



ADDENDUM – Amendments and Additions to the Implementation of Contracting Obligations under Comprehensive Land Claims Agreements, National Park Agreements, and DND Co-operation Agreements - Contracting Policy Notice 1997-8

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Addendum: Implementation of contracting obligations under Comprehensive Land Claims, National Park, and DND Co-operation Agreements (Contracting Policy Notice 1997-8)

1.00 GENERAL

This appendix is issued to supplement the provisions of Section 4, Policy Requirements. It is intended to provide guidance to contracting authorities engaged in contracting activities for the provision of goods, services and construction in areas subject to Comprehensive Land Claims Agreements listed below. Where practicable and consistent with sound procurement management and the spirit and intent of the land claims agreements, contracting authorities should enhance the capacity of aboriginal suppliers from the land claims settlement areas to fulfil a larger amount of government contract requirements. Procurement activities shall be carried out in a manner that responds to the developing nature of each settlement area economy and labour force. In particular, contracting authorities shall take into account the current capacity and increased ability, over time, of aboriginal firms to compete for and to successfully complete government contracts. The contracting obligations articles in the specific sections extracted from Agreements are policy requirements.

Alternative Formats

[RTF Version \(21 kb\)](#)

Contracting authorities should also note that bona fide set asides for aboriginal procurement established pursuant to comprehensive land claims meet the definition of minority and small businesses in the Schedules for Canada pursuant to the North American Free Trade Agreement and the World Trade Agreement. They are, therefore, exempt from the application of these trade agreements. Similarly, measures "adopted or maintained with respect to Aboriginal peoples" are also exempt from the Agreement on Internal Trade pursuant to article 18.0.2.

Relevant excerpts from the Tr'ondëk Hwëch'in Final Agreement are listed hereafter as Section 5.7, to immediately follow Section 5.6 - Little Salmon/Carmacks First Nation Final Agreement available in Contracting Policy Notice 1997-8.

Section 5.7 Tr'ondëk Hwëch'in Final Agreement (Pursuant to Order In Council P.C. 1998-1468 dated August 26, 1998)

This section of the policy reflects the Government contracting obligations addressed in Articles 6.4, 10.0, 13.0, 15.0, 17.0, and 22.0 of the Tr'ondëk Hwëch'in Final Agreement. Contracting Authorities should refer to Chapters 1 and 2 of the Agreement for Definitions and General Provisions.

6.4.0 GOVERNMENT ACCESS

6.4.1 Government, its agents and contractors shall have a right of access to enter, cross and stay on Undeveloped Settlement Land and use natural resources incidental to such access to deliver, manage and maintain Government programs and projects, including but not limited to the necessary alterations of land and watercourses by earthmoving equipment for routine and emergency maintenance of transportation corridors.

6.4.2 A Person authorised by Law to provide utilities for public purposes including electricity, telecommunications and municipal services shall have a right of access to enter, cross and stay on Undeveloped Settlement Land to carry out site investigations, assessments, surveys and studies in relation to proposed services after Consultation with the affected Yukon First Nation prior to exercising such access.

6.4.3 The right of access provided in 6.4.1 and 6.4.2 shall be subject to the conditions that there shall be no:

6.4.3.1 mischief committed on the Settlement Land;

6.4.3.2 fee or charge payable to the affected Yukon First Nation; or

6.4.3.3 unnecessary interference with the use and peaceful enjoyment of its Settlement Land by the Yukon First Nation.

6.4.4 Any Person exercising a right of access pursuant to 6.4.1 and 6.4.2 shall be liable only for significant damage to Settlement Land and any improvements on Settlement Land caused by the exercise of such right of access. Significant damage does not include necessary alteration of Settlement Land or watercourses required to maintain transportation corridors referred to in 6.4.1.

6.4.5 The right of access provided in 6.4.1 and 6.4.2 may be exercised:

6.4.5.1 for a period of no more than 120 consecutive days for any single program or project without the consent of the affected Yukon First Nation except that notice, where reasonable, shall be given; and

6.4.5.2 for a period of more than 120 consecutive days with the consent of the affected Yukon First Nation or, failing consent, with an order of the Surface Rights Board setting out the terms and conditions of access.

6.4.6 The Surface Rights Board shall not make an order under 6.4.5.2 unless the Person seeking access satisfies the Board that:

6.4.6.1 such access is reasonably required; and

6.4.6.2 such access is not also practicable and reasonable across Crown Land.

6.4.7 Nothing in this chapter shall be construed to limit the lawful authority of Government to carry out inspections and enforce Law on Settlement Land.

10.0 SPECIAL MANAGEMENT AREAS

Schedule A

Tombstone Territorial Park

10.1 Economic Opportunities

10.2 In evaluating any competitive proposal, bid or tender for work associated with the establishment of the Park, construction of Park facilities and the operation and maintenance of the Park, Government shall include among the factors for consideration, employment of Tr'ondëk Hwëch'in, or for Tr'ondëk Hwëch'in and Tr'ondëk Hwëch'in ownership or equity investment in the firm submitting the proposal, bid or tender, and in any subcontractor to that firm.

