



**CREE NATION GOVERNMENT
EEYOU TAPAYATACHESOO**



**Law concerning the Procedures and Requirements Relating to the
Procurement of Goods and Services in accordance with the *Cree Nation
Economic Prioritization Agreement***

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WHEREAS section 85 of the *Act respecting the Cree Nation Government* provides that, unless it involves an expenditure of less than fifty thousand dollars (\$50,000), and subject to any preferential provisions in the *James Bay and Northern Quebec Agreement* relating to the Crees, every contract for the performance of work or the supply of equipment and materials or the providing of services other than professional services shall not be awarded by the Council except after a call for public tenders;

WHEREAS section 85 of that Act also states that the Council shall establish, by by-law, the procedures and requirements relating to the calling of tenders and awarding of contracts;

WHEREAS the Cree Nation Government is now a signatory to the *Cree Nation Economic Prioritization Agreement*, which requires signatories to promote procurement processes that provide for open and competitive bidding exclusively among Cree Community-based Enterprises;

WHEREAS it is therefore appropriate to update the procedures and requirements for the procurement of goods and services which are fair, open, transparent, and competitive and which allow the Cree Nation Government to obtain a fair and reasonable price while favoring Cree employment and Cree-community based enterprises, in compliance with the *Cree Nation Economic Prioritization Agreement*;

NOW THEREFORE the Cree Nation Government adopts this Law, as follows:

I. PURPOSE

1. The purpose of this Law is to establish procedures and requirements relating to the procurement of goods and services by the Cree Nation Government that are fair, open, transparent, and competitive and which allow the Cree Nation Government to obtain a fair and reasonable price for the value of the contract while favouring Cree employment and Cree Community-based enterprises.
2. This Law aims to ensure the Cree Nation Government's procurement policies comply with the *Cree Nation Economic Prioritization Agreement*.

II. DEFINITIONS

3. "Concerned Director" means the Director of the department procuring the given goods or services;
4. "Cree First Nation" means any of the Cree First Nations listed in section 5.1 of the *Agreement on Cree Nation Governance between the Crees of Eeyou Istchee and the Government of Canada*.
5. "Cree Nation Business Registry" means the public registry, maintained by the Department of Commerce and Industry of the Cree Nation Government, of enterprises operating in Eeyou Istchee, as described in Section 5 of the *Cree Nation Economic Prioritization Agreement*.
6. "Cree Community-based Enterprise" means an enterprise that is sufficiently connected to one or various Cree First Nation(s) of Eeyou Istchee in accordance with the Connecting Factors Test defined in Annex A of the *Cree Nation Economic Prioritization Agreement*, and which has received certification as such by the Prioritization Review Panel.
7. "Local Cree Community-based Enterprise" means a Cree Community-based Enterprise having any permanent physical presence in the Cree First Nation in which the work is to be carried out.

8. “Margin of Preference” means:
 - (a) for contracts that are awarded based on lowest price, a percentage of the total price of the bid that is subtracted from the bid for the sole purpose of comparing multiple bids to determine the successful tenderer. The Margin of Preference shall have no impact on the price for contract awarding purposes.
 - (b) for contracts that are awarded based on the highest score in a points system, a percentage of the total score of the bid that is added to the bid for the sole purpose of comparing multiple bids to determine the successful tenderer.
9. “Responsive Bidder” means a corporation, entity or individual that has submitted a bid that conforms in all material respects with this Law and the tender documents, and that answers the qualification criteria established by the Concerned Director for the concerned contract.
10. “Social and Cultural Project” means any community or territorial initiative related to arts or designated to deliver training programs, social and work integration programs, or traditional activities.
11. “Supplemental Procedures” means the uniform written procedures issued from time to time by the Concerned Director pursuant to subsection IV B. of this Law to supplement the procedures set out in this Law.
12. “Traditional Facilities” means facilities used for Cree traditional activities and shall not include structures subject to the *Building Act*, CQLR c B-1.

