



by Tona Locke

Comprehensive Land Claims Agreements **are law** and protected by the Constitution. Each CLCA is given effect with a legislative act therefore making the obligations outlined within them legally binding. Government managers who seek to contract for goods and/or services and/or construction which might involve activity where CLCAs are in place, must be heedful that legal obligations may affect their procurement strategy and process. Often multiple CLCAs must be considered.

Comprehensive Land Claims Agreement (CLCA) is a phrase perhaps unfamiliar to many. Those that have heard the term are often unable to accurately define it. Fewer still may be aware of the federal contracting obligations and considerations that are outlined in many of these agreements or that Treasury Board policy requires all federal departments and agencies to report on any contracting activity within CLCA boundaries.

What are CLCAs?

CLCAs are modern treaties which detail a government-to-government relationship between the Aboriginal signatory and the Government of Canada as well as, in some cases, the associated provincial or territorial government.

The objective of the federal contracting obligations and considerations within these agreements is to support on-going socio-economic development in the CLCA Settlement Areas by increasing the opportunities for Aboriginal peoples to participate and compete successfully for government contracts.

Treasury Board policy

In effect since April 2009, Contracting Policy Notice (CPN) 2008-4¹ requires that all contracting activity undertaken by federal departments/agencies within CLCAs be reported to Aboriginal Affairs and Northern Development Canada (AANDC). These quarterly submissions include whether contracts awarded went to firms owned by beneficiaries/participants of land claims.

¹ TBS CPN 2008-4 www.tbs-sct.gc.ca/pubs_pol/dcgpubs/ContPolNotices/2008/0619a-eng.asp

Canada's CLCAs

Canada presently has 23 Final Agreements in effect. Most of these have related agreements, often referred to as Implementation Plans, which provide expanded direction on how activities shall be advanced.² While the settlement areas of many of these agreements are located north of the 60th parallel, managers would be amiss to make the assumption that CLCAs need only be considered if their requirement includes contracting in the North. The most recently ratified CLCA is located on Vancouver Island and additional agreements are under negotiation in almost every region of Canada.

Contract planning

CLCAs must be considered whenever any proposed government contracting is foreseen to affect or involve activities in a land claims settlement area. In the planning stages, there are obligations and/or expectations that measures will be taken to enhance opportunities for land claims beneficiary/participant businesses.

Engagement conventions are mentioned in most of the CLCAs. It is recommended that land claims beneficiaries/participants be conferred with regarding elements of all proposed contracts within their boundaries, especially with respect to the requirements and approach. This should be done early in the preparation stage of any project. Local and regional as well as historical and cultural knowledge of Aboriginal peoples is valuable. It bolsters the development of a successful approach to providing economic opportunities that can enhance Aboriginal participation in contracting activities and is a demonstration of respect for culture and traditional territory.

Notification of contracting opportunities

Notification of CLCA beneficiaries/participants is another important aspect of the contracting process in that it advances the objective of securing bids from qualified CLCA suppliers and/or serves to encourage CLCA businesses to

identify themselves. Notification is accomplished by faxing a copy of the notice of procurement to specified designated organizations. Particulars should ensure that all potential suppliers have access to the same information.

In order to ensure that the opportunity is communicated to qualified CLCA businesses, managers responsible for the procurement should use CLCA group maintained firm lists to invite bids. Remoteness of the area should also be considered when publishing competitive procurement opportunities and may be compensated for by advertising locally in newspapers or public venues. Longer bidding periods should also be considered for remote areas in order to increase the potential for response from qualified CLCA businesses.

Obligations and considerations

When fulfilling a procurement need which could conceivably involve contracting activity within the boundaries of a CLCA, managers MUST set out to find which CLCAs may apply and what content within the relevant agreement(s) is applicable to their particular requirement. This process should be initiated in the planning stage of the project.

Access to claim lands

All CLCAs contain a chapter devoted to Land Access. In each is a section indicating conditions and obligations for access by government employees, agents and contractors. Managers responsible for contracts that may include undertakings within the boundaries of a CLCA should discover, early in the procurement process, whether the land-access chapter in a potentially relevant CLCA contains clauses that might impact their requirement.

Ensuring compliance

While some CLCAs may have similar obligations and considerations, each is different. Ensuring compliance with the contracting

² Final Agreements and Related Implementation Matters
<http://www.ainc-inac.gc.ca/al/lc/ccl/fagr/index-eng.asp>

obligations and considerations outlined in multiple CLCAs creates increased complexity. It can be difficult for government managers to readily have the information at hand in order to meet the legal obligations.

Support for contracting in CLCAs

An online course titled “Aboriginal Considerations in Procurement”³ is accessible through the federal government Canada School of Public Service website.

Chapter 9 of the PWGSC Supply Manual (2010-01-11) contains general information about CLCAs as well as overviews, facts and links specific to each agreement. PWGSC’s Acquisitions Branch, Policy and Process Directorate also provides policy guidance on procurement activities related to CLCAs, for federal departments procuring via PWGSC.

