



PUEBLO OF ISLETA
P.O. BOX 1270
ISLETA, NM 87022

**PUEBLO OF ISLETA
Resolution No. 2015-069**

Authorizing Amendment to the Pueblo of Isleta Business Opportunity Act to Provide for Indian Preference to the Pueblo's Tribal Chartered Government Corporations

The following resolution was passed at a duly called meeting of the Tribal Council of the Pueblo of Isleta:

WHEREAS, the Pueblo of Isleta is a federally recognized Indian tribe with a written Constitution adopted pursuant to the Indian Reorganization Act and with inherent powers of self-government;

WHEREAS, Tribal Council enacted the Amended and Restated Isleta Business and Employment Opportunity on October 7, 2007 (hereinafter the "Act"), which provides a preference in contracting by the Pueblo to Tribal Member owned contractors, and local Indian owned contractors in the following priority:

- A. A Wholly Isleta Business;
- B. A Majority Isleta Business;
- C. A Community-Owned Business;
- D. An Indian-Owned Business; and
- E. A Non-Community Business.

WHEREAS, Tribal Council enacted a Business Corporations Ordinance (created on September 23, 2010, and amended on April 17, 2012) and issued a Charter to the Isleta Business Corporation (IBC) on December 30, 2010, which was done after the Act was enacted;

WHEREAS, the Act currently does not provide Indian preference for a Pueblo of Isleta Chartered Governmental Corporation like IBC;

WHEREAS, the Isleta Business Corporation requests Tribal Council to amend the Act to include a Pueblo of Isleta Chartered Governmental Corporation like IBC in the preference priority so that IBC can benefit from the preference in contracting along with Tribal Member owned contractors and local Indian owned contractors;

WHEREAS, the Council of the Pueblo of Isleta finds it is in the best interest of the Pueblo of Isleta to amend the Act as described herein.

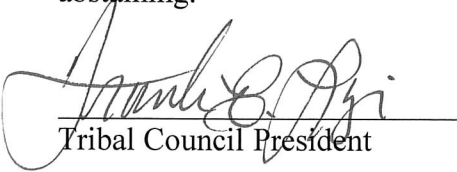
NOW THEREFORE BE IT RESOLVED, that the Tribal Council hereby amends the Act to include a Pueblo of Isleta Chartered Governmental Corporation in the preference priority defined in the Act, as follows:

- A. A Pueblo of Isleta Chartered Governmental Corporation and Wholly Isleta Business;
- B. A Majority Isleta Business;
- C. A Community-Owned Business;
- D. An Indian-Owned Business; and
- E. A Non-Community Business.

BE IT FURTHER RESOLVED, that the Act shall be amended effective immediately upon approval of this Resolution by Tribal Council.

CERTIFICATION

We, the undersigned officials of the Pueblo of Isleta, hereby certify that the foregoing Resolution was duly adopted by the Pueblo of Isleta Tribal Council at a regular meeting held on the 12th day of August, 2015, with a quorum present, with -6- voting for, -1- opposing, and -0- abstaining.


Tribal Council President


Pueblo of Isleta Governor

ATTEST:


Tribal Council Secretary

**AMENDED AND RESTATED
ISLETA BUSINESS AND EMPLOYMENT
OPPORTUNITY ACT
(Current as of August 12, 2015)**

Article I – Purpose; Legislative Findings; Scope and Application

1.01 Purpose. The Preamble to the Pueblo's Constitution states that one of the principal purposes for establishment of the Constitution is to provide for the economic and social betterment of the people of the Pueblo through cooperative effort, industry, and enterprise. In order to enhance and improve the economic and social development of the Isleta Community, it is essential that its residents, both individuals and business enterprises, have business and employment opportunities. The Tribal Government, Tribal Enterprises, and Community-Based Businesses, as hereafter defined, represent a substantial source of business and employment opportunities for the Isleta Community as a result of their need to procure goods and services in connection with their operations. The purpose of this Act is to ensure that procurement of goods and services by the Tribal Government, Tribal Enterprises, and Community-Based Businesses is channeled to support the development and welfare of the Isleta Community to the maximum extent feasible.

1.02 Legislative Findings. The Tribal Council finds that:

A. Channeling purchases of goods and services by Tribal Government, Tribal Enterprises, and Community-Based Businesses to sources and suppliers that are also members of the Isleta Community has a multiplier effect on economic activity within the Isleta Community and provides associated economic and social benefits;

B. Tribal Government and Tribal Enterprises should seek to maximize the benefit to the Isleta Community associated with their operations;

C. The Isleta Community is centered on the Reservation, and Tribal Members of the Pueblo living on or near the Reservation, together with other Indians living on the Reservation, form the core of the Isleta Community;

D. The Pueblo should seek to nurture and develop private businesses on or near the Pueblo to enhance the economic and social welfare of the Isleta Community; this consideration applies particularly to businesses owned by Isleta tribal members who have the deepest roots in the community, and are the most interested in its long-term economic and social development; and

E. Establishing clear and consistent rules, procedures, policies, and practices concerning procurement from qualified sources within the Isleta Community will maximize the business and employment opportunities for members of the Isleta Community and facilitate the Community's economic and social development.