III. APPLICABILITY

13. This Law is applicable to the procurement of goods and services by the Cree Nation Government as signatory to the *Cree Nation Economic Prioritization Agreement*, excluding the procurement of goods and services in the jurisdiction of communities that have not approved and adopted the *Cree Nation Economic Prioritization Agreement*.
14. For greater certainty, the *2022 Consolidated By-Law Concerning the Procedures and Requirements Relating to the Calling of Tenders and Awarding of Construction Contracts, BC 2011-31* continues to apply for the calling of tenders and awarding of construction contracts by the Cree Nation Government on the traditional territory of Cree First Nations that have not adopted the *Cree Nation Economic Prioritization Agreement*.
15. This Law also applies to the procurement of goods and services by the Cree Nation Government for projects situated outside the traditional territory of any Cree First Nations.
16. This Law does not apply to the procurement for:
 - (a) works carried out for the specific purpose of carrying out Social and Cultural Projects;
 - (b) works carried out for the construction of Traditional Facilities;
 - (c) Professional Services; and
 - (d) Emergencies.

IV. ADMINISTRATION AND GENERAL PROVISIONS

A. Responsible Authority

17. The Concerned Directors of the Cree Nation Government are entrusted with the application and implementation of this Law.

B. Supplemental Procedures

18. The Concerned Directors may issue uniform written procedures to supplement the procedures set out under this Law. In the event of inconsistency or conflict between this Law and any such supplemental Procedures, this Law shall prevail to the extent of the inconsistency or conflict.

C. Responsible Contractors

19. The Cree Nation Government shall award contracts only to responsible entities registered in the Cree Nation Business Registry, which hold all required licences and authorizations to carry out their respective activities and which possess the capacity to successfully perform the terms and conditions of the proposed contract, including access to appropriate tender bonds and contract performance bonds where appropriate. Consideration will be given to such matters as enterprise integrity, record of past performance (including past performance for the Cree Nation Government), and financial, administrative, and technical resources. The Cree Nation Government may use informal methods to assess and evaluate a proposed enterprise's past performance.

D. Documentation

20. All procurement contracts will be documented in writing. Tender documents and contractual documents will be prepared under the responsibility of the Concerned Director and will respect to a reasonable extent all best practices related to the type of contract in force in Canada and/or Quebec adapted to consider the provisions of this Law and of the Supplemental Procedures. The records relating to all its procurement contracts must be retained by the Cree Nation Government for a minimum period of five (5) years after final payment.

E. Cost Estimates

21. A cost or price analysis will be performed in connection with procurement contracts, including contract modifications, in the manner determined by the Concerned Director. The method and degree of analysis will depend on the facts surrounding the particular contract. In general, an independent third party (architect or engineer) cost estimate will be made for construction contracts of five hundred thousand dollars (\$500,000) or more. Where appropriate, an analysis will be made of lease versus construct alternatives to determine the most economical approach. The "cost-plus-a percentage-of-cost" and "turn-key" methods of contracting will not be used.

F. Cancellation of Solicitations

22. Upon the Concerned Director's determination that cancellation of a solicitation (including a call for tenders) is in the Cree Nation Government's best interest, the affected solicitation (whether formal or informal) will be cancelled. Cancellation may be based upon a change in the Cree Nation Government's requirements, lack of funding, changed circumstances, mistake or ambiguity in the solicitation of such magnitude as to make amendment of the solicitation impracticable, major

change to the scope of work, or any other sound business reason as determined by the Concerned Director to be in the best interest of the Cree Nation Government.

G. Rejection of All Bids or Proposals

23. The Cree Nation Government may, at its sole discretion and upon written determination by the Concerned Director, reject any and all bids or proposals received under any procurement method.

