

Chapter 4 - National and International Trade Agreements

- 4.001 (2005-12-16) Comprehensive Land Claims Agreements (CLCAs), the North American Free Trade Agreement (NAFTA), the World Trade Organization Agreement on Government Procurement (WTO-AGP) and the Agreement on Internal Trade (AIT) require Public Works and Government Services Canada (PWGSC) to comply with specific procedures when carrying out certain procurements. Therefore, a decision must be made as to whether or not the requisition is subject to a particular agreement, or a combination of agreements.

To determine coverage under the NAFTA, WTO-AGP and AIT agreements, the requisition value, the client, the type of good or service, and any exceptions or exclusions must be reviewed. Coverage under CLCAs is based on where the service will be performed or the good will be delivered.

The estimated amount of the Goods and Services Tax and/or the Harmonized Sales Tax must be included when determining the requisition value.

Comprehensive Land Claims Agreements

- 4.002 (2005-12-16) Comprehensive Land Claims Agreements (CLCAs) contain specific government contracting obligations which PWGSC is legally obligated to comply with. These obligations apply when contracting for the provision of goods, services or construction in areas subject to CLCAs.

Procurement that is subject to CLCAs, and one or more of the trade agreements (NAFTA, WTO-AGP, AIT) may involve special procedures. (See [4.009](#), [4.010](#), [4.011](#) and [4.012](#).) Procurement that is subject to CLCAs, but not to any of the trade agreements, must adhere to all procurement policies applicable to non NAFTA, WTO-AGP and AIT procurements. For example, application of the Canadian Content Policy for requirements over \$25,000.

To the extent possible the procedures and policies which implement the individual CLCAs are designed to achieve the following objectives which have been established by Treasury Board Secretariat:

- (a) increase the participation by aboriginal groups in business opportunities in the settlement area;
- (b) improve the capacity of aboriginal firms to compete for government procurement in the settlement area; and
- (c) employ Aboriginals at a representative level in the workforce of the settlement areas.

For any procurement which has contracting activities that take place within Comprehensive Land Claims Settlement Areas (CLCSAs), contracting officers should consult the Acquisition Policy and Process Directorate (APPD), at telephone number (819) 956-4744 to determine whether a CLCA may affect the overall procurement strategy. APPD will assist contracting officers in identifying these obligations and in developing methods of meeting them on a case-by-case basis.

- 4.003 (1999-06-21) The government is obligated under these CLCAs to ensure that claimant group enterprises have access to bid opportunities in the CLCSAs. This applies to the purchase of goods, services, and construction by any department, agency or Crown corporation of the federal government for final delivery or furtherance to a location covered by a CLCA. Most areas of Canada, north of the 60th parallel are covered by a CLCA. The only area south of the 60th parallel that is covered by a ratified CLCA is the northern part of Quebec. The origin of the order (i.e. ordering office) does not determine the applicability of a CLCA, only the final delivery point and FOB for furtherance point(s).

No two agreements are exactly the same. First, contracting officers must determine, by identifying

the final delivery point, if the requirement is affected. If it is, the corresponding agreement must be reviewed to see what is said about government procurement. There are no dollar thresholds, so the agreements apply to **all** applicable requirements regardless of dollar value.

Procurement Obligations

4.004 (1999-06-21) The agreements stipulate the applicability of certain criteria for the different stages of the procurement process from requirements definition to contract award. Some of these criteria are common to many of the agreements. The following example is representative of the government obligations in one phase of the procurement process. These obligations do not necessarily apply to all agreements.

Requirements Definition

4.005 (1996-01-01) Under CLCAs obligations, requirements definition must:

- (a) avoid artificially inflated employment skills requirements;
- (b) whenever possible, be designed to provide socio-economic opportunities to the claimant groups and firms; and,
- (c) give consideration to separating requirements into commodity or geographic groupings to permit smaller and more specialized firms to bid.

