

Without Prejudice

**Government of the Northwest Territories'**  
**Tłıchọ Contracting Guide**

October 2009

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## **Introduction**

This document is being produced to act as a guide to GNWT departments and agencies when they are contracting under the Tłıchǫ Agreement, which was signed by Dogrib Treaty 11, the GNWT and Canada on August 25, 2003. The Tłıchǫ Agreement came into effect on August 4<sup>th</sup>, 2005. This document provides a step-by-step approach for GNWT departments and agencies when they are contracting in Mowhi Gogha De Niitlee (NWT), on Tłıchǫ lands or in Tłıchǫ communities.

If you have any questions on these guidelines, the Tłıchǫ Agreement or the Tłıchǫ Implementation Plan, please contact the Implementation Division of the Department of Aboriginal Affairs and Intergovernmental Relations.

## **Definitions**

Activities – means activities to be carried out by the GNWT that give rise to employment or other economic opportunities.

Consultation – means:

- a) the provision, to the person or group to be consulted, of notice of a matter to be decided in sufficient form and detail to allow that person or group to prepare its views on the matter;
- b) the provision of a reasonable period of time in which the person or group to be consulted may prepare its views on the matter, and provision of an opportunity to present such views to the person or group obliged to consult; and
- c) full and fair consideration by the person or group obliged to consult of any views presented.

Invitation to Tender – means a solicitation of tenders in respect of a proposed contract by public advertisement.

Mowhi Gogha De Niitlee – comprises the area described in part 1 of the appendix to chapter 1 of the Tłıchǫ Agreement.

Mowhi Gogha De Niitlee (NWT) – means that part of Mowhi Gogha De Niitlee within the Northwest Territories.

Public Tender - means an Invitation to Tender or a Request for Proposals.

Register – means the Tłıchǫ Citizens Register published initially by the Eligibility Committee under 3.3.1(e) of the Tłıchǫ Agreement, as amended from time to time in accordance with 3.4 of the Tłıchǫ Agreement.

Request for Proposals – means a solicitation of proposals in respect of a proposed contract by public advertisement.

Tłıchǫ Agreement – means the land claims and self-government agreement entered into among the Tłıchǫ, the Government of the Northwest Territories and the Government of Canada signed on August 25, 2003, as amended from time to time.

Tłıchǫ Citizen – means a person whose name is on the Register.

Tłıchǫ Community – means the community of Behchokó (Rae-Edzo), Whatì (Lac La Martre), Gamètì (Rae Lakes) or Wekweètì (Snare Lake).

Tłıchǫ Community Government – means the community governments of Behchokó (Rae-Edzo), Whatì (Lac La Martre), Gamètì (Rae Lakes) or Wekweètì (Snare Lake) established by territorial legislation.

Tłıchǫ Entity means an entity which complies with the legal requirements to carry on business in the Northwest Territories and which is

- a) A corporation with more than 50% of the corporation's voting shares beneficially owned by Tłıchǫ Citizens or the Tłıchǫ Government;
- b) A co-operative controlled by Tłıchǫ Citizens or the Tłıchǫ Government
- c) A sole proprietorship operated by a Tłıchǫ Citizen; or
- d) A partnership in which at least 50% of the partners are Tłıchǫ Citizens or the Tłıchǫ Government.

Tłıchǫ Government – means the government of the Tłıchǫ First Nation established in accordance with chapter 7 of the Tłıchǫ Agreement.

Tłıchǫ Lands – means the lands

- a) vested in the Tłıchǫ Government under 18.1.1 of the Tłıchǫ Agreement; or
- b) in which the fee simple interest is held by the Tłıchǫ Government, if the lands were conveyed to it under 9.5.1 of the Tłıchǫ Agreement or if the lands have become Tłıchǫ lands under 18.1.10, 20.4.10 or 20.4.12 of the Tłıchǫ Agreement,

but does not include lands that have been the subject of a conveyance under 9.5.2 or 18.1.6 of the Tłıchǫ Agreement or of an expropriation where the Tłıchǫ Government no longer holds the fee simple interest in the lands or where any other person holds the fee simple interest to any minerals that may be found within, upon or under the lands.

