86, December 12, 1986.

Note. Slightly reworded for purposes of statutory form.

§ 1106. Annual audited report

The Fund shall be audited annually by independent outside auditors. Within 90 days of the end of each fiscal year, an audit report shall be distributed to the members of the Navajo Nation Council and interested members of the Navajo public. The report shall be written in easily understandable

language. The report shall include financial statements, a statement of the amount of money received by the Navajo Nation Trust Fund for Handicapped Services from each investment during the period, a statement of investments of the Fund including an appraisal at market value, a description of Fund investment activity during the period covered by the report, a statement of the Fund performance and other information relevant to the management of the Fund.

History

CD-68-86, December 12, 1986.

§ 1107. Amendments

Any section(s) herein may be amended by a majority vote of the full membership of the Navajo Nation Council except that § 1104 may only be amended as provided for in § 1104.

History

CD-68-86, December 12, 1986.

§ 1108. Expenses

All expenses directly associated with the administration and management of the Fund shall be paid from the Fund income as approved by the Budget and Finance Committee of the Navajo Nation Council. Such expenses shall include investment advisory and management fees, audit costs and other related expenses, all pursuant to duly approved contracts for such services.

History

CD-68-86, December 12, 1986.

Subchapter 2. Navajo Nation Trust Fund for Vocational Education

§ 1111. Establishment

There is established, the "Navajo Nation Trust Fund for Vocational Education" [hereinafter called the "Fund"], with an initial appropriation of six million dollars (\$6,000,000) as approved by the Navajo Nation Council. Additional appropriations may be made from time to time by the Navajo Nation Council provided that additional sources of revenue and/or funds are available for appropriation. Any money deposited into the Fund, plus accrued interest, shall be used only as provided hereinafter.

History

CJY-58-98, July 22, 1998.

CD-68-86, December 12, 1986.

§ 1112. Investment of the Fund

All amounts of money deposited in the Fund shall be invested as soon as practical in accordance with Investment Objectives and Investment Policies of the Navajo Nation as formally adopted by the Budget and Finance Committee of the Navajo Nation Council.

History

CJY-58-98, July 22, 1998.

CD-68-86, December 12, 1986.

§ 1113. Definition of principal and income

A. "Fund principal" shall consist of all Navajo Nation Council appropriations made pursuant to the Navajo Nation Appropriation Processes and Procedures; and any contributions made by any parties or entities.

B. "Fund income" shall consist of all earnings (interest, dividends, etc.) generated by the principal of the Fund.

History

CJY-58-98, July 22, 1998.

CD-68-86, December 12, 1986.

§ 1114. Expenditure of Fund principal

Fund principal shall not be expended except pursuant to a referendum adopted by a two-thirds (2/3) vote of all registered Navajo voters. The Navajo Nation Council may place a "Referendum to Expend Fund Principal" on the ballot of any primary, general or special election by a two-thirds (2/3) vote of the full membership of Navajo Nation Council.

History

CJY-58-98, July 22, 1998.

CD-68-86, December 12, 1986.

§ 1115. Spending policy

A. Four percent (4%) of the Fund (Market Value) shall be used as Vocational Education Scholarship Grants to Navajo students wishing to attend vocational education institutions and to apprentices and practitioners selected to participate in the Navajo Traditional Apprenticeship Project on an annual basis. The market value to be used in determining the budget amount will be the previous fiscal year end market value of the Fund. The excess of Fund income over expenses shall be reinvested in the Fund to cover the rate of inflation and to provide for reasonable Fund growth.

B. Vocational Education Scholarship Grants to Navajo students wishing to attend vocational education institutions and to apprentices and practitioners wanting to participate in the Navajo Traditional Apprenticeship Project shall

be awarded in accordance with rules and regulations developed by the Division of Dine Education approved by the Education Committee of the Navajo Nation Council.

History

CJY-58-98, July 22, 1998.

CD-68-86, December 12, 1986.

Note. Slightly reworded for purposes of statutory form.

§ 1116. Annual audited report

The Fund shall be audited annually by independent, outside auditors. Within 90 days of the end of each fiscal year, an audit report shall be distributed to the members of the Navajo Nation Council and interested members of the Navajo public. The report shall be written in easily understandable language. The report shall include financial statements, a statement of the amount of money received by the Navajo Nation Trust Fund for Vocational Education from each investment during the period, a statement of investments of the Fund including an appraisal at market value, a description of Fund investment activity during the period covered by the report, a statement of the Fund performance and other information relevant to the management of the Fund.

History

CJY-58-98, July 22, 1998.

CD-68-86, December 12, 1986.

Note. Slightly reworded for purposes of statutory form.

§ 1117. Amendments

Any section(s) herein may be amended by a majority vote of the full membership of the Navajo Nation Council except that § 1114 may only be amended as provided for in § 1114.

History

CJY-58-98, July 22, 1998.

CD-68-86, December 12, 1986.

§ 1118. Expenses

All expenses directly associated with the administration and management of the Fund shall be paid from the Fund income as approved by the Budget and Finance Committee of the Navajo Nation Council. Such expenses shall include investment advisory and management fees, audit costs and other related expenses, all pursuant to duly approved contracts for such services.

History

CJY-58-98, July 22, 1998.

CD-68-86, December 12, 1986.

Subchapter 3. Navajo Nation Trust Fund for Senior Citizens Services

§ 1121. Establishment

There is established, the "Navajo Nation Trust Fund for Senior Citizens Services" [hereinafter called the "Fund"], with an initial appropriation of seven million dollars (\$7,000,000) as approved by the Navajo Nation Council. Additional appropriations may be made from time to time by the Navajo Nation Council provided that additional sources of revenue and/or funds are available for appropriation. Any money deposited into the Fund, plus accrued interest, shall be used only as provided hereinafter.

History

CD-68-86, December 12, 1986.

§ 1122. Investment of the Fund

All amounts of money deposited in the Fund shall be invested as soon as practical in accordance with Investment Objectives and Investment Policies of the Navajo Nation as formally adopted by the Budget and Finance Committee of the Navajo Nation Council.

History

CD-68-86, December 12, 1986.

§ 1123. Definition of principal and income

A. "Fund principal" shall consist of all Navajo Nation Council appropriations made pursuant to the Navajo Nation Appropriation Processes and Procedures; and any contributions made by any parties or entities.

B. "Fund income" shall consist of all earnings (interest, dividends, etc.) generated by the principal of the Fund.

History

CD-68-86, December 12, 1986.

§ 1124. Expenditure of Fund principal

Fund principal shall not be expended except pursuant to a referendum adopted by a two-thirds (2/3) vote of all registered Navajo voters. The Navajo Nation Council may place a "Referendum to Expend Fund Principal" on the ballot of any primary, general or special election by a two-thirds (2/3) vote of the full membership of Navajo Nation Council.

History

CD-68-86, December 12, 1986.

§ 1125. Expenditure of Fund income

A. Ninety-five percent (95%) of the Fund income shall be used as Navajo Nation Grants to supplement Navajo Nation government and non-Navajo Nation government programs and projects that provide services to Navajo senior (elderly) citizens. Five percent (5%) of the Fund income shall be reinvested in the Fund to cover the rate of inflation and to provide for reasonable Fund growth.

B. Navajo Nation Grants to non-Navajo Nation government programs and projects shall be awarded in accordance with rules and regulations developed by the Office of the President and Vice-President in consultation with the Health and Social Services Committee of the Navajo Nation Council and approved by the Government Services Committee of the Navajo Nation Council.

History

CD-68-86, December 12, 1986.

Note. Slightly reworded for purposes of statutory form.

§ 1126. Annual audited report

The Fund shall be audited annually by independent outside auditors. Within 90 days of the end of each fiscal year, an audit report shall be distributed to the members of the Navajo Nation Council and interested members of the Navajo public. The report shall be written in easily understandable language. The report shall include financial statements, a statement of the amount of money received by the Navajo Nation Trust Fund for Senior Citizens Services from each investment during the period, a statement of investments of the Fund including an appraisal at market value, a description of Fund investment activity during the period covered by the report, a statement of the Fund performance and other information relevant to the management of the Fund.

History

CD-68-86, December 12, 1986.

Note. Slightly reworded for purposes of statutory form.

§ 1127. Amendments

Any section(s) herein may be amended by a majority vote of the full membership of the Navajo Nation Council except that § 1124 may only be amended as provided for in § 1124.

History

CD-68-86, December 12, 1986.

§ 1128. Expenses

All expenses directly associated with the administration and management of the Fund shall be paid from the Fund income as approved by the Budget and Finance Committee of the Navajo Nation Council. Such expenses shall include investment advisory and management fees, audit costs and other related expenses, all pursuant to duly approved contracts for such services.

History

CD-68-86, December 12, 1986.

Subchapter 4. Navajo Nation Trust Fund for Navajo Preparatory School, Inc.

§ 1131. Establishment

There is established and continued, the "Navajo Nation Trust Fund for Navajo Preparatory School, Inc." [hereinafter called the "Fund"], in the amount of three hundred thirty-eight thousand eight hundred twenty-three dollars and ninety cents (\$338,823.90) as approved by the Navajo Nation Council. Additional appropriations may be made from time to time by the Navajo Nation Council provided that additional sources of revenue and/or funds are available for appropriation. Any money deposited into the Fund, plus accrued interest, shall be used only as provided hereinafter.

History

CJY-77-99, July 22, 1999.

CD-68-86, December 12, 1986.

§ 1132. Investment of the Fund

All amounts of money deposited in the Fund shall be invested as soon as practical in accordance with Investment Objectives and Investment Policies of the Navajo Nation as formally adopted by the Budget and Finance Committee of the Navajo Nation Council.

History

CJY-77-99, July 22, 1999.

CD-68-86, December 12, 1986.

§ 1133. Definition of principal and income

A. "Fund principal" shall consist of all Navajo Nation Council appropriations made pursuant to the Navajo Nation Appropriation Processes and Procedures; and any contributions made by any parties or entities.

B. "Fund income" shall consist of all earnings (interest, dividends, etc.) generated by the principal of the Fund.

History

CJY-77-99, July 22, 1999.

CD-68-86, December 12, 1986.

§ 1134. Expenditure of Fund principal

Fund principal shall not be expended except pursuant to a referendum adopted by a two-thirds (2/3) vote of all registered Navajo voters. The Navajo Nation Council may place a "Referendum to Expend Fund Principal" on the ballot of any primary, general or special election by a two-thirds (2/3) vote of the full membership of Navajo Nation Council.

History

CJY-77-99, July 22, 1999.

CD-68-86, December 12, 1986.

§ 1135. Expenditure of Fund income

Four percent (4%) of the Fund Market Value shall be used to upgrade classroom equipment and materials, costs associated with the development, operation and maintenance of new educational facilities, and as education scholarships for Navajo Preparatory School high school graduates to pursue post-secondary education. The market value to be used in determining the budget amount will be the previous fiscal year end market value of the fund. The excess of Fund income over expenses shall be reinvested in the fund to cover the rate of inflation and to provide for reasonable Fund growth.

History

CJY-77-99, July 22, 1999.

CD-68-86, December 12, 1986.

§ 1136. Annual audited report

The Fund shall be audited annually by independent outside auditors. Within 90 days of the end of each fiscal year, an audit report shall be distributed to the members of the Navajo Nation Council and interested members of the Navajo public. The report shall be written in easily understandable language. The report shall include financial statements, a statement of the amount of money received by the Navajo Nation Trust Fund for Navajo Preparatory School, Inc. from each investment during the period, a statement of investments of the Fund including an appraisal at market value, a description of Fund investment activity during the period covered by the report, a statement of the Fund performance and other information relevant to the management of the Fund.

History

CJY-77-99, July 22, 1999.

CD-68-86, December 12, 1986.

§ 1137. Amendments

Any section(s) herein may be amended by a majority vote of the full membership of the Navajo Nation Council except that § 1134 may only be amended as provided for in § 1134 upon the recommendation of the Education Committee of the Navajo Nation Council.

History

CJY-77-99, July 22, 1999.

CD-68-86, December 12, 1986.

§ 1138. Expenses

All expenses directly associated with the administration and management of the Fund shall be paid from the Fund income as approved by the Budget and Finance Committee of the Navajo Nation Council. Such expenses shall include investment advisory and management fees, audit costs and other related expenses, all pursuant to duly approved contracts for such services.

History

CD-77-99, July 22, 1999.

CD-68-86, December 12, 1986.

Subchapter 5. 1982 Chapter Claims Fund

§ 1141. Establishment

There is established the 1982 Chapter Claims Fund with an initial contribution of twenty-two million two hundred thousand dollars (\$22,200,000) from the Navajo Nation's Claims Case Settlement, United States Court of Claims, Docket Number 353.

History

CD-33-83, December 13, 1983.

Note. Language derived from Navajo Nation Council resolution CD-33-83, December 13, 1983, "Approving Plan for Use and Distribution of twenty-two million two hundred thousand dollars (\$22,200,000) received from the Navajo Tribe's Claims Case Settlement, Docket Number 353."

§ 1142. Investment of the Fund principal/use of interest earnings

The Navajo Nation shall permanently invest the principal of the claims settlement monies and the chapters shall use interest earnings to finance local projects and programs including assistance to elderly and veterans.

History

CD-33-83, December 13, 1983.

Note. Heading added.

§ 1143. Distribution of interest earnings

The interest accrued on the principal of the Fund shall be distributed annually to each chapter based on population count.

History

CD-33-83, December 13, 1983.

Note. Heading added.

§ 1144. Chapter use of Fund

Each chapter shall determine the most appropriate use of all funds received, provided that all Fund uses must be for the common benefit of chapter members and for the general economic development of the local chapters.

History

CD-33-83, December 13, 1983.

Note. Heading added.

§ 1145. Reinvestment into the Fund

Part of the interest earned shall be put back into the principal before distribution is made to the chapters.

History

CD-33-83, December 13, 1983.

Note. Heading added.

Subchapter 6. Trust Fund for Chapter Government Nation Building

§ 1151. Establishment

There is established, the "Navajo Nation Trust Fund for Chapter Government Nation Building" [hereinafter called the "Fund"], with an initial contribution of Claims Settlement Funds in the amount of thirty-two million five hundred thousand dollars (\$32,500,000) plus accrued interest, as approved and accepted by the Navajo Nation Council in Resolution CJN-29-86. Additional appropriations may be made from time to time by the Navajo Nation Council; provided, however, additional sources of revenue and/or funds are available for such appropriation. Any money deposited into the Fund, plus accrued interest,

shall thereafter be used only as provided hereinafter.

History

CD-67-86, December 12, 1986.

