

Dennis Brunner: Senior Advisor, Implementation Branch, AANDC

I provide advice and guidance to federal government contracting officers, project authorities, anyone who has a deliverable of a good, service or construction in a land claim agreement area. I'd like to give you an overview of Canada's contracting process, and how the CLCA economic measures obligations fit into Canada's contracting process. We'll discuss tools, some specific awareness sessions that Aboriginal Affairs provides to contracting officers.

Canada's contracting process is of interest to our friends in the Coalition, to understand what Canada's contracting process is and how it works. For our federal partners here, if you're a project authority it's good to understand what type of box our contracting folks are working in. The Treasury Board tend to frown on contracting officers being creative. There are government contract regulations, there are contracting policy notices, there are Public Works and Government Services Canada's Supply Manual – all of these tools are used by contracting officers in their day to day activity. Throw into the mix the need to address the obligations to land claim agreements, and things can get complex.

The objectives of Canada's contracting process is to acquire goods, services and construction in a manner which enhances access, provides competition, treats industry fairly, so all potential suppliers of a particular of a particular requirement are subject to the same conditions. Results in best value or optimum balance of overall benefits to the Crown and the Canadian people. It's fair, transparent and open.

After the Gomery Commission, this is what Canada's contracting process is all about. Canada's contracting process is very well respected around the world. Numerous countries from South America, Europe, etc. come and receive demonstrations on how Canada's contracting process works.

Procurement Planning

The contracting officer reviews the Statement of Work for the requirement to determine the method of supply:

- Competitive Process
- Post in the Federal Government Electronic Tendering System - Buyandsell.gc.ca
- Standing Offer
- Supply Arrangement
- Acquisition Cards
- Non-Competitive Process

Our friends in Public Works and Government Services Canada (PWGSC) are setting up more streamlined tools for contracting officers to use, which cuts down on the paperwork. Canada buys \$21 billion in goods, services or construction every year, and there are fewer contracting officers to do this work than in the past.

Competitive Contracting

Request for Proposals (RFP) are used when procurement activity is not covered by a pre-existing Standing Offer or Supply Arrangement. This satisfies Canada's obligations under the North American Free Trade Agreement. It is considered to be the most fair, transparent and open methodology for obtaining goods or services.

Buyandsell.gc.ca (Federal Government Electronic Tendering System)

This system allows suppliers to view bid opportunity notices and to request bid solicitation documents. It also allows potential suppliers to download documents from the Buyandsell.gc.ca website. This is the most economical and fastest delivery option available, as well as ordering documents using traditional methods; phone, fax, or written request.

Basic services are free but suppliers subscribing to Buyandsell.gc.ca's additional services or profiles are required to pay a service fee.

The Standing Offer

“A *standing offer agreement* is a price agreement between the Government and a supplier, wherein the supplier agrees to provide, on demand, specified goods or services under specified conditions during a set period at a defined price or discount structure.”

PWGSC has put in place a number of standing offers and supply arrangements that must be used before any new procurement is considered.

Mandatories:

- The use of standing offers and supply arrangements for the commodity groups listed below is mandatory:
 - N84: Clothing, Individual Equipment and Insignia
 - N58: Communication, Detection, and Coherent Radiation Equipment
 - N91: Fuels, Lubricants, Oils and Waxes
 - N71: Furniture
 - N70: General Purpose Automatic Data Processing Equipment (Including Firmware), Software, Supplies and Support Equipment
 - N23: Ground Effect Vehicles, Motor Vehicles, Trailers and Cycles
 - D3: Information Processing and Related Telecommunication Services
 - N74: Office Machines, Text Processing Systems and Visible Record Equipment
 - N75: Office Supplies and Devices
 - R: Professional, Administrative and Management Support Services

Some standing offers include a line in them that says “If your deliverable is into a land claim agreement area, you cannot use this standing offer.” So in your project management process you have to go back to the basics and look at whether you’re standing offer and whether that mandatory can be used.