\*\*\* Except where otherwise defined above, all terms used in this Guide and which are defined in the Government Contract Regulations as amended, have the same meanings as set out in those Regulations.

## **Government Contracting wholly or partly in Mowhi Gogha De Niitlee (NWT)**

Except in respect to public activities in Tłıchǫ communities or on Tłıchǫ lands which are dealt with elsewhere in this Guide, where the Government of the Northwest Territories (GNWT) makes a decision to enter into contracts to carry out activities wholly or partly in Mowhi Gogha De Niitlee, the GNWT shall follow its preferential contracting policies, procedures and approaches intended to maximize local, regional and northern employment and business opportunities.

Where the GNWT is obligated to go out to public tender under the Government Contract Regulations, the GNWT shall:

1. Notify the public of its intent to carry out those public activities including providing contract information. Notice of intent posted by the GNWT on its Internet website, or individual GNWT Department websites, will satisfy the requirement of public notice.
2. Following receipt of bids or proposals, review and evaluate bids or proposals received, applying established preferential contracting policies, procedures and approaches.
3. Once decision is made to award a contract, provide public notice of the decision in accordance with existing contracting policies, procedures and approaches. Notice of contract awards posted by the GNWT on its Internet website, or individual GNWT Department websites, will satisfy the requirement of public notice.

**Note:**

**When contracting in Tłıchǫ communities or on Tłıchǫ lands, without going to public tender, specific obligations of the Tłıchǫ Agreement apply to the GNWT. See page 7, Government Contracting in a Tłıchǫ Community, and page 9, Government Contracting on Tłıchǫ Lands, for specific procedures.**

## **Government Contracting in a Tłıchǫ Community**

1. In response to a request to negotiate a contract for activities in a Tłıchǫ Community, the GNWT decides to consider the request for such a contract.
2. Where the GNWT makes a decision to enter into a contract with respect to activities in a Tłıchǫ community without going to public tender, the GNWT shall ***consult with the appropriate Tłıchǫ Community Government*** to determine the most suitable corporation, business or person to achieve the financial, affirmative action, training and economic objectives of the activity.
3. The GNWT will notify Tłıchǫ Community Government, in writing, by registered mail or confirmed fax sent to the appropriate Tłıchǫ Community Government at the address or at the fax number provided in Appendix 1, of its intent to enter into a contract in a Tłıchǫ community, without going to public tender. A copy of the notification will be provided to the Tłıchǫ Government.

The written notice should contain sufficient details with respect to the activity in order for the Tłıchǫ Community Government to form its views as to whom to recommend to the GNWT as the most suitable corporation, business or person to achieve the financial, affirmative action, training and economic objectives of the activity and indicate a reasonable period of time within which the GNWT wishes to receive the recommendation of the Tłıchǫ Community Government.

4. The GNWT must give full and fair consideration to the views of the Tłıchǫ Community Government with respect to its recommendation as to the most suitable corporation, business or person to achieve the financial, affirmative action, training and economic objectives of the activity.

If after having given such consideration, the GNWT decides not to accept the recommendation, advise the Tłıchǫ Community Government in writing of its decision and the reasons for that decision and then it can proceed to another process such as a public tender call, a request for proposals or an invitational tender, in which case the GNWT shall follow its preferential contracting policies, procedures and approaches intended to maximize local, regional and northern employment and business opportunities.

OR

If the GNWT receives no recommendation from the Tłıchǫ Community Government, the GNWT can then award the contract to any corporation, business or person in accordance with the GNWT's normal procurement practices, policies or guidelines, including by way of a public tender call, a request for proposals or an invitational tender, in which case the GNWT shall follow its preferential contracting policies,

procedures and approaches intended to maximize local, regional and northern employment and business opportunities.

