



HO-CHUNK NATION CODE (HCC)

TITLE 6 – PERSONNEL, EMPLOYMENT AND LABOR CODE

SECTION 10 – NATIVE AMERICAN PREFERENCE IN CONTRACTING ACT

ENACTED BY LEGISLATURE: December 31, 2024

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1. Authority.

A. Article V, Section 2(a) of the Constitution grants the Legislature the power to make laws, including codes, Acts, resolutions, and statutes.

B. Article V, Section 2(e) of the Constitution grants the Legislature the power to raise revenue, including the power to levy and collect Fees and license Fees.

C. Article V, Section 2(f) of the Constitution grants the Legislature the power to set the salaries, terms and conditions of employment for all government personnel.

D. Article V, Section 2(h) of the Constitution grants the Legislature the power to enact all laws prohibiting and regulating conduct, and imposing penalties upon all persons within the jurisdiction of the Nation.

E. Article V, Section 2(q) of the Constitution grants the Legislature the power to issue charters of incorporation, to charter corporations and other organizations for economic or other purposes, and to regulate their activities.

F. Article V, Section 2(s) of the Constitution grants the Legislature the power to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Ho-Chunk Nation.

2. Purpose.

The Ho-Chunk Nation Native American Preference in Contracting Act is enacted to 1) provide for the economic security of the Ho-Chunk Nation, its members, and all Native Americans living on or near the Nation land to the maximum extent possible in order to promote the important interests of self-governance and to preserve and promote the Nation's unique cultural heritage; 2) to promulgate Nation rules for governing contracting preference within the Nation's jurisdiction; and 3) to provide a fair, enforceable, and effective system of priorities in contracting and subcontracting, and the provision of supplies, services, labor and materials for activities subject to this Act.

3. Applicability.

This Act applies on all lands subject to the jurisdiction of the Ho-Chunk Nation.

4. Definitions.

A. "Commercial Enterprise" includes any activity of any government, including the federal, state, tribal, or local governments (including any activity of the Nation) that is not a traditional governmental function and any non-governmental economic activity involving the provision of goods or services.

B. "Covered Contract" means a contract subject to the requirement of this Act.

C. "Covered Entity" means any entity awarding or letting a contract or subcontract to provide supplies, services, labor and materials in which a significant part of the work to be performed will be performed on the Nation land, or a significant part of the supplies and materials to be furnished will be furnished to a site on the Nation land, or is otherwise subject to the jurisdiction of the Ho-Chunk Nation. For purposes of this definition, significant means more than an incidental or minimal portion of any project, but can be less than a majority of the work or materials or supplies on any one project. A Covered Entity includes the Ho-Chunk Nation government and all enterprises and governmental subsidiaries of the Nation including the Ho-Chunk Housing Authority.

D. "Day" means a work day, which excludes Saturdays, Sundays, and Federal holidays.

E. "Director" means the director of the Ho-Chunk Department of Labor.

F. "Entity" means any person, partnership, corporation, joint venture, government, commercial enterprise, or any other natural or artificial person, organization, or association of

persons or entities. This term is intended to be as broad and as all-encompassing as possible to ensure the statute's full coverage over all contract activities within the jurisdiction of the Nation.

G. "Nation" means the Ho-Chunk Nation.

H. "Nation Certified Entity" means an entity that is certified by the Director of Labor to be 51% or more owned by one or more enrolled members of the Nation and that the entity is genuinely controlled by one or more enrolled members of the Nation.

I. "Nation member" means any person enrolled as a member of the Nation.

J. "Nation Land" means all lands subject to the jurisdiction of the Ho-Chunk Nation.

K. "Native American" means a member of a federally-recognized Native American tribe.

L. "Native American Certified Entity" means an entity certified by the Director of Labor to be 51% or more owned by one or more Native Americans, the entity is genuinely controlled by one or more Native Americans, and the Native American is living on or near the Nation Land. No person shall be considered an Native American living on or near the Nation Land unless he or she has a permanent residence on or near the Nation Land and has lived on or near the Nation Land for at least six (6) months prior to applying for certification as a Native American Certified Entity under this Act.

M. "Qualified Bidder" means a bidder who submits a Responsive Bid or Proposal, who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service/warranty reputation and experience are adequate to ensure satisfactory delivery and performance of the services, construction or items of tangible personal property described in a request for proposal or solicitation of bid, which is on terms that are no less favorable to the Nation or a Nation owned business than those that would have been obtained in a comparable transaction on an arms-length basis by the Nation or a Nation owned business from a vendor that is not a Certified Preference Business.

