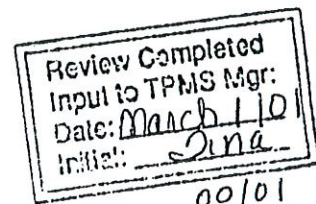


TOBIQUE FIRST NATION

TENDER POLICY



1.0 PREAMBLE

FOR ALL CONSTRUCTION CONTRACTS AND CAPITAL PROJECTS, TOBIQUE BAND COUNCIL WILL CALL FOR PUBLIC TENDERS TO ENSURE BEST VALUE, PRUDENCE, PROBITY AND SOUND CONTRACT MANAGEMENT. THE TOBIQUE BAND COUNCIL SHALL:

1. CALL FOR PUBLIC TENDERS WHERE THE ESTIMATE OF THE CONSTRUCTION WORK, INCLUDING HOUSING CONSTRUCTION, IS OVER \$100,000;
2. MAINTAIN COPIES OF EACH CONTRACT AWARDING PROCESS WITHIN ITS RECORDS.

2.0 DEFINITIONS

ABORIGINAL CONTRACTOR/SUPPLIER: (AS DEFINED BY THE PROCUREMENT STRATEGY FOR ABORIGINAL BUSINESS)(PSAB) A SOLE PROPRIETORSHIP, LIMITED COMPANY, COOPERATIVE, PARTNERSHIP, OR NOT-FOR-PROFIT ORGANIZATION WHERE:

- AT LEAST 51 PERCENT OF THE FIRM IS OWNED AND CONTROLLED BY ABORIGINAL PEOPLE; AND
- AT LEAST ONE THIRD OF THE FIRM'S EMPLOYEES, IF IT HAS SIX OR MORE FULL-TIME STAFF, MUST BE ABORIGINAL.

IF A FIRM IS OPERATING UNDER A JOINT VENTURE OR CONSORTIUM:

- AT LEAST 51 PERCENT OF THE JOINT VENTURE OR CONSORTIUM MUST BE CONTROLLED AND OWNED BY AN ABORIGINAL BUSINESS OR BUSINESSES, AS DEFINED ABOVE.

A FIRM MUST CERTIFY THAT IT MEETS THE ABOVE CRITERIA, AND IT MUST PROVIDE PROOF OF ELIGIBILITY UPON REQUEST.

INVITED TENDERS: THE TENDER IS LIMITED TO A SELECTED LIST OF CONTRACTORS WHO ARE INVITED TO SUBMIT A BID ON THE PROJECT. INDUSTRY STANDARD NORMALLY REQUIRES THAT AT LEAST THREE QUALIFIED FIRMS BE INVITED TO BID TO ENSURE COMPETITION.

LOCAL CONTENT: QUANTIFIABLE CRITERIA IDENTIFIED BY TOBIQUE FIRST NATION TO SUPPORT LOCAL BENEFITS AGAINST WHICH THE BIDS WILL BE ASSESSED. THIS COULD INCLUDE NUMBER OF INDIVIDUALS AND SKILLS AVAILABLE, AS WELL AS LOCAL MATERIAL AND EQUIPMENT FOR USE OF THE PROJECT AND THE SKILLS ENHANCEMENT APPROPRIATE TO THE PROJECT REQUIREMENTS.

LOWEST-BID: REFERS TO THE BID THAT MEETS ALL THE BASIC CONTRACT REQUIREMENTS OR SPECIFICATIONS AT THE LOWEST BID PRICE.

PUBLIC TENDER: PUBLIC OR OPEN TENDERS ARE PUBLICLY ADVERTISED USUALLY IN NEWSPAPERS AND/OR POSTED. IN ADDITION, IT IS POSSIBLE TO SOLICIT A SELECTED NUMBER OF CONTRACTORS TO SUBMIT BIDS ON A PROJECT AS PART OF A PUBLIC TENDER PROCESS. THE FUNDING AND /OR TIME FRAME LIMITATIONS MAY DETERMINE WHETHER ADVERTISING OR INVITED TENDERS ARE WARRENTED.

QUALIFIED FIRM: ONE OF THE TENDER DOCUMENTS IS THE CONTRACTOR'S QUALIFICATION STATEMENT AS REFERRED TO IN APPENDIX 2-9 OF THE CNI. IT SERVES TO ESTABLISH WHETHER A CONTRACTOR POSSESSES THE CAPACITY, SKILL AND INTEGRITY TO ENSURE THE WORK IS COMPLETED AS SPECIFIED, WITHIN TIME AND BUDGET.