§ 1152. Investment of the Fund

All amounts of money deposited in the Fund shall be invested as soon as is reasonably practical in accordance with the following provisions:

A. The Fund shall be invested in accordance with the degree of care exercised by reasonable and prudent managers of large investments and invested to reproduce maximum growth with a reasonably high degree of safety.

B. The management of investments shall be vested with the Budget and Finance Committee of the Navajo Nation Council. The Navajo Bond Financing and Investment Committee shall serve as technical advisors to the Budget and Finance Committee of the Navajo Nation Council. All investment objectives shall be approved by the Budget and Finance Committee of the Navajo Nation Council and appropriate investment agreements or contracts executed accordingly.

History

CD-67-86, December 12, 1986.

§ 1153. Definition of principal and income

A. "Fund principal" shall consist of the initial deposit of Claims Settlement Funds, any additional Navajo Nation Council appropriations made pursuant to the Navajo Nation Appropriation laws, and any contributions made by any other parties or entities.

B. "Fund income" shall consist of all earnings (interest, dividends, etc.), generated by the principal of the Fund.

History

CD-67-86, December 12, 1986.

§ 1154. Expenditure of Fund principal

Fund principal shall not be expended except pursuant to a referendum adopted by a two-thirds (2/3) vote of all registered Navajo voters. The Navajo Nation Council may place a "Referendum to Expend Fund Principal" on the ballot of any primary, general or special election by a two-thirds (2/3) vote of the full membership of Navajo Nation Council.

History

CD-67-86, December 12, 1986.

§ 1155. Expenditure of Fund income

A. Ninety-five percent (95%) of the Fund income may be distributed annually to each certified Navajo chapter based on registered voters. Each chapter shall determine the most appropriate use of all funds received; provided, that all Fund uses must be for the common benefit of chapter members and for the general, social and economic development of the local chapters, and chapter operating and maintenance expenses; and provided that expenditure is pursuant to an annual chapter budget approved by the voting members of the chapter.

B. Five percent (5%) of the Fund income shall be reinvested in the Fund to cover the rate of inflation and to provide for reasonable Fund growth.

C. The Navajo Revenue Sharing Program is hereby continued as a Navajo Nation program and shall henceforth be called the Chapter Government Nation Building Program and delegated administrative responsibility for distribution of the ninety-five percent (95%) share of Fund income to certified chapters.

D. Guidelines for utilization of funds distributed to the certified Navajo chapters will be developed and recommended for approval by the Budget and Finance Committee of the Navajo Nation Council.

History

CD-67-86, December 12, 1986.

§ 1156. Annual audited report

The Fund shall be audited annually. Within 90 days of the end of each fiscal year, an audit report shall be distributed to the members of the Navajo Nation Council, certified chapters and interested members of the Navajo public. The report shall be written in easily understandable language. The report shall include financial statements, a statement of the amount of money received by the Fund from each investment during the reporting period, a statement of investments of the Fund including an appraisal at market value, a description of Fund investment activity during the period covered by the report, a statement of the Fund performance and other information relevant to the management of the Fund.

History

CD-67-86, December 12, 1986.

§ 1157. Amendments

Any section(s) herein may be amended by a majority vote of the full membership of the Navajo Nation Council, except that § 1154 may only be amended as provided for within § 1154.

History

CD-67-86, December 12, 1986.

§ 1158. Expenses

All annual expenses directly associated with the administration and management of the Fund shall be paid from the Fund income as approved by the Budget and Finance Committee of the Navajo Nation Council. Such expenses shall include investment advisory and management fees, audit costs and other related expenses, all pursuant to duly approved and executed contract(s) for such services.

History

CD-67-86, December 12, 1986.

Subchapter 7. Navajo Nation Local Governance Trust Fund

§ 1161. Purpose

The purpose of the Local Governance Trust Fund is to provide an incentive for chapters to attain governance certification, as well as allow them organizational funding so they can develop programs and services in line with their goals, the Local Governance Act and Navajo Nation policy. Additionally, the Fund will provide a continuing source of revenues to governance-certified chapters.

History

CD-84-00, December 14, 2000.

Note. Renumbered for purposes of statutory form.

§ 1162. Establishment

There is established the "Navajo Nation Local Governance Trust Fund" (Fund) with an initial appropriation as approved by the Navajo Nation Council. Additional appropriations may be made from time to time by the Navajo Nation Council.

A. Beginning in Fiscal Year 2002, each year the Navajo Nation Council shall budget a sum equal to at least two percent (2%) of any and all projected revenue of the Navajo Nation, including, but not limited to, revenues received from taxes, oil and gas mining/minerals, timber, land rentals, right-of-way payments, interest/dividends, gain on sale of securities and other revenue producing activities for transfer to the Fund; this provision shall terminate at the end of Fiscal Year 2006.

B. Beginning in Fiscal Year 2007, the Fund shall annually receive fifty percent (50%) of the income available from the Navajo Nation Permanent Fund pursuant to 12 N.N.C. § 905.

C. Any monies deposited into the Fund, plus accrued interest, shall be used only as provided in the Fund plan of operation.

History

CD-84-00, December 14, 2000.

Note. Renumbered for purposes of statutory form.

§ 1163. Fund management

All amounts of money deposited in the Fund shall be invested as soon as is reasonably practical in accordance with the following provisions:

A. The Fund shall be invested in accordance with the degree of care exercised by reasonable and prudent managers of large investments and invested to produce maximum growth with a reasonably high degree of safety.

B. The management of investments shall be vested with the Investment Committee of the Navajo Nation. All investment objectives shall be approved by the Budget and Finance Committee of the Navajo Nation Council and appropriate investment agreements or contracts executed accordingly.

History

CD-84-00, December 14, 2000.

Note. Renumbered for purposes of statutory form.

§ 1164. Definition of principal and income

A. "Fund income" means all earnings (interest, dividends, etc.) generated by the Fund principal.

B. "Fund principal" means the initial deposit of monies by the Council, any additional Navajo Nation Council appropriations, and any contributions made by any other parties or entities.

History

CD-84-00, December 14, 2000.

Note. Renumbered for purposes of statutory form.

§ 1165. Expenditure of Fund principal

A. An incentive program is established to assist chapters in becoming governance certified in the manner set forth in 26 N.N.C. § 102. Fund principal and interest may be expended for this program in the following manner:

1. Each chapter which is, or becomes, governance certified, pursuant to 26 N.N.C. § 102 of the Local Governance Act, shall receive a grant of one hundred sixty thousand dollars (\$160,000) at the time of governance certification or, if already governance certified at the time of adoption of the Fund, upon final adoption of the Fund legislation.

2. Incentive monies distributed to the chapters pursuant to this provision shall in no event exceed one hundred sixty thousand dollars

(\$160,000) per chapter as a one-time grant.

B. With the exception of Fund principal designated in Subsection (A) of this Section, Fund principal shall not be expended except pursuant to a referendum adopted by two-thirds (2/3) vote of all registered Navajo voters. The Navajo Nation Council may place such a "Referendum to Expend Fund Principal" on the ballot of any primary, general or special election by a two-thirds (2/3) vote of the full membership of the Navajo Nation Council.

History

CD-84-00, December 14, 2000.

Revision Note. Slightly reworded and renumbered for purpose of statutory form.

§ 1166. Expenditure of Fund income

Fund income shall be expended as follows:

A. Four percent (4%) of the average annual market value of the Fund shall be distributed annually to governance certified Navajo chapters based upon a formula recommended by the Transportation and Community Development Committee of the Navajo Nation Council and established by the Budget and Finance Committee of the Navajo Nation Council. The amount of funds to be distributed pursuant to this provision shall not exceed the total of Fund income, as determined by § 1163(B), then available in the Fund. In conformity with the Local Governance Act, 26 N.N.C. § 1 *et seq.*, each governance certified chapter shall determine the most appropriate use of all funds received with the following exceptions:

1. Chapters may not use the distributions from this Fund for per capita distributions.

2. Chapters may not use the distributions from this Fund for the purchase of agricultural products for distribution or resale to chapter members.

3. Chapters may not use the distributions from this Fund to pay for training or instructional expenses of chapter officials or chapter employees, including travel expenses incident to training or instruction.

4. Chapters may not use the distributions from this Fund to pay stipends or meeting attendance fees to chapter officials or employees.

5. Chapters may not use the distributions from this Fund to pay travel expenses of any kind to chapter officials or chapter employees.

6. Chapters may not use the distributions from this Fund to purchase motor vehicles for the use of chapter officials or employees.

B. Of the four percent (4%) of the average annual market value to be distributed pursuant to Subsection (A) of this Section, a maximum of ninety-five percent (95%) of the proceeds will be used for distribution to the chapters, as set forth above and a minimum of five percent (5%) will be used

for administrative purposes as set forth in § 1169.

History

CD-84-00, December 14, 2000.

Revision Note. Slightly reworded and renumbered for purpose of statutory form.

§ 1167. Annual audited report

The Fund shall be audited annually, and the Navajo Nation shall include the Fund in its annual audit and report. The report shall be distributed to the members of the Navajo Nation Council, governance certified chapters and interested members of the Navajo public.

History

CD-84-00, December 14, 2000.

Note. Renumbered for purposes of statutory form.

§ 1168. Amendments

Any section herein may be amended at the recommendation of the Transportation and Community Development Committee and adopted by a two-thirds vote (2/3) of the full membership of the Navajo Nation Council, except that § 1165 may only be amended as provided for in § 1165(B).

History

CD-84-00, December 14, 2000.

Note. Renumbered for purposes of statutory form.

§ 1169. Expenses

All annual expenses directly associated with the administration and management of the Fund shall be paid from the Fund income as approved by the Budget and Finance Committee of the Navajo Nation Council. Such expenses shall include investment advisory and management fees, audit costs and other related expenses, all pursuant to duly approved and executed contracts for such services.

History

CD-84-00, December 14, 2000.

Note. Renumbered for purposes of statutory form.

Subchapter 8. Navajo Nation Veterans Trust Fund

§ 1171. Establishment

The "Navajo Nation Veterans Trust Fund" hereinafter the "Trust Fund" is

established with an initial appropriation of six million dollars (\$6,000,000) from revenues from Undesignated Tribal Reserves. Each year, during the appropriation of the Navajo Nation Comprehensive Budget, the Navajo Nation Council shall budget a sum equal to at least four percent (4%) of any and all projected revenues of the Navajo Nation, including, but not limited to revenues received from taxes, oil and gas mining and minerals, timber, land rentals, interest and dividends, gain on sale of securities and other revenue producing activities for transfer to the Fund. Any funds deposited into the Trust Fund, plus accrued interest, shall be used only as provided for as explained hereinafter.

History

CN-55-06, November 1, 2006.

CJY-46-98, July 20, 1998.

§ 1172. Purpose

The purpose of the Trust Fund is to provide funding for veterans programs, projects and services or activities which may include, but not limited to program/project development, community/economic development, housing, training and employment opportunities, leveraging or matching funds for exemplary projects, protection and advocacy services, financial assistance of benefits and services, education and scholarship, and survivor's benefits for the surviving spouses of deceased veterans. The Navajo Nation has a clear understanding and responsibility to its Navajo Nation veterans based on Navajo Nation Council Resolution CJ-5-40 which pledged its people the loyalty to the system which recognized minority rights and the Navajo way of life. Many more than 16,000 Navajo veterans have served their country in war or peacetime from World War I, World War II, Korean, Vietnam, Persian Gulf and to the present.

History

CJY-46-98, July 20, 1998.

Note. Slightly reformatted.

§ 1173. Fund investment

All monies deposited in the Trust Fund shall be invested in accordance with Investment Policies of the Navajo Nation as adopted by the Budget and Finance Committee of the Navajo Nation Council.

History

CJY-46-98, July 20, 1998.

§ 1174. Expenditure of Fund principal

Fund principal shall not be expended except pursuant to a referendum adopted by a two-thirds (2/3) vote of all registered Navajo voters. The Navajo Nation Council may place a "Referendum to Expend Trust Fund Principal" on the ballot of any primary, general or special election by a two-thirds (2/3) vote

of the full membership of the Navajo Nation Council.

History

CJY-46-98, July 20, 1998.

§ 1175. Definition of principal and income

A. Trust Fund principal shall consist of all Navajo Nation Council appropriations made pursuant to the tribal appropriation processes and procedures; and any contributions made by any parties or entities.

B. Trust Fund income shall consist of all earnings (interest, dividends, etc.) generated by the principal and interests of the Fund.

History

CJY-46-98, July 20, 1998.

§ 1176. Expenditure of Trust Fund

The Fund income shall not be expended, except as provided in § 1177, from Fiscal Year 1998 to Fiscal Year 2003. From Fiscal Year 2004, the Fund income shall be expended as follows:

A. Four percent (4%) of the average market value of the Fund covering the past three fiscal years will be used as supplemental funding for programs and services to benefit veterans, as noted under § 1172 on an annual basis. The market value of the Fund at the end of the previous 12 quarters will be used to determine the average market value of the Fund for expenditure (i.e. budget purposes). The excess of the Fund income over expenditures shall be reinvested in the Fund to cover the rate of inflation and to provide for reasonable Fund growth.

B. Tribal grants to non-tribal government programs and projects shall be awarded in accordance with rules and regulations developed by the Department of Navajo Veterans Affairs, in consultation with the Human Services Committee of the Navajo Nation Council and, if required, the Navajo Nation Council.

C. Of the four percent (4%) of the Fund (Market Value), ninety-five percent (95%) of the proceeds will be used for Subsections (A) and (B) of this Section and five percent (5%) will be used for administrative purposes, and this will be reviewed further by the Office of Management and Budget and the Program.

Except as provided at § 1177, all Trust Fund income distribution shall be determined pursuant to all eligible Navajo veterans and distributed among those applicable Navajo Nation chapters to be expended in accordance with § 1172 of this Plan.

History

CJY-46-98, July 20, 1998.

Revision Note. Slightly reworded for purpose of statutory form.

§ 1177. Expenses

All expenses directly associated with the administration and management of the Fund shall be paid from the Trust Fund income as approved by the Budget and Finance Committee of the Navajo Nation Council prior to the distribution of income under § 1176. Such expenses shall include investment advisory and management fees, audit costs and other related expenses, all pursuant to duly approved contracts for such services.

History

CJY-46-98, July 20, 1998.

§ 1178. Amendments

Any section or sections herein may be amended upon the recommendation of the Human Services Committee and the Budget and Finance Committee of the Navajo Nation Council by majority vote of the full membership of the Navajo Nation Council except that § 1174 may only be amended as provided herein.

History

CJY-46-98, July 20, 1998.

