



# Canada's Contracting Process and Comprehensive Land Claim Agreement Contracting Obligations (CLCA)

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Procurement and Materiel Management  
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INAC·AANC



# Objectives

PROVIDE AN UNDERSTANDING OF HOW COMPREHENSIVE LAND CLAIMS AGREEMENTS (CLCAs) AFFECT YOUR PROCUREMENT:

- What and where are CLCAs?
- How does Canada address CLCA obligations during our contracting process?
- Discuss Canada's contracting obligations in:
  - Labrador Inuit Land Claim Agreement (LILCA)
  - James Bay and Northern Quebec Agreement (JBNQA)
- How do we operationalize these obligations in our contracting process?
- Business Development Support Tools
  - Aboriginal Benefits Plans (ABP)
  - Procurement Strategy for Aboriginal Businesses (PSAB)
  - CLCA.Net
- Questions



# What are CLCAs?

- Canada's Contracting Process
- CLCAs are constitutional protected documents.
- Modern treaties are constitutionally protected under Section 35 of the *Constitution Act, 1982*.
- This provides modern treaty provisions and the rights protected within the highest legal precedence in Canada.
- The obligations of Canada and its Aboriginal and provincial/territorial modern treaty partners are legally binding.
- The purpose of settlement agreements is to provide certainty and clarity of rights to ownership and the use of land and resources.
- This certainty is supported through economic measures such as government contracting.



# Federal Government Contracting Policy

## Policy Objective

- The objective of government procurement contracting is to acquire goods and services and to carry out construction in a manner that enhances access, competition and fairness and results in best value or, if appropriate, the optimal balance of overall benefits to the Crown and the Canadian people.