N. "Qualified Vendor" means, for purposes of the a "Small Purchase", as defined in Section 8, a vendor who submits a responsive quote describing the goods or services the vendor would provide in response to a request for quotes, together with the vendor's pricing proposal for providing the goods or services requested, which is on terms that are no less favorable to the Nation or a Nation owned business than those that would have been obtained in a comparable transaction on an arms-length basis by the Nation or a Nation owned business from a vendor that is not a Certified Preference Business.

O. "Regulations" mean the regulations implementing this Act that are adopted by the Director of the Ho-Chunk Department of Labor.

P. "Responsive Bid" means a bid that conforms in all material respects to the requirements of the Request for Proposal and Instructions to Bidders portion of the solicitation

for bid. Material respects of a request for proposal or bid include but are not limited to price, quality, quantity and/or delivery requirements.

5. Declaration of Policy.

A. The policy of the Nation is to foster economic opportunities for its members and other Native American people.

B. The policy of the Nation is to promote the economic opportunity and the social interests of Nation members and other Native Americans by increasing contracting opportunities for all Native American people.

6. Native American Preference in Contracting

A. All Covered Entities entering into Covered Contracts in which a significant portion of the work will be done on or materials will be supplied to a site on Nation land shall give preference in contracting and subcontracting to Nation Certified Entities first and Native American Certified Entities second.

B. Priority in Contracting and Subcontracting. Provided the Bid or Proposal is on terms that are no less favorable to the Nation, as the case may be, preference for contracting and subcontracting shall be granted to Qualified Bidders according to the following priority:

1. Nation Certified Entities.
2. Native American Certified Entities with 51% or more Ho-Chunk Employees or Subcontractors.
3. Non-Native American Qualified Bidder with 51% or more Ho-Chunk Employees or Subcontractors.
4. Native American Certified Entities with 50% or less Ho-Chunk Employees or Subcontractors.
5. Non-Native American Qualified Entities with 50% or less Ho-Chunk Employees or Subcontractors.
6. Non-Native American Qualified Bidder with 50% or less Ho-Chunk Employees or Subcontractors.

7. Application of Preference in Contracting and Subcontracting Decisions.

A. Small Purchases. For purposes of this Section, "small purchases" shall include any procurement of goods or services with an actual or estimated value not exceeding \$100,000. The Nation or Nation owned businesses shall not break down requirements aggregating more than the small purchase threshold into several purchases that are less than the applicable threshold merely to: (1) permit use of the small purchase procedures or (2) avoid any

requirements that apply to procurement by a traditional invitation to bid, request for proposal, or request for qualifications process. Nothing shall preclude Nation or Nation owned businesses from electing to utilize a traditional invitation to bid, request for proposal process, or request for qualification process for any procurement with a value of less than \$100,000.

1. Any Nation Certified Business on the current List of Nation Certified Businesses, which provides the goods or services to be obtained through a “small purchase”, shall be offered the opportunity to submit a quote.

2. Subject to the requirements of Section 7.A.3., the award shall be made to the qualified vendor that provides the lowest price, unless that vendor’s proposal does not meet other specifications (i.e. delivery requirements; product specifications) requested. If award is to be made for reasons other than lowest price, documentation shall be provided in the contract file to justify departure from utilizing the lowest price as the primary factor in awarding a contract.

3. If a qualified quote is received from a Nation Certified Entity, the award shall be made to the Qualified Preference Business, after first applying the preference order stated in Section 6.B., with the lowest responsive bid if that bid is within budgetary limits established for the specific project or activity for which bids are to being taken and not more than “X” higher than the total bid price of the lowest responsive bid from any qualified bidder. For purposes of this subsection, “X” is 10% of that bid up to \$10,000.

8. Invitation to Bid.

A. Preference in the award of contracts and subcontracts that are let under a traditional invitation to bid process (e.g. conventional bid construction contracts, material supply contracts) that will be awarded based almost exclusively on price shall be provided as follows:

1. The invitation to bid may initially be restricted to Qualified Certified Firms only, provided that the Department of Labor has a reasonable expectation that three (3) or more Qualified Certified Firms are likely to submit responsive bids, which comply with the bid specifications. If three (3) or more qualified certified firms submit responsive bids which comply with the bid specifications, preference shall be given in the order stated in Section 6.B., to the lowest responsive bid if that bid is within budgetary limits established for the specific project or activity for which bids are being taken. In determining whether there is a reasonable expectation that three (3) or more Qualified Certified Firms are likely to submit bids, the Department of Labor may rely on the list of Certified Preferences Businesses.