**Subchapter 9. Navajo Engineering and Construction Authority Trust Fund
for Scholarships and Financial Assistance**

§ 1181. Establishment

There is hereby established, the "Navajo Engineering and Construction Authority Trust Fund for Scholarships and Financial Assistance" (Fund), with an initial appropriation of one million dollars (\$1,000,000) as approved by the Navajo Nation Council. Additional appropriations may be made from time to time by the Navajo Nation Council provided that additional sources of revenue and/or funds are available for appropriation. Any money deposited into the Fund, plus accrued interest, shall be used only as provided hereinafter. Dividends declared by NECA to the Navajo Nation in accordance with 5 N.N.C. § 1972 shall be designated as a Special Revenue Fund to specifically fund scholarship and financial assistance to eligible Navajo college students.

History

CAP-25-03, April 25, 2003.

CJA-5-97, January 21, 1997.

§ 1182. Investment of the Fund

A. All amounts of money deposited in the Fund shall be invested as soon as practical in accordance with Investment Objectives and Investment Policies of the Navajo Nation as formally adopted by the Budget and Finance Committee of

the Navajo Nation Council.

B. A Parental Investment Plan shall be established to allow the Navajo people to invest a portion of their salary to be able to financially support their children who wish to attend college.

History

CJA-5-97, January 21, 1997.

§ 1183. Definition of principal and income

A. Fund principal shall consist of all Navajo Nation appropriations made pursuant to the tribal appropriation process and procedures; and any contributions made by parties or entities.

B. Fund income shall consist of all earnings (interest dividends, etc.) generated by the principal of the Fund.

History

CJA-5-97, January 21, 1997.

§ 1184. Expenditure of Fund principal

Fund principal shall not be expended except pursuant to a referendum adopted by a two-thirds (2/3) vote of all registered Navajo voters. The Navajo Nation Council may place a "Referendum to Expend Fund Principal" on the ballot of any primary, general or special election by a two-thirds (2/3) vote of the full membership of the Navajo Nation Council.

History

CJA-5-97, January 21, 1997.

§ 1185. Expenditure of Fund income

A. Ten percent (10%) of the Fund (market value) shall be used as scholarships and financial assistance on an annual basis. The market value to be used in determining the budget amount will be the previous fiscal year end market value of the Fund. The unexpended portion of the Fund (market value) income shall be reinvested in the Fund to cover the rate of inflation and to provide for reasonable Fund growth.

B. Scholarships and financial assistance to Navajo students wishing to attend post-secondary institutions and colleges shall be awarded in accordance with Policies and Procedures of the Office of Navajo Nation Scholarship and Financial Assistance.

History

CAP-25-03, April 25, 2003.

CJA-5-97, January 21, 1997.

§ 1186. Annual Audited Report

The Fund shall be audited annually by outside external auditors. At the end of each fiscal year, an audit report shall be distributed to the members of the Navajo Nation Council and interested members of the Navajo public. The report shall be written in easily understandable language. The report shall include financial statements, a statement of the amount of money received by the Navajo Nation Trust Fund for Undergraduate Scholarships from each investment during the period, a statement of investments of the Fund including an appraisal at market value, a description of Fund investment activity during the period covered by the report, a statement of the Fund performance and other information relevant to the management of the Fund.

History

CJA-5-97, January 21, 1997.

§ 1187. Amendments

Any section or sections herein may be amended by the majority vote of the full membership of the Navajo Nation Council except that § 1184 may only be amended as provided for in § 1184.

History

CJA-5-97, January 21, 1997.

§ 1188. Expenses

All expenses directly associated with the administration and management of the Fund shall be paid from the Fund income as approved by the Budget and Finance and Committee of the Navajo Nation Council. Such expenses shall include investment advisory and management fees, audit costs and other related expenses, all pursuant to duly approved contracts for such services.

History

CJA-5-97, January 21, 1997.

Chapter 11. Navajo Nation Green Economy Fund

§ 1190. Establishment

There is hereby established the Navajo Nation Green Economy Fund ("Fund") for the purposes set out in the Navajo Nation Green Economy Commission ("Commission") at 2 N.N.C. §§ 926-927. Various governmental and private grants and appropriations made from time to time by the Navajo Nation Council will be deposited into the Fund. All money deposited into the Fund, plus accrued interest, shall be used only as provided herein. The Intergovernmental Relations Committee of the Navajo Nation Council shall provide legislative oversight for the Fund.

History

CJY-22-09, July 22, 2009. Navajo Nation Green Economy Fund Act of 2009.

§ 1191. Purpose

A. The purpose of the Fund is to fund green businesses, industries and community initiatives.

B. The Commission responsibilities in regard to the Fund are:

1. To promote the development of the private sector of the Navajo Nation economy by providing a source of investments, grants and loans for qualified Navajo-owned green businesses and industries and green projects;

2. To protect and maintain the value of the Fund by making quality green investments on the Navajo Nation and assisting in the collection of loans due and owing the Navajo Nation when loans paid through the Fund come owing; and

3. To ensure that investments, grants and loans made from the Fund are made in compliance with these guidelines and applicable Navajo Nation laws.

History

CJY-22-09, July 22, 2009. Navajo Nation Green Economy Fund Act of 2009.

§ 1192. Fund administration

A. All investments, grants and loans made from the Fund and all associated accounts receivable shall be processed and managed according to these guidelines. Any exceptions must be specifically approved by the Navajo Nation Green Economy Commission upon written recommendation of the Director of the Commission Office. Any such exception must be within the authority of the Commission.

B. It is the policy of the Navajo Nation to operate all investments, grants, and loans programs in a business-like manner, to maintain accurate investments, grants and loans account records so as to protect the assets of the Navajo Nation.

C. It is the policy of the Navajo Nation to consider the special needs of the Navajo business persons in the management of the Funds, to be sensitive to cultural concerns that may arise, and to make a special effort to accommodate qualified Navajo clients on an equal opportunity basis, regardless of age, sex, religion or political affiliation.

History

CJY-22-09, July 22, 2009. Navajo Nation Green Economy Fund Act of 2009.

§ 1193. Fund Management Plan

A. Investment, grant, or loan request must be made on application forms approved by the Director of the Commission Office for that purpose. The application must be completed with all the required information.

B. Misstatement of facts or knowingly making any false statements on the application shall be grounds for disqualification. Any evidence of fraud may be referred to the Navajo Nation Office of the Prosecutor for appropriate action.

C. No application shall be presented to the Commission without certification of eligibility under the Navajo Business and Procurement Act, 12 N.N.C. § 1501 *et seq.* The Commission shall not consider any application from any individual who is in violation of the Navajo Business and Procurement Act.

D. Applicants must be enrolled members of the Navajo Nation, or associations of Navajo individuals, who are in green business or starting a green business venture. If the ownership of the business venture is structured as a partnership, corporation, or form other than that of a sole proprietorship, the applicant must demonstrate that it is one hundred percent (100%) Navajo-owned and controlled. The owners must be directly involved in the daily operation of the business. Certification as a 100% Navajo-owned business under the Navajo Nation Business Opportunity Act, 5 N.N.C. § 201 *et seq.*, shall be sufficient to demonstrate such Navajo ownership. Green business ventures that are not certified shall show evidence of Navajo ownership. While a Fund loan is outstanding, any transfer of ownership of the business must be approved in advance by the Commission.

E. No investment, grant and/or loan shall be approved for a business activity that is in violation of any provision of the laws of the Navajo Nation. Applicants must demonstrate that investment, grant and loan proceeds will be used for lawful business purposes, including, but not limited to, the purchase of inventory, office furniture, equipment, working capital, the construction of permanent facilities, and the purchase of existing business interests, excluding goodwill. Investment, grant and/or loan proceeds shall not be used for unrelated purposes.

F. Applications for investment, grant, and/or loans shall include the following:

1. A signed and completed investment, grant and loan application form.

2. An executive summary of the business concept, grant and/or loan proposal, description and current estimated market value of collateral supported by appropriate documentation.

3. A detailed business plan which describes the market to be served, expected or existing competition, location of the business to include a map depicting the site, legal form of business organization, management, organizational chart, personnel, operating plans and or service plans, financial plans for the next three years, and expected operating results if the investment, grant, and/or loan is approved.

4. For existing businesses that have a proven, successful track record for three or more years, a brief description of the business may

be submitted in lieu of a full-fledged business plan. Additionally, the applicant must submit its last three years federal personal and business tax returns, a current investment plan, grant and/or business/loan application and a statement of what the investment, grant and/or loan proceeds will be spent for.

5. For existing businesses, the following additional information may be requested:

a. Balance Sheets for all past fiscal (operating) years up to a maximum of three years;

b. Income Statements for all past fiscal (operating) years up to a maximum of three years;

c. Income Statement for the present fiscal year through the month ending prior to the application;

d. Projected Balance Sheet for the immediately succeeding fiscal year;

e. Projected Income Statement by quarter for the immediately succeeding fiscal year;

f. Projected Cash Flow Statement for the immediately succeeding fiscal year;

g. Projected capital expenditures during the term of the investment, grant and/or loan;

h. Projected rates of returns;

i. An accounts receivable aging report; and

j. An accounts payable aging report.

6. Applications for start-up businesses shall provide pro-forma financial projections of the balance sheet, income statement, and cash flow for a period of three years. For purposes of these guidelines and policies, applications from businesses that have been in operation for less than one year will be considered as applications from start-up businesses.

7. All financial statements shall be prepared according to generally accepted accounting principles.

8. All financial projections shall contain full explanations of all assumptions utilized and a break-even analysis.

History

CJY-22-09, July 22, 2009. Navajo Nation Green Economy Fund Act of 2009.

§ 1194. Audit requirements

The Fund shall be audited annually by independent auditors as part of the overall audit of the Navajo Nation.

History

CJY-22-09, July 22, 2009. Navajo Nation Green Economy Fund Act of 2009.

§ 1195. Amendments

Any section herein may be amended by the Intergovernmental Relations Committee upon recommendation of the Commission.

History

CJY-22-09, July 22, 2009. Navajo Nation Green Economy Fund Act of 2009.

Chapter 12. Investment Program

History

Note. This Chapter should be read in light of the amendments made to 2 N.N.C. by CD-68-89, December 15, 1989. See 2 N.N.C. § 374(B)(1).

§ 1201. Authorization

The Navajo Nation Council approves and authorizes an investment program that, within statutory authority and limitations, shall provide maximum flexibility to the Secretary of the Interior as to choice of depositories and securities in which Navajo Nation monies may be deposited and/or invested, with an objective of obtaining optimum interest income and retaining reasonable fluidity in the investment portfolio so as to meet current disbursing needs.

History

CMY-59-66, May 6, 1966.

§ 1202. Authority and duties of Navajo Nation officials; Budget and Finance Committee

A. In furtherance of the objectives of 12 N.N.C. § 1201, the Controller of the Navajo Nation is authorized and directed on July 1 and January 1 of each year to prepare estimates of cash requirements and to submit not later than July 10 and January 10, respectively, each year, such estimates, together with recommendations concerning investment maturity dates to a designated investment officer or employee of the Bureau of Indian Affairs.

B. The Controller is directed to report at regular intervals to the Budget and Finance Committee concerning investments made pursuant to the Navajo Nation investment program.

C. The Budget and Finance Committee is authorized and directed to exercise such control as is necessary, incidental or desirable in carrying out

the intent of Resolutions CMY-59-66 and CO-105-66. Such authority of the Budget and Finance Committee shall include, but not be limited to, authority to request reports from the Controller regarding all investments of Navajo Nation funds, authority to request and/or authorize the gathering of such information as is necessary to determine what rates of interest were available, where investments were made, what banks and securities were investigated prior to making such investments, and why a particular bank was selected in any given instance, and such other information as may be pertinent to the investment program.

History

CO-105-66, October 5, 1966.

CMY-59-66, May 6, 1966.

Note. Slightly reworded for purposes of statutory form.

§ 1203. Authority to initiate and maintain investment program for Navajo Nation funds

The Navajo Nation Council authorizes the President of the Navajo Nation, with the consent and approval of the Budget and Finance Committee, to initiate and maintain a prudent, well-managed investment program for Navajo Nation funds presently held in trust by the Secretary of the Interior, and the President is authorized to withdraw funds from the U.S. Treasury for this purpose in an amount not to exceed twenty million dollars (\$20,000,000).

History

CJY-82-68, July 11, 1968.

Note. Slightly reworded for purposes of statutory form.

§ 1204. Authority to enter into contracts in connection with investment of Navajo Nation funds

The Navajo Nation Council authorizes the President of the Navajo Nation, with the consent and approval of the Budget and Finance Committee, to enter into such contracts as may be required in connection with the investment of Navajo Nation funds, taking into consideration the following:

A. The forces of inflation which may reduce the value of Navajo Nation funds over a period of years;

B. The safety of the funds invested;

C. The return to the Navajo Nation in interest, dividends, and increase in the value of investments;

D. The availability of funds when required; and

E. Other factors consistent with sound investment practices.

History

CJY-82-68, July 11, 1968.

Note. Slightly reworded for purposes of statutory form.

Cross References

Budget and Finance Committee of the Navajo Nation Council, 2 N.N.C. § 371 *et seq.*

Chapter 13. Bond Financing Act

§ 1300. Purpose

The Act authorizes the issuance of bonds by the Navajo Nation to finance capital improvement projects included in the Capital Improvement Plan and authorizes other governmental units to issue bonds to finance capital improvements in a manner that is consistent with the policies and procedures set forth in the Act. Notwithstanding the Appropriations Act, or any overlap with other legislation, this Act takes precedence. To achieve this purpose, this Act has the following objectives:

A. To provide financing for capital improvement projects, infrastructure, and capital expenditures, as defined in 12 N.N.C. § 800 *et seq.*

B. To enhance economic development for the Navajo Nation and its peoples by prudent use of tax-exempt and taxable financing and to take advantage of the Indian Governmental Tax Status Act of 1982, as amended.

History

CO-83-01, October 18, 2001.

Cross References

Indian Governmental Tax Status Act of 1982, 26 U.S.C. § 7871.

§ 1310. Definitions

For purposes of this Act and sections of this Act, the following definitions shall apply:

A. "Bond" means any evidence of indebtedness issued or entered into by a governmental unit, including any interest-bearing obligation of a governmental unit that obligates such governmental unit to pay the holder thereof a specified sum of money at specific intervals and to repay the principal amount of the obligation at maturity, together with any bond, note, obligation, loan agreement, financing lease, certificate of participation, bank loan, financing agreement or similar instrument or agreement issued or entered into by a governmental unit. As used in this Chapter, the term "bond" may refer to a general obligation bond, a revenue bond or a refunding bond related to either, as the context so requires.