# Federal Government Contracting Policy

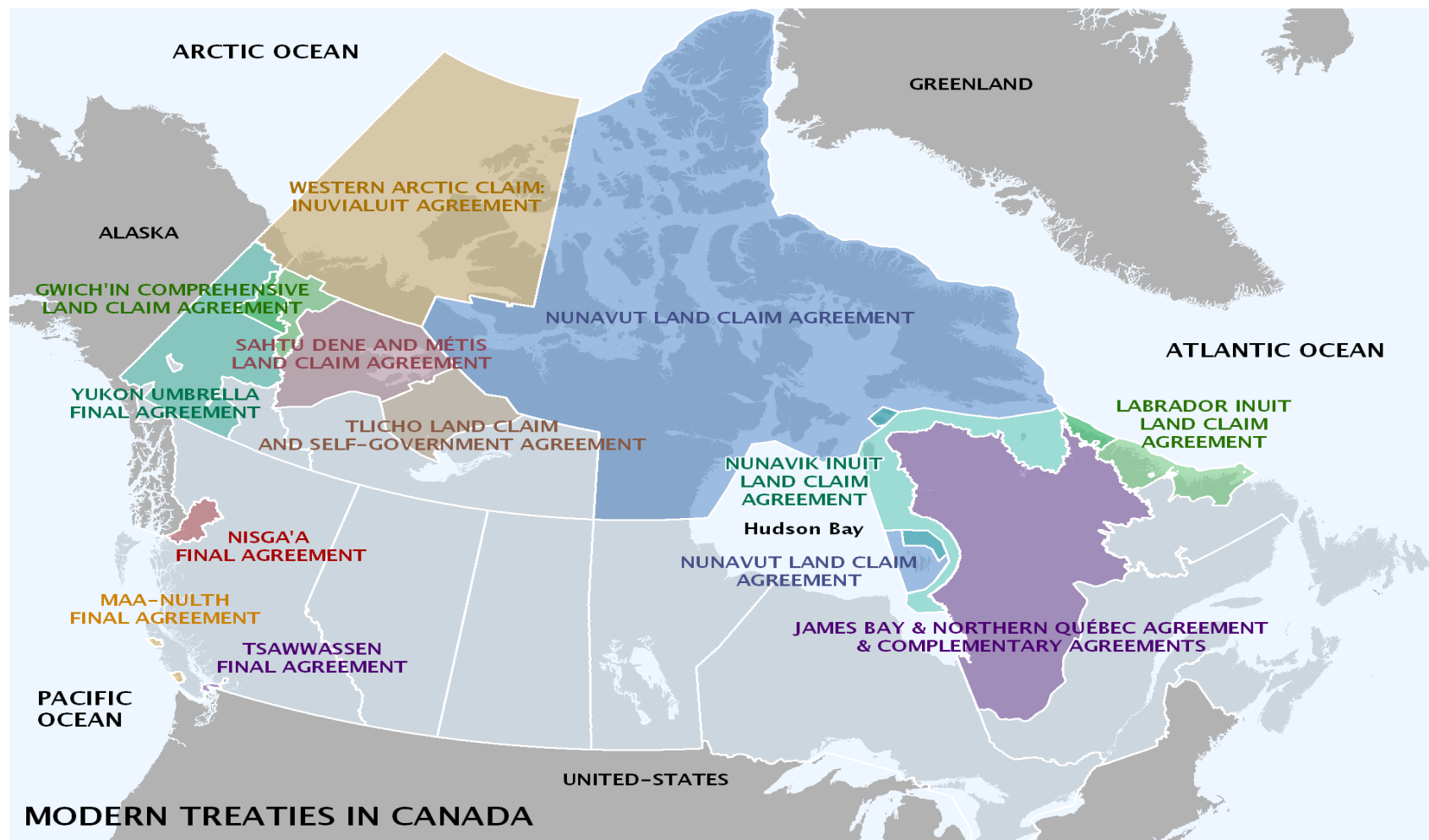
## Policy Statement

- Government contracting shall be conducted in a manner that will:
- stand the test of public scrutiny in matters of prudence and probity, facilitate access, encourage competition, and reflect fairness in the spending of public funds;
- ensure the pre-eminence of operational requirements;
- support long-term industrial and regional development and other appropriate national objectives, including aboriginal economic development;
- comply with the government's obligations under the [North American Free Trade Agreement](#), the [World Trade Organization – Agreement on Government Procurement](#) and the [Agreement on Internal Trade](#).



# Where are CLCAs?

CLCAs are located in British Columbia (4), Yukon (11), Northwest Territories (4), Nunavut (1), Quebec (4) and Labrador (1)





# List of Comprehensive Land Claims Agreements

There are currently 25 CLCAs in effect. As shown below, twenty-one CLCAs contain procurement obligations, and four do not:

1. James Bay and Northern Quebec Agreement (1975)
2. Northeast Quebec Agreement (1978)
3. Inuvialuit Final Agreement (1984)
4. Gwich'in Comprehensive Land Claim Agreement (1982)
5. Nunavut Land Claim Agreement (1993)
6. Sahtu Dene and Metis Comprehensive Land Claim Agreement (1994)
7. Nisga'a Agreement (2000) – **no procurement obligations**
8. Labrador Inuit Land Claims Agreement (2005)
9. Tlicho Land Claims Agreement (2005)
10. Nunavik Inuit Land Claims Agreement (2008)
11. Tsawwassen First Nation Agreement (2009) – **no procurement obligations**
12. Maa-nulth First Nations Final Agreement (2011) - **no procurement obligations**



## List of Comprehensive Land Claims Agreements – cont'd

(Yukon Umbrella Final Agreement)

13. Eeyou Marine Region Land Claims Agreement (2012)
14. First Nation of Nacho Nyak Dun Final Agreement (1995)
15. Champagne and Aishihik First Nations Final Agreement (1995)
16. Teslin Tlingit Council Final (1995)
17. Vuntut Gwich'in First Nation Final Agreement (1995)
18. Selkirk First Nation Final Agreement (1997)
19. Little Salmon/Carmacks First Nation Final Agreement (1997)
20. Tr'ondëk Hwëch'in Final Agreement (1998)
21. Ta'an Kwach'an Council Final Agreement (2002)
22. Kluane First Nation Final Agreement (2004)
23. Kwanlin Dun First Nation Final Agreement (2005)
24. Carcross/Tagish First Nation Final Agreement (2005)
25. Tla'amin Final Agreement (2014) - **no procurement obligations**







## Applicability of CLCAs

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.

*PWGSC Supply Manual Reference 9.35*



## Final Point of Delivery – Goods Contract

**Requirement:** Snowmobiles are being purchased where the final deliverable is into a CLCA area but first must be shipped to a non CLCA area for installation of logos, lights, decals.