2. If the Department of Labor prefers not to restrict the invitation to bid to qualified certified firms, or if an insufficient number of qualified certified firms submit responsive bids, as described in Section 8.A.1., the Department of Labor may advertise generally for bids. Award may be made to the qualified certified firm, after first applying the preference order stated in Section 6.B., with the lowest responsive bid which complies with the bid specifications if that bid is within budgetary limits

established for the specific project or activity for which bids are being taken and not more than “X” higher than the total bid price of the lowest responsive bid from any qualified bidder.

3. “X” is determined as follows: When the lowest responsive bid is:

Less than \$100,000	10% of the lowest responsive bid
At least \$100,000, but less than \$200,000	9% of the lowest responsive bid
At least \$200,000 but less than \$300,000	8% of the lowest responsive bid
At least \$300,000 but less than \$400,000	7% of the lowest responsive bid
At least \$400,000 but less than \$500,000	6% of the lowest responsive bid
At least \$500,000 but less than \$1 Million	5% of the lowest responsive bid
At least \$1 Million but less than \$2 Million	4% of the lowest responsive bid
At least \$2 Million but less than \$4 Million	3% of the lowest responsive bid
At least \$4 Million but less than \$7 Million	2% of the lowest responsive bid
\$7 Million but less than \$10 Million	1.5% of the lowest responsive bid
Over \$10 Million	1% of the lowest responsive bid

4. If no qualified certified firm submits a responsive bid which complies with the bid specifications and that is within the stated range of the total bid price of the lowest responsive bid, as described in the chart this Section, the award shall be made to the qualified bidder with the lowest price, which complies with the bid specifications.

9. Request for Proposal (RFP).

A. Preference in the award of contracts and subcontracts that are let under an RFP process that will be awarded based on combination of technical requirements, specifications, price and other appropriate factors shall be provided as follows:

1. The Department of Labor shall, in collaboration with the department, instrumentality or business initiating the procurement, develop the particular specifications (i.e. technical specifications; components; compatibility requirements; warranties; delivery/completion dates; pricing; etc.) for the RFP, including to the extent possible a rating system that provides for the assignment of points for, or rating of, the relative merits of submitted proposals. The RFP shall identify all rated factors, including price or cost, and any significant sub-factors that will be considered in awarding the contract, and shall state the relative importance the Department of Labor places on each evaluation factor and sub-factor.

2. As noted in Section 8.A.1., the RFP may be restricted to Qualified Certified Firms. The RFP should, however, not be so restricted unless the Department of Labor has a reasonable expectation that a reasonable number of qualified certified firms (in most cases not less than three (3)) are likely to submit responsive proposals. Notification that Indian preference is applicable to the procurement shall be included in the RFP. If at least three (3) total and two (2) or more qualified certified firms submit responsive proposals, preference shall be given in the order stated in Section 6.B., with the best proposal based on a rating system established for the RFP. If fewer than the minimum required number of qualified certified firms submit responsive proposals, the Department of Labor may reject all proposals, and may re-advertise the

RFP in accordance with section 8.A.2 or may award the contract to a non-certified firm in which case the basis of the determination to award the contract and not re-bid shall be documented.

3. If the Department of Labor prefers not to restrict the RFP to qualified certified firms, or if an insufficient number of qualified certified firms submit responsive RFPs, as described in section 8.A.1., the Department of Labor may issue the RFP inviting proposals from qualified non-certified firms as well as qualified certified firms. Notification that Native American preference is applicable to the procurement shall be included in the RFP solicitation.

4. The Department of Labor shall set aside up to fifteen (15) additional rating points for the provision of Native American preference to qualified certified firms in the award of contracts and subcontracts. In addition, if a qualified certified firm shows that the firm contacted native subcontractors and they did not submit a bid, then the firm shall be given points. The number of additional points set aside for preference and the method for allocating these points shall be specified in the RFP.

