

TITLE 32. PROCUREMENT

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CHAPTER 1. BUY CREEK ACT

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1-103.	Directories of Creek-owned businesses.
1-104.	Distribution of list of purchased goods and services.
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Historical and Statutory Notes

<p>NCA 86-36, § 101, provides: “The National council finds: “A. That there is a need to create a relation- ship between Creek owned businesses and the Nation for the purposes of promoting an eco- nomic system.</p>	<p>“B. That it is in the best interests of the Muscogee (Creek) Government to promote and support Creek owned businesses. “C. That Creek businesses that grow and prosper help reduce the unemployment rate in the Nation.”</p>
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Cross References

Tribal employees, Indian preference, see Title 38, § 3-201 et seq.

§ 1-101. Creek preference

The Muscogee (Creek) Nation and any agency and every person acting as purchasing agent for the Nation or any of its agencies shall prefer, in all purchases of goods and services, vendors of Creek citizenry ownership; provided, that such preference shall not be for goods or services of inferior quality to those offered from other vendors, but a differential of not to exceed five percent (5%) may be allowed in the cost of Creek vendors or services.

[NCA 86-36, § 102, passed July 26, 1986, unsigned.]

§ 1-102. Definition of Creek vendors

For the purposes of this chapter, Creek vendors shall be defined as businesses which possess fifty-one (51%) percent of Creek citizenship ownership, and who are registered with the Muscogee (Creek) Nation as a Creek vendor.

[NCA 86-36, § 103, passed July 26, 1986, unsigned; amended by NCA 04-025, § 3, approved Mar. 4, 2004.]

§ 1–103. Directories of Creek-owned businesses

The Executive Branch of the Muscogee (Creek) Nation shall publish annually a directory of Creek-owned businesses and shall distribute this directory to agencies of the Nation and shall distribute upon request to outside agencies who are desiring to do business with minority vendors.

[NCA 86–36, § 104, passed July 26, 1986, unsigned.]

§ 1–104. Distribution of list of purchased goods and services

At least every two (2) years, the Nation shall publish a list of the type of goods and services that are purchased by the Nation and shall distribute this list to Creek-owned businesses.

[NCA 86–36, § 105, passed July 26, 1986, unsigned.]

§ 1–105. Creek vendor bids

Creek vendors who are registered with the Nation shall be invited to bid on procurement contracts offered by the Nation and shall distribute this list to Creek-owned businesses.

[NCA 86–36, § 106, passed July 26, 1986, unsigned; amended by NCA 04–025, § 4, approved Mar. 4, 2004.]

Historical and Statutory Notes

NCA 07–107, § 2, provides:

“Findings: There is a compelling need for establishment of a Uniform Commercial Code (UCC) within the Muscogee (Creek) Nation to promote sustainable and diversified economic development. This UCC helps create an environment that encourages lenders and non-tribal businesses to do business, not only with the Nation, but also with tribal citizens and non-tribally owned Indian businesses, while protecting the interests of all parties engaged in business and financial transactions. This UCC is key to establishment of a governing legal infrastructure that not only supports and strengthens

the effective exercise of tribal sovereignty, but also satisfies the fears that are often expressed by prospective lenders, business people and investors. Lacking a UCC, lenders are less likely to lend, businesses are less inclined to do business, and investors are less likely to invest. This comprehensive UCC, carefully drafted to incorporate important elements which protect tribal sovereign immunity while encouraging business, will provide the certainty and predictability the business and lending community require to invest in the future of the Muscogee (Creek) Nation.”

Cross References

Office of Secretary of Nation, duties and responsibilities, see Title 16, § 8–103.

Library References

Indians ⇄210.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

CHAPTER 2. LOCAL HIRE ACT

Section

- 2-101. Employment opportunities.
- 2-102. Mandatory clause.
- 2-103. Indian owners.
- 2-104. List of available, qualified Indians.