- (1) Since the final destination of the snowmobiles is in a CLCA then the CLCA obligations apply.



## Final Point of Delivery – Service Contract

**Requirement:** A report on site suitability must be researched, prepared, and delivered to NHQ.

(1) If the contractor can reference Departmental data, search google or Statistics Canada site and complete the contract with existing information then CLCA obligations do not apply.

(2) If the contractor must go on the CLCA Settlement Area or to a community then the CLCA applies. You must consider if there is an opportunity to generate socio-economic benefits for beneficiaries or beneficiary firms. This is based on your Statement of Work.

- Translation / interpretation
- Bear monitoring / patrol
- Kitchen tent / cooks
- Small boat + guide



# Is my procurement in a CLCA settlement area?

We have access to two (2) tools:

1) For a quick check – go to the *C5 Expert*® QuickSearchMap  
[www.c5expert.ca](http://www.c5expert.ca)

2) For more in depth information - use the Aboriginal and Treaty Rights and Information System (ATRIS)  
<https://www.aadnc-aandc.gc.ca/eng/1100100014686/1100100014687>

- Community
- Postal Code
- Latitude/Longitude

For access contact:

Dennis Brunner ([dennis.brunner@aadnc-aandc.gc.ca](mailto:dennis.brunner@aadnc-aandc.gc.ca))

Cathryn Kallwitz ([cathryn@setasidesolutions.ca](mailto:cathryn@setasidesolutions.ca))





# C5 Expert<sup>®</sup> – Quick Search Map - <http://c5expert.ca/apps/>



# C5 Expert<sup>®</sup> – Quick Search Map

Registration

Name:  \*

Username:  \*

E-mail:  \*

Password:  \*

Verify Password:  \*

Fields marked with an asterisk (\*) are required.



# C5 Expert<sup>®</sup> – Quick Search Map

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1 Locality ⓘ

Locality: Aklavik ⓘ Search

Tip: To look up a postal code, please use the Canada Post .

Terms of use

Land Claims

- ☒ Carcross/Tagish
- ☒ Champagne and Aishihik
- ☒ Eeyou
- ☒ Gwich'in
- ☒ Innu Nation
- ☒ Inuvialuit
- ☒ James Bay and Northern Quebec
- ☒ Kluane
- ☒ Kwanlin Dun
- ☒ Labrador Inuit
- ☒ Little Salmon/Carmacks
- ☒ Maa-nulth
- ☒ Nacho Nyak Dun
- ☒ Nisga'a
- ☒ Northeastern

This Map is for illustrative purposes only to assist GoC personnel in identifying CLCAs. It does not in any way modify or convey rights or title to lands.

Point	Land Claim	Province Territory	Postal Code	Locality
	Inuvialuit	NT	X0E 1C0 ⓘ	aklavik
	Gwich'in	NT	X0E 0T0 ⓘ	aklavik

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# C5 Expert<sup>®</sup> – Quick Search Map

1 Locality

Locality: XOA 0H0

Search

Tip: To look up a postal code, please use the Canada Post .

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- ☒ Nisga'a
- ☒ Northeastern

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Point	Land Claim	Province Territory	Postal Code	Locality
	Nunavut	NU	XOA 0H0	Iqaluit



# Contracting Challenges

Depend on:

- Type of procurement
- Type of contract
  - Standing Offer, Supply Arrangement - Issues on Use
- Location(s) of delivery
- Timing
- Obligation ambiguity

Contracting in CLCA areas is ***very complex***



# Contracting Challenges

- Canada's Contracting Process is Complex and when we add the mandatory requirement to address CLCA contracting obligations the resulting process is a challenge.
- Contracting process related to CLCAs is currently under scrutiny
  - Federal Government
    - OAG
    - Modern Treaty Implementation Office (MTIO)
    - Treaty Obligations Management System (TOMS)
    - CLCA.Net
    - MAF
  - Aboriginal Partners Awareness
  - Canada – NTI Settlement Agreement
  - Annual Increase of Contract Award in CLCA areas



# Procurement Process

- Procurement Planning and understanding individual CLCA obligations
- Engagement
- Notification/ Bid Invitation
  - LILCA / JBNQA
- Bid Evaluation Criteria
  - LILCA
- Access to Aboriginal owned lands
  - Permit
  - Cost
  - Length of Time
  - Resource Usage (water)