Substantial support is provided through the Implementation Branch of AANDC by means of resources and tools made available to managers seeking guidance regarding contracting activity that may fall within CLCA boundaries. Representatives of this branch have travelled extensively across the country delivering presentations with the objective of creating awareness, offering an overview of the contracting obligations and considerations contained within the CLCAs, as well as recommending best practices. This undertaking has proffered valuable knowledge and led to an increased realization of the importance of including examination of the CLCAs.

Even for those with the benefit of these learning sessions, planning for and establishing compliance on individual procurement files may still seem like a somewhat daunting task. AANDC’s Implementation Branch offers additional assistance to managers through the provision of access to an expert system that produces a checklist. This checklist is used to

verify that the necessary steps have been taken to ensure contracting compliance with the Comprehensive Land Claims. The CLCA Contracting Compliance Checklist is generated by utilizing information about key elements of the contracting requirement including locations, award and end dates, contract dollar-value, method of supply and method of solicitation. The subsequent output identifies which CLCAs are applicable, what the relative obligations are and chronicles best practices for consideration. The resulting document also includes a summary of the select elements that Contracting Authorities will require to meet the reporting stipulations of TBS CPN 2008-4.

Managers who have a contracting requirement that could conceivably have associated work that falls within the boundaries of a CLCA are recommended to contact AANDC’s Implementation Branch at CLCA.net@ainc-inac.gc.ca and take advantage of the resources and tools that they make available. *MM*

Regional Overviews of the Comprehensive Land Claims Agreements¹

The Yukon

The Yukon encompasses 11 final agreements currently in effect. The Umbrella Final Agreement (UFA), finalized in 1990, is characterized as a general agreement that is used as the framework or template for the all Yukon First Nations CLCAs. It does not create or *affect* any legal rights, however all the provisions agreed to within the UFA are contained in each of the Yukon First Nation Final Agreements where commitments then become legally binding. Individual agreements differ with the inclusion of additional specific provisions which apply to their respective First Nations.

Universal to all the agreements under the UFA is the obligation to ensure that Yukon Indian People¹ have access to participate in contract opportunities on a competitive basis and a commitment that information will be provided on how to secure access to contracts and standing offers, including how to register on lists that the Government uses. (con’t)

³ “Aboriginal Considerations in Procurement” online course <http://www.cspc-efpc.gc.ca/cat/det-eng.asp?courseno=C223E>

The Northwest Territories

Four of the ratified CLCAs have their settlement areas located within the borders of the Northwest Territories. Two separate agreements¹ are set-asides for Inuvialuit preference in procurements related to National Parks located in the Inuvialuit Settlement Region (ISR). As well, the Inuvialuit Regional Corporation (IRC) and the Department of National Defence (DND) have two signed Co-operation Agreements¹ that deal expressly with activities within the ISR.

Newfoundland and Labrador, and Nunavut

This region of the country contains three CLCAs, with the Nunavik Marine Region spanning not only Nunavut and Newfoundland and Labrador, but Quebec as well. The Nunavut Land Claim Agreement settlement area is the largest of the CLCAs and stretches farther North than any other.

Quebec

Signed in 1975, the James Bay and Northern Quebec Final Agreement was the first of the CLCAs to come in to effect. It was later amended to include the Northeastern Quebec Agreement for the Naskapi First Nation. The James Bay and Northern Quebec Final Agreement contains clauses to ensure priority for Inuit businesses in submitting bids and subcontracting.

British Columbia

To date, three CLCAs are in effect in British Columbia. The Nisga'a Settlement Area is located in northern British Columbia, the Tsawwassen Settlement Area includes portions of the densely populated urban area of Greater Vancouver and the Maa'nulth First Nations Settlement Area is found on Vancouver Island. None of these CLCAs contain specific contracting obligations but do include Land Access requirements and the best practices of engagement and notification are recommended.



For additional information refer to:

Aboriginal Affairs and Northern Development Canada
www.ainc-inac.gc.ca/al/ldc/index-eng.asp

"Aboriginal Considerations in Procurement" online course
www.cspc-efpc.gc.ca/cat/det-eng.asp?courseno=C223E

C5Expert™
www.rfpsolutions.ca/rfpportal/index.php?option=com_content&view=article&id=89&Itemid=132

Land Claims Agreements Coalition
www.landclaimscoalition.ca/modern-treaties.php

PWGSC Supply Manual (2010-01-11)
www.tpsgc-pwgsc.gc.ca/app-acq/ga-sm/chapitre09-chapter09-eng.html#s9-35

TBS CPN 1997-8
www.tbs-sct.gc.ca/Pubs_pol/dcgpubs/ContPolNotices/97-8-eng.asp for Sections 1 through 10

TBS CPN 2006-4
www.tbs-sct.gc.ca/pubs_pol/dcgpubs/contpolnotices/2006/04-eng.asp for Sections 11 and 12 of CPN 1997-8

TBS CPN 2008-4
www.tbs-sct.gc.ca/pubs_pol/dcgpubs/ContPolNotices/2008/0619a-eng.asp

Yukon Council of First Nations website
www.cyfn.ca/ouragreementsufa

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Summit: Canada's magazine on public sector purchasing

December/January 2011-12

www.summitconnects.com