B. "Bond fund" means any debt service fund, debt service reserve fund, sinking fund, rebate fund, reserve or replacement fund or other special fund or account established in connection with the issuance of any bond.

C. "Bond-related costs" mean:

1. The costs and expenses of issuing, administering and maintaining bonds, including paying bond debt service, paying the costs of credit enhancement devices, paying administrative costs and expenses, including costs of consultants, advisors or other professional service providers appointed, retained or approved by the Navajo Nation or other governmental unit;

2. The cost of funding any bond fund;

3. Capitalized interest on bonds;

4. Rebates, interest or penalties due to the United States in connection with any bond issued as a tax-exempt obligation; and

5. Any other costs or expenses that the Navajo Nation or other governmental unit determines is necessary or desirable in connection with the issuance of any bond.

D. Pursuant to 12 N.N.C. § 810(F), Appropriations Act, "Capital Improvement" means a major project undertaken by the Navajo Nation or other governmental unit that is generally not recurring on an annual basis and which fits within one or more of the following categories:

1. All projects requiring debt obligation or borrowing.

2. Any acquisition or lease of land.

3. Purchase of equipment or vehicles, with a reasonably expected economic life of five years or more, valued in excess of fifty thousand dollars (\$50,000).

4. Major building improvements that are not routine maintenance expenses and that substantially enhance the value or extend the useful life of a structure.

5. Construction or acquisition of buildings or facilities including engineering, design, and other pre-construction costs with an estimated cost in excess of an amount to be determined by the Controller.

6. Acquisition, installation or rehabilitation of equipment or furnishings required to furnish buildings, improvements or other projects, the cost of which is above a certain amount to be established by the Controller.

7. Infrastructure Assets. Are long-lived capital assets that normally are stationary in nature and normally can be preserved for a significantly greater number of years than most capital assets. Examples

of infrastructure assets include roads, bridges, tunnels, drainage systems, water and sewer systems, dams and lighting systems. Buildings, except those that are an ancillary part of a network of infrastructure assets, should not be considered.

E. "Credit enhancement device" means a letter of credit, line of credit, liquidity facility, municipal bond insurance policy or other device or facility used to enhance the creditworthiness or marketability of bonds.

F. "Full faith and credit" means the full taxing power and borrowing power of a governmental unit, plus any other revenue pledged in payment of interest and repayment of principal of a bond issued by the governmental unit.

G. "General obligation bond" means a bond issued by a governmental unit that is backed by the full faith and credit of the governmental unit issuing the general obligation bond. General obligation bonds also may be secured by a pledge of revenues designated by the governmental unit.

H. "Governmental unit" means the Navajo Nation, any enterprise, authority or commission established by the Navajo Nation and any political subdivision of the Navajo Nation, including chapters or any other local units of government created pursuant to the Local Governance Act.

I. "Long-term debt" means the unmatured principal of debt instruments and other forms of noncurrent or long-term general obligation liabilities that were not specific liabilities of any proprietary or trust fund and were not current liabilities properly recorded in the governmental funds.

J. "Navajo Nation" means, for purposes of this Chapter, the Navajo Nation acting through its Council, the Budget and Finance Committee of the Council and the duly authorized officers of its Executive Branch. As used in this Chapter, Navajo Nation does not include any enterprise, authority or commission established by the Navajo Nation or any political subdivision of the Navajo Nation, including chapters and other local units of government.

K. "Refunding bond" means an advance refunding or current refunding bond issued by a governmental unit for the purpose of paying, defeasing, redeeming or retiring a previously issued bond.

L. "Revenues" mean all taxes, oil and gas, mining/minerals, land rentals, interest/dividends, gain on sale of securities and other revenue producing activities and all other income and receipts of whatever kind or character derived by or to which a governmental unit is entitled from the operation, sale or use of facilities, projects, utilities or systems owned or operated by the governmental unit and other revenues legally available to be pledged to secure a bond or to be designated as revenues from which a bond will be payable.

M. "Revenue bond" means a bond issued by a governmental unit, the payment of interest and repayment of principal of which is secured by the revenues pledged or designated to be payable for such purpose by a governmental unit.

History

CO-83-01, October 18, 2001.

§ 1320. Long term debt policies

A. Per 12 N.N.C. § 820(H), Long-term debt limitation. Annual debt service for long-term debt shall not exceed the sum of (i) eight percent (8%) of annual unrestricted recurring revenue, and (ii) projected annual project revenue, as calculated by the Controller, and long-term debt shall not be authorized until the impact of annual debt service on the annual operating budget, including sinking fund contributions, has been analyzed and a determination has been made that debt service payments are in compliance with this Section. For purposes of this Section, "annual debt service" payments for long-term debt shall only include the payment of scheduled principal, interest, costs associated with any credit enhancement device and other bond-related costs reasonably estimated to be or become payable in connection with any long-term debt consisting of a general obligation bond of the Navajo Nation or any other bond backed by the full faith and credit of the Navajo Nation which is not subject to annual appropriation by the Nation. "Projected annual project revenue" shall refer to annual revenues generated by a capital improvement or other project financed with either general obligation bonds of the Navajo Nation or other bonds backed by the full faith and credit of the Navajo Nation, as certified to the Controller on an annual basis by a financial advisor, feasibility consultant, accountant or other appropriate professional service provider acceptable to the Controller.

B. Use of proceeds from long-term debt will be restricted to financing capital improvement projects and will not be used to finance current operations or normal repairs and maintenance.

C. The Navajo Nation normally will rely on internally generated funds and/or grants to finance its capital improvement needs. Bonds will be issued to finance a capital improvement project when it is an appropriate means to achieve a fair allocation of costs between current and future beneficiaries; and when it is determined that the project will be substantially completed within three years from issuance of bonds. Bonds shall not, in general, be issued to fund capital improvement projects solely because insufficient funds are budgeted at the time of acquisition or construction.

History

CO-83-01, October 18, 2001.

§ 1330. Financing of capital improvements and related projects

A. General Obligation Bonds. A governmental unit may issue general obligation bonds upon the adoption of an authorizing resolution or the enactment of an ordinance by its governing body for the financing of specific capital improvements for such governmental unit. Additionally, the Navajo Nation, through its Controller, may issue general obligation bonds for the financing of specific capital improvements for the Navajo Nation or any other governmental unit pursuant to an authorizing resolution or ordinance adopted or enacted by either its Council or the Budget and Finance Committee of the Council, provided that such improvements are part of an approved Capital Improvement Plan. The Controller shall review a request from the Navajo Nation to issue general obligation bonds. If the Controller can certify that funding

is available to pay principal and interest within the limitations of the general revenues of the Navajo Nation and other designated available revenues, the issuance of general obligation bonds by the Navajo Nation to fund the capital improvements may be presented to the full Council or to the Budget and Finance Committee for approval or rejection only. The Controller shall have the responsibility for issuing general obligation bonds on behalf of the Navajo Nation and thereafter shall identify the requirements for payment of interest and principal on such bonds as part of the annual budget planning and preparation process until such time as the bonds are retired. General obligation bonds issued by a governmental unit other than the Navajo Nation shall be subject to all budgetary, approval and other requirements applicable to the governmental unit issuing general obligation bonds. In addition, notwithstanding the provisions of any law applicable to an issuing governmental unit, including without limitation those granting borrowing and other financing authority and powers to the governmental unit, including 26 N.N.C. § 103 of the Local Governance Act, no governmental unit shall issue general obligation bonds unless such governmental unit has made application to the Controller and such application has been reviewed and approved by the Controller and, with respect to legal matters, approved by the Department of Justice. The Office of the Controller shall charge each governmental unit proposing to issue general obligation bonds an application fee in an amount sufficient to pay all costs associated with such review and approvals.

The Controller may, in providing the certification or approval required by the foregoing paragraph, retain the services of financial advisors, accountants, appraisers, feasibility consultants and other appropriate professional service providers and reasonably rely on the opinions, findings, statements and conclusions provided by such persons. Fees and costs associated with such services shall be paid by the Controller from application fees required to be paid to the Controller by the issuing governmental unit, as established by the Controller from time to time. All procurement of services must comply with applicable Navajo Nation laws, including the Navajo Preference in Employment Act, the Navajo Business and Procurement Act, and the Navajo Nation Procurement Act (12 N.N.C. § 301 *et seq.*)

B. Revenue Bonds. A governmental unit may issue revenue bonds upon the adoption of an authorizing resolution or the enactment of an ordinance by its governing body for the financing of specific capital improvements or for any other lawful public purpose identified by such governmental unit. Additionally, the Navajo Nation, through its Controller, may issue revenue bonds for the financing of specific capital improvements, provided that such improvements are part of an approved Capital Improvement Plan, pursuant to an authorizing resolution or ordinance adopted or enacted by either its Council or the Budget and Finance Committee of the Council, and provided further that the specific revenue stream upon which payment of principal and interest on the bonds will be made shall be identified and pledged to the payment of the bonds at the time the bonds are issued. The Controller shall review a request from the Navajo Nation to issue revenue bonds in light of guidelines. If the Controller can certify that funding within any applicable limitations are available from the identified revenue sources, the issuance of revenue bonds by the Navajo Nation to fund the proposed improvements may be presented to the full Council or to the Budget and Finance Committee for approval or rejection only. The Controller shall have the responsibility for issuing revenue bonds on behalf of the Navajo Nation and thereafter shall identify the requirements

for payment of interest and principal on such bonds as part of the annual budget planning and preparation process until such time as the bonds are retired. Revenue bonds issued by a governmental unit other than the Navajo Nation shall be subject to all budgetary, approval and other requirements applicable to the governmental unit issuing revenue bonds. In addition, notwithstanding the provisions of any law applicable to an issuing governmental unit, including without limitation those granting, borrowing and other financing authority and powers to the governmental unit, including 26 N.N.C. § 103 of the Local Governance Act, no governmental unit shall issue revenue bonds unless such governmental unit has made application to the Controller and such application has been reviewed and approved by the Controller and, with respect to legal matters, approved by the Department of Justice. The Office of the Controller shall charge each governmental unit proposing to issue revenue bonds an application fee in an amount sufficient to pay all costs associated with such review and approvals.

The Controller may, in providing the certification or approval required by the foregoing paragraph, retain the services of financial advisors, accountants, appraisers, feasibility consultants and other appropriate professional service providers and reasonably rely on the opinions, findings, statements and conclusions provided by such persons. Fees and costs associated with such services shall be paid by the Controller from application fees required to be paid to the Controller by the issuing governmental unit, as established by the Controller from time to time. All procurement of services must comply with applicable Navajo Nation laws, including the Navajo Preference in Employment Act, the Navajo Business and Procurement Act, and the Navajo Nation Procurement Act (12 N.N.C. § 301 *et seq.*)

A governmental unit issuing a revenue bond may pledge to the payment of such bonds, or may make a revenue bond payable from, all or any portion of:

1. The revenues of any revenue producing facility owned or operated by or providing services to such governmental unit or financed by the revenue bond;
2. The revenues of a public utility or system, or an addition or extension to the public utility or system, where the improvements, projects or facilities financed by the revenue bond are a portion of the public utility or system;
3. All or any portion of any other revenues of the governmental unit, regardless of whether such revenues are related to the improvements, projects or facilities financed by the revenue bond.

If a governmental unit determines that it is necessary to provide additional security for revenue bonds, the governmental unit may mortgage, grant security interests in or otherwise encumber facilities, projects, utilities or systems owned or operated by the governmental unit. Such security may be given in favor of the holders of revenue bonds, a trustee therefor or as security for its obligations arising under any credit enhancement device. A governmental unit may obtain a credit enhancement device for revenue bonds provided that such credit enhancement device shall be payable solely from revenues, the proceeds of revenue bonds, and the other additional security provided for in this Paragraph.

C. Pledge of Nation's Full Faith and Credit. Only a bond issued by the Navajo Nation as a general obligation bond of the Navajo Nation in compliance with all provisions and requirements of this Chapter shall be backed by the full faith and credit of the Navajo Nation. No bond issued by a governmental unit, other than a general obligation bond of the Navajo Nation, shall be backed by the full faith and credit of the Navajo Nation unless the full faith and credit of the Navajo Nation has been specifically pledged to the payment of such bond by the Navajo Nation Council, the Controller has consented to such pledge, and the bond has been issued in compliance with all provisions and requirements of this Chapter for the issuance of a general obligation bond by the Navajo Nation. The Navajo Nation, acting through its Controller, may condition the lending of the full faith and credit of the Navajo Nation to back bonds issued by another governmental unit upon the satisfaction of such terms and conditions and the payment of such fees and charges as the Controller may establish from time to time.

D. Bond Issuance. In issuing bonds, a governmental unit may:

1. Subject to the limitations contained in this Chapter, establish the maturity schedules, interest rates, including fixed, variable or adjustable interest rate terms, tender or redemption provisions, provisions for capitalized interest and other bond terms;

2. Appoint a bond trustee and bond counsel and retain the services of financial advisors, underwriters, paying agents, legal counsel and other professional service providers in connection with the issuance of bonds;

3. Execute and deliver any necessary or appropriate agreement or other document in connection with obtaining a credit enhancement device;

4. Enter into covenants for the benefit of bondholders and the provider of any credit enhancement device to improve the security of bondholders or the provider of a credit enhancement device, or to maintain the tax-exempt status of interest payable on bonds;

5. Establish such bond funds as may be necessary or desirable to pay debt service, to secure bonds and for any other purpose reasonably related thereto; and

6. To apply bond proceeds to pay bond related costs.

E. Limitation on Bond Maturity. All long term debt issued will be repaid within a period not to exceed the expected useful lives of the capital improvement projects financed by the long term debt as certified to the Controller by a financial advisor, feasibility consultant, accountant or other appropriate professional service provider reasonably acceptable to the Controller. For purposes of this Section, the reasonably expected remaining economic life of a bond financed capital improvement shall be determined as of the date on which bonds are issued based on the expected remaining economic life of the equipment and other components of the bond financed improvement. Land shall not be taken into account in determining the economic life of a capital improvement, except that, in the event twenty-five percent (25%) or

more of the proceeds of a bond issue financing such improvement are expended to acquire land, such land shall be treated as having an expected remaining economic life of 30 years, and shall be taken into account in determining the reasonably expected remaining economic life of the bond financed improvement.

F. Investment of Bond Proceeds and Funds. Prior to the expenditure of bond proceeds for the purposes authorized by this Chapter, including the payment of bond related costs, such proceeds and investment earnings thereon, together with all other amounts held in any bond fund. shall be invested at the direction of the issuing governmental unit in accordance with and subject to the limitations of the applicable laws and regulations of the Navajo Nation and the governmental unit and in compliance with the investment policies established by the Controller from time to time for such proceeds and funds.