Supply Arrangements

These are similar to Standing Offers, meet a recurring need.

- Used mainly for services.
- Uses a competitive process to determine a list of pre-qualified suppliers.
- Includes a predetermined set of terms and conditions but allows for some negotiation.
- Mini competition seeks bids on specific requirements.
- Posted on Buyandsell.gc.ca, refreshed at least annually.

Non Competitive – Sole Sourcing

- Treasury Board Contracting Policy Notice 2007-04 - Non-Competitive Contracting
- The requirement MUST fall under one of the following 4 exceptions:
 1. The requirement is in response to an emergency (i.e. fire, flood, earthquake)
 2. It is not in the public interest to solicit bids (e.g.. there are national security implications)
 3. Only one supplier can do the work (holds patent, trademark or intellectual property essential for the work to be done)
 4. The requirement is less than \$25K

Procurement Under \$25K

A purchase for less than \$25K is not reason enough to ignore the competitive process. Treasury Board contracting policy notice states: “contracting authorities are expected to call for bids whenever it is cost effective to do so.”

- For Service Contracts evidence is required that Canada is spending tax payer money wisely.

- At least two proposals for the same work from different suppliers, or
- Industry research showing average and/or range of fees paid for the services
- For Goods, price for comparable products need to be on file.
- Deliverables to a CLCA area.

As a point of interest, federal departments are continually trying to improve processes to work with/address the obligations within the economic measures chapters or articles. Re under \$25k, when we solicit bids in Iqaluit, and we need generators, and it's under \$25k, then we would go to the Inuit Firm List to determine if there is a company that could supply those, and we would solicit bids from those companies. So under \$25k we recommend that the contracting authority go to the Aboriginal suppliers. That's why if the Coalition does not have a business list, then how can we recommend that? I've got them listed a little later on, but I just wanted to bring out that there's a link that Canada can use to address socio-economic benefits. We know we have land claim agreement obligations. Even though they've been negotiated at different times, have different wording, and sometimes we have different interpretations of them, we know what we have to do, and it's the "how" – how do we address the obligations? We are consistently working within Canada to address that and make it a better process, so that everyone wins.

Role of the Treasury Board (TB)

Treasury Board is that central agency that we all have to deal with.

- Setting government-wide procurement policy and limits on project and contract approval authorities.
- Reporting on government-wide contracting.
- Approving entry into contracts and projects above the established limits.
- Treasury Board Secretariat (TBS) supports TB in meeting these roles, is responsible for monitoring and managing compliance through the Management Accountability Framework (MAF), and leads the functional community (training and certification, policy interpretation).

Role of Departments and Agencies

Each department has specific requirements.

- Departments and Agencies are responsible for:
 - Planning & defining their specific requirements
 - The acquisition and provision of goods and services that fall within their own delegated authority
 - Contract administration and post-contract evaluation
 - Ensuring their respective departments and agencies have the requisite capacities (training, certification, etc.) whether acquiring goods or services on their own authority or through PWGSC
- Departments may procure services and construction under their own authorities subject to the Treasury Board Contracting Approval Limits, and do not require a delegation from the Minister of PWGSC.

Role of Public Works and Government Services (PWGSC)

- PWGSC is responsible for:
 - The acquisition and provision of goods and services for departments
 - Planning and organizing the provision of goods and services for departments
 - Investigating and developing services for enhancing integrity and efficiency in the contracting process
 - Investigating and developing services for increasing efficiency and economy of the federal public administration
- Minister of PWGSC has exclusive authority (with some exceptions for SSC) to purchase goods for departments. However, the Minister of PWGSC has delegated to other Ministers standard authority:

- To contract for goods up to \$25K through direct methods such as sole source/competed contracts, credit cards, purchase orders, etc.,
- To enter into a contract for goods using a PWGSC pre-competed procurement instrument (e.g. Supply Arrangement or Standing Offer) up to the limit permitted in the instrument
- For emergency contracting for goods in accordance with Treasury Board policy