Historical and Statutory Notes

NCA 89-80, § 101, provides:

“Findings:

“A. Many construction, renovation and repair contracts and jobs are let by the Muscogee (Creek) Nation to various contractors.

“B. Many of these projects have no Creek citizens or American Indians employed on them.

“C. Many Creek citizens and American Indians can provide the skilled or unskilled labor required in the performance of these contracts.

“D. In many instances Creek tribal funds are utilized in funding these projects, either in total or on a matching funds basis.

“E. Many of the Native Americans within the boundaries of the Creek Nation are unemployed and in need of employment.”

Cross References

Tribal employees, Indian preference, see Title 38, § 3-201 et seq.

§ 2-101. Employment opportunities

To ensure employment opportunities for Creek citizens and American Indians residing within the boundaries of the Creek Nation, all future construction contracts which utilize Creek Nation funds or Bureau of Indian Affairs funds shall require the contractors to employ a minimum of twenty-five percent (25%) Creek citizens or American Indians who reside within the boundaries of the Creek Nation as a part of the work force for the contracted project/projects.

[NCA 89-80, § 102, passed June 28, 1989, unsigned.]

Library References

Indians ⇌213.

Westlaw Topic No. 209.

C.J.S. Indians §§ 59 to 61.

§ 2-102. Mandatory clause

A “local hire” clause shall be a mandatory part of any Creek Nation construction contract with the provisions that failure by the contractor to comply shall void the contract. This includes community and organization projects funded in whole or in part by Creek Nation.

[NCA 89-80, § 103, passed June 28, 1989, unsigned.]

Library References

Indians ⇌213.

Westlaw Topic No. 209.

C.J.S. Indians §§ 59 to 61.

§ 2-103. Indian owners

Contracting company owners who are Creek citizens or American Indian shall not be included in the twenty-five percent (25%) work force requirement.

[NCA 89-80, § 104, passed June 28, 1989, unsigned.]

Library References

Indians ↻213.
Westlaw Topic No. 209.
C.J.S. Indians §§ 59 to 61.

§ 2-104. List of available, qualified Indians

The Division of Community Services shall establish and maintain a list of available qualified Creek citizens and American Indians residing within the boundaries of the Creek Nation.

[NCA 89-80, § 105, passed June 28, 1989, unsigned.]

Library References

Indians ↻213.
Westlaw Topic No. 209.
C.J.S. Indians §§ 59 to 61.

CHAPTER 3. SURPLUS TRIBAL PROPERTY; PROCEDURES FOR DISPOSAL

Section

- 3-101. Disposal of property.
- 3-102. Certification of property as surplus to needs of program; use of property.
- 3-103. Opportunity to acquire property surplus to needs of the Nation by communities, churches and ceremonial grounds.
- 3-104. Public sale of property surplus to needs of the Nation.

Historical and Statutory Notes

NCA 88-37, § 101, provides:
“Findings:
“The National Council finds that:
“A. These items considered as surplus property could be used by the Chartered Indian Community for their Community needs.
“B. The Community should delegate a representative of that Community with verification, to come to the Tribal Complex and pick these items up on a first come, first serve basis.”

Cross References

Procedures for unclaimed property in possession of Lighthorse Police, see Title 14, § 1-901.

§ 3-101. Disposal of property

A. Property subject to federal rules. Property acquired by the Muscogee (Creek) Nation that is subject to federal rules and regulations for the disposal of property, shall be disposed of in accordance with those federal rules and regulations.

B. Disposal of other property. Disposal of surplus property that is not subject to federal rules and regulations shall be disposed of in accordance with Title 32, §§ 3-103 and 32-3-104, subject to the following exceptions:

1. Property belonging to the Farm shall be disposed of in accordance with procedures in Title 1 of the Muscogee (Creek) Nation Code of Laws.
2. Vehicles determined to be surplus property may be traded in for cash value towards the purchase of a new or used vehicle or sold for parts or scrap.
3. Surplus property that is determined by the Program or Department Supervisor and the Manager of General Services Administration to have a value of less than fifty dollars (\$50) shall not be subject to the requirements of public sale and shall be disposed of by the Program Supervisor with the approval of the Manager of General Services Administration.