TENDER INSURANCE AND SECURITY: PROVISIONS TO ENSURE THE CONTRACTOR HAS ADEQUATE COVERAGE FOR THE LIABILITY ARISING OUT OF, OR RESULTING FROM, THE OWNERSHIP, EXISTENCE, MAINTENANCE OR USE OF PREMISES BY THE CONTRACTOR AND OPERATIONS NECESSARY OR INCIDENTAL TO THE PERFORMANCE OF A GIVEN CONTRACT, AS WELL AS PERFORMANCE BOND, AND LABOUR AND MATERIAL PAYMENT BONDS.

TENDERING PROCESS: THE PROCEDURE BY WHICH TENDER DOCUMENTS, OR SPECIFICATIONS DESCRIBING THE REQUIREMENTS AND QUALIFICATIONS NECESSARY UNDER A CONTRACT, ARE PUT IN THE HANDS OF CONTRACTORS/SUPPLIERS WHO WILL BE INTERESTED IN PREPARING AND SUBMITTING BIDS TO UNDERTAKE THE PROJECT. UNDER A COMPETITIVE PROCESS THERE ARE TWO DIFFERENT METHODS USED FOR CARRYING OUT A TENDERING PROCESS. THE FIRST METHOD IS AN INVITED TENDER AND THE SECOND, A PUBLIC TENDER.

VALUE FOR MONEY: NORMALLY, THE LOWEST BID PRICE, WHICH INCORPORATES SPECIFIED PROVISIONS FOR LOCAL CONTENT, COMMITTED TO BY THE CONTRACTOR/SUPPLIER IN CARRYING OUT THE CONTRACT. IT IS IMPORTANT THAT THESE FACTORS BE CLEARLY IDENTIFIED AND INCORPORATED IN THE TENDER DOCUMENTS AND THE EVALUATION CRITERIA. TENDER DOCUMENTS MAY INCLUDE BASIC REQUIREMENTS WITH RESPECT TO AREAS SUCH AS THE USE OR AVAILABILITY OF LOCAL MATERIALS, SERVICES, CONTRACTORS AND LABOUR, AS WELL AS SKILL ENHANCEMENTS UNDER APPRENTICESHIP OR FACILITIES OPERATOR PROGRAMS. BIDDERS WILL HAVE TO INCORPORATE THESE REQUIREMENTS WITHIN THE CONTRACT AND THEIR BID PRICE. SPECIFIC TRAINING AND ECONOMIC DEVELOPMENT INITIATIVES SHOULD BE COORDINATED WITH PLANNED CAPITAL WORKS, BUT WOULD NOT GENERALLY BE A PART OF THE CONTRACTING PROCESS. FOR EXAMPLE, TRAINING TO PROVIDE AN INDIVIDUAL WITH THE BASIC SKILL SETS NEEDED SHOULD BE PLANNED AND CARRIED OUT IN ADVANCE OF A CAPITAL PROJECT. THE PROJECT WOULD THEN PROVIDE JOB OPPORTUNITIES AND ON-THE-JOB EXPERIENCE FOR THE TRAINED INDIVIDUAL. THIS COULD BE DONE AS PART OF AN APPRENTICESHIP PROGRAM.

3.0 OBJECTIVE OF TENDERING POLICY

THE OBJECTIVE OF TOBIQUE FIRST NATION TO ESTABLISHING A TENDERING POLICY, AS IT RELATES TO DIAND FUNDING, PROVIDED FOR ALL CAPITAL PROJECTS OVER \$100,000, INCLUDING HOUSING, IS TO ENSURE VALUE FOR MONEY WITH CONTRACTS AWARDED IN AN OPEN AND EQUITABLE FASHION, WHILE AT THE SAME TIME PROMOTING LOCAL SOCIO-ECONOMIC BENEFITS. TOBIQUE FIRST NATION MAY WISH TO GIVE CONSIDERATION TO ALSO EXTENDING THEIR TENDERING POLICY TO THE PURCHASE OF GOODS AND SERVICES REQUIRED IN THE DAY TO DAY OPERATIONS OF PROGRAMS AND SERVICES TO THE COMMUNITY.

4.0 BENEFITS OF A TENDERING POLICY

THIS POLICY WILL BE USED TO ENHANCE THE PARTICIPATION OF ABORIGINAL BUSINESSES. THROUGH A TENDERING POLICY THAT ENCOURAGES PARTICIPATION OF ABORIGINAL BUSINESSES, TOBIQUE FIRST NATION WILL BE BETTER EQUIPPED TO MAXIMIZE THE ECONOMIC DEVELOPMENT POTENTIAL, BOTH WITHIN AND OUTSIDE THE COMMUNITY, TO BE DERIVED FROM CAPITAL PROJECTS. THIS SHALL BE DONE BY:

1. INCREASING THE PARTICIPATION OF ABORIGINAL FIRMS IN FIRST NATIONS CONTRACTING;
2. DEVELOPING THE ABILITY OF ABORIGINAL FIRMS TO COMPETE FOR, AND WIN, PUBLIC AND PRIVATE SECTOR CONTRACTS; AND
3. ENCOURAGING THE DEVELOPMENT OF SUSTAINABLE PARTNERSHIPS WITH NON-ABORIGINAL CONTRACTOR/SUPPLIERS AND OTHER RELATED BUSINESS, INCLUDING THE FINANCIAL SECTOR.