1.03 Scope and Application.

A. This Act shall apply to:

1. All procurement contracts for goods and services to be delivered or performed on the Reservation for consideration of \$5,000 or more that are let by (a) the Tribal Government, including those associated with any Indian Self-Determination Act contract to which the Tribal Government is a party, (b) Tribal Enterprises, and (c) all Community-Based Businesses;
2. All subcontracting for goods and services to be delivered and performed on the Reservation for consideration of \$5,000 or more by any party under contract with the Prime Contractor to the Tribal Government, a Tribal Enterprise, or a Community-Based Business, or an Intermediate Subcontractor; and
3. All employment of persons performing services on the Reservation by a Covered Employer.

B. This Act does not apply to:

1. Any direct contracting by federal or state government departments, agencies, and authorities for goods or services to be delivered or performed on the Reservation, or any subcontract let in the performance of such direct contract with the federal or state government entities; and
2. Any employment of persons by the Tribal Government or Tribal Enterprises, with respect to which employment preference shall be governed by the applicable Personnel Policies and Procedures.

Article II – Definitions

As used for purposes of this Act, the definition of each of the following terms is:

“**Act**” means this Isleta Business and Employment Opportunity Act, including any subsequent amendment hereto.

“**Bid**” means a Bidder’s proposal with respect to a Covered Contract.

“**Bidder**” means a Business that offers or proposes to enter into a Covered Prime Contract with the Tribal Government, a Tribal Enterprise, or a Community-Based Business, or a Covered Subcontract with a Prime Contractor or Intermediate Subcontractor.

“Business Enterprise” means a commercial enterprise providing goods and services to other parties for profit, regardless of the legal form of such enterprise.

“Business Permit” means a permit for the conduct of business on the Reservation issued pursuant to the Pueblo’s Business Permit Policy, or any successor law or policy.

“Commercially Competitive” means, with respect to contract terms other than price, terms and conditions which: (a) do not materially adversely affect the contemplated execution of the project with respect to which a Covered Contract is let, and (b) are not likely to materially adversely affect time of completion, potential liability associated with, or other material aspects of the performance of the Covered Contract, as compared to terms offered by another Qualified Bidder.

“Community-Based Business” means a Business Enterprise not owned by the Pueblo that maintains a place of business on the Reservation pursuant to a Business Permit issued by the Pueblo.

“Community Member Indian” means (a) an enrolled member of the Pueblo, or (b) an Indian enrolled in another tribe and living on the Reservation.

“Community-Owned Business” means a Business Enterprise, in whatever form conducted, of which not less than 51% of the capital, profits, and management interest are held by Indians residing on the Reservation, but which is not a Wholly Isleta Business or Majority Isleta Business.

“Contracting and Employment Preferences” means the preferences with respect to selection of Prime Contractors, Subcontractors, and Covered Employees described in Articles 3 and 4 of this Act.

“Covered Contract” means a Covered Prime Contract or Covered Subcontract.

“Covered Employer” means a Business Enterprise hiring an Employee to perform services for a Covered Contract or Regular On-Reservation Services.

“Covered Lower Level Subcontract” means any contract to supply goods or services with a value in excess of \$5,000, to or for the benefit of a Subcontractor, to facilitate the Subcontractor’s discharge of its obligations under a Subcontract with a Prime Contractor or an Intermediate Level Subcontractor higher in the chain of supply and performance which ultimately facilitates the Prime Contractor’s performance of its Covered Prime Contract.

“Covered Prime Contract” means a legally enforceable commitment of a Business Enterprise, acting as a Prime Contractor, to provide goods or services with a value in excess of \$5,000 to the Tribal Government, a Tribal Enterprise, or Community-Based Business where the delivery of the goods or performance of the services will occur on the Reservation.

“Covered Subcontract” means a legally enforceable commitment of a Business Enterprise, acting as a Subcontractor, to provide goods or services with a value in excess of \$5,000 to a Prime Contractor, or an Intermediate Subcontractor, to enable the Prime Contractor to perform a Covered Prime Contract.

“Directly Affected Party” means (a) the party seeking proposals for a Covered Contract and the Preference Priority Business Enterprise Bidder or potential Bidder whose Qualification is at issue with respect to contracting, and (b) the Covered Employer and the Community Member Indian whose Qualification is at issue with respect to employment.

“Employee” means a person providing labor to a Business Enterprise for a wage, but does not include an independent contractor hired to perform a contract and is not under the direct supervision of a Covered Employer.

“Governor” means the Governor of the Pueblo, or a Lieutenant Governor acting on his behalf in accordance with the laws and traditions of the Pueblo.

“Indian” means an enrolled member of the Pueblo or any other federally recognized Indian tribe or an Alaska Native.

