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### **COMPREHENSIVE LAND CLAIMS AGREEMENTS AND ESDC PROCUREMENT**



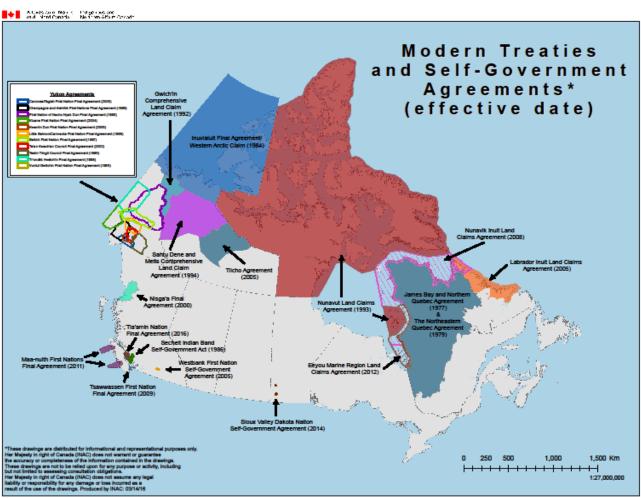
### **COMPREHENSIVE LAND CLAIMS AGREEMENTS (CLCAs)** are negotiated agreements with individual aboriginal communities

who continue to use and occupy traditional lands, and whose aboriginal rights and title have not been addressed through another treaty or other legal means.

### WHEN DO CLCAS APPLY?

- When the procurement, or a portion thereof, includes the final delivery of goods/services/construction to a settlement area(s) covered by particular CLCAs; (Note: the final delivery point(s) is not necessarily the destination address detailed in the requisition, nor the origin (i.e. ordering office) of the requisition);
- Where a procurement is in support of government activities within a CLCA area; and
- Where a procurement involves the performance of services or associated travel by the resulting contractor within a CLCA area.

*In such cases, contracting officers should seek assistance, on whether* CLCAs apply, by contacting the ESDC Procurement Policy Team.



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**CLCA OBLIGATIONS** - Although Canada's procurement obligations vary with each CLCA, they can involve:

- providing notification of the procurement to the land claimant groups and/or CLCA beneficiary firms;
- separating requirements into commodity or geographic groupings, whenever practical and consistent with sound procurement management, to permit smaller and/or more specialized firms to submit bids;
- use of CLCA business directories/lists;
- use of Bid Evaluation Criteria to benefit CLCA beneficiaries, subject to international obligations, wherever practical and consistent with sound procurement management; and
- "right of first refusal" for certain procurements (e.g. archaeology, heritage, parks, surveying).

### **CLCA FACTS**

- Canada first established policies on Aboriginal claims in 1973.
- CLCAs are law, their obligations are legally binding, and they are constitutionally protected.
- CLCAs apply, regardless of dollar value, to both competitive and noncompetitive procurements.
- The final delivery points determine the applicability of a CLCA, not the origin of the requisition (i.e. ordering office).
- No two CLCAs are exactly the same.
- There are 26 comprehensive land claims agreements currently in effect, many containing economic measures with procurement obligations.

#### **METHODS OF SUPPLY**

- Standing Offers (SO) and Supply Arrangements (SA):
  - If the SO/SA is already in place, ensure that it addresses CLCAs and can be used for delivery within CLCAs
  - If developing an RFSO or RFSA, determine if the resulting SO or SA can be used for delivery within CLCAs.
    - If SO or SA will be used within CLCA:
      - address the obligations of the applicable CLCAs;
      - include the appropriate clauses in the RFSO/RFSA and resulting SO/SA to indicate that the SO/SA can be used for delivery within CLCAs, and identify which one(s).
    - If SO or SA will not be used within CLCA:
      - include the appropriate clauses in the RFSO/RFSA and resulting SO/SA to indicate that it is not possible to use the instrument for delivery within CLCAs.
- Request for Proposal and resultant Contract.
- "As-and-when Requested" type Contracts with Task Authorizations.
- Call-ups against a Standing Offers

*Note*: When issuing Call-ups against a Standing Offer, Contracts against a Supply Arrangement, or Task Authorizations against a Contract, no further CLCA requirement needs to be addressed; all mandatory CLCA obligations should already form part of the applicable Standing Offer, Supply Arrangement or Contract.

Officers must ensure that the procurement file contains adequate documentation on the measures taken to address any CLCA procurement obligations especially with regards to Requirements definition, notification of procurement and evaluation criteria.

### FOR PROCUREMENT OFFICERS

- BEST PRACTICE: Engage with the client to ensure a good understanding of the requirement as additional information may trigger CLCA obligations.
- Upon receipt of the file, verify if final delivery locations identify any applicable CLCA.
- If CLCA applies:
- identify which CLCAs apply and verify the obligations for the procurement; and
- ensure that the client is aware of the applicability of CLCA(s) to their requirement.
- If CLCA does not apply, as you engage with the client, keep in mind the possibility that additional information may have an impact to CLCAs.

### **Access to Aboriginal-Owned Lands**

When there is a possibility that contracting activities will be located on aboriginal land, clients must liaise with the appropriate directorate within INAC to determine if the location is subject to other access provisions under the CLCA, and if any access permits are required.

# (1) Identify if any CLCA is applicable

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What is the final delivery location of the procurement?

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Are there multiple locations for delivery?

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Is there more than one CLCA that applies?

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Is the procurement in support of government activities within a CLCA area?

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Does the procurement involve the performance of services or associated travel by the resulting contractor within a CLCA area?

# (2) Assessing obligations of CLCAs

What are the obligations of the applicable CLCA?

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Are there many obligations to address for the procurement?

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The fnal delivery location may not be within a CLCA but will any of the work under the contract require access to any CLCA areas?

### (3) Procurement Strategy

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Are trade agreements applicable to the requirement?

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Is the procurement set-aside under PSAB?

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What is the type of procurement instrument?

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What is the solicitation method?

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How will it be advertised?

If using a SO/SA, can it be used for procurement within a CLCA areas?

### (4) Soliciation documents

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Are there any CLCA evaluation criteria to be addressed with the bid evaluation?

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All solicitation documents must address CLCAs if applicable. The resulting contractual document must indicate if can be used within a CLCA.

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Any Notices posted on GETS/TMA, such as an NPP, ACAN or LOI, must be sent separately to the applicable land claimant group(s) on thedate of posting and must indicate that CLCAs apply.

### **PROCESS FOR ALLOCATION UNIT**

Best practice: It is important to verify all new PReqs to identify if the final delivery location falls within any CLCA.

### Identifying CLCA requirements



#### STEP 1

Allocation unit (AU) reviews PReqs



#### STEP 2

AU verifies the final delivery postal code (first 3 digits) using the file NAME under LOCATION



### STEP 3

If the requirement is applicable to CLCAs, AU identifies which CLCAs apply



#### STEP 4

If CLCA(s) apply, AU identifies in 'header text' that CLCA provisions apply and should be followed, identifying applicable CLCA(s)