10.3 Nothing in 10.1 shall be construed to mean that the criteria for employment of Tr'ondëk Hwëch'in, or for Tr'ondëk Hwëch'in and Tr'ondëk Hwëch'in ownership or equity investment shall be the determining criteria in the award of any contract.

13.0 HERITAGE

13.12.0 Economic Opportunities

13.12.1 Economic opportunities, including training, employment and contract opportunities for Yukon Indian People at Designated Heritage Sites and other facilities related to Heritage Resources, shall be considered in Yukon First Nation Final Agreements.

13.12.1.1 Government shall provide written notice to the Tr'ondëk Hwëch'in of any public tender for contracts associated with the management of a Designated Heritage Site directly related to the history or culture of Tr'ondëk Hwëch'in within the Traditional Territory of the Tr'ondëk Hwëch'in.

13.12.1.2 Government shall include the Tr'ondëk Hwëch'in in any invitational tender for contracts associated with the management of a Designated Heritage Site directly related to the history or culture of the Tr'ondëk Hwëch'in within the Traditional Territory of the Tr'ondëk Hwëch'in.

13.12.1.3 The Tr'ondëk Hwëch'in shall have the first opportunity to accept any contract offered by Government other than by public or invitational tender associated with the management of a Designated Heritage Site directly related to the history or culture of Tr'ondëk Hwëch'in within the Traditional Territory of the

Tr'ondëk Hwëch'in upon the same terms and conditions as would be offered to others.

13.12.1.4 Any failure to provide written notice pursuant to 13.12.1.1 shall not affect the public tender process or the contract awards resulting therefrom.

13.12.1.5 Any failure to include the Tr'ondëk Hwëch'in in any invitational tender for contracts pursuant to 13.12.1.2 shall not affect the invitational tender process or the contract awards resulting therefrom.

13.12.1.6 Any failure to provide a first opportunity pursuant to 13.12.1.3 shall not affect any contract entered into associated with the management of a Designated Heritage Site directly related to the history or culture of Tr'ondëk Hwëch'in within the Traditional Territory of the Tr'ondëk Hwëch'in.

13.12.1.7 Government shall include in any contract opportunities associated with a Designated Heritage Site directly related to the history or culture of Tr'ondëk Hwëch'in within the Traditional Territory of the Tr'ondëk Hwëch'in:

- a. a criterion for the employment of Tr'ondëk Hwëch'in or engagement of Tr'ondëk Hwëch'in Firms; and
- b. a criterion for special knowledge or experience of Tr'ondëk Hwëch'in related to the Designated Heritage Site.

13.12.1.8 Nothing in 13.12.1.7 shall be construed to mean that a criterion for employment of Tr'ondëk Hwëch'in or engagement of Tr'ondëk Hwëch'in Firms or for special knowledge or experience of Tr'ondëk Hwëch'in shall be the determining criterion in awarding any contract.

15.0 DEFINITION OF BOUNDARIES AND MEASUREMENT OF AREAS OF SETTLEMENT LAND

15.7.0 Employment and Economic Opportunities

15.7.1 Where employment in surveying of Settlement Land is generated as a direct consequence of a Yukon First Nation Final Agreement, the parties to the Yukon First Nation Final Agreement shall negotiate as part of that Yukon First Nation Final

Agreement, the participation of Yukon Indian People who have appropriate qualifications or experience, in such employment, and the determination of such qualifications and experience.

15.7.1.1 In evaluating any competitive proposal, bid or tender for the survey of Tr'ondëk Hwëch'in Settlement Land, Government shall include among the factors for consideration, employment of Tr'ondëk Hwëch'in, or for Tr'ondëk Hwëch'in and Tr'ondëk Hwëch'in ownership or equity investment in the firm submitting the proposal, bid or tender, and in any subcontractor to that firm.

15.7.1.2 The Tr'ondëk Hwëch'in and Government shall ensure that qualifications and experience requirements for employment of Tr'ondëk Hwëch'in in the surveying of Tr'ondëk Hwëch'in Settlement Land shall be established at levels appropriate to the nature of the tasks being performed in that employment, and shall take into account the local knowledge of Tr'ondëk Hwëch'in.

15.7.1.3 Qualified Tr'ondëk Hwëch'in shall have first priority for employment in the surveying of Tr'ondëk Hwëch'in Settlement Land on the same terms and conditions that such employment would be offered to any other person with the appropriate qualifications and experience.

15.7.1.4 Nothing in 15.7.1.1 shall be construed to mean that the criteria for employment of Tr'ondëk Hwëch'in, or for Tr'ondëk Hwëch'in and Tr'ondëk Hwëch'in ownership or equity investment shall be the determining criteria in the award of any contract.