G. Refunding Bonds. A governmental unit that is authorized to issue general obligation bonds or revenue bonds pursuant to § 1330(A) or § 1330(B) may from time to time in its discretion upon the adoption of an authorizing resolution or the enactment of an ordinance by its governing body issue refunding bonds for the purpose of paying, defeasing, redeeming or retiring bonds previously issued by such governmental unit. Refunding bonds may, however, be issued by a governmental unit, only after such governmental unit has complied fully with the refunding rules applicable to such bonds issued by the Controller from time to time, including the payment of any fees required to be paid by the governmental unit to the Controller.

H. Manner of Sale. Bonds issued pursuant to this Chapter may be sold by a governmental unit pursuant to a public competitive bid or at a private negotiated sale, as determined by the governmental unit in accordance with prudent financial management practices. A governmental unit issuing bonds shall take all reasonable measures directed by the chief financial officer of the governmental unit to assure compliance by the governmental unit with the requirements of all applicable securities laws. In determining an appropriate manner of sale and in making recommendations to comply with applicable securities laws, a governmental unit and its chief financial officer may rely on the advice of its financial advisor or bond counsel, and may in its discretion retain the services of special counsel, financial advisors, investment bankers and other appropriate experts and reasonably rely on the advice and opinions provided by such persons.

I. Execution of Bonds. Bonds issued pursuant to this Chapter shall be signed by the chief executive and the chief financial officer of the governmental unit issuing bonds, by either manual or facsimile signature. For bonds issued by the Navajo Nation, the chief executive and the chief financial officer shall be the President and the Controller of the Navajo Nation, respectively. For bonds issued by a chapter, the chief executive and the chief financial officer shall be the chapter President and its Secretary/Treasurer, respectively. For bonds issued by a governmental unit other than the Navajo Nation or a Chapter, the chief executive and the chief financial officer shall be those persons designated as such for the governmental unit in the charter, legislation, plan of operation or other authority creating such unit. No person executing a bond on behalf of a governmental unit shall be liable personally on the bond by reason of the issuance thereof. In the event that a person whose signature appears on a bond as that of the chief executive or chief financial officer of the governmental unit ceases to hold such office

prior to the delivery of a bond, the signature of such person shall, nevertheless, be valid and sufficient for all purposes, the same as if such person had remained in office until delivery.

J. Severability. If any provision of this Chapter, or its application to any governmental unit or circumstance is held invalid, the remainder of the provisions of this Chapter, and their application to any governmental unit or circumstance, shall not be affected.

K. Changes in Law. No provision of law applicable to a governmental unit issuing bonds hereunder that is enacted or adopted following the issuance of a bond, or any ordinance, resolution, initiative, referendum or other action adopted or taken subsequent to the issuance of a bond shall be given any force or effect if to do so would materially impair any obligation or covenant made with the holder of such bond or the interest of the provider of any credit enhancement device supporting or securing such bonds.

History

CO-83-01, October 18, 2001.

§ 1340. Interim financing of capital improvements and related projects

A. Subject to any applicable limitations imposed by this Act, other applicable laws and regulations of the Navajo Nation or contained in any charter, ordinance or resolution applicable to such governmental unit, a governmental unit may borrow money by entering into a credit agreement, or issuing notes, warrants, short-term promissory notes, commercial paper or other obligations:

1. To provide interim financing for capital improvements to be undertaken by the governmental unit; or
2. To refund outstanding obligations incurred pursuant to this Section.

B. To secure obligations authorized under this Section, a governmental unit may:

1. Pledge its anticipated taxes, grants, other revenues, the proceeds of any bonds, or any combination thereof;
2. Segregate any pledged funds in separate accounts, which may be held by the governmental unit, the Controller or third parties;
3. Enter into contracts with third parties to obtain credit enhancement devices to provide additional security for obligations authorized by this Section;
4. Establish any reserves deemed necessary for the payment of the obligations; and/or
5. Adopt resolutions and enter into agreements containing covenants and provisions for protection and security of the owners of obligations,

which shall constitute enforceable contracts with such owners.

C. Obligations authorized by this Section which are issued in anticipation of taxes or other revenues, and any obligations authorized by this Section which are issued to refund them, shall not be issued prior to the beginning of, and shall mature not later than, the end of the fiscal year of the governmental unit in which the taxes or other revenues are expected to be received. Obligations issued in anticipation of taxes or other revenues shall not be issued in an amount greater than eighty percent (80%) of the amount budgeted by the governmental unit to be received in the fiscal year in which the obligations are issued.

D. Obligations authorized by this Section, which are issued in anticipation of a grant, shall mature not later than one year after the date the grant is estimated to be received. Obligations issued to provide interim financing for capital assets shall mature not later than one year from the estimated completion or acquisition of the capital assets.

E. Refunding obligations issued pursuant to Subsection (A)(1) of this Section shall mature as soon as the issuing governmental unit deems practicable and no later than 18 months after the refunding obligations are issued.

F. Except as provided in this Section, obligations authorized by this Section may be in any form and contain any terms, including provisions for redemption at the option of the holder of the obligation and provisions for the varying of interest rates in accordance with any index, banker's loan rate or other standard.

G. The issuing governmental unit, in the ordinance or resolution authorizing the issuance of obligations under this Section, may delegate to the chief financial officer of the governmental unit or, in the case of the Navajo Nation, the Controller, the authority to determine maturity dates, principal amounts, redemption provisions, interest rates or the method for determining a variable or adjustable interest rate, denominations and other terms and conditions of such obligations which are not appropriately determined at the time of enactment or adoption of the authorizing ordinance or resolution, which delegated authority shall be exercised subject to applicable requirements of law and such limitations and criteria as may be set forth in such ordinance or resolution. Except to the extent of any such delegation, the ordinance or resolution of the governmental unit authorizing the issuance of obligations under this Section shall contain:

1. The maximum effective rate of interest the obligations shall bear;
2. The manner of sale;
3. The discount, if any, the governmental unit may allow;
4. The terms and conditions by which the obligations may be redeemed prior to maturity;
5. The maturities of the obligations;

6. The form and denominations of the notes or other obligations;
and

7. All other material terms and conditions related to the sale of
the obligations.

H. The governmental unit may contract with third parties to serve as
issuing, paying and authenticating agents for any obligations authorized by
this Section.

I. Obligations authorized by this Section may be sold by a governmental
unit pursuant to a public competitive bid or at a private negotiated sale upon
such terms as the governmental unit finds advantageous, with such disclosure or
other measures to comply with the requirements of applicable securities laws as
the governmental unit deems appropriate.

J. Notwithstanding the provisions of any law applicable to a governmental
unit, including without limitation those granting, borrowing and other
financing authority and powers to the governmental unit, including 26 N.N.C. §
103 of the Local Governance Act, no governmental unit shall borrow money for
the purposes permitted by this Section unless such governmental unit has made
application to the Controller and such application has been reviewed and
approved by the Controller and, with respect to legal matters, approved by the
Department of Justice. The Office of the Controller shall charge each
governmental unit proposing to borrow money pursuant to this Section an
application fee in an amount sufficient to pay all costs associated with such
review and approvals.

History

CO-83-01, October 18, 2001.

Note. (A) Slightly reworded for purposes of statutory form.

§ 1350. Amendments

This Bond Financing Act may be amended by a majority vote of the full
membership of the Navajo Nation Council upon the recommendation of the Budget
and Finance Committee of the Navajo Nation Council.

History

CO-83-01, October 18, 2001.

Chapter 14. Contingency Funds

§ 1401. Approval of expenditures

A. The Budget and Finance Committee is authorized to approve expenditures
from contingency funds available in the yearly Navajo Nation budget to meet
emergent and unusual conditions not more specifically provided for elsewhere in
the budget.

B. The President of the Navajo Nation is authorized to approve expenditures necessary in his or her discretion from contingency funds available in the Navajo Nation budget, provided that such expenditures shall not exceed five hundred dollars (\$500.00) for any one case.

History

CAP-10-63, April 24, 1963.

CJ-36-58, July 21, 1958.

Note. This Section should be read in light of the amendments made to 2 N.N.C. by CD-68-89, December 15, 1989. See 2 N.N.C. §§ 374(B)(1) and 1005(C)(6) and (7).

Chapter 15. Navajo Business and Procurement Act

§ 1501. Title

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

History

CD-62-86, December 11, 1986.

§ 1502. Purpose

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

History

CD-62-86, December 11, 1986.

§ 1503. Definitions

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

1. The Navajo Nation Council, its standing committees, and Navajo Nation Council Delegates;

2. The President and Vice-President of the Navajo Nation;

3. All committees, boards, and commissions of the Navajo Nation government;

4. All certified chapters of the Navajo Nation;

5. All grazing committees, land boards, and farm boards of the Navajo Nation;

6. All divisions, departments, and programs operating under the authority of and within the Executive Branch of the Navajo Nation government;

7. All programs under and within the Judicial Branch of the Navajo Nation government;

8. All enterprises of the Navajo Nation; Navajo Community College, Crownpoint Institute of Technology, and any other entity owned in whole or part by the Navajo Nation; and

9. All other programs and entities who receive at least fifty-one percent (51%) of their funding either directly from the Navajo Nation government or are authorized by the Navajo Nation government to receive federal or state grants or other monies on behalf of the Navajo Nation.

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

C. "Business Opportunity" shall mean:

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

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

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

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

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

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

G. "Easement" shall mean any right-of-way or limited right to use Navajo

Nation realty including any transfer, assignment, or extension thereof.

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

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

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

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

L. "Permit" shall mean any permit (excluding grazing and land use permits), license or revocable agreement for the temporary use of Navajo Nation realty or personalty or the grant of authority to allow specific acts including any transfer, assignment, or extension thereof.

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

History

CD-62-86, December 11, 1986.

Note. Slightly reworded and reorganized for purposes of statutory form. The "Navajo Skill Center" is now the "Crownpoint Institute of Technology" pursuant to ACJA-7-87, January 2, 1987.

Annotations

1. Construction and application

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

§ 1504. Eligibility and compliance under the Act

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

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

1. Evidence of compliance verifying the initial eligibility of the applicant in that none of the conditions cited in § 1505(A)-(D) below are applicable; or

2. Evidence of clearance verifying that the applicant has since remedied all applicable bases for previous ineligibility cited in § 1505(A)-(D) below and is now eligible as an applicant in conformance with this Act.

History

CD-62-86, December 11, 1986.

§ 1505. Ineligibility

No applicant individual, business, corporation, partnership or other entity shall be eligible to do any business with the Navajo Nation as set forth in § 1502 (i.e., as a contractor, grantee, consultant, broker, dealer, vendor, supplier, permittee, lessee, easement or loan recipient, etc.); or receive any certification or advantage under the Navajo Nation Business Opportunity Act; or receive any contract, purchase order (P.O.), request for direct payment (R.D.P.), or other accounts payable order for procurement from the Navajo Nation; or be granted a Navajo Nation easement, permit or lease, or loan of any type from the Navajo Nation if any one of the following circumstances apply:

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

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

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

D. If the individual or any individual(s) of the applicant entity either in its present form or in any other identifiable capacity as an individual, business, corporation, partnership or other entity, has been convicted of a criminal offense within the previous 10 years under any Navajo Nation, state or federal law for embezzlement, theft, forgery, bribery, falsification or

destruction of records, receiving stolen property, or committing a criminal offense relating to obtaining a public/private contract or in the performance of such contract.

History

CD-62-86, December 11, 1986.

§ 1506. Removal of ineligibility

A. Any individual, business, corporation, partnership or other entity may remove a determination of ineligibility based on § 1505(A) of this Act by paying in full all outstanding amounts owed to the Navajo Nation. Such payment shall not be contingent in any way on the future eligibility of the party(ies) under this Act. Only upon full and complete payment, will the individual, business, corporation, partnership or entity be considered eligible under § 1505(A) for application for business opportunities, procurement activities and loans from the Navajo Nation.

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

History

CD-62-86, December 11, 1986.

§ 1507. Right of offset

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

History

CD-62-86, December 11, 1986.

Annotations

1. Construction and application

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

2. Purpose

"The Navajo Business and Procurement Act was created to enforce the Navajo Nation Collection System in the best interests of the Navajo Nation." *PC & M*

Construction Company, Inc. v. Navajo Nation, et al., 7 Nav. R. 96, 98 (Nav. Sup. Ct. 1994).

§ 1508. Administrative review process

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

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

History

CD-62-86, December 11, 1986.

Annotations

1. Construction and application

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

§ 1509. Final appeal

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

History

CD-62-86, December 11, 1986.

Annotations

1. Construction and application

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

§ 1510. Construction of the Act

Eligibility and compliance under this Act shall be construed as an additional requirement which is a condition precedent to the application of other appropriate Navajo Nation laws, rules, regulations and program requirements. Nothing in this Act shall be construed to waive or supersede

such other applicable law, program, or Navajo Nation requirements unless said requirements are inconsistent with this Act, in which event § 1512 shall apply. Any action(s) by employees or officials of the Navajo Nation in violation of this statute shall be null and void.

History

CD-62-86, December 11, 1986.

§ 1511. Delegation of authority/responsibility for monitoring and enforcement

The Division of Finance, the Division of Economic Development and the Department of Justice in conjunction with the Office of the Attorney General are delegated the authority and responsibility to promulgate rules and regulations as necessary, and to monitor, enforce and implement the intent of this Act. Said rules and regulations shall require the approval of the Government Services Committee of the Navajo Nation Council.

History

CD-62-86, December 11, 1986.

Note. The Advisory Committee is no longer a standing committee of the Navajo Nation Council. See CD-68-89, December 15, 1989 (Resolved Clause #10), and 2 N.N.C. § 341 *et seq.* for the authority of the Government Services Committee.

§ 1512. Prior inconsistent law repealed

All prior Navajo Nation laws, regulations, rules and provisions of the Navajo Nation Council previously adopted, to the extent they are inconsistent with this Act, are repealed.

History

CD-62-86, December 11, 1986.

§ 1513. Severability of the Act

If any provision of this Act is held invalid by any court of competent jurisdiction, the remaining provisions of the Act shall have full force and effect.

History

CD-62-86, December 11, 1986.

§ 1514. Express exceptions under the Act

The following transactions are expressly exempted from compliance and consideration under this Act: gifts, homesite leases, grazing and land use permits, educational scholarships, educational loans, and water use assessments for Navajo-owned farms and irrigation projects.

History

CD-62-86, December 11, 1986.