“Indian-Owned Business” means a Business Enterprise, in whatever form conducted, of which not less than 51% of the capital, profits, and management interests are held by Indians, but which is not a Wholly Isleta Business, Majority Isleta Business, or Community-Owned Business.

“Interested Party” means the Prime Contractor, Subcontractor or Employer whose compliance with this Act is at issue and any individual or Business Enterprise who reasonably may claim economic loss resulting from any alleged non-compliance by any such party.

“Intermediate Subcontractor” means a Business Enterprise that is a party to a Covered Subcontract that in turn enters into a Covered Lower Level Subcontract through which to procure goods or services required to meet its performance obligations under its Covered Subcontract.

“Isleta Community” means the enrolled members of the Pueblo of Isleta and other Indians living on the Reservation.

“Majority Isleta Business” means a Business Enterprise, in whatever form conducted, of which not less than 51% of the capital, profits, and management interests are held by enrolled tribal members of the Pueblo, but which is not a Wholly Isleta Business.

“Non-Community Business” means a Business Enterprise, in whatever form conducted, which is not a Wholly Isleta Business, Majority Isleta Business, Community-Owned Business, or Indian-Owned Business.

“Pre-Existing Permanent Employees” means full time Employees who have been continuously employed by the Covered Employer for not less than three months prior to first performing services with respect to a Covered Contract or Regular On-Reservation Services.

“Preference Contracting List” means a list prepared by the Tribal Preference Office and delivered to a Procurement Officer identifying all Preference Priority Business Enterprises registered with the Tribal Preference Office whom the Tribal Preference Office determines to be Qualified with respect to a particular Covered Contract on which Bids are to be solicited.

“Preference List” means either a Preference Contracting List or a Preference Worker List.

“Preference Pricing Range” means the definition of such term stated at Section 3.04.

“Preference Priority Business Enterprise” means a Wholly Isleta Business, Majority Isleta Business, Community-Owned Business, or Indian-Owned Business.

“Preference Registry” means the registry for Preference Priority Business Enterprises and Community Member Indians maintained by the Tribal Preference Office pursuant to Section 5.02.

“Preference Worker List” means a list prepared by the Tribal Preference Office and delivered to a Covered Employer identifying all Community Member Indians registered on the Preference Registry who are Qualified to hold a particular position for which the Covered Employer is hiring.

“Prime Contractor” means a Business that enters into a Covered Prime Contract with the Tribal Government, a Tribal Enterprise, or a Community-Based Business.

“Procurement Officer” means the person authorized and responsible for selecting a Prime Contractor or Subcontractor to perform a covered Contract, whether or not such selection is subject to approval or consent by another official or body.

“Pueblo” means the Pueblo of Isleta, a federally-recognized Indian tribe.

“Pueblo of Isleta Chartered Governmental Corporation” means an entity chartered by the Pueblo of Isleta pursuant to Title I of the Business Corporation Ordinance, as may be amended from time to time.

“Qualification” means an ability or attribute of a Business Enterprise that is reasonably necessary to assure that such business Enterprise will satisfactorily perform a Covered Contract, or of an Employee to perform a particular job.

“Qualified” means, with respect to any Bidder, Prime Contractor, or Subcontractor, a Business Enterprise having such bonding capacity, source of supply, experience, technical proficiency, and other attributes or abilities as may be reasonably necessary to assure the other party to a Covered Contract that such Business Enterprise is capable of performing in a timely and satisfactory manner any Covered Contract that may be entered into with such Business Enterprise. It also means an Employee possessing the necessary Qualifications to perform a particular job.

“Regular On-Reservation Services” means an Employee performing services on the Reservation each month for three consecutive months and at an average or not less than five hours per week, or who is intended to perform such services if the position has not been previously filled.

“Reservation” means all land located within the exterior boundaries of the Pueblo of Isleta and all land now or hereafter held in trust for the benefit of the Pueblo by the United States.

“Subcontractor” means a Business Enterprise that enters into a Covered Subcontract with a Prime Contractor or an Intermediate Subcontractor.

“Tribal Council” means the Tribal Council of the Pueblo.

“Tribal Enterprise” means a commercial for-profit business enterprise conducted by the Pueblo as an unincorporated unit or as a separate entity formed and wholly owned by the Pueblo, including without limitation the Isleta Casino & Resort and all its subunits, the Isleta One Stop, and any other Business Enterprise carried on by the Pueblo.

“Tribal Government” means the Pueblo of Isleta, its three branches, and all of its departments, agencies, and instrumentalities, other than Tribal Enterprises.

“Tribal Preference Office” means the Tribal Preference Office established pursuant to Section 5.01.

“Wholly Isleta Business” means a Business Enterprise, in whatever form conducted, of which all (100%) capital, profits, and management interests are owned by one or more enrolled tribal members of the Pueblo.