H. Confidentiality

24. During the procurement process, information contained in proposals or bids will be confidential and will not be publicly disclosed. However, all contracts awarded on a sole-source procurement basis pursuant to this Law shall be made public by the Concerned Director within thirty (30) days of the signing of such contract. All proposals made outside a public tender process pursuant to this Law shall be made public by the Concerned Director after a notice of award has been issued or the applicable contract has been negotiated and signed. Winning proposals or bids submitted in a public tender process under this Law will be made public by the Concerned Director, within thirty (30) days of the signing of the contract. Proprietary information may be protected from public disclosure when this is deemed in the best interest of the Cree Nation Government by the Concerned Director or when the owner of such proprietary information requests in writing beforehand that the Concerned Director keep such proprietary information confidential and such request is deemed reasonable by the said Director.

V. AWARDING OF PROCUREMENT CONTRACTS OF LESS THAN \$50,000

25. Contracts of a value of which is less than fifty thousand dollars (\$50,000) may be awarded by the Concerned Director in the manner they see fit.
26. Should the contract be awarded to a proponent that is not a Cree Community-based Enterprise, the Concerned Director must provide written justification to the Department of Finance for why a Cree Community-based Enterprise was not awarded the contract.

In all cases, the proponent must be able to carry out the work set out in the contract within the timeframe, following the terms and conditions and for a price deemed fair and reasonable by the Concerned Director.

VI. AWARDING OF PROCUREMENT CONTRACTS OF \$50,000 OR MORE

27. Procurement contracts the value of which equals or exceeds fifty thousand dollars (\$50,000) and is less than five hundred thousand dollars (\$500,000) may be awarded, upon recommendation by the Concerned Director, by the Executive Committee or the Management Committee, in compliance with the *Law Concerning Financial Authority of the Cree Nation Government*.
28. Procurement contracts the value of which is five hundred thousand dollars (\$500,000) or more must be awarded by the Executive Committee upon recommendation by the Concerned Director.
29. The Concerned Director must make the recommendations referred to in sections 27 and 28 following exclusive tendering to Cree Community-based Enterprises. The Concerned Director shall

take reasonable measures to advertise the call for tenders to as many Cree Community-based Enterprises as reasonably possible, including posting the exclusive call for tenders on the Cree Nation Business Registry for a period of at least fifteen (15) days.

30. The exclusive tender will define the works requested and provide sufficient notice to ensure timely responses by proponents. The tender documents will be made available to any interested person upon payment of the reasonable fee determined by the Concerned Director. A summary of the tender documents shall be advertised in the manner deemed appropriate by the Concerned Director with the goal of obtaining as many bid responses as possible from Cree Community-based Enterprises. Required insurances, tender bonds, contract performance bonds and other bonds shall be stated in the tender documents.
31. The tender documents will state the date and time for the bid opening. The date and time will be set to allow a reasonable timeframe for an adequate number of proponents to submit bid responses.
32. A bid response shall be made solely by sealed documents submitted within the required timeframe to the Concerned Director or her/his designated representative. All sealed bids received shall remain sealed in the custody of the Concerned Director or her/his designated representative until the date and time set for the opening of bids.
33. Where deemed appropriate by the Concerned Director, any tendering platform recognized and used by the Government of Quebec or the Cree Nation Government, such as the *Bureau des soumissions déposées du Québec*, may be used.
34. A person submitting a bid response may modify or withdraw the bid only by delivering a written notice of the modification or withdrawal to the Concerned Director or her/his designated representative no later than the date and time set for bid opening. Modifications or withdrawals of bids are effective only if timely and received prior to the bid opening.
35. A bid received after the date and time set for bid opening is late. Late bids will not be considered, will be held unopened and shall be returned to the bidder.
36. In determining bid pricing, the Concerned Director or her/his designated representative may waive formalities and allow correction of obvious typographical or clerical errors.
37. All bids received for a particular contract shall be opened by the Concerned Director or her/his designated representative in the presence of at least two (2) witnesses on the date and at the time set out in the tender documents for the opening of the bids. Any person submitting a bid or an authorized representative of such a bidder may be present at the opening of the bids.
38. Subject to the terms of this Law, the contract shall either be awarded to the Responsive Bidder submitting the lowest bid, or to the Responsive Bidder with the highest score, when a points system is being used. The tender documents must state which method will be used and, in the case of a points system, include the rubric that will be used to assign points.
39. In the event the lowest priced proposal or highest scoring proposal exceeds the cost estimate for such contract prepared under the responsibility of the Concerned Director pursuant to subsection IV E of this Law, the said Director or her/his designated representative, at their discretion, may negotiate with the Responsive Bidder that submitted the lowest priced or highest scoring bid in order to secure a price which is deemed fair and reasonable by the Concerned Director or her/his designated representative.

