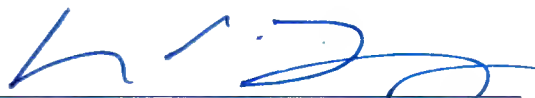


November 7, 2016

MEMORANDUM

TO : Tom Platero, Executive Director  
Office of Legislative Services

FROM:   
Levon B. Henry, Chief Legislative Counsel

RE : CO-56-16 – No Action by Navajo Nation President

On October 19, 2016 the Navajo Nation Council considered and passed Resolution CO-56-16 which amended 5 N.N.C. § 204(A), *The Navajo Business Opportunity Act to Classify the Navajo Engineering and Construction Authority as a Priority One Navajo Nation Owned Business*. The Speaker of the Navajo Nation Council certified the resolution on October 25, 2016. On that same day, the Office of the President and Vice-President received the resolution for the President's consideration. Ten days later on November 4, 2016, the Office of the President and Vice-President returned the resolution to the Office of Legislative Services. Neither the Navajo Nation President nor the Vice-President signed the resolution.

Pursuant to 2 N.N.C. § 221(B) "All resolutions that enact new Navajo law or amend existing Navajo law and are adopted by the Navajo Nation Council shall become effective on the day the President of the Navajo Nation signs it into law or the Navajo Nation Council takes action to override the President's veto..." Resolution CO-56-16 specifically refers to 2 N.N.C. § 221(B). The President's powers include signing "legislation passed by the Navajo Nation Council into Navajo law within ten calendar days after the certification of the legislation by the Speaker..." 2 N.N.C. 1005(C)(10). "The President's authority to sign into law or veto legislation shall be deemed waived if not exercised within ten calendar days after certification of the legislation by the Speaker...and the legislation shall be deemed enacted and become effective pursuant to 2 N.N.C. § 221." 2 N.N.C. § 1005(C)(12).

The Speaker certified Resolution CO-56-16 on October 25 and the President's office received the resolution on October 25, 2016. The ten-day period extended to November 4, 2016. The President had not signed the resolution within the ten-day period. Therefore, by law Resolution CO-56-16 is deemed enacted and considered Navajo Nation law.

cc: Hon. LoRenzo Bates, Speaker, Navajo Nation Council  
Hon. Jonathan Hale, Council Delegate  
Pete Atcitty, Chief of Staff, Legislative Branch

RESOLUTION OF THE  
NAVAJO NATION COUNCIL

23rd NAVAJO NATION COUNCIL -- Second Year, 2016

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT, LAW AND ORDER AND NAABIK'ÍYÁTI' COMMITTEES AND NAVAJO NATION COUNCIL; AMENDING THE NAVAJO NATION CODE AT 5 N.N.C § 204(A), THE NAVAJO BUSINESS OPPORTUNITY ACT TO CLASSIFY THE NAVAJO ENGINEERING AND CONSTRUCTION AUTHORITY AS A PRIORITY ONE NAVAJO NATION OWNED BUSINESS

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Resources and Development Committee may recommend to the Navajo Nation Council amendments to the Navajo Business Opportunity Act. 5 N.N.C. § 215.
- B. The Navajo Nation established the Law and Order Committee (LOC) as a Navajo Nation standing committee and as such empowered LOC to review and make recommendations to the Navajo Nation Council on proposed Navajo Nation Code amendments and enactments. 2 N.N.C. §§ 164 (A)(9), 600 (A), 601 (B)(14) (2015); CO-45-12.
- C. The Navajo Nation Council established the Naabik'íyáti' Committee as a Navajo Nation standing committee and as such proposed legislation that requires final action by the Navajo Nation Council shall be assigned to the Naabik'íyáti' Committee. 2 N.N.C. §§ 164 (A)(9), 700 (A) (2015); CO-45-12.
- D. The Navajo Nation Council must review and approve enactments or amendments of positive law. 2 N.N.C. § 164 (A) (2015); CO-45-12.

SECTION TWO. FINDINGS

- A. The Navajo Engineering and Construction Authority (NECA) is an enterprise of the Navajo Nation. 5 N.N.C. § 1971(A).