Access to Nunavut Inuit Owned Lands

4.006 (2000-12-01) CLCAs make provisions for access to Inuit Owned Lands. The Nunavut Land Claims Agreement (NLCA) has a mandatory requirement to obtain a certificate of exemption for the right of access and entry to Inuit Owned Lands within the Nunavut Settlement Area. The Nunavut requires a written certificate of exemption from the Nunavut claimant group for the general public right, and government right, of entry and access to the Inuit Owned Lands of this settlement area as per Section 21.2.1 of the NLCA and discussions held with Nunavut Tunngavik Incorporated on May 27th, 1994. There are no fees connected with the issuance of this certificate.

Contracting officers must identify, whenever possible, the exact location of the contracting activity within this land claim settlement area. For more specific information on whether your requirement is occurring on Inuit Owned Lands, contracting officers are required to contact the Kitikmeot Lands Administration Office in Kugluktuk, Northwest Territories at (867) 982-3310.

Notification of Procurement

4.007 (2005-12-16) Notification of the requirement must be issued to the appropriate claimant group(s). For the procurement of goods, services or construction destined for locations covered by land claim agreements, fax a copy of the procurement notice to the land claimant group(s) listed under the applicable agreement:

James Bay and Northern Quebec Agreement

Makivik Corporation
3333 Place Cavendish, 3rd Floor
St-Laurent, QC H4M 2X6
Telephone: (514) 745-8880
Facsimile: (514) 745-3700

Crees of Oujé-Bougoumou
203 Opemiska Meskino
Oujé-Bougoumou, QC G0W 3C0
Telephone: (418) 745-3931

Facsimile: (418) 745-3844

Grand Council of the Crees (of Québec)
24 Bayswater Avenue
Ottawa, ON K1Y 2E4
Telephone: (613) 761-1655
Facsimile: (613) 761-1388

Naskapi Development Corporation
120-1000 St-Jean-Baptiste Avenue
Quebec, QC G2E 5G5
Telephone: (418) 871-5100
Facsimile: (418) 871-5254

Naskapi Indian Band of Québec
P.O. Box 970
Schefferville, QC G0G 2T0
Telephone: (418) 585-2686
Facsimile: (418) 585-3130

Inuvialuit Final Agreement

Inuvialuit Development Corporation
P.O. Bag # 7
Inuvik, NT X0E 0T0
Telephone: (867) 777-2419
Facsimile: (867) 777-3256

Inuvialuit Regional Corporation
P.O. Box 2120
Inuvik, NT X0E 0T0
Telephone: (867) 777-2737
Facsimile: (867) 777-2135

Gwich'in Comprehensive Land Claim Agreement

Gwich'in Tribal Council
P.O. Box 30
Fort MacPherson, NT X0E 0J0
Telephone: (867) 952-2330
Facsimile: (867) 952-2212

Nunavut Land Claims Agreement

Nunavut Tunngavik Incorporated
Business Development Department
P.O. Box 638
Iqaluit, NU X0A 0H0
Telephone: 1-888-646-0006
Facsimile: (867) 975-4949

Qikiqtani Inuit Association
P.O. Box 1340
Iqaluit, NU X0A 0H0
Telephone: (867) 979-5391 or 1-800-667-2742
Facsimile: (867) 979-3238

Qikiqtaaluk Corporation
P.O. Box 1228

Iqaluit, NU X0A 0H0
Telephone: (867) 979-8400
Facsimile: (867) 979-8433

Kakivak Association
P.O. Box 1419
Iqaluit, NU X0A 0H0
Telephone: (867) 979-0911 or 1-800-561-0911
Facsimile: (867) 979-3707

Kivalliq Inuit Association
P.O. Box 340
Rankin Inlet, NU X0C 0G0
Telephone: (867) 645-2800 or 1-800-220-6581
Facsimile: (867) 645-2348

Sakku Investments Corporation
P.O. Box 188
Rankin Inlet, NU X0C 0G0
Telephone: (867) 645-2805
Facsimile: (867) 645-2063

Kitikmeot Economic Development Commission
P.O. Box 1330
Cambridge Bay, NU X0B 0C0
Telephone: (867) 983-2095
Facsimile: (867) 983-2075