5. If the GNWT accepts the recommendation of the Tłıchǫ Community Government, inform them in writing, and proceed to negotiations with the corporation, business or person recommended. The negotiations will be in accordance with the GNWT's Negotiated Contract Guidelines.
6. Upon completion of successful negotiations, let the contract to the corporation, business or person once Cabinet approval has been received to award the negotiated contract.
7. Upon failure to negotiate a contract, take other measures to carry out the activities, including going to a public tender call, a request for proposals or an invitational tender, in which case the GNWT shall follow its preferential contracting policies, procedures and approaches intended to maximize local, regional and northern employment and business opportunities. Before proceeding to another process, provide written notice to the corporation, business or person that negotiations were not successful and that the GNWT intends to proceed to another process
8. Once a decision is made to award a contract, notice of the awarding of the contract should be posted on the GNWT Internet website, or individual GNWT Department websites.

The GNWT's Negotiated Contract Guidelines shall apply to all decisions to negotiate a contract for activities in a Tłıchǫ Community and to award a contract resulting from any such negotiations.

## Government Contracting on Tłıchǫ Lands

1. In response to a request for a negotiated contract on Tłıchǫ lands, the Government of the Northwest Territories (GNWT) decides to consider the request for such a contract.
2. When the GNWT makes a decision that it will enter into a contract for activities on Tłıchǫ lands without going to public tender, Tłıchǫ entities or Citizens shall be given the first opportunity to negotiate such contracts, provided they satisfy all criteria, including any qualifications particular to the contract and price. The negotiations will be in accordance with the GNWT's Negotiated Contract Guidelines.
3. The GNWT will notify Tłıchǫ Citizens and Tłıchǫ entities of intent to let a contract without going to public tender. Written notice of intent, to enter contracts without tender for work to be performed on Tłıchǫ lands, transmitted by registered mail or confirmed fax to the addresses or fax numbers provided in Appendix 1 to the Tłıchǫ Government and Tłıchǫ Community Governments administrative offices will satisfy the requirement to notify Tłıchǫ Citizens and Tłıchǫ entities.

The written notice should contain sufficient details with respect to the activity in order for Tłıchǫ Citizens or Tłıchǫ entities to be able to make a decision as to whether they wish to participate in negotiations for the contract, provide a reasonable period of time within which expressions of interest must be received by the GNWT and an address to which expressions of interest must be sent. The notice may contain a deadline for when the negotiations must be concluded.

Once submissions are received from Tłıchǫ Citizens and Tłıchǫ entities, the GNWT must verify that they are Tłıchǫ Citizens or Tłıchǫ entities by checking with the Tłıchǫ Citizen Registry or the Tłıchǫ entity list provided by the Tłıchǫ Government or check the Tłıchǫ entity list on its website.

If no expressions of interest are received from Tłıchǫ Citizens or Tłıchǫ entities, the GNWT may award the contract to any person in accordance with the GNWT's normal procurement practices, policies or guidelines, including by way of public tender.

4. If the GNWT receives only one expression of interest in response to its request for expressions of interest, the GNWT may proceed directly to negotiations with that Tłıchǫ Citizen or Tłıchǫ entity.
5. If more than one Tłıchǫ Citizen or Tłıchǫ entity indicates an interest in negotiating the contract, the GNWT will proceed to an invitational process with the interested Tłıchǫ Citizens or entities.

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6. Upon completion of successful negotiations, let the contract to the Tłıchǫ Citizen or Tłıchǫ entity once Cabinet approval has been received to award the negotiated contract.
7. Upon failure to negotiate a contract, take other measures to carry out the activities, including going to public tender, in which case the GNWT shall follow its preferential contracting policies, procedures and approaches intended to maximize local, regional and northern employment and business opportunities. Before proceeding to another process, provide written notice to the Tłıchǫ Citizens or Tłıchǫ entity that negotiations were not successful and that the GNWT intends to take other measures to carry out the activity including going to public tender
8. Once a decision is made to award a contract, notice of the awarding of the contract should be posted on the GNWT's Internet website or individual GNWT Department websites.

The GNWT's Negotiated Contract Guidelines shall apply to all decisions to negotiate a contract for activities on Tłıchǫ lands and to award a contract resulting from any such negotiations.

**APPENDIX**

**Tłıchq Government & Tłıchq Community Governments Contact List**

*(Updated October 2009)*

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