§ 1515. No waivers or other exceptions

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

History

CD-62-86, December 11, 1986.

Revision Note. Slightly reworded for purpose of statutory form.

§ 1516. Effective date and amendment

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

History

CD-62-86, December 11, 1986.

Chapter 16. Gaming Development Fund

§ 1601. Establishment

A. There is hereby established the Gaming Development Fund (hereinafter referred to as Fund). Revenue from any agreements entered into by the Navajo Nation concerning the lease of gaming machines to any other Indian Nation shall be deposited into this Fund.

B. Additional appropriations may be made from time to time by the Navajo Nation Council provided that additional sources of revenue are available for appropriation. Any money deposited into the Fund shall only be used as provided hereinafter.

History

CO-53-06, October 31, 2006.

§ 1602. Purpose

The purpose of the Fund is to separately hold gaming revenues from various revenue sources and to provide funding for gaming development within the Navajo Nation.

History

CO-53-06, October 31, 2006.

§ 1603. Investment of the Fund

All amounts deposited into the Fund shall be invested as soon as practical in accordance with the Navajo Nation's duly adopted Investment Objectives and Investment Policies.

History

CO-53-06, October 31, 2006.

§ 1604. Expenditure of Fund

The Controller of the Navajo Nation shall have authority to approve fund expenditures pursuant to a budget and operating plan approved by the Budget and Finance Committee. The Office of the Controller shall establish policies and procedures governing the procedure by which parties may make application to the Controller for approval of expenditures.

History

CO-53-06, October 31, 2006.

§ 1605. Annual Audited Report

The Fund shall be audited annually by independent auditors as part of the overall audit of the Navajo Nation government

History

CO-53-06, October 31, 2006.

§ 1606. Legislative oversight

The Budget and Finance Committee of the Navajo Nation Council shall provide legislative oversight for the Fund.

History

CO-53-06, October 31, 2006.

§ 1607. Amendments

This chapter may be amended by the Navajo Nation Council upon the recommendation of the Budget and Finance Committee of the Navajo Nation Council. Section 1604 shall only be amended or waived by a two-thirds (2/3) vote of the full membership of the Navajo Nation Council.

History

CO-53-06, October 31, 2006.

§ 1608. Effective period

The effective date of the Fund shall be May 1, 2006, and the Fund shall remain in place for a period of five years. At the end of that period, all monies remaining in the Fund that have not been budgeted or encumbered at that time shall be deposited into the General Fund of the Navajo Nation.

History

CO-53-06, October 31, 2006.

Chapter 17. Business and Industrial Development Fund

§ 1701. Establishment

A. The Navajo Nation Council established the Navajo Nation Business and Industrial Development Fund with an initial appropriation of thirty million dollars (\$30,000,000). Additional appropriations may be made from time to time by the Navajo Nation Council provided that additional sources of funds are available for appropriation. All money deposited into the Fund, plus accrued interest, shall be used only as provided herein.

B. Based upon the discussion of the Navajo Nation Council the initial capital contribution of twenty-five million dollars (\$25,000,000) was increased to thirty million dollars (\$30,000,000) with the understanding that the additional five million dollars (\$5,000,000) contribution would be utilized for small business development at the chapter level.

C. Therefore, twenty-five million dollars (\$25,000,000) will be utilized for financing larger tourism, commercial and industrial development projects, and five million dollars (\$5,000,000) will be utilized for financing small business development at the chapter level.

History

CJY-33-88, July 28, 1988.

CF-3-88, February 3, 1988.

CAU-45-87, August 13, 1987.

Note. Slightly reworded for purposes of statutory form.

§ 1702. Purpose

The purpose of this Fund is to establish a special Navajo Nation fund for providing financing for business and industrial development. The Fund will be utilized for Navajo Nation participation in large tourism, commercial and industrial development projects and small business development projects through various forms of financing including, but not necessarily limited to: direct Navajo Nation investment, direct loans, loan guarantees, or other forms of debt

security instruments. Further, to the maximum extent possible, the Fund will be utilized to leverage other sources of funding for project development and implementation.

History

CJY-33-88, July 28, 1988.

CF-3-88, February 3, 1988.

CAU-45-87, August 13, 1987.

§ 1703. Definitions

The following words used in this Fund Management Plan shall have the following meaning unless the context clearly indicates otherwise, and the singular whenever used herein shall include the plural:

A. "Government Services Committee" means the Government Services Committee, a duly authorized standing committee of the Navajo Nation Council (see 2 N.N.C. § 341 *et seq.*).

B. "B & F" means the Budget and Finance Committee of the Navajo Nation Council (see 2 N.N.C. § 371 *et seq.*).

C. "Division of Economic Development" means the Division of Economic Development, a duly authorized division of the Navajo Nation government (see 2 N.N.C.).

D. "Direct Loan" means the act of financing through the lending of principal to a party for a specific small business, tourism, commercial or industrial development purpose, whereby the principal plus interest will be repaid through an agreed upon schedule of payments or upon demand.

E. "Direct Navajo Nation Investment" means the commitment of monies for the purpose of obtaining a return which may be in the form of, among other things, dividends, rents, profits or creation of permanent jobs for Navajos; the term *investment* may include transactions such as direct or indirect purchase of stocks, bonds, real estate and personal property, etc.; and the procurement of services for economic development master planning, marketing and feasibility studies, engineering and architectural designing, surveying and platting where the same is necessary to the initiation or continuation of a Navajo Nation approved tourism, commercial and industrial development project.

F. "EDC" means the Economic Development Committee, a duly authorized standing committee of the Navajo Nation Council (see 2 N.N.C. § 721 *et seq.*).

G. "Fund" means the Business and Industrial Development Fund as authorized and established by Resolution CAU-45-87, August 13, 1987.

H. "Financing" means the act or process of providing and/or raising funds for business, tourism, commercial or industrial development within the Navajo Nation's territorial jurisdiction. Such financing may include, but are not necessarily limited to: direct tribal investment, direct loans, loan

guarantees or other forms of debt security.

I. "Loan Guaranty" means the designation of specified Fund assets as security for a loan or debt obligation from some source other than the Fund by a party or parties seeking to locate a commercial or industrial enterprise, or to locate, improve or expand a small business enterprise within the Navajo Nation's territorial jurisdiction.

J. "Navajo Nation" means the Navajo Nation government, including its Legislative, Judicial and Executive branches.

K. "Navajo Nation's Territorial Jurisdiction" means all Navajo lands as defined in 7 N.N.C. § 254.

L. "Navajo Tribe" means collectively the individuals who are registered Navajos and constitute the membership of the Navajo Tribe/Nation.

M. "N.N.C." means the Navajo Nation Council, the governing body of the Navajo Nation (see 2 N.N.C. § 101 *et seq.*).

N. "Debt Security" means an asset in the Fund which is pledged to secure a debt obligation of the Navajo Nation and/or which names the Navajo Nation as guarantor.

History

CJY-33-88, July 28, 1988.

CF-3-88, February 3, 1988.

CAU-45-87, August 13, 1987.

Note. Slightly reworded for purposes of statutory form. The Advisory Committee is no longer a standing committee of the Navajo Nation Council. See CD-68-89, December 15, 1989 (Resolved Clause #10), and 2 N.N.C. § 341 *et seq.* for the authority of the Government Services Committee. CANDO is no longer an entity of the Navajo Nation. See 2 N.N.C. for the authority of the Division of Economic Development.

§ 1704. Program Administration

A. Legislative Oversight. The Economic Development Committee of the Navajo Nation Council shall review and approve all proposed economic development plans which require the use of Business and Industrial Development Funds and/or assets; and shall be the central point of contact for all economic development activities. Further, the EDC shall have the authority to establish process and procedures for review and approval of Fund project financing.

B. Program Management. The Division of Economic Development has the following delegated duties and responsibilities in matters involving the development of business and industrial development projects and the administration of the Fund:

1. To participate in administering the Fund, and any other funds designated for business and economic development;

2. To plan, implement and manage Navajo development projects including, but not necessarily limited to: (a) expanding, diversifying and privatizing existing Navajo Nation enterprises; (b) planning, developing and constructing facilities and services to capture a major share of the tourism market in the southwestern United States; and (c) improving industrial parks and related infrastructure to increase their attractiveness to industry;

3. To market and solicit proposals from major outside businesses and industries to locate facilities and operations on Navajo Nation industrial sites and assist them in bringing projects to the point of implementation; and

4. To develop policies, proposed regulations and procedures pertaining to specific projects, plans or funds for review and approval by the Economic Development Committee of the Navajo Nation Council.

History

CJY-33-88, July 28, 1988.

CF-3-88, February 3, 1988.

CAU-45-87, August 13, 1987.

ACAU-196-87, August 26, 1987.

Note. Slightly reworded for purposes of statutory form.

§ 1705. Fund Management

A. Fund Manager. The Chief Financial Officer (CFO) of the Division of Economic Development shall maintain the following duties and authorities in matters involving the administration and management of the Fund:

1. Coordinate with the Division of Finance and others as appropriate to manage the Fund and other funds earmarked for development purposes;

2. Develop and recommend appropriate arrangements for project financing; and

3. Administer the Commercial Lending Program of the Navajo Nation through loan officers stationed at the Regional Business Development Offices. In addition to administering current funds for commercial credit, the CFO will develop other financing assistance programs, including loan packaging, loan guarantees, "leveraging" and other methods. The CFO may recommend to the Economic Development Committee of the Navajo Nation Council standards, guidelines and procedures for the approval of loans to improve commercial lending practices.

B. Fund Accounting. The records and books of account for the fund shall be kept separate from the Navajo Nation General Fund as a separate fund with its own "Balance Sheet and Revenue and Expenditure Statement." Day to day accounting shall be performed by the Division of Finance in accordance with generally accepted accounting practices.

C. Investment Goals and Objectives.

1. The Navajo Nation Council approved the creation of the Fund to be administered and managed in accordance with the established Navajo Nation Investment policies and procedures as provided for by the Budget and Finance Committee of the Navajo Nation Council.

2. The Fund shall be invested in accordance with established Investment Objectives and Policies until such time the Budget and Finance Committee, upon the advice and recommendations of the Fund manager and the Navajo Nation Investment Committee, adopts Investment Objectives and Policies specific to the Business and Industrial Development Fund.

D. Project Financing Practices.

1. The Fund may be used to fund different types of financing. These may include: (a) direct Navajo Nation investment; (b) loans; (c) loan guarantees; and (d) various other forms of debt security. The Fund will be apportioned for administrative and financing purposes as follows:

a. Small Business Development Funds. No more than five million dollars (\$5,000,000) of the initial capital contribution shall be designated "Small Business Development Funds" and may be used to provide direct loans/or loan guarantees to projects. Such projects must promote the development of Navajo owned small businesses at the chapter level within the Navajo Nation or within close proximity to the Navajo Nation.

b. Tourism, Commercial and Industrial Development Funds. The remaining twenty-five million dollars (\$25,000,000) of the initial capital contribution to the Fund shall be designated "Tourism, Commercial and Industrial Development Funds" and may be used to provide for direct Navajo Nation financing of industrial, commercial or tourism development projects located anywhere within the Navajo Nation's territorial jurisdiction. Any interest earnings, rents, dividends, profits due to the Navajo Nation as a result of project financing from this portion of the Fund shall be deposited into this portion of the Fund.

2. Upon approval of this Fund Management Plan, the Division of Economic Development, in consultation with the appropriate Navajo Nation officials and Legislative authorities, will develop the policies, rules and regulations for implementation of the Fund financing programs.

History

CJY-33-88, July 28, 1988.

CF-3-88, February 3, 1988.

See also CAU-45-87, August 13, 1987.

See also ACAU-195-87, August 26, 1987.

See also BFJA-22-87, January 12, 1987.

Note. Slightly reworded for purposes of statutory form.

§ 1706. Eligibility requirements

A. Compliance with the Navajo Business and Procurement Act. Compliance with the provisions of the Navajo Business and Procurement Act, 12 N.N.C. § 1501 *et seq.*, is a condition precedent to any transactions or granting of any business opportunity, contract, procurement activity; or processing any easement, permit, lease transaction; or considering any loan application by or from the Navajo Nation to any individual, business, corporation, partnership or entity other than the Navajo Nation. Therefore, "eligibility and compliance under the Act" as defined in 12 N.N.C. § 1504 must be satisfied and met prior to further consideration and processing of any application or request for project financing through the Fund.

B. General Application Requirements.

1. Once the provisions of Subsection (A) above are satisfied, the party requesting and seeking funding must satisfy the following general application requirements:

a. Nature of Business. The party must be engaged in or actively pursuing the creation of an enterprise for the sale (either wholesale or retail), manufacturing, warehousing or distribution of a product or service;

b. Employment. The party must be adding or creating new permanent Navajo Nation based employment opportunities, or retaining Navajo jobs that would otherwise be lost;

c. Ownership/Equity Interest or Representative Capacity. The party must demonstrate; (a) Sole Proprietorship—one hundred percent (100%) proof of ownership; or (b) Partnership or Joint Venture—the party must hold at least a fifty-one percent (51%) equity position in the business or company; or (c) Corporation—the party must demonstrate that participation in the contract has been authorized by corporate resolution and that the party is authorized to represent the corporation;

d. Minimum Capital Investment Requirement. The party must, at a minimum, provide capital investment of twenty percent (20%) of the cost of the project from sources independent of the Fund or any other Navajo, state or federal sources. The party must provide proof that said twenty percent (20%) minimum capital investment is available and can be drawn from a verified source or sources. This provision is not applicable to the Navajo Small Business Development Fund;

e. Benefit. The proposed project, if implemented, must directly benefit the members and residents of the Navajo Nation; and

f. Submission of a Standard Business Plan. The party must demonstrate a genuine desire for the success of the proposed project as evidenced by submission of a standard business plan elements and sub-elements:

(1) Business Summary. General business description (name, location and plant description, product, market and competition, management expertise), business goals, summary of financial needs and application of funds, projected earnings and potential returns to investors;

(2) Description of Products and/or Services. Describe: products; proprietary position: patents, copyrights, and legal and technical considerations; and compare products/services to competitors' products/services;

(3) Detailed Market Analysis. A detailed analysis describing the total market, industry trends, the target markets, and competition;

(4) Detailed Marketing Plan. Describe: overall strategy, pricing policy and methods of selling, distributing and servicing products;

(5) Management and Organization. Describe and/or submit: form of business organization, board of directors composition, officers within organization chart and responsibilities, resumes of key personnel, staffing plan and number of employees, facilities planned, other capital improvements, and operating plan and schedule of upcoming work for next one to two years; and

(6) Financial Data. Submit: financial statements (five years to present); and five-year financial projections (first year by quarters; remaining years annually) for: profit and loss statements, balance sheets, cash flow charts and capital expenditure estimates. Explain: projections, key business ratios, use and effect of new funds, and potential return to investors.