5.0 APPLICATION OF TENDERING POLICY

TOBIQUE FIRST NATION WILL CALL FOR PUBLIC TENDERS FOR ALL CAPITAL PROJECTS, INCLUDING HOUSING, FUNDED IN WHOLE OR IN PART BY FEDERAL GOVERNMENT CONTRIBUTIONS, WHERE THE ESTIMATE OF THE CONSTRUCTION WORK IS OVER \$100,000. THE REQUIREMENTS TO CALL FOR PUBLIC TENDERS MEANS THAT TENDER CALLS FOR ALL PROJECTS OVER \$100,000 WILL BE PUBLICLY ADVERTISED BY TOBIQUE FIRST NATION IN NEWSPAPERS OR THROUGH A PUBLIC ELECTRONIC BIDDING SERVICE TO ALLOW ANY INTERESTED CONTRACTOR THE OPPORTUNITY TO BID ON THE PROJECT. IN ADDITION, IT IS POSSIBLE TO SOLICIT A SELECTED NUMBER OF CONTRACTORS TO SUBMIT BIDS ON A PROJECT AS PART OF A PUBLIC TENDER PROCESS.

IN SOME INSTANCES, TOBIQUE FIRST NATION MAY CHOOSE TO CONDUCT A PRE-QUALIFYING PROCESS OF THE CONTRACTORS THROUGH PUBLIC NOTIFICATION. ALL INTERESTED CONTRACTORS WOULD OUTLINE THEIR QUALIFICATIONS USING THE CONTRACTOR'S QUALIFICATION STATEMENT AGAINST AN ESTABLISHED SET OF CRITERIA DESCRIBED UNDER THE PUBLIC NOTIFICATION. ONCE THE EVALUATION OF THE PRE-QUALIFICATIONS IS COMPLETE, TOBIQUE FIRST NATION WOULD INVITE QUALIFIED FIRMS TO SUBMIT A COMPLETE BID FOR THE PROJECT.

WHILE THE REQUIREMENT TO CALL FOR PUBLIC TENDERS IS LIMITED AT THIS TIME TO CONTRACTS OVER \$100,000, TOBIQUE FIRST NATION'S TENDERING POLICY MAY BE USED TO AWARD CONTRACTS UNDER \$100,000. FOR CONTRACTS BETWEEN \$100,000 AND \$500,000, TOBIQUE FIRST NATION WILL UTILIZE THE FOLLOWING COMPETITIVE TENDERING OPTIONS: 1) A PUBLIC TENDER THROUGH ADVERTISEMENTS IN LOCAL OR REGIONAL NEWSPAPERS; 2) AN INVITED TENDER WHERE BIDS ARE INVITED FROM A SELECTED LIST OF CONTRACTORS (IN USING THE INVITATION METHOD, AT LEAST THREE COMPETENT FIRMS WILL BE INVITED TO BID); AND 3) IF THERE ARE AT LEAST THREE QUALIFIED ABORIGINAL CONTRACTORS/SUPPLIERS IN THE AREA TO LIMIT THE INVITATIONS TO ABORIGINAL CONTRACTORS/SUPPLIERS.

6.0 BASIC PRINCIPLES IN TOBIQUE FIRST NATION TENDERING POLICIES

THE TENDERING POLICY OF TOBIQUE FIRST NATION INCLUDES DIRECTIVES AND PROCEDURES TO BE USED THROUGHOUT EACH OF THE FOLLOWING STAGES: ASSEMBLING TENDER DOCUMENTS; TENDER ADVERTISING; DISTRIBUTION OF TENDER DOCUMENTS; EXTENSION OF TENDER CLOSING DATE; RECEIPT OF OPENING OF TENDERS; REVIEW OF TENDERS; AWARD OF CONTRACT; AND CANCELLATION OF TENDERING PROCESS BEFORE AND AFTER RECEIPT OF BIDS. THE POLICY IS DEVELOPED IN ACCORDANCE WITH THE *CONSTRUCTION CONTRACTING GUIDELINES FOR FIRST NATIONS AND ABORIGINAL COMMUNITIES (CNI)* WILL BE UTILIZED IN CONJUNCTION WITH THIS POLICY TO ACHIEVE THIS.