Article III – Contracting Preference

3.01 **Prime Contractor Preference.** In its selection of a Prime Contractor and letting of any Covered Prime Contract, the Tribal Government, a Tribal Enterprise, and any Community-Based Business shall comply with and adhere to the following order of priority with respect to any Qualified Bidder offering to supply the requested goods or services at a price that is within the Preference Pricing Range and on terms that are Commercially Competitive:

- A. A Pueblo of Isleta Chartered Governmental Corporation and a Wholly Isleta Business;
- B. A Majority Isleta Business;
- C. A Community-Owned Business;
- D. An Indian-Owned Business; and
- E. A Non-Community Business.

3.02 Subcontractor Preference. In its selection of a Subcontractor with respect to any Covered Subcontract, a Prime Contractor and any Intermediate Subcontractor shall comply with and adhere to the following order of priority with respect to any Qualified Bidder offering to supply the requested goods or services at a price that is within the Preference Pricing Range and on terms that are Commercially Competitive:

- A. A Pueblo of Isleta Chartered Governmental Corporation and a Wholly Isleta Business;
- B. A Majority Isleta Business;
- C. A Community-Owned Business;
- D. An Indian-Owned Business; and
- E. A Non-Community Business.

3.03 Inclusion of Obligation to Comply with Act in All Covered Contracts. Each Covered Prime Contract entered into by the Tribal Government, a Tribal Enterprise, or a Community-Based Business shall include in said Covered Prime Contract (a) a covenant that the Prime Contractor will comply with and adhere to the Contracting and Employment Preferences mandated by this Act, (b) an obligation to include in any Covered Subcontract a covenant that the Subcontractor comply with and adhere to the Contracting and Employment Preferences mandated by this Act, and (c) an obligation to include, in any Covered Lower Level Subcontract used, directly or indirectly, to acquire goods and/or services to perform the Covered Subcontract, a covenant that the Subcontractor comply with and adhere to the Contracting and Employment Preferences mandated by this Act.

3.04 Preference Pricing Range. For purposes of this Act, Preference Pricing Range means a price for performing a Covered Contract offered by a Qualified Bidder that is a Preference Priority Business Enterprise which is not in excess of the lowest responsive bid; provided that if a bid submitted by a Preference Priority Business Enterprise is not more than 5% in excess of the lowest responsive bid, such Preference Priority Business Enterprise shall have the opportunity to lower its bid to not more than the otherwise lowest responsive bid and bring its bid within the Preference Pricing Range.

3.05 Determining Necessary Contractor Qualifications. The Procurement Official of any Tribal Government, Tribal Enterprise, Community-Based Business, Prime Contractor, or Subcontractor that intends to solicit proposals from Bidders to enter into a Covered Contract shall prepare a proposed list describing in reasonable detail any proposed Qualifications that will be imposed to determine whether a Bidder is a Qualified Bidder and the reason for imposing each such Qualification, and submit such list of Qualifications to the Tribal Preference Office. Said Procurement Official shall consult with the Tribal Preference Office concerning the basis for any such Qualification, as requested for the Tribal Preference Office, and shall respond in writing to any objection of the Tribal Preference Office regarding the commercial necessity of any Qualification that may reduce the number of Preference Priority Business Enterprises that are Qualified Bidders. The Procurement Officer and Tribal Preference Office shall attempt to resolve any disagreement concerning the necessity of any Qualification informally and in good faith. If the Procurement Officer and Tribal Preference Office do not agree to a final list of Qualifications for Bidders on any Covered Contract, either party may petition the Hearing Officer for review of the matter pursuant to Section 6.03.

3.06 Solicitation of Proposals from Preference Priority Business Enterprises.

A. Prior to soliciting proposals for any Covered Contract, the responsible Procurement Officer shall obtain from the Tribal Preference Office a Preference Contracting List. The Procurement Officer shall solicit a bid for the Covered Contract from each such potentially Qualified Preference Priority Business Enterprise identified on the Preference Contracting List.

B. If the Procurement Officer believes that any Business Enterprise on the Preference Contracting List is not Qualified with respect to the Covered Contract for which Bids are solicited, he shall inform the Tribal Preference Office in writing and shall be afforded the opportunity to discuss the issue of such Business Enterprise's Qualifications with the Tribal Preference Office. The Tribal Preference Office shall then issue a written determination on whether the Business Enterprise at issue is Qualified. If the Tribal Preference Office determines that the Business Enterprise is Qualified, a Bid shall be solicited from such Business Enterprises without prejudice to the right of the Procurement Officer to appeal the issue of the Qualification pursuant to Section 6.03.

C. The Procurement Officer's responsibility and obligation shall be to obtain a Preference Contracting List for each Covered Contract for which Bids are solicited, and, subject to the Procurement Officer's right to question and object to the Qualification of any Business Enterprise on the Preference List described above, to solicit Bids from each Business Enterprise on the Preference List. The Procurement Officer shall have no obligation to identify Qualified Preference Priority Business Enterprises not on the Preference List received from the Tribal Preference Office, although the Procurement Officer may do so at his or her option, nor shall the Procurement Officer be obligated to solicit a Bid from any Business Enterprise claiming to be a Qualified Preference Priority Business Enterprise not appearing on or added to the Preference Contracting List by the Tribal Preference Office.