Government Roles

- PWGSC as the Contracting Authority buys:
 - 75% of the dollar contracts (\$ volume)
 - 25% of the number of contracts awarded (Business Volume)
- Other Government Departments (OGD) as the Contracting Authority
 - 25% of the dollar contracts (\$ volume)
 - 75% of the number of contracts awarded (Business Volume)

Role of Aboriginal Affairs and Northern Development Canada (AANDC)

- Negotiate Land Claim Agreements for the Government of Canada.
- Provide interpretation of and advice on Comprehensive Land Claim Agreements and their associated Implementation Plans with respect to Canada's contracting obligations through TAG/Implementation.
- Implementation Branch has
- Provide interpretation/advice on Procurement Strategy for Aboriginal Business (PSAB) through APBP.
- Implementation Branch delivers awareness sessions to federal government contracting authorities or project authorities. Have trained over 2,000 federal employees in the past 3.5 years. Have also doubled up with PSAB team and the office of small and medium enterprises to deliver awareness sessions together.
- Develop and provide training to client departments on contracting obligations pertaining to CLCAs and PSAB.
- Assist Aboriginal suppliers to market themselves to the federal government.
- Verify that an Aboriginal business meets the PSAB criteria and is registered in PSAB's Aboriginal Business Directory (ABD).
- Point of contact to request pre/post award audits of contracts awarded to Aboriginal suppliers under the PSAB.

CLCAs and Procurement

- Nineteen CLCAs have economic measures that affect your procurement. Each CLCA is unique and different.

Cities	CLCA
Whitehorse	Ta'an Kwach'an and Kwanlin Dun
Yellowknife	Tlicho
Inuvik	Inuvialuit and Gwitch'in
Iqaluit	Nunavut
Chibougamau	James Bay and Northern Quebec
Rocky Harbour	Labrador Inuit

Applicability of CLCAs

PWGSC Supply Manual Reference 9.35:

It is the final delivery point(s) (location of delivery) of the goods and/or construction, or the services performed that is the determining factor as to whether the contracting obligations of one (1) or more CLCA(s) apply.

If we're delivering snowmobiles to Iqaluit, the NLCA applies. If there is construction in the Inuvialuit Region, then the Inuvialuit Land Claim Agreement applies. If it's a service contract and the requirement is for the contractor to provide a report to Ottawa and in the statement of work it states that the contractor will work with data from the Department. In other words, there is no interaction with the land claim agreement, then land claim agreements don't apply. However, if it's a service requirement, and the report is due back in Ottawa, but the successful bidder/contractor has to go to a land claim agreement area and do some work (Environment Canada, DFO: fish tagging, bird tagging; NRCan: bear monitoring). The question is: "We know we have obligations, but how do we generate socio-economic benefits for the Aboriginal business community through the contracting process? So there may be a requirement for bear patrol, translation, food provision. Contract officers are taught to work with Canada's contracting process, but with land claim agreements we need to think outside the box. The how is the tough part.

Contracting Challenges

- Depend on:
 - Type of procurement
 - Type of contract (standing offer, etc)
 - Location(s) of delivery (more than one land claim agreement area? Must know obligations)
 - Timing: always an issue. Contracting environment has more work to do when involved with a land claim agreement
 - Obligation ambiguity: agreement wording is sometimes open to interpretation
- Complexity
 - Canada's Contracting Process is complex
 - CLCAs add another layer of complexity

Procurement Planning

- Many CLCA share similar language but it is important to understand the obligations of the individual CLCA where the goods, services or construction are to be delivered.
- You should consider when feasible how can this procurement create socio-economic benefits for the aboriginal business community?
- Time management is always an issue

Engagement

- To adequately engage with affected signatory groups, we suggest you contact the appropriate CLCA claimant group, either by:
 - Telephone
 - Fax
 - E-mail
 - Town halls/Industry Days

Remember, you can also discuss with your Policy Directorate or AANDC's Implementation Branch.