THE FOLLOWING PRINCIPLES SHALL BE FOLLOWED IN TOBIQUE FIRST NATIONS TENDERING PROCEDURE:

- A COMMITMENT TO DEAL WITH ALL POTENTIAL BIDDERS ON AN EQUITABLE BASIS;
- A COMMITMENT TO ESTABLISH SPECIFIC CRITERIA WITHIN WHICH A PUBLIC TENDERING PROCESS WILL BE FOLLOWED BASED ON GOOD CONTRACTING PRINCIPLES WHICH TAKE INTO CONSIDERATION THE DOLLAR VALUE, THE COMPLEXITY OF THE WORK TO BE UNDERTAKEN AND THE NUMBER OF FIRMS WITHIN THE AREA OF COMPETITION WHO ARE ABLE TO MEET THE LEVEL OF EXPERTISE AND QUALIFICATIONS NECESSARY;
- ALL TENDER DOCUMENTS WILL BE TREATED CONFIDENTIALLY;
- ALL TENDERS WILL BE ASSESSED ON THE BASIS OF A CLEAR, CONSISTENT, PREDEFINED EVALUATION CRITERIA.

IN ADDITION, TOBIQUE FIRST NATION WILL:

- MAXIMIZE THE USE AND DEVELOPMENT OF AVAILABLE FIRST NATION RESOURCES OR SKILLS;
- DEVELOP AND REVIEW ANNUALLY A SOURCE LIST OF QUALIFIED LOCAL AND ABORIGINAL SUPPLIERS FROM WHICH TO INVITE BIDS FOR CONTRACTS UNDER \$100,000.

7.0 MAXIMIZING LOCAL BENEFITS IN THE TENDERING POLICY

THERE ARE THREE PRINCIPLE WAYS IN WHICH TOBIQUE FIRST NATION ENSURES THAT IT DERIVES THE MAXIMUM BENEFITS POSSIBLE EVEN WHEN PUBLICLY TENDERING CONSTRUCTION CONTRACTS:

- 1) REQUIRING LOCAL CONTENT PROVISIONS WITHIN THE CONTRACT;
- 2) JOINT-VENTURE ARRANGEMENTS; AND
- 3) INCORPORATING ABORIGINAL SET-ASIDES, WHERE APPROPRIATE AND COST EFFECTIVE, WITHIN THE CONTRACT.

1. LOCAL CONTENT:

WHEN POSSIBLE, CONTRACTS WILL BE NEGOTIATED TO INCLUDE THE HIRING OF MEMBERS OF TOBIQUE BAND. QUANTIFIED LOCAL CONTENT CONDITIONS ARE MEANT TO REPLACE THE "LOCAL PREFERENCE CLAUSE".

2. JOINT-VENTURE ARRANGEMENTS:

WHERE THERE ARE A LACK OF SKILLS OR RESOURCES (LABOUR, EQUIPMENT AND MATERIAL) TO CARRY OUT A LARGER PROJECT, TOBIQUE FIRST NATION MAY CONSIDER A JOINT-VENTURE ARRANGEMENT.

THIS APPROACH INVOLVES THE LOCAL FIRM WORKING WITH A PARTNER AND THROUGH A JOINT VENTURE AGREEMENT TO ACCESS THE ADDITIONAL RESOURCES AND SKILLS NEEDED TO ENABLE THEM TO PARTICIPATE IN THE PUBLIC TENDERING PROCESS.

3. USING ABORIGINAL BIDDERS:

TOBIQUE FIRST NATION WILL ENSURE ABORIGINAL CONTRACTORS ARE NOTIFIED FOR BIDDING ON ANY CONTRACTS. INDUSTRY STANDARD NORMALLY REQUIRES AT LEAST THREE QUALIFIED FIRMS SUBMIT BIDS.

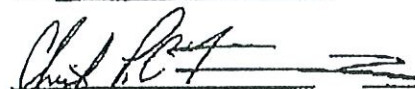
8.0 APPROVAL PROCESS FOR TOBIQUE FIRST NATION TENDERING POLICIES

AS A REQUIREMENT OF BOTH THE FUNDING ARRANGEMENTS FOR 1999-2000 AND THE ACCOUNTABILITY AND MANAGEMENT ASSESSMENT PROCESS, TOBIQUE BAND COUNCIL HAS DEVELOPED AND ADOPTED THIS LOCAL TENDERING POLICY.

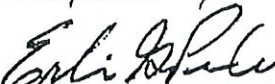
9.0 PROCEDURE TO AMEND POLICY


THIS POLICY MAY BE AMENDED FROM TIME TO TIME AS REQUIRED AT A DULY CONVENED COUNCIL MEETING OF WHICH A MAJORITY OF COUNCILORS ARE PRESENT TO SUPPORT THE PROPOSED AMENDMENTS.

APPROVED AND PASSED AT A DULY CONVENED MEETING OF THE TOBIQUE BAND COUNCIL ON _____, 2001.


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CONSTRUCTION CONTRACTING GUIDELINES FOR FIRST NATIONS AND ABORIGINAL COMMUNITIES (CNI) ARE ATTACHED.