- B. The Purposes for which NECA was organized are as follows:
1. To engage in the general engineering and construction industry;
  2. To train Navajo people in the engineering and construction industry, including training in the management of the Authority;
  3. To provide employment to the Navajo Nation, its enterprises and individual members, in engineering and construction related businesses;
  4. To be the primer heavy construction contractor serving the Navajo Nation and the public sector of the Four Corners area, emphasizing the values of excellence, service and employee development; and
  5. To do everything necessary, proper, advisable, or convenient for the accomplishment of the purposes set forth herein consistent with all applicable laws or regulations, and this plan of operation.
- N.N.C. §1972(A) (1) - (5).
- C. The Navajo Nation Business Opportunity Act, 5 N.N.C. § 204(A)(2), indicates Priority Two is given to any fifty-one percent (51%) to ninety-nine percent (99%) Navajo or fifty-one percent (51%) to one hundred percent (100%) other Indian owned and controlled business or one hundred (100%) *Navajo Nation owned* and controlled economic enterprise having its principal place of business on or off the Navajo Nation. (Emphasis added).
- D. Certification as a Priority One is granted to any one hundred percent (100%) *Navajo-owned* and controlled business, having its principal place of business on or off the Navajo Nation. (Emphasis added). 5 N.N.C. § 204(A)(1).
- E. NECA is a wholly *Navajo Nation owned* business enterprise of the Navajo Nation for the benefit of the Navajo People. (Emphasis added). 5 N.N.C. § 1971(A).

- F. In bid openings, the business enterprises and corporations' bids are never opened if there is a Navajo-owned business that is classified as Priority One, causing the Priority Two Navajo Nation owned businesses in a competitive disadvantage.
- G. The NECA governing board has passed a resolution supporting and urging an amendment to the Navajo Business Opportunity Act. The resolution is attached hereto and incorporated herein as Exhibit A.
- H. The Navajo Nation finds the following Navajo Nation Code amendments to 5 N.N.C. § 204(A), to classify the Navajo Engineering and Construction Authority as a Priority One Navajo Nation owned business is in the best interest of the Navajo Nation.

**SECTION THREE. AMENDING NAVAJO NATION CODE TITLE 5**

The Navajo Nation amends the Navajo Nation Code, Title 5 as follows:

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**NAVAJO NATION CODE ANNOTATED**  
**TITLE 5. COMMERCE AND TRADE**  
**CHAPTER 2. NAVAJO NATION BUSINESS OPPORTUNITY ACT**

\*\*\*

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

- A. Preference Priorities. The Navajo Nation shall certify all businesses pursuant to the following Navajo business opportunity priority classification:
  - 1. Priority #1. Certification shall be granted to any one hundred percent (100%) Navajo-owned and controlled business, having its principal place of business on or off the Navajo Nation and Navajo Engineering and Construction Authority, notwithstanding 5 N.N.C. § 204(A)(2) of this section.

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

- B. Obtaining a Priority Certification and Required Compliance. To receive a priority certification under this Act, the business must satisfactorily demonstrate that the business meets the requirements of 5 N.N.C. § 204(A)(1)-(2).

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#### **SECTION FOUR. CODIFICATION**

The provisions of the Act which amend or adopt new sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amended provisions in the next codification of the Navajo Nation Code.

#### **SECTION FIVE. SAVINGS CLAUSE**

Should any provision of this Act be determined invalid by the Navajo Nation Supreme Court or the District Courts of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, the remainder of the Act shall remain the law of the Navajo Nation.

#### **SECTION SIX. EFFECTIVE DATE**

The Navajo Nation Code amendment enacted herein shall be effective pursuant to 2 N.N.C. § 221 (B).

**CERTIFICATION**

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 10 in favor and 7 opposed, this 19<sup>th</sup> day of October 2016.



LoRenzo Bates, Speaker  
Navajo Nation Council

10-25-16

Date

Motion: Honorable Peterson B. Yazzie  
Second: Honorable Alton Joe Shepherd

**ACTION BY THE NAVAJO NATION PRESIDENT:**

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (10), on this \_\_\_\_\_ day of \_\_\_\_\_ 2016.

\_\_\_\_\_  
Russell Begaye, President  
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this \_\_\_\_\_ day of \_\_\_\_\_ 2016 for the reason(s) \_\_\_\_\_ expressed in the attached letter to the Speaker.

\_\_\_\_\_  
Russell Begaye, President  
Navajo Nation

NAVAJO NATION

RCS# 667

10/19/2016  
07:10:11 PM

NNC Fall Session

Amd# to Amd#

Legislation No 0227-16

PASSED

MOT Yazzie, P  
SEC Shepherd

Amending the NN Code at 5 N.N.C.  
Section 204(A), the Navajo Bus.  
Opportunity Act to classify....