40. In the event the lowest priced proposal exceeds the cost estimate for such contract and negotiations referred to in subsection 39 do not result in an agreement within budget, the Concerned Director shall proceed to public tender for the contract. The public tender must have identical parameters to the one issued exclusively to Cree Community-based Enterprises.
41. The rules described herein for the process of exclusive tendering to Cree Community-based Enterprises shall apply, *mutatis mutandis*, to public tenders described in subsection 40 of this Law.
42. Where, pursuant to subsection 40 of this Law, the Executive Committee proceeds to public tender, any bids received during the exclusive tender to Cree Community-based Enterprises shall be considered to have been submitted as part of the public tender, subject to the Responsive Bidder's approval. Such bids shall be granted a Margin of Preference of between ten percent (10%) and thirty percent (30%) to be determined by the Management Committee.
43. The Management Committee may grant a Margin of Preference not exceeding ten percent (10%) to Responsive Bidders that are not Cree Community-based Enterprises, but that hire Cree beneficiaries under the contract or under a related sub-contract. Such incentives shall be determined in advance of any particular public tender process and shall form part of the tender documents.
44. In the determination of the Margin of Preference to be awarded, pursuant to subsections 42 and 43, the Management Committee will take into consideration the following factors:
 - (a) The type of project the contract is for;
 - (b) The proportion of the total price of the contract that will be used for labour costs;
 - (c) The market conditions in and outside of Eeyou Istchee; and
 - (d) Any other factors the Management Committee deems relevant.
45. Following a public tender, pursuant to subsection 40 of this Law, if only one bid is received, or only one Responsive Bidder has submitted a bid, the Concerned Director or her/his designated representative may, at her/his option, convert the competitive process to a negotiated procurement. The award will only be made by the Executive Committee if the single bidder is a Responsive Bidder and the price bid or negotiated price is determined by the Concerned Director or her/his designated representative to be fair and reasonable.

VII. STANDARDS OF CONDUCT

46. If any proponent of a Cree Nation Government contract, including their officers, employees, representatives, agents or consultants, take the following actions with respect to any Cree Nation Government employee, officer, agent or consultant (including architects and engineers) who may have influence over or be involved in administering a Cree Nation Government procurement contract, in addition to any other recourse which may be available to the Cree Nation Government, such action may lead to a suspension or debarment of the proponent from further participation in any Cree Nation Government procurement for a minimum period of five (5) years or for such longer period determined by the Executive Committee of the Cree Nation Government in view of the circumstances:
 - (a) make, directly or indirectly, any offer or promise of future employment, business opportunity or gain, or engage, directly or indirectly, in any discussion of future employment, business opportunity or gain with the purpose of influencing procurement decisions;

- (b) offer, give, or promise to offer or give, directly or indirectly, any money, gratuity or other item of any value exceeding two hundred dollars (\$200).
- 47. The Cree Nation Government *Act respecting Ethics and Codes of Conduct* shall apply to the application of this Law.
- 48. In the event of violation of this Law or of the Supplemental Procedures, in addition to any other recourse which may be available to the Cree Nation Government, and to avoid the appearance of impropriety, the Concerned Director may:
 - (a) cancel, rescind, terminate, or void any affected contract;
 - (b) recover the amounts expended by the Cree Nation Government to the concerned proponent; or
 - (c) if the violation was innocent or did not actually prejudice the integrity of the contract award process, elect to continue the process.

ADOPTED THIS 20th Day of March 2024



Edna Neeposh, Corporate Secretary