



## NCA 17-105

**CLASSIFICATION: #16. EXECUTIVE BRANCH**

**A LAW OF THE MUSCOGEE (CREEK) NATION AMENDING MCNCA TITLE 16, § 9-103., § 9-108., § 9-125, § 9-129, and § 9-135., ENTITLED "Muscogee (Creek) Nation Contracting and Employment Support Act"**

**Be it enacted by the National Council of the Muscogee (Creek) Nation:**

**SECTION ONE. AMENDMENT.** This amendment shall be codified in Title 16, Chapter 9 of the Code of Laws of the Muscogee (Creek) Nation; provided that for purposes of codification of said amendment and its inclusion in pocket parts of the Code of Laws of the Muscogee (Creek) Nation, the Attorney General is hereby authorized: (1) to approve any changes related to the manner in which sections, articles, chapters and sub-chapters are designated consistent with the format in the Code of Laws published in 2010 by West Publishing Company; (2) to include footnoted references to the legislative history in said pocket parts to the Code of Laws and (3) to note in said pocket parts any editorial correction of minor clerical or grammatical errors in the following amendment, without further National Council approval:

**SECTION TWO. AMENDMENT.** MCNCA Title 16, § 9-103 is hereby amended to read as follows:

**TITLE 16. EXECUTIVE BRANCH  
CHAPTER 9. MUSCOGEE (CREEK) NATION  
CONTRACTING AND EMPLOYMENT SUPPORT ACT**

**§ 9-103. Definitions**

G. "Employer" shall mean the Nation, tribal government, all commercial and enterprise entities, all independent agencies and any other person, company, contractor, subcontractor or other entity located in or on Muscogee (Creek) Nation Indian Country or engaged in work with the Muscogee (Creek) Nation, its entities or wholly-owned corporations who employs at least one individual.

M. An employer is "located in or on the Muscogee (Creek) Nation" if, during any portion of a business enterprise or specific project, contract or subcontract, the employer maintains a temporary or permanent office or facility on or performs work on Muscogee (Creek) Nation Indian Country.

N. "Major Muscogee (Creek) Employer" shall mean a business either Indian Owned or not that employs at least fifty (50) Muscogee citizens as either part of the core

crew or project crew, or has at least 75% of its entire workforce comprised of Muscogee citizens as certified by the Contracting and Employment Support Office. A business may be certified as Indian Owned, Major Muscogee Employer, or both.

O. "Nation" shall mean the Muscogee (Creek) Nation.

P. "Tribal citizen" or "citizen" shall mean any person who is a duly enrolled citizen of the Muscogee (Creek) Nation or other Federally Recognized Tribe, unless the context clearly indicates otherwise.

Q. "Contracting and Employment Support" shall mean the Contracting and Employment Support Office.

R. "Contracting and Employment Support Staff" shall mean employees hired by the Contracting and Employment Support Office to carry out the functions of this Act.

**SECTION THREE. AMENDMENT.** MCNCA Title 16, § 9-108 is hereby amended to read as follows:

**§ 9-108. Preference requirements**

B. The Muscogee (Creek) Nation government is an "employer" for the purposes of this title and any of its business entities shall be an employer for the purpose of this title.

C. However, if potential contractors are otherwise equally qualified to complete the relevant contract work and respective bids are otherwise equal, the Muscogee (Creek) Nation, its entities and wholly owned corporations shall apply a preference for Indian-owned economic enterprises in procurement and contracting. Exceptions to this requirement shall be permitted when no Indian-owned economic enterprise is readily available; when the purchase can be made from available federal procurement sources such as the General Services Administration or the Veteran's Administration; when more favorable pricing may be obtained; when the order meets the requirements of a Sole Source Request as defined in applicable procurement policy and procedure; or in an emergency situation as determined by the Principal Chief.

D. A contractor shall extend a preference to qualified individuals with respect to hiring each and every employment position utilizing the Muscogee (Creek) Nation Contracting and Employment Support Office job bank. If the Contractor, Sub-Contractor and the Contracting and Employment Support Office are unable to fill the job positions with qualified employees after applying the preference provisions, then the job positions may be filled by other individuals.

E. Preference shall be given in the following order:

1. First Preference shall be given to Muscogee owned businesses that are Major Muscogee Employers.
2. Second Preference shall go to Muscogee Owned Businesses.
3. Third Preference shall go to businesses that are certified as Indian Owned and that are Major Muscogee Employers.
4. Final Preference shall go to those businesses that are certified as Indian Owned.
5. Any contract awarded to a general contractor may be subcontracted, provided that the Preference requirements stated in this law apply, regardless of the level of subcontracting activity. Failure to apply Preference requirements to subcontracts shall be deemed by the Contracting and Employment Support Office a violation of this law.
6. The Muscogee (Creek) Nation Administration may create procurement and contracting policies and procedures for application of said Preference. The Muscogee (Creek) Nation procurement and/or contracting offices may maintain a list of entities which have previously provided poor performance or engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws.