D. Notice of each Covered Contract of which the Tribal Preference Officer is notified, the Qualifications List related thereto, and when prepared by the Tribal Preference Officer, the Priority Contracting List for said Covered Contract shall be posted and available for review in the Tribal Preference Office. If any Preference Priority Business Enterprise that is not included on a Preference Contracting List believes that it is Qualified, it may petition the Tribal Preference Office in writing to be added to the Priority List and provide evidence that it meets the Qualifications stated on the Qualifications List. The Tribal Preference Office shall consider the petition and evidence and reach a determination whether to add such Priority Preference Business Enterprise to the Priority List. If there is any uncertainty on the issue of Qualification, the Tribal Preference Office shall err on the side of such Priority Preference Business's Qualification and include it on the Priority List, provided that nothing shall extend the Bid solicitation period stated in the request for proposals for such Covered Contract, and the added Priority Preference Business Enterprise shall be responsible for responding with a Bid within the allotted period. The Procurement Officer may object to any such addition on the grounds of Qualification by written notice to the Tribal Preference Office and reserve his or her right to contest Qualification pursuant to Section 6.03 hereof, but shall solicit a Bid from the Preference Priority Business Enterprise added to the Preference List.

3.07 Bid Opening and Covered Contract Award.

A. In accordance with the process and at the time described in the request for proposals for a Covered Contract, the Bids for a Covered Contract shall be opened. The Covered Contract will be awarded to the Qualified Preference Priority Business Enterprise submitting a bid within the Preference Pricing Range and on Commercially Competitive terms which have the highest priority status under Section 3.01 or 3.02, whichever applies. If there are more than one such Bidder with the same priority status, the Procurement Officer shall choose among them on the basis of price or any other commercially reasonable basis consistent with the request for proposals.

B. The Procurement Officer shall notify the Tribal Preference Office of the time and place of each Bid opening for a Covered Contract. The Tribal Preference Office shall have the right to attend and monitor any Bid opening.

C. If the Tribal Preference Office does not attend the Bid opening, the Procurement Officer shall submit to the Tribal Preference Office a written summary of the Bids and the basis on which the Covered Contract was awarded.

D. If the Procurement Officer believes that the Preference Priority Business Enterprise that would otherwise be entitled to the award of the Covered Contract is not Qualified, and the Procurement Officer has previously objected to deletion from the Qualification list of a Qualification on which such belief is based, or the inclusion of such Preference Priority Business Enterprise on the Preference Contracting List for such Covered Contract pursuant to Sections 3.05 and 4.05, respectively, the Procurement Officer may petition the Tribal Preference Office to allow such Bid to be disregarded. The Tribal Preference Office shall issue a written determination on said petition to the Procurement Officer submitting such petition and the Preference Priority Business Enterprise that is the subject of it. If either recipient is not satisfied with such determination, they may petition the Hearing Officer for review pursuant to Section 6.03. While the appeal of any Qualification determination of the Tribal Preference Office is pending, the award of the Covered Contract shall be held in abeyance.

E. If any Preference Priority Business Enterprise's Bid is disregarded in accordance with an unappealed determination of the Tribal Preference Office, or a final determination on appeal under Sections 6.03 and 6.04, the Covered Contract shall be awarded to the next highest priority Qualified Preference Priority Business Enterprise submitting a Bid in the Preference Pricing Range and on terms that are Commercially Competitive.

F. Only if there is no Preference Priority Business Enterprise that submits a Bid within the Preference Price Range and on Commercially Competitive terms, may a Covered Contract be awarded to a Non-Community Business.

Article IV – Employment Preference

4.01 Employment Preference. Any Covered Employer seeking to hire an Employee to perform services with respect to a Covered Contract or to perform Regular On-Reservation Services shall hire a Qualified Community Member Indian if one is available and identified to such Business Enterprise by the Preference Worker List supplied by the Tribal Preference Office to said Business Enterprise pursuant to Section 4.02. Nothing herein shall be construed as preventing a Covered Employer from obtaining personal services with respect to a Covered Contract or Regular On-Reservation Services through Pre-existing Permanent Employees; provided that reassignment of Pre-Existing Permanent Employees shall not be used as a pretext for avoiding the Employment Preference provisions of this Article IV when the Business Enterprise is adding workforce as a result of the Covered Contract or Regular On-Reservation Services.

4.02 Hiring Procedures. Prior to any public notice or advertisement of its intent to hire any Employee to perform services with respect to a Covered Contract or to perform Regular On-Reservation Services, a Covered Employer shall notify the Tribal Preference Office of such intent to hire and obtain a Preference Worker List identifying all Community Member Indians registered with the Tribal Preference Office who the Tribal Preference Office determines to be Qualified to hold the offered position. The Tribal Preference Office shall consult with the hiring Covered Employer to determine the necessary Qualifications for a position, and shall include on the Preference Worker List only Community Member Indians who are reasonably Qualified to hold such position based on the information available to the Tribal Preference Office from its records. The hiring Covered Employer shall diligently seek to contact the persons identified on the Preference Worker List to determine their availability for the open position and shall hire a Qualified Community Member Indian to fill such position if available. Only if no Qualified Community Member Indian is available shall a Covered Employer hire another person to fill the offered position. Before hiring any person other than a Community Member Indian, the Covered Employer shall provide written notice to the Tribal Preference Office describing its efforts to hire a Community Member Indian for such position and the basis of the Business Enterprise's determination that no Qualified Community Member Indian is available to fill such position.