2. Upon approval of this Fund Management Plan, the Division of Economic Development in consultation with the appropriate Navajo Nation officials and Legislative authorities, will further develop specific policies, rules and regulations for implementation of the above general application requirements.

History

CJY-33-88, July 28, 1988.

CF-3-88, February 3, 1988.

CAU-45-87, August 13, 1987.

Note. Slightly reworded for purposes of statutory form.

Cross References

Navajo Business and Procurement Act, 12 N.N.C. § 1501 *et seq.*

§ 1707. Compliance with the Navajo Sovereign Immunity Act

Under the Navajo Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*, the Navajo Nation and certain elected officials of the Navajo Nation are immune from suit and/or may not be subpoenaed or otherwise compelled to appear or testify in the courts of the Navajo Nation, or any proceeding which is under the jurisdiction of the courts of the Navajo Nation concerning any matter involving such official's actions pursuant to his or her official duties; except as provided for in § 554 of the citation above; and in the event that such a suit must be brought against the Navajo Nation and/or its duly authorized representatives, in actions involving project financing through the Fund, then the procedure defined within § 555 of the same citation above must be followed.

History

CJY-33-88, July 28, 1988.

CF-3-88, February 3, 1988.

CAU-45-87, August 13, 1987.

Revision Note. Slightly reworded for purpose of statutory form.

Cross References

Navajo Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*

§ 1708. Compliance with the Navajo Nation Ethics in Government Law

The Navajo Nation Ethics in Government Law, 2 N.N.C. § 3741 *et seq.*, requires accountability to the people of the Navajo Nation by their elected, appointed and assigned public officials and employees in exercising the authority vested or to be vested with them as a matter of public trust, through the following provisions:

A. Establishing and requiring adherence to standards of conduct to avoid such conflicts of interest as the use of public offices, employment or property for private gain, the granting and exchange of favored treatment to persons, businesses or organizations; and the conduct of activities by such officials and employees which permits opportunities for private gain or advantage to influence government decisions.

B. Providing for a more informed electorate by requiring the disclosure of significant economic and business interests and affiliations of public officials which involve any potential for conflict with the primary interests of the people and government of the Navajo Nation; and

C. Requiring public officials and employees to abstain from, using any

function of their office or duties, in a manner which could place, or appear to place, their personal economic or special interests before the interests of the general public.

D. All provisions of the Act must be fulfilled throughout the process of review and approval of any application or request for project financing through the Fund.

History

CJY-33-88, July 28, 1988.

CF-3-88, February 3, 1988.

CAU-45-87, August 13, 1987.

Revision Note. Slightly reworded for purpose of statutory form.

Cross References

Navajo Nation Ethics in Government Law, 2 N.N.C. § 3741 *et seq.*

§ 1709. Audit requirements

The Fund shall be audited annually by independent outside auditors. Within 60 days of the end of each fiscal year, a certified audit report shall be distributed to the members of the Navajo Nation Council. The report shall be written in easily understandable language. The report shall include standard financial statements, and any other financial statements required by federal or Navajo Nation laws.

History

CJY-33-88, July 28, 1988.

CF-3-88, February 3, 1988.

CAU-45-87, August 13, 1987.

§ 1710. Amendments

Any section(s) may be amended by a majority vote of a quorum of the Navajo Nation Council based upon recommendation from the Government Services Committee of the Navajo Nation Council and the Economic Development Committee of the Navajo Nation Council.

History

CJY-33-88, July 28, 1988.

CF-3-88, February 3, 1988.

CAU-45-87, August 13, 1987.

Note. Slightly reworded for purposes of statutory form. The Advisory Committee is no longer a standing committee of the Navajo Nation Council. See CD-68-89, December 15, 1989 (Resolved Clause #10), and 2 N.N.C. § 341 *et seq.* for the authority of the Government Services Committee. See 2 N.N.C. § 721 *et seq.* for the authority of the Economic Development Committee.

Chapter 18. Oil and Gas Development Special Revenue Fund

§ 1801. Establishment

There is established the "Oil and Gas Development Special Revenue Fund" (hereinafter "Fund"). During the first fiscal year, the Office of the Controller shall deposit into such Fund a sum not less than three million dollars (\$3,000,000) from any additional sources of income that becomes available to the Navajo Nation. During the four fiscal years thereafter, the Office of the Controller shall deposit into such Fund a sum not less than three million dollars (\$3,000,000) per fiscal year from general revenue sources. Additional money may be added to the Fund at any time. Any money deposited into the Fund, plus accrued interest, shall be used only as provided herein.

History

CO-97-99, October 20, 1999.

§ 1802. Purpose

The purpose of this Fund is to establish a special fund to provide financing for development projects and related costs of the Navajo Nation Oil and Gas Company, Inc. (hereinafter "Company") in furtherance of the Navajo Nation Energy Policy announced in January 1992 and pursuant to its corporate charter.

History

CO-97-99, October 20, 1999.

§ 1803. Program administration

A. Legislative Oversight. The Resources Committee of the Navajo Nation Council shall review and approve all requests from the Company which will require the use of money from the Fund for development projects.

B. Program Management. As authorized in its federal charter, the Company shall use the funds:

1. To own and operate, directly or through subsidiary corporations, joint ventures, associations, partnerships or otherwise, any oil and/or gas production, operating, refining, drilling or marketing businesses; and any motor or fossil fuel distributing, trucking, jobber, wholesale, or retailing and related business.

2. To form subsidiary corporations and to enter into and form partnerships, joint ventures, associations and other business

arrangements.

3. To conduct activities in all phases of the oil and gas industry either within or outside of Navajo Indian Country.

4. To engage in any lawful business with the powers permitted to a corporation organized pursuant to 25 U.S.C. § 477.

History

CO-97-99, October 20, 1999.

§ 1804. Fund management

A. Fund Accounting.

1. The records and books of account for the Fund shall be kept separate from the Navajo Nation General Fund as a separate fund with its own balance sheet and revenue and expenditure statement. Day to day accounting for the Fund shall be performed by the Navajo Division of Finance in accordance with generally accepted accounting principles.

2. The Company shall account for the funds spent out of the Fund. Such accounting shall be included as part of the annual report of the Company submitted to its shareholder's representatives.

B. Investment Goals and Objectives. All monies deposited into the Fund shall be invested as soon as practicable in accordance with:

1. The degree of care exercised by reasonable and prudent managers of investments intended to produce maximum growth of the investments with a high degree of safety; and

2. The Investment Objectives and Investment Policies of the Navajo Nation as formally adopted by the Budget and Finance Committee of the Navajo Nation Council.

C. Financing Practices. The Fund shall be used to finance development projects and related costs for the Company related to the oil and gas industry in furtherance of the Navajo Nation Energy Policy announced in January 1992, including, but not limited to, enhancement of crude oil marketing, purchase of existing oil or gas production, exploration and development of new oil wells, development of a vertically integrated oil company, development or acquisition of a pipeline, development or acquisition of a refinery, and participation in energy generation projects.

History

CO-97-99, October 20, 1999.

Revision Note. Slightly reworded for purpose of statutory form.

§ 1805. Effective period

The effective date of the Fund shall be the beginning of Fiscal Year 2000, and the Fund shall be maintained for five fiscal years thereafter. At the end of the fifth full fiscal year, any funds remaining in the Fund that have not been budgeted by the Company, in consultation with the Resources Committee of the Navajo Nation Council, for projects contemplated under § 1804(C) shall be returned to the Navajo Nation, and this Chapter shall expire, unless extended by resolution of the Navajo Nation Council.

History

CO-97-99, October 20, 1999.

§ 1806. Audit requirements

The Fund shall be audited annually by independent auditors as part of the overall audit of the Navajo Nation government.

History

CO-97-99, October 20, 1999.

Chapter 19. Insurance Services Fund

§ 1901. Insurance Services Fund

A. There is created in the treasury of the government of the Navajo Nation a series of funds to be known as the Insurance Services Fund.

B. All monies received by the Insurance Services Department for insurance purposes shall be deposited into this Insurance Services Fund.

C. In addition to those monies contributed or appropriated pursuant to Subsection (B) of this Section, any premium refunds, reimbursements, lien recoveries and interest accrued on monies deposited into this Fund shall remain in this Fund.

D. Monies deposited to this Fund shall be expended according to fund management plans approved by the Insurance Commission and the Budget and Finance Committee. These fund management plans will be actuarially based with amounts in excess of reserve requirements being refunded to the participants of the various insurance programs.

E. Notwithstanding the foregoing, the Insurance Commission may, in its discretion, direct some balance to be maintained in these funds in anticipation of claims and other expenses related to the provision of Insurance Services.

History

CJA-17-99, January 28, 1999.

Chapter 20. Capital Outlay Match Funding Special Revenue Fund

§ 2001. Establishment

There is hereby established the "Capital Outlay Match Funding Special Revenue Fund" (hereinafter "Fund"). During the annual appropriation the Navajo Nation Council shall appropriate two million dollars (\$2,000,000) to the Fund from any sources of income that becomes available to the Navajo Nation. Any money deposited into the Fund, plus accrued interest, shall be used only as provided herein. These funds shall not lapse on an annual basis, pursuant to 12 N.N.C. § 820(N).

History

CD-85-00, December 14, 2000.

§ 2010. Purpose

The purpose of this Fund is to establish a special fund to provide match funding and cost reimbursement for the States of Arizona, Utah and New Mexico partially funded capital outlay projects. Often times said states will require the Navajo Nation to match fund and/or cost reimburse the capital outlay projects that benefit the Navajo people residing on the Navajo Nation in the respective States, and there is no ready source of funds within the budget of the Navajo Nation to make the match and/or cost reimbursement. This Fund is created to address this deficiency.

History

CD-85-00, December 14, 2000.

§ 2020. Program administration

A. Legislative oversight. The Transportation and Community Development Committee of the Navajo Nation Council shall review and approve all requests from the Navajo local chapters and Navajo government branches, divisions, departments and programs that require the use of money from the Fund for match funding and/or cost reimburse capital outlay projects that are partially funded by the States of Arizona, Utah or New Mexico.

B. Program management. The Capital Improvement Office of the Division of Community Development shall have the authority and responsibility to use the Fund to match fund and/or cost reimburse capital outlay projects that are partially funded by the States of Arizona, New Mexico and Utah with concurrence by the Transportation and Community Development Committee of the Navajo Nation Council in conformance with § 2030(C), Matching Practices. Such requests for funding road and airport projects shall follow the established process including the capital improvement project policies and procedures.

History

CD-85-00, December 14, 2000.

§ 2030. Fund management

A. Fund accounting

1. The records and books of account for the Fund shall be kept separate from the Navajo Nation General Fund with its own balance sheet and revenue and expenditure statement. The day-to-day accounting for the Fund shall be performed by the Navajo Nation Division of Finance in accordance with generally accepted accounting principles.

2. The Capital Improvement Office shall account for the money spent out of the Fund. Such accounting shall be included as part of the quarterly program reports submitted to the Transportation and Community Development Committee of the Navajo Nation Council and the Navajo Nation Council.

B. Investment goals and objectives. All monies deposited into the Fund shall be invested as soon as practicable in accordance with:

1. The degree of care exercised by reasonable and prudent managers of investments intended to produce maximum growth of the investments with a high degree of safety; and

2. The Investment Objectives and Investment Policies of the Navajo Nation as formally adopted by the Budget and Finance Committee of the Navajo Nation Council.

C. Matching and cost reimbursement practices. The Fund shall be used to match fund and/or cost reimburse capital improvement projects, as defined at 12 N.N.C. § 810(F) of the Navajo Nation Appropriations Act, that are partially funded by the States of Arizona, Utah and New Mexico for the construction of, including but not limited to, preschool buildings, chapter houses and multi-purpose buildings on the Navajo Nation. The monies can be used to fund any stage of the projects such as planning, designing, required clearances, construction, etc. The Transportation and Community Development Committee of the Navajo Nation Council shall approve the use of the monies in the Fund. This provision shall not be deemed to waive or amend any requirement of law concerning the recovery of indirect costs, including 2 N.N.C. § 824(B)(9).

History

CD-85-00, December 14, 2000.

§ 2040. Effective date

The effective date of the Fund shall be the beginning of Fiscal Year 2001 and shall remain in effect until the Navajo Nation Council terminates the Fund by resolution.

History

CD-85-00, December 14, 2000.

§ 2050. Audit requirements

The Fund shall be audited annually by independent auditors as part of the overall audit of the Navajo Nation government.

History

CD-85-00, December 14, 2000.

§ 2070. Amendments

This Fund Plan of Operation shall be amended by the Navajo Nation Council from time to time upon the recommendation of the Transportation and Community Development Committee of the Navajo Nation Council.

History

CD-85-00, December 14, 2000.

Chapter 21. Navajo Nation Water Rights Claim Fund

§ 2101. Establishment

There is hereby established the "Navajo Nation Water Rights Claim Fund" (hereinafter the "Fund"). During the annual operating budget appropriations the Navajo Nation Council shall appropriate no less than two million dollars (\$2,000,000) to the Fund from any and all projected revenue. Additional money may be added to the Fund at any time. Any money deposited into the Fund, plus accrued interest, shall be used only as provided in this Chapter. These funds shall not lapse on an annual basis pursuant to 12 N.N.C. § 820(N), but shall be a continuing account.

History

CMY-47-02, May 17, 2002.

§ 2102. Purpose

The purpose of this Fund is to provide assured annual funding for the protection of the Nation's water rights in the States of Arizona, Utah and New Mexico. On April 9 and 12, 2002, the Navajo Nation Council received reports from the Navajo Nation water rights experts, Navajo Department of Justice, Navajo Nation President, and Navajo people all indicating that the Navajo Nation must diligently pursue and protect the Navajo Nation's water rights in the Little Colorado River, Colorado River Main Stem, San Juan River in Utah and San Juan River in New Mexico. As used in this Chapter, water rights shall mean the development, filing and adjudication or settlement of claims in any jurisdiction and the establishment and operation of whatever program or offices are deemed necessary to further the purposes stated herein.

History

CMY-47-02, May 17, 2002.

§ 2103. Expenditure of the Fund; authorization; Fund expenditure plan

A. The Fund shall be expended pursuant to a Fund Expenditure Plan.

B. The Navajo Nation Water Rights Claim Commission shall establish the policies and priorities for the expenditure of the Fund and the Commission is hereby delegated the authority to approve the budget and expenditure of the Fund. Said policies and priorities shall be developed and in place by August 1, 2002.