G. The Nation and its entities shall maintain a "Debarment List" which shall be a list of contractors which have previously provided poor performance or engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws. Nothing shall require the Nation to contract with or hire any economic enterprises which have previously provided poor performance or engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws. Procurement offices shall develop policies and procedures to define poor performance of a contractor/ employer. Documentation of poor performance shall be available and provided to the contractor upon request. The procurement offices shall forward the names of any certified Indian Owned Businesses determined to have poor performances to both the Contracting and Employment Support Office for technical assistance and improvement.

1. Debarment list, Annual Certification; in compiling the debarment list the Contracting and Employment Support Office shall require, on an annual basis, Employers to certify;
  - a. Compliance with the following laws (if applicable to the Employer), and any other such laws deemed appropriate by the Contracting and Employment Support Office: Title VII of the Civil Rights Act of 1964, Fair labor Standards Act, Americans with Disabilities Act, Equal Pay Act, Occupational Health and Safety Act, Davis-Bacon Act; National Labor Relations Act; Muscogee (Creek) Nation Minimum Wage Act and Muscogee (Creek) Nation Contracting and Employment Support Act.
  - b. Whether the employer is currently the subject of any investigation

by any tribal, state or federal government agency or the subject of any lawsuit in any tribal, state, or federal court, concerning an allegation that the employer violated any law set forth above.

2. The period of Debarment by the Contracting and Employment Support shall be for a period of no less than 2 years.

H. The Contracting and Employment Support Office shall address complaints of violations of the law or the Contracting and Employment Support Office Rules; and, should there be any unresolved violations by Departments of the Nation or its Business entities, the Contracting and Employment Support Office shall issue reports of non-compliance to the Principal Chief, National Council and applicable Boards.

**SECTION FOUR. AMENDMENT.** MCNCA Title 16, § 9-125 is hereby amended to read as follows:

**§ 9-125. Filing of complaints by the Contracting and Employment Support Office and proceedings there on generally**

If the Contracting and Employment Support staff has cause to believe that an employer, contractor, subcontractor, or union has failed to comply with this Title or any rules, regulations or orders of the Contracting and Employment Support Act, it may file a complaint with the Contracting and Employment Support Director and notify such party of alleged violations. The Contracting and Employment Support Director will attempt to achieve an informal settlement of the matter, but if an informal settlement cannot be achieved, the Contracting and Employment Support Office may impose penalties as provided in § 9-130 herein. Should any entity fail to comply with orders of the Contracting and Employment Support Office, the Contracting and Employment Support Office may pursue a civil legal action against the entity in the Muscogee (Creek) Nation District Court.

**SECTION FIVE. AMENDMENT.** MCNCA Title 16, § 9-129 is hereby amended to read as follows:

**§ 9-129. Appeals from decisions of Contracting and Employment Support Appeals Board**

There shall be no right of further appeal of any claim beyond the Contracting and Employment Support Appeals Board.

**SECTION SIX. AMENDMENT.** MCNCA Title 16, § 9-135 is hereby amended to read as follows:

**§ 9-135. Contracting and Employment Support Appeals Board**

The Contracting and Employment Support Appeals Board of the Muscogee (Creek) Nation shall consist of an attorney from the Office of the Attorney General, a member of the National Council, the Secretary of the Nation and Commerce, the Secretary of Interior Affairs and the Secretary of Housing.

**SECTION SEVEN. EFFECTIVE DATE.** This Act shall become effective immediately upon proper approval and execution in accordance with the requirements of the Muscogee (Creek) Nation Constitution.

**ENACTED** by the Muscogee (Creek) National Council on this 29<sup>th</sup> day of July, 2017.

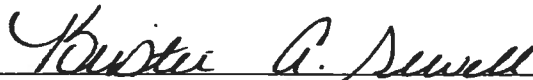
**IN WITNESS WHEREOF**, the Speaker of the Muscogee (Creek) National Council has hereto attached his signature.



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Lucian Tiger III, Speaker  
National Council  
Muscogee (Creek) Nation

**CERTIFICATION**

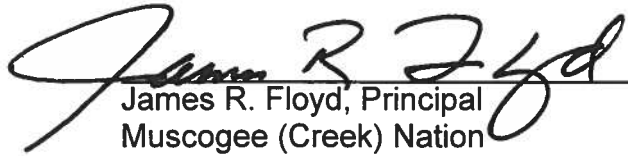
I, the undersigned, certify that the foregoing is a true extract from the minutes of the Muscogee (Creek) National Council comprised of Sixteen members with **Fifteen** members attending this meeting on the 29<sup>th</sup> day of July, 2017 and that the above is in conformity with the provisions therein adopted by a vote of 14 in favor, 0 against, and that said Law has not been rescinded or amended in any way and the above is the signature of the Speaker of the National Council.



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Kristie A. Sewell, Recording Secretary  
Muscogee (Creek) National Council

**APPROVAL**

I, the Principal Chief of the Muscogee (Creek) Nation, hereby affix my signature on this 2nd day of August, 2017 to the above Law, **NCA 17-105** authorizing it to become a Law under Article VI., Section VI., of the Constitution of the Muscogee (Creek) Nation.

  
James R. Floyd, Principal  
Muscogee (Creek) Nation