# Procurement Planning

- Many CLCAs share similar language but it is important to understand the specific obligations of the individual CLCA where the goods, services, construction and land leases are to be delivered.
- Canada must consider when feasible how a procurement requirement may generate socio-economic benefits for the CLCA business community.
- Best Practices Legal Opinion.
- Time management is a consideration during the contracting process.
  - Procurement Planning
  - Notification
  - Bid Evaluation
  - Contract Management



# 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 INAC's Implementation Branch.



# PSPC Supply Manual Chapter 9 - Special Procurements

[https://buyandsell.gc.ca/policy-and-guidelines/supply-manual/section/  
9](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
    - Parks Canada / DFO
  - 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





# Comprehensive Land Claim Agreements cont'd

- JBNQA
  - Cree Chapter 28
  - Inuit Chapter 29
  - Annex A – Implementation Plan with Makivik
  - Nunavik Inuit LCA
- Labrador Inuit LCA – 7.10 Contracting
- Yukon – Chapter 22 (+)



# Labrador Inuit Land Claim Agreement (2005)

- Canada has legal obligations under Chapter 7, Economic Development of the LILCA
- How do we operationalize these obligations in our contracting process?



## Part 7.10

- Part 7.10 Contracting and Employment of Inuit by the Government of Canada

### Part 7.10.1

- 7.10.1 The Nunatsiavut Government shall prepare and maintain a comprehensive list of Inuit Businesses, together with information on goods and services that they would be in a position to supply in relation to contracts offered by the Government of Canada. This list shall be considered by the Government of Canada, where practicable and consistent with sound procurement practices, in meeting its obligations under this chapter.
- LILCA: <http://www.nunatsiavut.com/business/inuit-business-directory/>



## Notification

- Notify the claimant group of the requirement and the claimant group notify Inuit Businesses
- If interested in bidding on the requirement, an Inuit Business may submit bid / questions to the Contracting Authority
- For less than \$25,000 I recommend that the Contracting Authority search the LILCA Business Directory. If there are Inuit companies who can provide the goods and services required, request that the Inuit firms submit a bid.
- Nunatsiavut Government  
12 Sandbanks Road  
P.O. Box 70  
Nain, NL A0P 1L0  
Telephone: 709-922-2942  
Facsimile: 709-922-2931

## Part 7.10.2

- 7.10.2 In inviting bids on Government of Canada contracts for the procurement of goods or services in the Labrador Inuit Settlement Area, the Government of Canada shall provide notice to the Nunatsiavut Government and shall provide all reasonable opportunities to the Inuit Businesses enumerated on the list referred to in section 7.10.1 to submit competitive bids and in doing so shall take, where practicable and consistent with sound procurement practices, the following measures;
  - Set the date, location, and terms and conditions for bidding so that Inuit Businesses may readily bid
  - Invite bids by commodity groupings to permit smaller and more specialized firms to bid
  - Permit bids for goods and services for a specified portion of a larger contract package to permit smaller and more specialized firms to bid
  - Permit bids for goods and services for a specified portion of a larger contract package to permit smaller and more specialized firms to bid
  - Design construction contracts so as to increase the opportunity for smaller and more specialized firms to bid
  - Avoid artificially inflated employment skills requirements not essential to the fulfilment of the contract



## Part 7.10.3

- 7.10.3 If the Government of Canada contracts for the procurement of goods or services in the Labrador Inuit Settlement Area, qualified Inuit Businesses shall, subject to meeting the technical and administrative conditions of the request for goods or services, be given fair consideration.
- Procurement Process
- Fair, Transparent, Open
- Treats Industry Fairly
- Notification



## Part 7.10.4

- 7.10.4 Whenever practicable and consistent with sound procurement practices, and subject to Canada's international obligations, the following criteria, or as many as may be appropriate with respect to any particular contract, shall be included in the bid criteria established by the Government of Canada for the awarding of Government of Canada contracts for the procurement of goods and services in the Labrador Inuit Settlement Area:
  - the existence of the head office, administrative offices or other facilities in the Labrador Inuit Settlement Area;
  - the employment of Inuit labour, engagement of Inuit professional services or use of suppliers that are Inuit Businesses in carrying out the contracts; and
  - the undertaking of commitments, under the contract, with respect to on-the- job training or skills development for Inuit.