10. Application of Preference Not Feasible; Limits on Application of Preference.

A. The Nation and any Nation owned business shall, in the conduct of their own operations, adhere to the preference requirements of this Act; provided that, if the Department of Labor determines that provision of preference is not feasible in any invitation to bid or RFP process, the Department of Labor shall:

1. Document in writing its determination and the basis for its findings;
2. Shall maintain that documentation in the files pertaining to that bid/RFP process for three (3) years; and
3. Provide the Nation or the Nation owned businesses with a copy of the determination within twenty (20) days of its issuance.

B. *Sole Source Bid.* Nothing in this Act shall preclude the Department of Labor from awarding a contract or subcontract without competitive bidding or RFP if the Department of Labor makes a determination, after conducting a good faith review of the technical or other requirements of the entity for which the contract or purchase is being made, and a review of available sources of supply, that there is only one source for the required service or good.

C. Nothing in this Act shall require the Department of Labor to apply the preference requirements of this Act in a manner that violates the terms of any contractual agreements to which the Nation or any of its subdivisions is a party, or in a manner that violates applicable federal law and nothing in this Act shall require the Department of Labor to transact business with any person or business entity which would be in violation of any other Act, law, or regulation including, without limitation, the Gaming Regulatory Act or Federal Acquisition Regulations (i.e. concerning debarred contractors).

11. Technical Qualifications.

A. The Department of Labor shall have the discretion to determine if any contractor or subcontractor meets the technical, administrative and financial qualifications it requires for any particular contract or subcontract. If the Department of Labor determines that a Certified Preference Business is not technically qualified, the Department of Labor must provide to each Certified Preference Business it rejects, written reasons for the rejection.

1. If the Department of Labor determines that one or more Certified Preference Business lack the qualifications to perform all of the work or requirements specified in an invitation to bid or RFP, the Department of Labor may, in its discretion, divide the work required into smaller portions so that Certified Preference Businesses can qualify.

12. Federal law.

A. The requirements set out in this Section shall not apply to contracts awarded by the Federal or State government or their subdivisions. However, they shall apply to all subcontracts awarded by a Federal or State contractor or grantee that is subject to the jurisdiction of the Nation, whether or not the prime contract was subject to these requirements, except when it is determined that application of these requirements to that entity is specifically prohibited by Federal law.

B. All Covered Entities shall comply with this Act and all the rules and regulations promulgated in connection with this Act, as well as all guidelines of the Department of Labor. Application for or award of any business preference under this Act, as well as contracting with the Nation, any of its related entities, or a certified entity, subjects the transaction to the jurisdiction of the Nation and constitutes consent to resolution of any dispute pursuant to Section 15 herein.

13. Compliance Plan, Notice, and Contracts

A. Compliance Plan

1. All Covered Entities subject to this Act shall, no less than thirty (30) business days prior to commencing business on Nation land, prepare a Compliance Plan, acceptable to the Director of Labor, setting out how the Covered Entity shall comply with the requirements of this Act regarding Nation member and Native American contract and subcontract preference and implementing regulations. A Covered Entity already present on Nation land on the effective date of this Act that has not prepared a Compliance Plan acceptable to the Director of Labor shall come into compliance with the requirements of this Section within sixty (60) days of the effective date of this Act.

2. All Covered Entities are required to report relevant changes regarding the information contained in their Compliance Plans to the Director of Labor within seven days of becoming aware of the changes.

B. Notice

1. Notice to Proposed Contractors. Any office, division, branch, subsidiary entity, or commercial enterprise of the Nation or any of its subsidiary entities, when issuing a notice of a proposed contract to be awarded by it or notice of any other proposed action that will create new contracting or subcontracting opportunities on Nation land, shall include provisions in the notice that fully inform the prospective contractor or other entity about the requirements established by the Act.