Nunasi Corporation
Corporate Controller
5107 48th Street
Yellowknife, NT X1A 1N5
Telephone: (867) 766-6450
Facsimile: (867) 920-4592

Kitikmeot Inuit Association
Lands Division
P.O. Box 360
Kugluktuk, NU X0B 0E0
Telephone: (867) 982-3310
Facsimile: (867) 982-3311

Umbrella Final Agreement of the Council for Yukon Indians

Council of Yukon First Nations
22 Nisutlin Drive
Whitehorse, YT Y1A 2S5
Telephone: (867) 667-7631
Facsimile: (867) 668-6577

Champagne and Aishihik First Nations Final Agreement

Champagne and Aishihik First Nations
Box 5309
Haines Junction, YT Y0B 1L0
Telephone: (867) 634-2288
Facsimile: (867) 634-2108

Little Salmon/Carmacks First Nation Final Agreement

Little Salmon/Carmacks First Nation
P.O. Box 135
Carmacks, YT Y0B 1C0
Telephone: (867) 863-5576
Facsimile: (867) 863-5710

First Nation of Nacho Nyak Dun Final Agreement

Nacho Nyak Dun First Nation
P.O. Box 220
Mayo, YT Y0B 1M0
Telephone: (867) 996-2265
Facsimile: (867) 996-2107

Selkirk First Nation Final Agreement

Selkirk First Nation
P.O. Box 40
Pelly Crossing, YT Y0B 1P0
Telephone: (867) 537-3331
Facsimile: (867) 537-3902

Teslin Tlingit Council Final Agreement

Teslin Tlingit Council
Box 133
Teslin, YT Y0A 1B0
Telephone: (867) 390-2532
Facsimile: (867) 390-2204

Vuntut Gwichin First Nation Final Agreement

Vuntut Gwichin
P.O. Box 94
Old Crow, YT Y0B 1N0
Telephone: (867) 966-3261
Facsimile: (867) 966-3800

Tr'ondëk Hwëch'in Final Agreement

Tr'ondëk Hwëch'in
P.O. Box 599
Dawson City, YT Y0B 1G0
Telephone: (867) 993-5385
Facsimile: (867) 993-6553

Ta'an Kwach'an Council Final Agreement

Mundessa Development Corporation
Box 32081
Whitehorse, YT Y1A 5P9
Telephone: (867) 668-3613
Facsimile: (867) 667-4295

Kluane First Nation Final Agreement

Kluane First Nation
P.O. Box 20

Burwash Landing, YT Y0B 1H0
Telephone: (867) 841-4013
Facsimile: (867) 841-5900

Sahtu Dene and Metis Comprehensive Land Claim Agreement

Fort Good Hope Metis Nation
Land Corporation, Local No. 54
Box 11
Fort Good Hope, NT X0E 0H0
Telephone: (867) 598-2105
Facsimile: (867) 598-2160

Ayoni Keh Land Corporation
c/o Colville Lake First Nation Band
Box 43, Colville Lake, NT X0E 1L0
Telephone: (867) 709-2700
Facsimile: (867) 709-2717

Déline Land Corporation
c/o Déline Dene Band Council
General Delivery, P.O. Box 156
Déline, NT X0E 0G0
Telephone: (867) 589-3618
Facsimile: (867) 589-3826

Tulita Land Corporation
c/o Fort Norman Dene Band
General Delivery
Tulita, NT X0E 0K0
Telephone: (867) 588-3734
Facsimile: (867) 588-4025

Fort Norman Metis Land Corporation
c/o Fort Norman Metis Nation, Local No. 60
General Delivery
Tulita, NT X0E 0K0
Telephone: (867) 588-3201
Facsimile: (867) 588-3806/4908

Yamoga Lands Corporation
c/o Fort Good Hope Dene Band
P.O. Box 18
Fort Good Hope, NT X0E 0H0
Telephone: (867) 598-2519
Facsimile: (867) 598-2437

Ernie McDonald Land Corporation
c/o Norman Wells Metis Nation, Local No. 59
P.O. Box 186
Norman Wells, NT X0E 0V0
Telephone: (867) 587-2455
Facsimile: (867) 587-2545