## Inuit (Aboriginal) Benefits Plans (IBP/ABPs)

- An IBP/ABP ensures that, regardless of who the successful bidder is, socio-economic benefits are realized for the beneficiaries of the specific CLCA(s).
- Bid criteria in IBP/ABPs reflect Canada's CLCA contracting obligations and addresses some or all of the following depending on the Statement of Work:
  - On-the-job training;
  - Skills development;
  - Apprenticeship skills; and
  - Sub-contracting to beneficiary firms.
- DND Alert Care & Maintenance Contract
- RCMP Building Construction in Arviat
- DFO Dredging & Dock Construction in Pangnirtung





## Care & Maintenance of DND Alert Facility – Results of the Inclusion of an Inuit Benefits Plan

Year	Employment	Procurement	Participation	Travel / Training	IBP Total to Date
Year 1 (to June 2013)	\$239,556	\$350,059	\$19,297	\$25,552	<b>\$634,464</b>
Year 2 (to June 2014)	\$397,724	\$988,949	\$148,200	\$102,352	<b>\$1,637,225</b>
Year 3 (to May 2015)	\$393,088	\$867,947	\$189,908	\$0	<b>\$1,450,943</b>
<b>Total</b>	<b>\$1,030,368</b>	<b>\$2,206,955</b>	<b>\$357,405</b>	<b>\$127,904</b>	<b>\$3,722,632</b>

# James Bay & Northern Quebec Agreement (JBNQA) 1975

## 28.10.3 Cree Participation in Employment and Contracts

28.10.3 For projects initiated or conducted by Canada or Québec or their agencies, delegates, or contractors, and for projects by any proponent a major purpose of which is to provide goods or services to or for the benefit of Cree communities the governments shall take all reasonable measures to establish Cree priority in respect to employment and contracts created by such projects:

- b) in respect to contracts arising from such projects, including requirements that the proponents:
  - i) design contract packages to provide to the Crees a reasonable opportunity to submit competitive tenders;
  - ii) post calls for tenders in a public place in all Cree communities on the date on which the general public is made aware of such calls for tenders;
  - iii) set the date, location, terms and conditions for tendering so that Cree individuals or groups may reply with reasonable ease.

# James Bay & Northern Quebec Agreement (JBNQA) 1975

## 29.0.31 Inuit Participation in Employment and Contracts

29.0.31 For projects initiated or conducted by Canada or Québec or their agents, delegates, or contractors, and for projects by any proponent a major purpose of which is to provide goods or services to or for the benefit of Inuit communities the governments shall take all reasonable measures to establish Inuit priority in respect to employment and contracts created by such projects:

- b) in respect to contracts arising from such projects, including requirements that the proponents:
  - i) design contract packages to provide to the Inuit a reasonable opportunity to submit competitive tenders;
  - ii) post calls for tenders in a public place in all Inuit communities on the date on which the general public is made aware of such calls for tenders;
  - iii) set the date, location, terms and conditions for tendering so that Inuit individuals or groups may reply with reasonable ease.



# Annex A Inuit Employment and Contract Priority

Agreement Respecting the Implementation of the James Bay and Northern Quebec Agreement Between Her Majesty the Queen in Right of Canada and Makivik Corporation (1990)

- Annex A – Inuit Employment and Contract Priority



# Annex A Inuit Employment and Contract Priority

## Part II Policy on James Bay and Northern Quebec Agreement Procurement

- 1.Objective
- 2.Policy
- 3.Definitions
- 4.List of Inuit Firms
- 5.Contracting Procedures
- 6.Planning of Government Contracts
- 7.Bid Evaluation Criteria
- 8.Bid Solicitation
- 9.Bid Invitation
- 10.Monitoring and Reporting



# Annex A Inuit Employment and Contract Priority

## Part II Policy on James Bay and Northern Quebec Agreement Procurement

### 8 BID SOLICITATION

8.1 Wherever practicable and consistent with sound procurement management, Canada will first solicit bids from within the Territory.

8.4 Where it is determined that there is a single firm within the Territory qualified to perform a government contract, Canada will solicit that firm to submit a bid for the government contract. The contract may be awarded upon negotiation of acceptable terms and conditions.