C. The Navajo Nation Water Rights Commission, the Attorney General, the Controller, the Budget and Finance Committee, and the Resources Committee are hereby authorized to promulgate a Fund Expenditure Plan specifying the procedures for requesting the use of money from the Fund.

History

CMY-47-02, May 17, 2002.

§ 2104. Fund accounting

A. The records and books of account for the Fund shall be kept separate from the Navajo Nation General Fund with its own balance sheet and revenue and expenditure statement. The day-to-day accounting for the Fund shall be performed by the Division of Finance in accordance with generally accepted accounting principles.

B. The Office of the Attorney General shall account for the money spent out of the Fund. Such accounting shall be included as a part of the quarterly program reports submitted to the Resources Committee of the Navajo Nation Council and the Navajo Nation Council.

History

CMY-47-02, May 17, 2002.

§ 2105. Investment of the Fund

All monies deposited into the Fund shall be invested as soon as practicable in accordance with:

A. The degree of care exercised by reasonable and prudent managers of investments intended to produce maximum growth of the investments with a high degree of safety; and

B. The Investment Objectives and Investment Policies of the Navajo Nation as formally adopted by the Budget and Finance Committee of the Navajo Nation Council.

History

CMY-47-02, May 17, 2002.

§ 2106. Audit requirements

The Fund shall be audited annually by independent auditors as part of the overall audit of the Navajo Nation government.

History

CMY-47-02, May 17, 2002.

§ 2107. Amendments

This Chapter may be amended only by ninety percent (90%) vote of all members of the Navajo Nation Council and upon the recommendation of the Resources Committee of the Navajo Nation Council.

History

CMY-47-02, May 17, 2002.

§ 2108. Effective date

The effective date of the Fund shall be the beginning of Fiscal Year 2003 and shall remain in effect until the Navajo Nation Council terminates the Fund by resolution.

History

CMY-47-02, May 17, 2002.

Chapter 22. Navajo Nation Gaming Distribution Plan

§ 2201. Establishment

A. There is hereby established the "Navajo Nation Gaming Distribution Plan" (hereinafter "Plan"). The Class II and III net gaming revenues received by the Navajo Nation government from the Navajo Nation Gaming Enterprise shall be received and distributed in accordance with this Plan.

B. The Controller of the Navajo Nation, the Navajo Gaming Regulatory Office, and the Navajo Nation Gaming Enterprise shall work together and communicate to properly insure compliance with this Plan.

History

CJY-30-08, July 25, 2008.

§ 2202. Purpose

A. The purpose of this Plan is to provide a revenue allocation plan for the use of the Class II and III net gaming revenues received from the Navajo Nation Gaming Enterprise from its gaming activities, and to provide procedures to use and to account for the net gaming revenues in accordance with federal law.

B. According to the Indian Gaming Regulatory Act, Indian tribes must expend net gaming revenues for the following purposes:

1. To fund tribal government operations and/or programs;

2. To provide for the general welfare of the tribe and its members;
3. To promote tribal economic development;
4. To donate to charitable organizations; and/or
5. To help fund operations of local government agencies.

History

CJY-30-08, July 25, 2008.

§ 2203. Definitions

A. "Gaming Revenues Fund Management Plan" means a fund management plan approved by the Budget and Finance Committee that distributes gaming revenues within the Navajo Nation.

B. "Gross gaming revenues" means, for purposes of this plan, the annual total amount of money wagered on Class II and III games, admission fees (including table or card fees), less any amounts paid out as prizes or paid for prizes awarded, and less an allowance for amortization of capital expenditures for structures. 25 C.F.R. § 514.1.

C. "Indian Gaming Regulatory Act" or "IGRA" means the Indian Gaming Regulatory Act of 1988, 25 U.S.C. § 2701 *et seq.*, as amended.

D. "Management Contract" means any contract, subcontract, or collateral agreement between and Indian tribe and a contractor or between a contractor and a subcontractor if such contract or agreement provides for the management of all or part of a gaming operation. 25 C.F.R. § 502.15.

E. "Net gaming revenues" or "net revenues" means the gross revenues of an Indian gaming operation less, amounts paid out as, or paid for, prizes; and total gaming-related operating expenses, including debt services and gaming facilities, but excluding management fees. See 25 C.F.R. § 502.17.

F. "Per capita payment" means the distribution of money, loans or other things of value to all or any members of the Navajo Nation, or to an identified group of the Navajo Nation, which is paid from the gaming revenues of any Navajo gaming activity. This definition does not apply to payments or services performed by Navajo Nation government programs, established for social welfare, medical assistance, education, housing, and veterans.

History

CJY-30-08, July 25, 2008.

Note. Slightly reworded at Subsection B, by adding the word "for" as the fifth word, for purposes of clarity; and at Subsection F, by adding the word "the" between "group of" and "Navajo Nation,".

§ 2204. Authorized Use of Gaming Revenues

A. The Navajo Nation Gaming Enterprise may use gaming revenues that it generates from its gaming activities for the following:

1. To pay applicable fees to the National Indian Gaming Commission, in accordance with the Indian Gaming Regulatory Act;

2. To pay revenue sharing and tribal contributions to the applicable state pursuant to the Navajo Nation-state gaming compacts;

3. To pay capital, improvement, operational and administrative costs of the Enterprise, gaming facilities and other gaming-related facilities; and the Enterprise may use gaming revenues to pay down existing debt service and to facilitate financing for the construction, expansion, improvement, repairs, and maintenance of gaming facilities and other gaming-related facilities;

4. To pay or reimburse all necessary costs to ensure that gaming is conducted in a manner that adequately protects the environment and the public health and safety.

B. The Navajo Nation Gaming Enterprise shall pay all remaining net gaming revenues to the Navajo Nation for deposit into a special revenue fund for gaming revenues.

History

CJY-30-08, July 25, 2008.

Note. Slightly reworded at Subsection B, by adding the word "the" before "Navajo Nation", for purposes of clarity.

§ 2205. Distribution

A. The net gaming revenues received by the Navajo Nation government from gaming activities must be distributed in the following order, unless otherwise approved by the Navajo Nation Council as follows:

1. To fund the operations of the Navajo Gaming Regulatory Office through the annual budget process; then

2. To be deposited into a special revenue fund and distributed in accordance with the Gaming Revenues Fund Management Plan, which is approved by the Budget and Finance Committee and recommended by the Navajo Gaming Regulatory Office.

B. The request and budgeting of gaming revenue funds from the Gaming Revenues Fund Management Plan shall be budgeted in accordance with the Navajo Nation budget process.

History

CJY-30-08, July 25, 2008.

§ 2206. Per Capita Payments

Gaming revenues shall not be distributed as per capita payments to any member or group of the Navajo Nation.

History

CJY-30-08, July 25, 2008.

§ 2207. Accounting

A. The Office of the Controller shall maintain this special revenue fund in accordance with applicable state gaming compacts in separate accounts, with their own balance sheets with revenue and expenditure statements.

B. If any Navajo Nation chapter receives gaming revenues, the Navajo Nation chapter shall prepare quarterly reports detailing their expenditures from this special revenue fund, and submit such reports to the Controller and the Budget and Finance Committee of the Navajo Nation Council.

History

CJY-30-08, July 25, 2008.

§ 2208. Investment

All deposits into the special revenue fund shall be invested as soon as practicable, and in accordance with the Navajo Nation Investment Objectives and Investment Policies.

History

CJY-30-08, July 25, 2008.

§ 2209. Audit

The Office of the Controller shall include this Plan as part of its overall audit of the Navajo Nation funds. Pursuant to 25 U.S.C. § 2710(b)(2)(C), the audit of this Plan may be provided by the Navajo Nation to the National Indian Gaming Commission.

History

CJY-30-08, July 25, 2008.

§ 2210. Amendments

This Act may be amended only by two-thirds (2/3) vote of the full membership of the Navajo Nation Council, and only upon the recommendation of the Budget and Finance Committee of the Navajo Nation Council.

History

CJY-30-08, July 25, 2008.

Chapter 23. Diné Higher Education Grant Fund

§ 2301. Establishment

There is established the "Diné Higher Education Grant Fund" (hereinafter "Fund"). The Fund shall be held in trust for the governmental units set forth herein. Thereafter, the Office of the Controller shall deposit into such fund the sum of seven million two hundred thousand dollars (\$7,200,000) per fiscal year from annual recurring revenue sources. Any money deposited into the Fund plus accrued interest, shall be used only as provided herein. And furthermore, the Diné College, Crownpoint Institute of Technology and Navajo Nation Scholarship and Financial Assistance Program shall not request supplemental appropriations during the life of this Act.

History

CJY-39-04, July 23, 2004.

Note. Previous error is corrected by replacing the word Grand with Grant.

§ 2302. Purpose

The purpose of this Fund is to establish a special fund to provide funds as developed and subject to approval by the Education Committee and recommended to the Navajo Nation Council.

History

CJY-39-04, July 23, 2004.

§ 2303. Fund Administration

A. Legislative Oversight. The Navajo Nation Council Education Committee shall review and approve all requests from the governmental units, which will require the use of money from the Fund for development and operating projects.

B. Program Management. As authorized by their enabling legislation or plan of operations, the governmental units shall use the funds:

1. Diné College.

a. To operate and maintain programs, facilities, and maintenance.

b. To enter into and form partnerships, joint ventures, associations, and other initiatives and arrangements.

c. To conduct activities in all areas of higher education.

2. Crownpoint Institute of Technology.

a. To operate and maintain programs, facilities, and maintenance.

b. To enter into and form partnerships, joint ventures, associations, and other initiatives and arrangements.

c. To conduct activities in all areas of higher education.

3. Office of Navajo Nation Scholarship & Financial Assistance. To provide financial assistance to eligible applicants at the undergraduate, graduate, and dissertation levels.

C. Fund Distribution. The Fund shall be distributed yearly in the following amounts:

Diné College.....	\$4,200,000
Crownpoint Institute of Technology.....	\$1,500,000
Scholarship & Financial Assistance.....	\$1,500,000

D. Fund Management/Accounting. The records and books of account for the governmental units shall be kept separate from the Navajo General Fund as a separate Fund with its own Balance Sheet and Revenue and Expenditure Statement. Day to day accounting for the Fund shall be performed by the governmental units in accordance with generally accepted accounting principles. The Governmental units shall account for the funds spent out of the Fund. Such accounting shall be included as part of the Annual Audit of the Navajo Nation submitted to the Navajo Nation Council.

History

CJY-39-04, July 23, 2004.

Note. Slightly reworded and reformatted for purposes of statutory form.

§ 2304. Effective Period

The effective date of the Fund shall be the beginning of Fiscal Year 2006, and shall be maintained for 20 fiscal years thereafter.

History

CJY-39-04, July 23, 2004.

Note. Previous error is corrected by replacing the heading Purpose with Effective Period.

Chapter 24. Historical Trust Fund Asset Mismanagement Litigation Trust Fund

§ 2401. Establishment

There is established the "Historical Trust Fund Asset Mismanagement Litigation Trust Fund, (the Fund)".

A. The Navajo Nation Council hereby appropriates the amount of \$298,928.94 from attorneys fees and costs reimbursed to the Navajo Nation from other litigation, as the initial appropriation to the fund.

B. Beginning with the Navajo Nation Fiscal Year 2008 and ending when the Navajo Nation's Historical Trust Asset Mismanagement Litigation against the United States is fully and finally resolved, the Navajo Nation Council shall appropriate no less than \$1,500,000.00 each year during the annual operating budget appropriation into the Historical Trust Asset Mismanagement Litigation Fund Account.

C. Funds deposited or appropriated into the Historical Trust Asset Mismanagement Litigation Fund account are to be expended for fees, costs, and expenses incurred by the Navajo Nation's Historical Trust Asset Mismanagement litigation against the United States, and shall not lapse on an annual basis, but shall be a continuing appropriation available until expended or such time as the Navajo Nation's Historical Trust Asset Mismanagement litigation against the United States is fully and finally resolved.

D. The Navajo Nation Council may make appropriations to the Fund from any other sources of revenue that become available to the Navajo Nation. Any money deposited into the Fund, plus accrued interest, shall be used only as provided herein. The funds shall not lapse on an annual basis, pursuant to 12 N.N.C. § 820(N).

E. The Navajo Nation Controller shall deposit the full amount of any monetary award or settlement to the Navajo Nation resulting from the final resolution of the Navajo Nation's historical trust asset mismanagement litigation against the United States in the Unreserved, Undesignated Fund Balance of the Navajo Nation.

History

CN-57-06, November 1, 2006.

§ 2402. Purpose

The Fund shall be held in trust for the purpose of financing litigation against the United States for its failure to adequately manage and protect the Navajo Nation's tribal trust assets.

History

CN-57-06, November 1, 2006.

§ 2403. Fund Management Plan

A. The Fund shall be expended in accord with a fund management plan adopted by the Budget and Finance Committee.

B. In consultation with the Office of the Controller, the Office of the

Attorney General shall develop proposed priorities and policies for the expenditure of the Fund in the form of a fund management plan, subject to recommendation by the Government Services Committee and final approval by the Budget and Finance Committee of the Navajo Nation Council.

History

CN-57-06, November 1, 2006.

§ 2404. Fund Accounting

A. The day-to-day accounting for the Fund shall be performed by the Office of the Controller in accord with generally accepted accounting principles.

B. The Office of the Attorney General shall account for the money spent out of the Fund. Such accounting information shall be included in quarterly reports submitted to the Government Services Committee and the Navajo Nation Council.

History

CN-57-06, November 1, 2006.

§ 2405. Investment of the Fund

All monies deposited into the Fund shall be invested as soon as practicable in accord with:

A. The degree of care exercised by reasonable and prudent managers of investments intended to produce maximum growth of the investments with a high degree of security; and

B. The Investment Objectives and Investment Policies of the Navajo Nation as duly adopted by the Budget and Finance Committee of the Navajo Nation Council.

History

CN-57-06, November 1, 2006.

§ 2406. Audit requirements

The Fund shall be audited annually by independent external auditors as part of the overall audit of the Navajo Nation government.

History

CN-57-06, November 1, 2006.

§ 2407. Amendments

This Chapter may be amended or repealed at any time by the Navajo Nation Council upon the recommendations of the Government Services Committee and the Budget and Finance Committee of the Navajo Nation Council.

History

CN-57-06, November 1, 2006.

§ 2408. Effective date

The effective date for the Fund shall be the beginning of Fiscal Year 2007 on October 1, 2006.

History

CN-57-06, November 1, 2006.