4.03 Staffing Plan. Any Covered Employer that is a party to a Covered Contract through which such Business Enterprise will receive in excess of \$100,000 of consideration, or who will employ persons to perform Regular On-Reservation Services for compensation of more than \$20,000 per year allocable to their performances of services on Reservation, shall, before beginning such activity, consult with and deliver to the Tribal Preference Office a staffing plan describing any hiring associated with such activity, how such Business Enterprise will comply with this Act, and such other steps as said Business Enterprise may reasonably take to maximize employment opportunities for Community Member Indians.

4.04 Preference Concerning Employment Decisions. In addition to the hiring preference required by this Article IV, when making any and all employment decisions, including without limitation, promotion, demotion, layoff, reassignment, training, compensation adjustment, and other matters, affecting any member(s) of its workforce performing a Covered

Contract or performing Regular On-Reservation Services, a Business Enterprise shall give preference to Community Member Indians over other persons.

4.05 Qualification Determinations. If a Business Enterprise engaged in hiring that is subject to this Article IV disputes whether a Community Member Indian listed on a Preference Worker List is Qualified to hold the position with respect to the list prepared by the Tribal Preference Office, the Business Enterprise may petition the Tribal Preference Office for a redetermination on the issue of such person's Qualification. The Tribal Preference Office shall issue a written determination on said petition to the Business Enterprise and subject Community Member Indian. If either party receiving the determination is not satisfied, said determination may be appealed to the Hearing Officer pursuant to Section 6.03.

4.06 Unionized Prime Contractor, Subcontractor or Covered Employer.

A. As a condition to the award of a Covered Contract or grant of a Business Permit to conduct business on the Reservation, any Covered Employer having a collective bargaining agreement with one or more labor unions must obtain written agreement from said union(s) stating that it/they will comply with the Community Member Indian preference requirements of this Act with respect to referral of workers to perform services for Covered Contracts and Regular On-Reservation Services. Such agreement shall be subject to approval by the Tribal Preference Office. Such agreement may provide that the Covered Employer shall make initial job referral requests to the union. However, if the union does not have a Qualified Community Member Indian applicant on any of its out-of-work lists, the union shall contact the Tribal Preference Office. If the Tribal Preference Officer can identify a Qualified Community Member Indian, he/she will be referred through the union hiring hall to the job site. The union may not refer a person other than a Community Member Indian until it has contacted the Tribal Preference Office and the Tribal Preference Office has certified that there are no Qualified Community Member Indians available to take the open position.

B. No Community Member Indian shall be required to travel to a site off the Reservation to be processed by the union hiring hall. Such processing shall be done on Reservation by telephone, mail, fax or e-mail. Any Qualified Community Member Indian who does not wish to become a member of the union shall be granted a temporary work permit for the duration of the project for which he/she is hired. Said Qualified Community Member Indian shall not be required to pay union dues, an initiation fee or contribute to standard benefits or programs from which they will derive no benefit, but shall be paid union scale wages.

C. This section shall not limit a Covered Employers ability to perform a Covered Contract or provide Regular On-Reservation Services with unionized Pre-Existing Permanent Employees, but the Covered Employer shall provide the Tribal Preference Office with satisfactory evidence that all of its unionized workforces used on Reservation which is not hired in accordance with this Act qualifies as Pre-Existing Permanent Employers.

ARTICLE V – Tribal Preference Office

5.01 Establishment. There is hereby established a Tribal Preference Office which shall consist of (a) a Tribal Preference Officer selected by the Tribal Council in accordance with the Pueblo's personnel policies, procedures, and practices applicable to selection of department heads, and (b) such other staff authorized by the Tribal Council and funded by Tribal Council appropriations. The Tribal Preference Officer shall possess such authority and responsibility as this Act grants to and imposes on the Tribal Preference Office. The Tribal Preference Officer may delegate such authority and responsibility to staff, provided that the Tribal Preference Officer shall remain responsible for the exercise of the authority so delegated.

5.02 Registry. The Tribal Preference Office shall maintain a Preference Registry for Preference Priority Business Enterprises and Community Member Indians eligible for the business contracting and employment preferences provided by Articles III and IV, respectively. The Tribal Preference Office shall solicit and obtain such information and verify such facts as may be necessary to determine eligibility for the preferences provided by this Act, and of the Qualifications of registrants for various contracting and employment opportunities. It shall be the responsibility of Business Enterprises and Community Member Indians wishing to obtain the benefits of the Act to register with the Tribal Preference Office and to maintain current all information in their file. The Tribal Preference Office shall advertise to the Isleta Community the availability and benefit of registration in the Preference Registry, and assist Preference Priority Business Enterprises and Community Member Indians to register and provide necessary and appropriate information concerning their Qualifications for contracting and employment. The Tribal Preference Office shall have the authority and responsibility to investigate and verify the accuracy of information provided by registrants to assure that all information contained in the Preference Registry is reasonably accurate.