Yea : 10

Nay : 7

Not Voting : 5

Yea : 10

Begay, K  
Begay, NM  
BeGaye, N

Brown  
Daniels  
Hale

Shepherd  
Slim

Smith  
Witherspoon

Nay : 7

Bennett  
Chee

Crotty  
Damon

Perry  
Tsosie

Yazzie

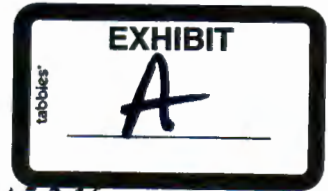
Not Voting : 5

Bates  
Filfred

Jack  
Pete

Phelps  
Tso

Yazzie, P



NECA5-2-16

**RESOLUTION OF THE NAVAJO ENGINEERING  
AND CONSTRUCTION AUTHORITY BOARD OF DIRECTORS**

**Approving and Recommending the Amendment of the  
Navajo Business Opportunity Act, 5 N.N.C. § 204(A), to Classify Navajo Engineering  
and Construction Authority as a Priority One (1) Navajo-Owned Business; and Related  
Actions.**

**WHEREAS:**

1. On June 13, 1972 by Resolution CJN-56-72, the Navajo Tribal Council created and established the Navajo Engineering and Construction Authority (NECA) as a wholly Navajo-owned business enterprise of the Navajo Nation for the benefit of the Navajo People; and
2. The Navajo Engineering and Construction Authority (NECA) is created and established to “engage in the general engineering and heavy construction industry,” 5 N.N.C. § 1972 (A) (1), as amended; and
3. The NECA Board of Directors is delegated the authority and responsibility for the management and operation of NECA, 5 N.N.C. § 1972 (B) (1), as amended; and
4. The NECA is established to “engage in general engineering and heavy construction industry, to train Navajo People in the engineering and construction industry, including training in the management ... , to provide employment to the Navajo Nation, its enterprises and individual members, in engineering and construction and related businesses, and to be the premier heavy construction contractor serving the Navajo Nation and the public sector of the Four Corners area, emphasizing the values of excellence, service and employee development, ...”, 5 N.N.C. §§ 1971, et seq.; and
5. Pursuant to 5 N.N.C. § 1972 (B)(12), as amended, the NECA is authorized by the Navajo Nation and therefore has the authority and responsibility to “ enter into, make, perform, and carry out, or cancel, or rescind contracts for any lawful proposes set forth in 5 N.N.C. § 1972 including contracting for funds from whatever source without prior or subsequent approval or authorization by the Navajo Nation and to delegate so much of this authority as may be advisable to the General Manager or to the Chairman of the Board of Directors”; and
6. Pursuant to the authorization contained in 5 N.N.C. § 1972 (B)(12), as amended, the NECA has contracted federal highway construction projects on the Navajo Nation through the Bureau of Indian Affairs, Navajo Regional Office, Office of Highway Programs, Gallup, New Mexico, on an exclusive basis; and



7. As directed by the Navajo Nation Council at 5 *N.N.C.* §§ 1972, as amended, the NECA has become the premier heavy construction contractor in the Four Corners area with a substantial investment portfolio, unlimited bonding capacity, has trained countless Navajos in the construction fields, has an annual average work force of 400 employees, provided scholarships to Navajo college students, and has returned millions of dollars as a return on investment to the Navajo Nation; and

8. The NECA has met and exceeded the purposes for which the Navajo Tribal Council created it in 1972. NECA has proven to be extremely beneficial to the Navajo People and a critical player in the Navajo Nation's nation building efforts. The NECA continues to be beneficial and critical to the Navajo Nation; and

9. By Navajo Nation Council Resolution *CAP-13-13* (April 16, 2013) and signed into law on April 26, 2013, the Navajo Nation Council established the Navajo Division of Transportation (NDOT) as a division of the Navajo Nation government; and

10. The NDOT is created to "exclusively administer the Navajo Nation transportation programs within the Navajo Nation, to ensure an effective and efficient transportation operation to promote the improvement of the transportation system and to provide the necessary resources to accomplish the objectives...". 2 *N.N.C.* §§ 1371, et seq, as amended; and

11. The United States government recently approved and authorized NDOT as a direct recipient of the Federal Highway Trust Fund money for highway construction on the Navajo Nation; and

12. The NDOT can and has by-passed the BIA Navajo Regional Office for receipt of the Federal Highway Trust Fund designated for highway construction on the Navajo Nation; and

13. Pursuant to the Navajo Business Opportunity Act, 5 *N.N.C.* § 201, et seq., (hereinafter "NBOA") and in particular 2 *N.N.C.* § 205, as amended, the NDOT has begun to bid out highway construction projects on the Navajo Nation without regard to the 5 *N.N.C.* § 1972 (B)(12), as amended, and the NECA's highway construction contracting preference law stated therein; and

14. The NDOT Executive Director is specifically authorized and directed to "Negotiate contracts, grants, and agreements appurtenant to the Navajo Nation Division of Transportation and subject to Navajo Nation laws, rules, and regulations" (*Emphasis added*); and

15. The NECA contracting authority on an exclusive basis codified at 5 *N.N.C.* § 1972 (B)(12), as amended, has not been amended or rescinded therefore is and remains applicable Navajo Nation law with which the NDOT Executive Director must comply; and