15.7.2 Where economic opportunities and benefits are associated with the survey of Settlement Land, Yukon First Nations shall have access to these opportunities and benefits. Any contract issued for the survey of Settlement Land shall contain the condition that Yukon Indian People and Yukon First Nation businesses with the necessary qualifications and experience shall be given first consideration in providing technical and support services associated with the contract. A list of Yukon First Nation businesses and Yukon Indian People interested in providing such services to potential contractors for such surveys of a Yukon First Nation's Settlement Land shall be included with all requests for proposals, and documentary

proof the Yukon First Nation's businesses and Yukon Indian People were given first consideration shall form part of a contractor's proposal.

17.0 FOREST RESOURCES

17.14.0 Economic Opportunities

17.14.1 Government shall, at the time it publicly invites tenders for Forest Resources Management or forest protection within a Yukon First Nation's Traditional Territory, provide a written notice of the tender to that Yukon First Nation.

17.14.2 When negotiating a Yukon First Nation Final Agreement, the parties to that Yukon First Nation Final Agreement shall address economic opportunities for the Yukon First Nation in the management, protection and harvesting of Forest Resources.

17.14.2.2 Government shall provide written notice to the Tr'ondëk Hwëch'in of any public tender for contracts associated with Forest Resources Management within the Traditional Territory of the Tr'ondëk Hwëch'in .

17.14.2.3 Government shall include the Tr'ondëk Hwëch'in in any invitational tender for contracts associated with Forest Resources Management within the Traditional Territory of the Tr'ondëk Hwëch'in.

17.14.2.4 The Tr'ondëk Hwëch'in shall have the first opportunity to accept any contract offered by Government, other than by public or invitational tender, associated with silviculture within the Traditional Territory of the Tr'ondëk Hwëch'in upon the same terms and conditions as would be offered to others.

17.14.2.5 Any failure to provide written notice pursuant to 17.14.2.2 shall not affect the public tender process or the contract awards resulting therefrom.

17.14.2.6 Any failure to include the Tr'ondëk Hwëch'in in any invitational tender for contracts pursuant to 17.14.2.3 shall not affect the invitational tender process or the contract awards resulting therefrom.

17.14.2.7 Any failure to provide a first opportunity pursuant to 17.14.2.4 shall not affect any contract entered into associated with silviculture within the Traditional

Territory of the Tr'ondëk Hwëch'in .

17.14.2.8 Government shall include a criterion for employment of Tr'ondëk Hwëch'in or engagement of Tr'ondëk Hwëch'in Firms in any contract opportunities associated with silviculture in the Traditional Territory of the Tr'ondëk Hwëch'in.

17.14.2.9 Nothing in 17.14.2.8 shall be construed to mean that a criterion for employment of Tr'ondëk Hwëch'in or engagement of Tr'ondëk Hwëch'in Firms shall be the determining criterion in awarding any contract.

17.14.2.10 Where Government requires Extra Fire Fighters to fight forest fires within the Traditional Territory of the Tr'ondëk Hwëch'in it shall, where practicable, hire Tr'ondëk Hwëch'in.

22.0 ECONOMIC DEVELOPMENT

22.5.0 Contracting

22.5.4 For contracts to be awarded in the Yukon, Canada undertakes to include on contract lists those qualified Yukon First Nations who have indicated an interest in contracting.

22.5.5 A Yukon First Nation may request information from a federal contracting authority on contracts awarded in the Yukon. Where such information is publicly available, the authority shall make all reasonable efforts to provide the requested information.

22.5.6 At the request of Yukon Indian People, Government shall provide information on how to access Government supply and services contracts and standing offers, and how to register on lists or inventories which Government uses for contracting.

22.5.7 Where practicable, provision of information in 22.5.6 shall be through seminars and workshops.

22.5.8 Government shall ensure that Yukon Indian People and Yukon First Nations' corporations are advised on how to access Government contracting, and that such individuals and businesses are given full opportunity to be registered on any lists or inventories Government uses for contracting purposes.

22.5.9 Any criteria for northern preference in contracting shall not exclude Yukon Indian People.

22.5.10 The Yukon shall, where reasonable, make best efforts to structure contracts, on both Settlement Land and Non-Settlement Land, so that they are of a size manageable by small businesses.

Schedule A

Economic Measures

PART I - SPECIFIC ECONOMIC MEASURES

2.5 Subject to 12.13.4, where the Tr'ondëk Hwëch'in has jurisdiction to issue a Decision Document for a Project in the Traditional Territory of the Tr'ondëk Hwëch'in which is reviewed by a panel of YDAB, the Tr'ondëk Hwëch'in may require in the Decision Document that the Project proponent and the Tr'ondëk Hwëch'in negotiate a Project agreement.

2.6 Project agreements referred to in 2.5 may include:

2.6.2 business opportunities for the Tr'ondëk Hwëch'in or Tr'ondëk Hwëch'in including contracts and the provision of goods and services.

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