5.03 Preparation of Preference Lists. Upon receipt of notice pursuant to Sections 3.06 and 4.02, respectively, the Tribal Preference Office shall prepare a Preference Contracting List and/or a Preference Worker List, as directed by such Sections, and deliver such list to the appropriate party. Any such Preference List shall be prepared in good faith on the basis of the information available to the Tribal Preference Office from the Preference Registry. In making determinations regarding Qualification for purposes of the preparation of lists under this Section, the Tribal Preference Office shall consider the purpose of this Act to maximize business and employment opportunities, and shall equally weigh the importance of credible, accurate, and fair determinations regarding Qualifications on the effective conduct of business on the Reservation. The Tribal Preference Office shall seek to make all determinations with respect to Qualification based on open dialogue and consultation with the parties affected, and shall seek to resolve any disagreement concerning Qualifications without the necessity for formal proceedings under Article VI.

5.04 Monitoring and Enforcing Compliance.

A. In addition to preparing Preference Lists and issuing interpretive decisions and rulings in accordance with the provisions of this Act, the Tribal Preference Office shall monitor and enforce compliance with this Act by all persons.

B. The Tribal Preference Office shall diligently seek to ensure that all claims by Business Enterprises and individuals for Preference Priority status claimed are valid, that they are entitled to assert the Qualifications which they claim, and all other information, data, and documentation submitted and maintained in the file held by the Tribal Preference Office is true, accurate, and complete.

C. The Tribal Preference Office shall diligently seek to ensure that all parties to, or persons proposing to enter into, a Covered Contract, and all Business Enterprises employing Employees to provide Regular On-Reservation Services, comply with the Preference obligations, requirements, and procedures described in Articles III and IV of this Act.

D. The Tribal Preference Office shall seek to ensure compliance with this Act by all persons subject to its terms by informal means and consultation to the extent that the nature of any perceived non-compliance permits. In the exercise of its enforcement and monitoring authority, the Tribal Compliance Office shall consider the past compliance history and good faith of the parties involved, and shall seek to remedy any non-compliance through agreement and consensus to the extent feasible.

E. Only if the conduct at issue or nature of any non-compliance require in the opinion of the Tribal Preference Office, shall it commence formal enforcement proceedings in accordance with Section 6.02.

5.05 Training and Assistance. To the extent feasible within the budget appropriated to it by the Tribal Council, the Tribal Preference Office shall seek to provide, sponsor, and/or otherwise make available to Preference Priority Business Enterprises and Community Member Indians training and other opportunities to improve their Qualifications so that they may maximize the opportunities provided by this Act. The Tribal Preference Office shall coordinate its efforts regarding training and skill-building with the appropriate Tribal Departments and Programs. The Tribal Preference Office shall also seek to encourage, assist, and cooperate with Prime Contractors, Subcontractors, Covered Employees, and others to offer mentorship, apprenticeship, training, and other similar programs to Preference Priority Business Enterprises and Community Member Indians to enhance the skills, experience, and Qualifications of business and labor within the Isleta Community.

ARTICLE VI – Enforcement

6.01 Interpretive Determinations and Rulings. In addition to petitions for determinations on the issue of Qualifications under Sections 3.05 and 4.05, any Directly Affected Party may petition the Tribal Preference Office for a determination concerning any other matter concerning the application of Preference policy pursuant to Articles III and IV, such as whether a Bid is within the Preference Pricing Range and its terms are Commercially Competitive. The Tribal Preference Office shall promptly issue a determination to the Directly Affected Parties. The determination of the Tribal Preference Office may be appealed by any Directly Affected Party pursuant to Section 6.03.

6.02 Compliance Determinations. If the Tribal Preference Office identifies a possible instance of non-compliance with the Act and is unable to resolve the issue of non-compliance informally or determines that efforts for informal resolution are not feasible or appropriate in the circumstances, the Tribal Preference Office shall issue a notice of probable non-compliance to the party whose compliance is in question. Such party shall be afforded the opportunity to submit documentation and evidence and to meet with the Tribal Preference Office to show that such party is in compliance. The Tribal Preference Office may allow another Interested Party to intervene and may hold a hearing in which all Interested Parties may participate, as the Tribal Preference Office may determine appropriate. After meeting with the party whose compliance is in question, or completion of the hearing if one is held, the Tribal Preference Office shall issue a determination on compliance. The party whose compliance is the subject of such determination and any other Interested Party who is permitted to intervene may appeal such determination to the Hearing Officer pursuant to Section 6.03.