16. Pursuant to 5 *N.N.C.* § 204, as amended, the NBOA classifies the NECA and all Navajo Nation owned enterprises as Priority 2 for purposes of bidding and bid opening; and

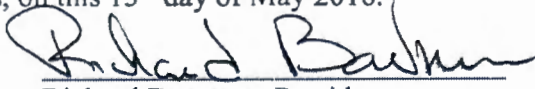
17. As a Priority 2 classified Navajo-owned business, the NECA can and does submit bids but NECA bids are not given consideration and are not even opened if there is a Priority 1 Navajo-owned company who submits a bid for the highway construction project; and
18. Recently, NDOT put out to bid a highway construction project on the Navajo Nation and awarded that project construction contract to an alleged Priority 1 Navajo-owned highway construction company even though NECA's bid was lower than that company's bid. The NECA's bid was not even opened because of NECA's classification as a Priority 2 under the NBOA; and
19. The NDOT's application of the NBOA bidding requirement puts NECA's business operation and financial viability in jeopardy and frustrates and undermines the purposes for which the Navajo Tribal Council created NECA in 1972; and
20. There is an obvious conflict and resulting uncertainty between the mandates contained in the NDOT's Plan of Operation, the NECA's Plan of Operation; and
21. The conflict in Navajo law needs to be resolved to give direction and certainty to the NDOT and NECA; and
22. Federal Highway Trust Fund moneys appropriated for highway construction on the Navajo Nation need to be committed and expended in an expeditious and efficient manner; and
23. The NECA is a competent Navajo-owned company that has demonstrated experience and history of constructing high quality highways and waterline/sewerlines and, further, has the capacity such as skilled employees, experienced management, unlimited bonding, and necessary equipment to build highways and construct waterlines/sewerlines on the Navajo Nation; and
24. The NECA is the only Navajo Nation-owned business that relies on contracting in a competitive heavy construction industry market, consequently, the NECA is vastly different and unique from other Navajo Nation-owned business enterprises; and
25. The Navajo Nation President supports the proposed amendment if it is limited to NECA and to the purposes specified by 5 N.N.C. § 1974, as amended. Attached hereto and incorporated herein as Exhibit A is a copy of the President's letter; and
26. It is in the best interest of the NECA that the Navajo Business Opportunity Act, 5 N.N.C. § 204(A), is amended to classify NECA as a Priority 1 Navajo-owned business to allow NECA to compete on a level playing field with all highway construction contractors consistent with the NBOA; and
27. Pursuant to 5 N.N.C. § 1981, as amended, the NECA Board of Director may amend the NECA Plan of Operation with the approval by the appropriate oversight committee of the Navajo Nation Council and final approval by the Navajo Nation Council.

**NOW THEREFORE BE IT RESOLVED THAT:**

1. The Navajo Engineering and Construction Authority Board of Directors hereby approves and recommends to the Navajo Nation the amendment of the Navajo Business Opportunity Act, 5 N.N.C. § 204(A)(1) and (2), to classify Navajo Engineering and Construction Authority as a Priority 1 Navajo-owned and controlled business.
  
2. The Navajo Engineering and Construction Authority Board of Directors further approves and recommends the amendment of the Navajo Business Opportunity Act, 5 N.N.C. § 204(A)(1) and (2), as follows:
  - A. Preference Priorities. The Navajo Nation shall certify all businesses pursuant to the following Navajo business opportunity priority classification:
    1. Priority #1. Certification shall be granted to any one hundred percent (100%) Navajo-owned and controlled business, having its principal place of business on or off the Navajo Nation including the Navajo Engineering and Construction Authority provided that it is limited to the purposes of NECA specified at 5 N.N.C. §1972.
  
    2. Priority #2. Certification shall be granted to any fifty-one percent (51%) to ninety-nine percent (99%) Navajo or fifty-one percent (51%) to one hundred percent (100%) other Indian owned and controlled business or with the exception provided in § 204(A)(1), one hundred percent (100%) Navajo Nation owned and controlled economic enterprise having its principal place of business on or the Navajo Nation.
  
3. The NECA Board of Directors further authorizes and directs the NECA General Manager and the NECA General Counsel to do any and all things necessary and proper to carry out the intent and purpose of this resolution including presentation to the appropriate oversight Committee of the Navajo Nation Council and to the Navajo Nation Council, if necessary.

**CERTIFICATION**

I hereby certify that the foregoing resolution was duly considered by the Navajo Engineering and Construction Authority Board of Directors at a duly called meeting held in Shiprock, New Mexico, at which a quorum was present, and the same was adopted by a vote of 5 in favor, 0 opposed, 1 abstentions, on this 13<sup>th</sup> day of May 2016.

  
Richard Bowman, President  
NECA Board of Directors

Motion by: Ernest Hubbell

Seconded by: Richard Begaye