[NCA 83-17, § 101, approved April 30, 1983; amended by NCA 02-017, § 1, approved Feb. 28, 2002.]

Cross References

Sale of farm property, see Title 1, § 1-101.

Library References

United States ⇌58(4).
Westlaw Topic No. 393.
C.J.S. United States §§ 101 to 106.

§ 3-102. Certification of property as surplus to needs of program; use of property

A. Certification of property as surplus to needs of program. Prior to disposal or sale, all Tribal personal property, except property belonging to the Farm, shall not be subject to disposition until it is certified by the program or Department Supervisor and the Manager of General Services Administration to be surplus to the needs of the program to which the property was assigned.

B. Disposition of property surplus to needs of program. Upon issuance of certification that property is surplus to the needs of the program pursuant to subsection A of this section, the Manager of General Services Administration shall take possession of the property and make it available for use by other Muscogee (Creek) Nation governmental programs, departments or agencies in accordance with the policies and procedures of the General Services Administration, unless it is certified as surplus to the needs of the Nation pursuant to subsection C of this section.

C. Certification of property as surplus to needs of Nation; disposition. If the Manager of General Services Administration determines at any time that property in the possession of the General Services Administration is surplus to the needs of the Nation, then the Manager shall seek certification that the property is surplus to the needs of the Nation by the Executive Director and the Principal Chief. Upon the issuance of such certification, the property shall be disposed of in accordance with Title 32, §§ 3-103 and 3-104.

[NCA 83-17, § 102, approved April 30, 1983; amended by NCA 02-017, § 2, approved Feb. 28, 2002.]

Library References

United States ⇌58(4).
Westlaw Topic No. 393.
C.J.S. United States §§ 101 to 106.

§ 3-103. Opportunity to acquire property surplus to needs of the Nation by communities, churches and ceremonial grounds

A. Right to acquire property. Subject to the limitations in Title 32, § 3-101, Muscogee (Creek) Nation Indian communities, churches and ceremonial grounds shall have the opportunity to acquire property that has been certified as surplus to the needs of the Nation.

B. Maintenance of list and acquisition. The Manager of General Services Administration shall maintain and make available for inspection a list of such property on an ongoing basis and will donate such property to a Muscogee (Creek) Nation Indian community, church or ceremonial grounds on a first come first serve basis.

C. Publication of list and acquisition. At least annually, and at such other times as deemed prudent, the Manager of General Services Administration shall send notice that property certified as surplus to the needs of the Nation is available for acquisition, together with a list of the surplus property, to all Muscogee (Creek) Indian communities, churches or ceremonial grounds. The notice shall state that a full description of each item may be obtained from the Manager of General Services Administration, that the notified entities shall

have thirty (30) days from the date of the notice to request property on the list, and that they will be granted property from this surplus property list on a first come, first serve basis.

D. Affidavit. An officer or recognized leader of the community, church or ceremonial ground receiving the property shall sign an affidavit that the property is to be used only for official business.

[NCA 83-17, § 105, approved April 30, 1983; amended by NCA 88-37, § 102, approved July 14, 1988; renumbered NCA 83-17, § 103 and amended by NCA 02-017, § 3, approved Feb. 28, 2002.]

Cross References

Farm operations, authorization of expenditures and sales, see Title 1, § 1-101.

Library References

United States Ⓒ58(4).
Westlaw Topic No. 393.
C.J.S. United States §§ 101 to 106.