6.03 Hearing Officer; Appeals.

A. There is hereby created the position of Hearing Officer to hear and decide appeals from the determinations of the Tribal Preference Office. The Tribal Council shall select one or more persons who have applied for such positions in accordance with the Pueblo's personnel policies, procedures, and practices to serve as the Hearing Officer(s) under this Act. The Hearing Officer(s) shall be compensated by hearing stipend at a rate fixed by the Tribal Council, or on such other basis as the Tribal Council may determine.

B. Within three (3) Business Days of receipt of a written determination from the Tribal Preference Office, (1) a Directly Affected Party to an Interpretive Ruling proceeding pursuant to Section 6.01, or (2) an Interested Party to a Compliance Proceeding under Section 6.02, may appeal the Tribal Preference Officer's determination by written notice to the Hearing Officer reasonably describing the basis of the appeal. The Hearing Officer shall within five (5) Business Days of receipt of the Notice of Appeal conduct a hearing de novo at which the Hearing Officer shall receive such testimony and evidence and hear such argument as shall be necessary to fully develop a record in the matter and reach a decision. Within five (5) Business Days of the hearing, the Hearing Officer shall render a written decision sustaining, reversing, or modifying the written determination of the Tribal Preference Office that is the subject of the appeal. Unless the Hearing Officer's decision is appealed pursuant to Section 6.04 within five (5) Business Days of receipt by a Directly Affected Party or Interested Party, as the case may be, the Hearing Officer's decision shall be final.

6.04 Appeal of Hearing Officer's Decision.

A. Appeals from a Hearing Officer's decision affecting a Covered Prime Contract to which the Tribal Government or a Tribal Enterprise is a party, or a Subcontract providing goods or services necessary to perform such Covered Prime Contract, shall be submitted and decided by the Tribal Council in the exercise of its authority over tribal contracting, which could otherwise be compromised as a result of the Preference proceeding, provided, however, that if the Tribal Council determines that the decision on appeal will not have

a material effect on its contracting powers it may refer the matter to the Tribal Court for proceedings on the appeal. All other appeals of a Hearing Officer's decision shall be to the Tribal Court.

B. Notice of any appeal of a Hearing Officer's decision shall be filed with the Tribal Council Secretary and Tribal Court within five (5) Business Days of the appellant's receipt of the decision. Timely notice of appeal shall be required, or the appeal right waived and the Hearing Officer's decision shall be final.

C. The appeal shall be decided on an expedited basis based on the record in the proceeding before the Hearing Officer. An oral presentation of position shall be permitted before Tribal Council, or oral argument before the Tribal Court, as the case may be, to fully state the parties' positions on the issues, provided that no new evidence or testimony not appearing on the record before the Hearing Officer shall be considered.

D. The Hearing Officer's decision shall be sustained unless determined to be arbitrary and capricious, not supported by the evidence in the record, or otherwise not in accordance with this Act or other applicable law of the Pueblo.

E. Within five (5) Business Days of the presentation to Tribal Council/argument before Tribal Court, a final decision shall be rendered sustaining, reversing, or modifying the decision of the Hearing Officer. Appeal of a decision of the Tribal Court on any such appeal may be made to the Isleta Appellate Court only on the issue of whether such decision of the Tribal Court is in accord with the Constitution and laws of the Pueblo, and the Isleta Appellate Court shall not re-examine any evidence or factual matter upon which the Tribal Court's decision is based.

6.05 Sanctions for Non-Compliance. If any Prime Contractor, Subcontractor, or Covered Employer is determined to be in non-compliance with this Act, the following sanctions may be applied based upon the nature and severity of the instance of non-compliance:

- A. A written finding of non-compliance and agreement to cease and desist further non-compliance;
- B. A remedial order to disgorge any profit or monetary benefit determined to have directly resulted from the instance of non-compliance to the Pueblo;
- C. A civil penalty in an amount of not more than \$500 per day or \$5,000 in the aggregate;
- D. The suspension or revocation of a Covered Contract with respect to which the non-compliance occurred; or
- E. The suspension or revocation of the privilege of doing business on the Reservation.

ARTICLE VII – Miscellaneous

7.01 Reports to Tribal Council. The Tribal Preference Office shall render quarterly annual reports to the Tribal Council concerning the effectiveness of this Act, any issues that the Tribal Preference Office has encountered in its application and enforcement, and any recommendations that the Tribal Preference Office may have with respect to amendment of the Act.

7.02 Regulations and Procedures. The Tribal Preference Office may establish such regulations and procedures to effectively administer this Act, provided that all such regulations and procedures shall be submitted to the Tribal Council for review at least thirty (30) days before their effective date, and no such regulations or procedures shall take effect if disapproved by the Tribal Council.

7.03 Severability. If any provision of this Act is determined by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall remain in force and effect and be administered in accordance with their terms, but without reference or effect of the invalid provision.

7.04 Sovereign Immunity. Nothing contained herein shall be construed as a waiver of sovereign immunity by the Pueblo on its own behalf or with respect to any of its officials, employees or agents.