## CLCAs Business Lists

- Nunavut Tunngavik Inc.: <http://inuitfirm.tunngavik.com/>
- Gwich'in: <http://gwichin.biz/>
- Inuvialuit: <http://www.irc.inuvialuit.com/corporate/ibl/search/>
- Sahtu:  
[http://driveit.clickspace.com/ir/clients/sahtu/pdf/businessdevelopment/category\\_order.pdf](http://driveit.clickspace.com/ir/clients/sahtu/pdf/businessdevelopment/category_order.pdf)
- Tlicho: <http://www.tlicho.ca/businesses/private-businesses>
- JBNQA – Cree : <http://www.gcc.ca/archive/article.php?id=370>
- JBNQA – Inuit : <http://www.makivik.org/corporate/nie-directory/>
- Nunavik:  
[http://www.krg.ca/images/stories/docs/2012Business\\_Directory\\_updated.pdf](http://www.krg.ca/images/stories/docs/2012Business_Directory_updated.pdf)
- LILCA: <http://www.nunatsiavut.com/business/inuit-business-directory/>



## CLCAs Business Lists cont'd

- Yukon

- Champagne & Aishihik: <http://cafn.ca/doing-business/cafn-businesses/>
- Carcross/Tagish: <http://www.ctfn.ca/>
- Kwanlin Dun: [http://www.kwanlindun.com/kdfn\\_business\\_listings/](http://www.kwanlindun.com/kdfn_business_listings/)
- Kluane: <http://www.kfn.ca/index.php/business>
- Little Salmon/Carmacks: <http://cyfn.ca/nations/little-salmon-carmacks-first-nation/>
- Nacho Nyak Dun:  
[http://nndfn.com/images/uploads/pdfs/  
NND\\_Business\\_Registry\\_Form\\_2012\\_copy\\_2.pdf](http://nndfn.com/images/uploads/pdfs/NND_Business_Registry_Form_2012_copy_2.pdf)
- Selkirk: <http://www.selkirkfn.ca/>
- Tr'ondek Hwech'in: <http://www.trondek.ca/>
- Ta'an Kwach'an: <http://www.taan.ca/>
- Teslin Tlingit: <http://www.teslin.ca/businesses/business.html>
- Vuntut Gwitchin: <http://www.vgfn.ca/>





# Contracting Issues

- Consultation with Inuit communities with payments to Elders.
  - Payment process
  - Cash or cheque?
- Consultants report to HQ
  - CLCA applicability
- Notification
  - Timing – minimum 15 days for LDV requirements
  - Complaints received
- Sole Source contracting :
  - to Aboriginal Firms / HTAs
  - to non-Aboriginal Firms
- Soliciting bids for LDV requirements



## CPN 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.
- [http://pse5-esd5.ainc-inac.gc.ca/clcaonline/clca\\_public/Reports/SearchCLCAQuarterlyReport.aspx?lang=eng](http://pse5-esd5.ainc-inac.gc.ca/clcaonline/clca_public/Reports/SearchCLCAQuarterlyReport.aspx?lang=eng) (link to CLCA.net Quarterly reports)

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



# Procurement Strategy for Aboriginal Businesses (PSAB) and CLCAs

- PSAB is a Federal Government initiative / policy that assists Aboriginal businesses to compete for and win procurement opportunities.
- Since 1996, the PSAB has been working to create strengthened strategic partnerships between Aboriginal business owners, industry sectors and the Government of Canada.
- The PSAB initiative is a national Government of Canada initiative led by INAC. All federal government departments and agencies participate in this initiative.
- The PSAB initiative aims to increase federal contracting opportunities and to gain access to the overall federal procurement process for Aboriginal businesses.
- Bid solicitation is restricted exclusively to qualified Aboriginal business nation wide listed on the Industry Canada Business Directory.
- The Department Project Authority is responsible to determine if the requirement will be set up under PSAB.



## **Procurement Strategy for Aboriginal Businesses (PSAB) and CLCAs - Cont**

- CLCAs are constitutionally protected under Section 35 of the Constitution and are law.
- CLCA obligations take precedence over PSAB.



# Thank You!

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Modern Treaty Implementation Office  
Treaties and Aboriginal Governance  
Indigenous and Northern Affairs Canada

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