The Sahtu Secretariat Incorporated
P.O. Box 155
Déline, NT X0E 0G0
Telephone: (867) 589-4719
Facsimile: (867) 589-4908

NAFTA

- 4.008 (2003-05-30) The *North American Free Trade Agreement Implementation Act* sets out Canada's commitment to reduce trade barriers between Canada, the United States of America and the Federal Republic of Mexico. Chapter 10 of the Agreement focuses on achieving greater competition for, and transparency in, government procurement, eliminating protection of domestic products or suppliers or discrimination among foreign products or suppliers. It also details Canada's agreement to undertake certain government procurement functions in accordance with procedures prescribed in the Act.

To determine whether the North American Free Trade Agreement (NAFTA) is applicable, [Chapter 10](#) of the Agreement must be consulted. In the following sections on determining NAFTA coverage, all references to an 'Annex' are to the annexes to Chapter 10 of the NAFTA.

For purposes of determining coverage, a requisition is considered to be one for:

- (a) goods;
- (b) services; or
- (c) construction

based on the one which represents more than 50 percent of the estimated value of the requisition.

- 4.009 (2006-06-16) If all of the following four NAFTA criteria are met, the procurement is subject to NAFTA. If any one of the criteria is not met, the procurement is not subject to NAFTA.

- (a) Determine the value of the requisition. See [Article 1001](#) and [Article 1002](#), and [Annex 1001.2c](#).

The thresholds in the NAFTA are presented in U.S. dollars. A procurement may be subject to NAFTA if the requisition has a value in Canadian dollars as follows:

- (i) for goods being procured by a federal government entity (including departments, and some Commissions and Boards), \$32,400 (see Article 1001(1)(c)(i));
- (ii) for services being procured by a federal government entity, \$84,000 (see Article 1001(1)(c)(i));
- (iii) for goods or services being procured by a federal government enterprise (usually Crown corporations), \$420,000 (see Article 1001(1)(c)(ii));
- (iv) for construction for federal government entities, \$10,900,000 (see Article 1001(1)(c)(i));
- (v) for construction for federal government enterprises, \$13,400,000 (see Article 1001(1)(c)(ii)).

The values in Canadian dollars are based upon conversion factors as agreed upon in the Agreement and may be revised every two years. The above conversions are in effect until December 31, 2007.

- (b) Determine the coverage by client. See [Annex 1001.1a-1](#) and [Annex 1001.1a-2](#).
- (c) Determine the coverage by type of requirement:
 - (i) goods - see [Annex 1001.1b-1](#); or
 - (ii) services - see [Annex 1001.1b-2](#); or
 - (iii) construction - see [Annex 1001.1b-3](#).

- (d) Determine that the requirement is not exempt. See [Article 1018](#) and [Annex 1001.2b](#).

Article 1(d) of [Annex 1001.2b](#) provides for set-asides for small and minority businesses. Procurement that is subject to a CLCA must be set-aside pursuant to this provision using either the Set-Aside Program for Aboriginal Business (SPAB) or the Land Claims Set-aside (LCSA), whichever is more appropriate. (See [Section 9L](#) for details on the SPAB and [Section 9M](#) for details on the LCSA.)

NOTE: The use of offsets for procurements covered by NAFTA is prohibited. See [Article 1006](#).

WTO-AGP

4.010 (2006-06-16) The World Trade Organization Agreement on Government Procurement (WTO-AGP) is an agreement which aims to secure greater international competition for government procurement. The WTO-AGP supersedes the General Agreement on Tariffs and Trade Government Procurement Code by extending the previous coverage of goods to now include services and construction, much like NAFTA. The national treatment and non-discrimination provisions and procurement procedures of the WTO-AGP are similar to those of NAFTA.

To determine whether the [WTO-AGP](#) is applicable, the Agreement must be consulted. In the following sections on determining WTO-AGP coverage, all references to an “Annex” are to the annexes to the WTO-AGP.

If all of the following four WTO-AGP criteria are met, the procurement is subject to WTO-AGP. If any one of the criteria is not met, the procurement is not subject to WTO-AGP.