GWSC Supply Manual Chapter 9.35 – Comprehensive Land Claims Agreements

This is written in a clear and precise manner.

- <https://buyandsell.gc.ca/policy-and-guidelines/supply-manual/section/9>

Comprehensive Land Claim Agreements

- Nunavut LCA – Article 24
- NWT
 - Inuvialuit Final Agreement
 - ☞ 16.2 (a)(b)
 - ☞ 16 (4)
 - ☞ 16.8 (b)(c)
 - ☞ CPN 1997-8 Section 2
 - Gwich'in Comprehensive Land Claim Agreement – Chapter 10.1.4
 - Sahtu Dene and Metis Final Agreement – Chapter 7.1
 - Tlicho Agreement – Chapter 26.3.1
- JBNQA
 - Cree Chapter 28
 - Inuit Annex A – Implementation Plan with Makivik
 - Nunavik Inuit LCA
- Labrador Inuit LCA – 7.10 Contracting
- Yukon – Chapter 22 (+)

Bid Invitation

- 24.7.1 - The DIO shall prepare and maintain a comprehensive list of Inuit firms, together with information on the goods and services which they would be in a position to furnish in relation to government contracts. This list shall be considered by the Government of Canada in meeting their obligations under this Article.
- List of registered Inuit Firm: www.inuitfirm.tunngavik.com

Notification of Procurement

Supply Manual 9.35.35:

- The most common obligation is the notification of the procurement that must be issued to the appropriate claimant group(s). For the procurement of goods, services and/or construction destined for locations covered by land claim agreements, a copy of a notice describing the procurement, e.g. the Notice of Proposed Procurement (NPP) or Advance Contract Award Notice (ACAN), must be faxed to all land claimant groups listed in Annex 9.2 for each of the applicable agreements, on the date of posting on the Government Electronic Tendering Service (GETS).

Notification of Procurement

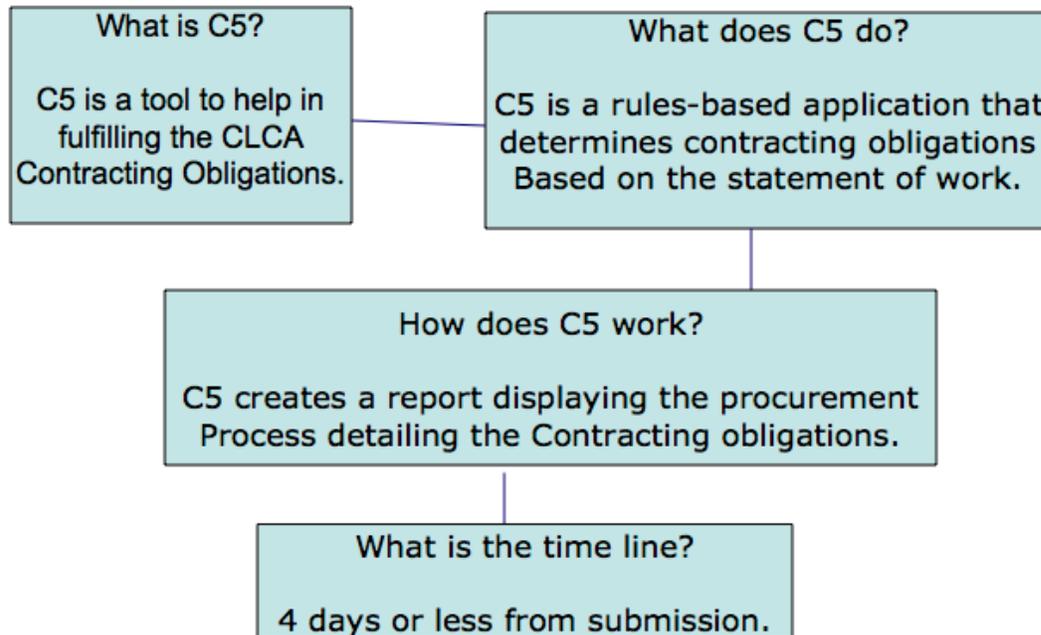
- For procurements not posted on GETS, the contracting officer should send to the applicable land claimant groups a notice about the procurement, containing the same information that an NPP or ACAN would have contained. In such cases, contracting officers should allow the land claimant groups at **least 15 calendar days** to submit any enquiries before awarding a contract, although the CLCAs do not specify any waiting period.
- *For list of claimant groups please refer to Annex B of 9.35.35*