§ 3-104. Public sale of property surplus to needs of the Nation

A. Publication. After affording communities, churches and ceremonial grounds the opportunity to acquire surplus property pursuant to Title 32, § 3-103, and at such time as the Manager of General Services Administration determines that sufficient property has accumulated for the cost efficient conduct of a public sale, publication notice of the sale shall be given. The notice shall be posted at least five days prior to a public sale, the Manager shall cause notice to be published in the Muscogee Nation News and at least two other newspapers with a circulation in the Muscogee (Creek) Nation's jurisdictional boundaries, notifying interested persons of a date, place, and time a public sale will be held to dispose of surplus property. The publication shall include a statement that persons may write to request the Manager of General Services Administration, Muscogee (Creek) Nation, for to provide a full description of each item.

B. Expenses; conduct of sale. Expenses, including the expense of publication, shall be paid from the proceeds of the sale. All items shall be sold on a first come first serve basis and no property shall be held for an individual. Property shall be priced according to value as determined by the Manager of General Services Administration.

C. Return of sale. Within thirty (30) days from the date of the sale, an itemized list of property sold, including the amount it sold for and to whom it was sold, shall be given to the Controller. This list shall be available to the public upon written request.

D. Proceeds. All proceeds from public sale shall be deposited in the Tribal Treasury.

[NCA 83-17, §§ 103, 104, approved April 30, 1983; amended by NCA 89-12, § 101, approved Feb. 17, 1989; renumbered NCA 83-17, § 104 and amended by NCA 02-017, § 4, approved Feb. 28, 2002.]

Title 32, § 3-104

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Library References

United States Ⓒ58(4).
Westlaw Topic No. 393.
C.J.S. United States §§ 101 to 106.

CHAPTER 4. GOVERNMENT DISCOUNT AIRFARE AND CHARGE ACCOUNT PROGRAM

Section

- 4-101. Definitions.
- 4-102. Participation in Government Discount Airfare and Charge Account Program.
- 4-103. Development of procedures.
- 4-104. Limited waiver of immunity.
- 4-105. Authority of Principal Chief.

Historical and Statutory Notes

NCA 98-06, § 101, provides:

“Findings: The National Council finds that:

“A. The Muscogee (Creek) Nation is a federally recognized tribal government exercising its power of self-governance.

“B. The Muscogee (Creek) Nation has a current compact and/or Self Determination and Education Assistance Act contract, grant, or cooperative agreement with the United States Department of Interior and the Department of Health and Human Services.

“C. The Indian Self-Determination Act Amendments of 1994 (P.L. 103-413), at 25 U.S.C. § 450j(k), give tribal entities access to Government sources of supplies and services, including the Government discount airfare and charge account programs.

“D. By participating in this program, the Nation will expend substantially less money on travel fares by receiving the Government’s discounted airfare rates for Official Government Travel, as hereinafter defined.

“E. In FY 1997, the Nation spent approximately \$124, 630.85 on Official Government Travel.

“F. Currently, in order to receive the Government discount, eligible Indian tribes are required to execute a limited waiver of immunity from suit for the Government and one of the

following in favor of the billing contractor: (1) execute a limited waiver of immunity from suit; or (2) post a cash or surety bond comparable to one-half of the Nation’s annual airfare expenditures for Official Government Travel; or (3) prepayment in an amount equivalent to six months of the Nation’s annual airfare expenditures for Official Government Travel.

“G. According to the U.S. General Services Administration, the approximate average savings for an airline ticket purchased with the Government discount is sixty percent (60%).

“H. Should the Nation choose to post a bond or prepay the billing contractor, said funds will be returned to the Nation after November 29, 1998, provided that the Nation is current on its obligations under the Contract. Thereafter, only the limited waiver of immunity from suit by Government will be required to take advantage of the Government discount airfare and charge account program.

“I. Section 12 of the Nation’s FY 1998 Annual Funding Agreement adopts and incorporates into said Annual Funding Agreement section 450j(k) of the 1994 Self-Determination Act Amendments, which authorizes the Nation to participate the Government discount airfare and charge account program.”

