

TITLE 26 - FINANCE

CHAPTER 1 - FINANCE CODE

ARTICLE 4 – CONTRACTING AND PROCUREMENT AUTHORITY

Legislative History: 26 T.O.C. Chapter One, Article 4, Contracting and Procurement Authority, was enacted and codified by Resolution No. 08-707 effective December 15, 2008; amended by Resolution No. 18-168 effective May 22, 2018 to include contracting authority for the Tohono O’odham Nation Health Care set to expire September 30, 2020. Amended by Resolution No. 20-338 to extend the Tohono O’odham Nation Health Care’s contracting authority sunset date to September 30, 2023.

Related Legislation: The Nation’s chairperson is delegated “limited” authority to enter certain agreements with the Indian Health Service pursuant to Resolution No. 93-240, which became effective July 21, 1993.

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Section 1401 Construction.

This Article shall apply to the Nation's Executive, Judicial, and Legislative Branches and shall not be construed to diminish or alter the contracting and procurement powers of the Nation's enterprises or other subordinate entities that have been expressly vested with such powers in accordance with the laws of the Nation.

Section 1402 Contract Approval Reserved.

Except as expressly provided otherwise by law, the following shall require approval by action of the Legislative Council:

- (A) attorney contracts on behalf of the Nation;
- (B) any agreement waiving the Nation's sovereign immunity;
- (C) any agreement providing that the Nation indemnify a third party in a manner that requires a waiver of the Nation's sovereign immunity in order to be enforceable;
- (D) intergovernmental agreements, including but not limited to agreements with any other government, subdivision, or entity thereof; law enforcement and other memoranda of understanding or agreement; self-determination contracts and annual funding agreements; the tribal-state gaming compact; and cooperative agreements;
- (E) agreements to receive and expend grant funds in accordance with Resolution No. 99-059;
- (F) construction and all other contracts and agreements with a total value in excess of \$500,000;
- (G) agreements to manage and lease or otherwise deal with lands, or interests in land, and resources of the Tohono O'odham Nation, including the use, permit or lease of lands for mining purposes (including oil and gas), and the use, permit, lease, sale or disposition of other resources (including surface and ground waters); and
- (H) any other contract, lease, or other agreement exercising a power expressly vested in the Legislative Council or that is otherwise subject to Legislative Council approval.

Section 1403 Tohono O’odham Nation Health Care Delegation of Contracting Authority

(A) Notwithstanding Section 1402(B)-(F) of this Article, the Tohono O’odham Nation Health Care is authorized to negotiate, execute and otherwise conclude, and administer contracts and agreements

(1) for goods and services, including those with state and federal agencies (“intergovernmental agreements”), that are necessary to maintain operations, services, and to comply with Centers for Medicare and Medicaid Services (“CMS”) conditions of participation (collectively, “Operational Contracts”); provided that the Operational Contracts expend funds pursuant to appropriations or budgets authorized under resolutions or in accordance with the other laws of the Nation; and

(2) with insurance providers, third-party administrators, and other similar type of patient benefit providers that are necessary for TONHC to submit claims and receive payment for services (collectively, “Revenue Contracts”).

(B) The Nation’s liability for an Operational Contract or Revenue Contract entered pursuant to this section shall not exceed, and sovereign immunity is not waived for, an amount greater than the Nation’s applicable insurance coverage or the total value of the contract, whichever is lower.

(C) On a quarterly basis, the TONHC shall provide a summary of all current Operational and Revenue Contracts, which shall include a description of the type of services provided under the contract, the total and annual amount of the contract, the duration of the contract, and a current revenue and expenditure report, to the Nation’s chairperson, Health and Human Services Committee, and Legislative Council.

(D) Unless otherwise extended by Legislative Council resolution, this section and the Operational and Revenue Contracts provisions of Section 1406(A) and (C)(2) will be repealed effective September 30, 2023.

Section 1404 Judicial Branch.

(A) Travel and Procurement. The Chief Judge of the Tohono O’odham Judicial Branch is vested with the authority, in accordance with budgets approved pursuant to the Nation’s laws, to grant final approval for the travel of Judicial Branch employees and officials, and procure Judicial Branch goods and services, subject to the additional requirements of this Article.

(B) Contracting Authority. Subject to the provisions of this Code and other laws of the Nation, and with the exception of contracts and agreements that require Legislative Council approval, the Chief Judge is authorized to negotiate, execute and otherwise conclude, and

administer contracts (1) in amounts not to exceed \$100,000 that are within the Chief Judge's authority as the chief administrator of the Judicial Branch and (2) that expend funds pursuant to appropriations or budgets authorized under resolutions or in accordance with the other laws of the Nation.

(C) The Chief Judge may delegate the authorities stated in this Section to the Deputy Chief Judge.

Section 1405 Legislative Branch.

(A) Travel and Procurement. The Council Chairperson is vested with the authority, in accordance with budgets approved pursuant to the Nation's laws, to grant final approval for the travel of Legislative Branch employees and officials, and procure Legislative Branch goods and services, subject to the additional requirements of this Article.

(B) Contracting Authority. Subject to the laws of the Nation and with the exception of contracts and agreements that require Legislative Council approval, the Legislative Council Chairperson, and in the Council Chairperson's absence, the Council Vice Chairperson, are vested with the authority to negotiate, execute and otherwise conclude, and administer contracts (1) in amounts not to exceed \$100,000, (2) that are within the authorities delegated to the Council Chairperson and Vice Chairperson by the Legislative Council, and (3) that expend funds pursuant to appropriations or budgets authorized under resolutions or in accordance with the other laws of the Nation.

Section 1406 Executive Branch; Nation's Chairperson.

(A) Official Representative. Except as provided otherwise in this Code or any other law of the Nation, the Nation's Chairperson shall be the designated signatory and official representative of the Nation on all contracts and agreements, including the Operational and Revenue Contracts entered pursuant to Section 1403 of this Article.

(B) Travel and Procurement. The Nation's Chairperson is vested with the authority, in accordance with budgets approved pursuant to the Nation's laws, to grant final approval for the travel of Executive Branch employees and officials, and procure Executive Branch goods and services, subject to the additional requirements of this Article.

(C) Contracting Authority. Subject to the laws of the Nation, including the provisions of this Code, and with the exception of contracts and agreements that require Legislative Council approval, the Nation's Chairperson, and in the Chairperson's absence, the Nation's Vice Chairperson, are vested with the authority to negotiate, execute and otherwise conclude, and administer

(1) Executive Branch contracts in amounts not to exceed \$500,000 that expend funds

pursuant to appropriations or budgets authorized under resolutions or in accordance with the other laws of the Nation; and

(2) Operational and Revenue Contracts entered pursuant to Section 1403 of this Article.