C. Contracts Awarded by the Nation, Its Subsidiaries and Commercial Enterprises

1. Contract Language Imposing Contract Preference Requirements. Any office, division, branch, subsidiary entity or commercial enterprise of the Nation or any of its subsidiary entities, when awarding a contract or entering into any other legal agreement with a party that will create new contracting or subcontracting opportunities shall comply with the requirements of this Act in regard to selection of a contractor and shall include provisions that impose the requirements of this Act regarding subcontracting on the contractor or other party, such that the legal document will fully bind the party to comply with the requirements of this Act, notwithstanding any future decision by a court that has the effect of eliminating, reducing, or putting into question the Nation's authority to impose the requirements of this Act on said contractor pursuant to the sovereign authority of the Nation.
2. Department of Labor Approval of Contracts Awarded by Nation Entities. Each office, division, branch, subsidiary entity or commercial enterprise of the Nation or any of its subsidiary entities, prior to issuing notice of a contract of more than \$2500 to prospective contractors or issuing any other notice to prospective employers or entities that will lead to the creation of employment, contracting or subcontracting opportunities on Nation land, and prior to awarding a contract or entering into any other agreement that will lead to the creation of contracting, or subcontracting opportunities on Nation land, shall submit contract provisions imposing the requirements of this Act in the proposed notice or contract to the Director of Labor for approval. The Director shall indicate approval by signing his name at a place provided for Department of Labor approval on the document at issue.
3. Tribal Court Enforcement. The Director of Labor may petition the Ho-Chunk Nation Trial Court to enjoin, upon good cause shown, the issuance or award of any contract or the initiation of any other activity by an office, division, branch, subsidiary entity or commercial enterprise of the Nation or any of its subsidiary entities that will create contracting, or subcontracting opportunities on Nation land which fails to comply with the requirements of this Act.
4. Disseminating Information Regarding This Act. No employee of the Nation shall disseminate any written information on the Nation's Native American preference requirements without first obtaining the Director of Labor's approval of the document.

5. Department of Labor Assumption of Federal Native American Preference Enforcement. If any Federal laws or regulations governing any program administered by any office, division, branch, subsidiary entity or commercial enterprise of the Nation or any of its subsidiary entities authorize a tribe to obtain delegated authority to assume responsibility for enforcing, Native American contracting and subcontracting preference requirements established by Federal law or regulations and enforced by a Federal agency, said office, division, branch, subsidiary entity or commercial enterprise of the Nation or any of its subsidiary entities, shall within ninety (90) days of the effective date of this Act, in coordination with the Director of Labor and the Nation's Department of Justice, apply for such delegated or replacement authority and request that such delegated or replacement authority be vested in the Department of Labor.

14. Technical Assistance.

A. The Director of Labor shall establish a program to provide technical, managerial and other non-financial forms of assistance to Nation members and Native Americans whose place of business is on Ho-Chunk Nation land to assist them to start and operate businesses that will be eligible to benefit from the provisions of this Act.

15. Enforcement.

A. General Provisions.

1. Applicability. The enforcement provisions set out in this Section shall be used to enforce the requirements set out in this Act.

2. Limited Waiver of Tribal Sovereign Immunity. In order to enforce the protections afforded to Cover Entities or Covered Enterprises under this Act, the Nation hereby grants a limited waiver of tribal sovereign immunity from suit to the extent necessary to commence legal action in Ho-Chunk Nation Court to secure interpretation or enforcement of this Act; provided, however, that:

a. The limited waiver applies only to legal action taken by a Covered Entity or Covered Enterprise to enforce the provisions of this Act, and shall not under any circumstances apply to any legal or other action taken by any other person or entity;

b. The relief available pursuant to this waiver shall consist of equitable and injunctive relief and monetary damages not to exceed \$5,000; and

c. In no event shall any judgment or other relief awarded pursuant to this waiver result in the encumbrance of any Nation property or assets.

d. Any such action to enforce the provisions of this Act shall be commenced only in the Ho-Chunk Nation Court. Nothing herein contained is intended to confer any right upon an entity or person who is not covered by

this Act or to provide jurisdiction to any court other than the Ho-Chunk Nation Court.

B. Investigations.

1. The Ho-Chunk Nation Department of Justice may conduct investigations within the jurisdiction of the Nation as the Department of Justice deems necessary to ensure compliance with the terms of the contract(s) entered into for a project.

16. Severability.

A. Should any provisions of this Act be determined invalid by a court of competent jurisdiction, the invalidated provision shall be severed and the remainder of this Act shall not be affected.

17. Coverage and Effective Date.

A. This Act shall be in full force and effect as of the date of the formal approval and enactment by the Ho-Chunk Legislature.

B. This Act shall apply to all contracts entered into after this Act is enacted by the Ho-Chunk Legislature. All contracts entered into prior to the effective date of this Act shall continue to be governed in accordance with the terms of the applicable contract(s) and laws until such time as the contract is up for renewal, at which time the contract shall be governed under this current Act.