§ 4-101. Definitions

Wherever used in this chapter, the following definitions shall apply:

- A. “Government” shall mean the federal government.
- B. “Government Discount Airfare and Charge Account Program” shall mean the Government Discount Airfare and Travel and Transportation Payment and Expense Control System contracts.
- C. “Nation” shall mean the Muscogee (Creek) Nation.
- D. “Official government travel” shall mean any travel by an officer or employee of the Nation in connection with the performances of work or functions pursuant to the Nation’s compact of self-governance; annual funding agreement with the Department of Interior; contracts with the Indian Health Service; contracts, grants or cooperative agreements with the Bureau of Indian Affairs; other contracts, grants or cooperative agreements with the Government.

[NCA 98-06, § 103, approved March 4, 1998.]

§ 4–102. Participation in Government Discount Airfare and Charge Account Program

The Nation hereby elects to participate in the Government’s Discount Airfare and Charge Account Program.

[NCA 98–06, § 104, approved March 4, 1998.]

Library References

Indians ☞139.
Westlaw Topic No. 209.
C.J.S. Indians §§ 54 to 55.

§ 4–103. Development of procedures

The Principal Chief or his designee and the Health System Board must develop and establish the proper forms and procedures to ensure that employees use the discount fares only when carrying out a compact, contract, grant or cooperative agreement in accordance with the limitations set forth in 25 U.S.C. § 450j(k) as added by Section 102(13) of Public Law 103–413.

[NCA 98–06, § 105, approved March 4, 1998.]

Library References

Indians ☞139.
Westlaw Topic No. 209.
C.J.S. Indians §§ 54 to 55.

§ 4–104. Limited waiver of immunity

The Muscogee (Creek) Nation (hereinafter “Nation”) hereby consents to a limited waiver of its immunity from suit by the U.S. General Services Administration (hereinafter “Government”) for the sole and limited purpose of enforcing the Nation’s contractual obligation under the General Services Administration’s Travel and Transportation Payment and Expense Control System Contract (hereinafter “Contract”) and the Contracts Dispute Act to pay (i) the amount owed to the Government for the discounted travel fares; (ii) late interest penalties, if any; (iii) any additional late payment interest penalties assessed up to one hundred percent (100%) of the late interest penalty; and (iv) the Government’s court costs incurred in bringing such suit, including any attorney fees awarded by the Court; provided, however, such limited waiver of immunity from suit is strictly limited to an enforcement action of said contractual obligations brought by the United States in its own name. For the purpose of this limited waiver of its immunity from suit allowing said enforcement action, the Nation consents to jurisdiction for such enforcement actions in the Courts of the Muscogee (Creek) Nation and the United States District Court wherein jurisdiction and venue lies, and/or the appropriate governmental administrative body of competent jurisdiction; and the corresponding appellate courts of each of the foregoing Courts or administrative bodies. For all other claims, causes of action, theories of relief, remedies, and losses or damages of any kind not expressly authorized herein, the Nation’s immunity from suit is and shall be maintained and preserved. In the event of an award of monetary damages, the Government may obtain satisfaction of any assets of the Tribal organization (excluding real property and improvements by way of

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Title 32, § 4–105

fixtures) for amounts due and owed the Government. In no event shall damages exceed the full amount payable under the contract with the Government.

[NCA 98–06, § 106, approved March 4, 1998.]

Library References

Indians ☞405.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 4–105. Authority of Principal Chief

The Principal Chief is hereby authorized to execute a limited waiver of immunity from suit containing language identical to that set forth in Title 32, § 4–104, and to execute any other application, requests or other documents necessary for the Nation to participate in the Government Discount Airfare and Charge Account Program including the posting of a bond or the of cash prepayment in the amount comparable to six (6) months of the Nation’s annual airfare expenditures for official government travel.

[NCA 98–06, § 107, approved March 4, 1998.]

Library References

Indians ☞139, 216.
Westlaw Topic No. 209.
C.J.S. Indians §§ 54 to 55, 59.