Business Lists

- Nunavut Tunngavik Inc.: <http://inuitfirm.tunngavik.com/>
- Gwich'in: <http://biz.gwichintribalcouncil.com/find-registered-businesses/>
- Inuvialuit: <http://www.irc.inuvialuit.com/corporate/ibl/>
- Sahtu: http://driveit.clickspace.com/ir/clients/sahtu/pdf/businessdevelopment/category_order.pdf
- Tlicho: <http://www.tlicho.ca/node/191>
- JBNQA: <http://www.gcc.ca/links/links.php#busi>
- Nunavik: http://www.krg.ca/images/stories/docs/2012Business_Directory_updated.pdf
- LILCA: <http://www.nunatsiavut.com/index.php/education-and-economic-development/inuit-business-directory>
- Yukon:
 - Champagne & Aishihik: <http://www.cafn.ca/busdev.html>
 - Carcross/Tagish: Under Development
 - Kwanlin Dun: http://www.kwanlindun.com/kdfn_business_listings/
 - Kluane: <http://www.kfn.ca/index.php/business>
 - Little Salmon/Carmacks: Under Development
 - Nacho Nyak Dun: Under Development: http://nndfn.com/images/uploads/pdfs/NND_Business_Registry_Form_2012_copy_2.pdf
 - Selkirk: Under Development
 - Tr'ondek Hwech'in: Under Development
 - Ta'an Kwach'an: Under Development
 - Teslin Tlingit: <http://www.teslin.ca/businesses/business.html>
 - Vuntut Gwitchin: Under Development

C5 Expert

An application that AANDC uses. If you as a federal department send me a statement of work, I'll give you a report that defines what your obligations are. It's a discussion point between the person who provides advice and the contracting authority.



Contracting Policy Notice 2008-4

- CPN 2008-4 was developed to clarify monitoring and reporting obligations in implementing federal contracting in CLCAs.
- 5.1.4.3 - The deputy head of INAC must prepare and disclose, on a public Government of Canada website, a quarterly report on contracts for each area covered by a CLCA within 90 calendar days after the end of the quarter. Each report must include the information described in sections 5.1.4.1 and 5.1.4.2 from each department and agency.
- Link to CLCA.net quarterly reports:
 - http://pse5-esd5.aic-inac.gc.ca/clcaonline/clca_public/Reports/SearchCLCAQuarterlyReport.aspx?lang=eng

Data Elements

1. The name of the applicable CLCA(s) where the services or goods were delivered
2. The postal code(s) for the locations benefiting from the services delivered, or where the goods are installed and put to use
3. The name of the contractor
4. Classification of the Contractor as either:
 - A beneficiary of a Land Claims Agreement or an entity owned by the beneficiaries of the [Insert name of the appropriate CLCA], or
 - Not a beneficiary or entity owned by beneficiaries of the CLCA(s). The transaction number(s) in the departmental financial system (for example, the requisition number, commitment number or contract number)
5. The Contract Award date

6. The contract expiry date
7. The Economic Objects code
8. A short narrative description of the goods or services to be delivered
9. The value of the contract
10. Department Name and Customer Information System (CIS) number
11. Address of the location from where the order originated