- (a) Determine the value of the requisition. See [Article I](#); [Article II](#), and Appendix I, [Annex 1](#).

The thresholds in the WTO-AGP are presented in Special Drawing Rights, the unit of account of the International Monetary Fund. A procurement may be subject to WTO-AGP if the requisition has a value in Canadian dollars as follows for the period January 1, 2006 to December 31, 2007:

- (i) for goods and services being procured by a federal government entity (including departments, and some Commissions and Boards), \$245,000. See Appendix I, [Annex 1](#).
- (ii) for construction for federal government entities \$9,400,000. See Appendix I, [Annex 1](#)

- (b) Determine the coverage by client. See Appendix I, [Annex 1](#).

- (c) Determine the coverage by type of requirement:

- (i) goods – see Appendix I, [Annex 1](#), or
- (ii) services – see Appendix I, [Annex 1](#) and [Annex 4](#).

The WTO-AGP identifies services coverage according to the United Nations Central Product Classification system of classification. The conversion to PWGSC's classification system is provided in *Supply Manual* [Annex 4.1](#) (only services listed are covered.)

- (iii) construction – see Appendix I, [Annex 1](#) and [Annex 5](#).

- (d) Determine that the requirement is not exempt. See [Article XXIII](#) and [Appendix I](#).

Article 1(d) of Appendix I, provides for set-asides for small and minority businesses. Procurement that is subject to a Comprehensive Land Claims Agreement must be set-aside pursuant to this provision using either the Set-Aside Program for Aboriginal Business (SPAB) or the Land Claims Set-Aside (LCSA), whichever is more appropriate. See [Section 9L](#) for details on the SPAB and [Section 9M](#) for details on the LCSA.

NOTE: The use of offsets for procurements covered by WTO-AGP is prohibited. See [Article XVI](#).

AIT

4.012 (2005-12-16) The Agreement on Internal Trade (AIT) relating to government procurement is a comprehensive Agreement on Canadian Internal Trade, in recognition of the need to reduce barriers to trade within Canada.

[Chapter Five](#), Procurement, of the AIT, is intended to "establish a framework that will ensure equal access to procurement for all Canadian suppliers in order to contribute to a reduction in purchasing costs and the development of a strong economy, in a context of transparency and efficiency".

In the following sections on determining AIT coverage, all references to an "Annex" are to the annexes to Chapter Five, Procurement, of the AIT.

If all of the following four AIT criteria are met, the procurement is subject to AIT. If any one of the criteria is not met, the procurement is not subject to AIT.

- (a) Determine the value of the requisition. A procurement may be subject to AIT if the requisition value is:
 - (i) \$25,000 or greater, in cases where the largest portion of the procurement is for goods;
 - (ii) \$100,000 or greater, in cases where the largest portion of the procurement is for services, except those services excluded by [Annex 502.1B](#); or
 - (iii) \$100,000 or greater, in the case of construction.
- (b) Determine the coverage by client. Entities listed in [Annex 502.1A](#), are subject to the AIT procurement procedures.

Entities listed in [Annex 502.2A](#) are excluded from Chapter Five of the AIT.
- (c) Determine the coverage by the type of requirement.
 - (i) All requirements for the purchase, lease or rental of goods are covered.
 - (ii) All services are covered except for those listed in [Annex 502.1B](#).
 - (iii) All construction procurement is covered.
- (d) Determine that the procurement is not exempt. See [Article 507](#) and [Article 1802](#); [Article 1803](#); and [Article 1804](#).

Procurement which is subject to a Comprehensive Land Claims Agreement (CLCA) can also be subject to the AIT. Based on [Article 1802](#) of the AIT, legal counsel at Industry Canada considers that the notification and other requirements in the CLCAs are "measures", as defined in Chapter Two, General Definitions of the AIT, and, that, to the extent they are "severable" from the procurement as a whole, are excluded from the obligations of the AIT. The procurement itself and all other aspects of it remain covered. This means that provisions contained in the CLCAs, such

as notification procedures or evaluation criteria favouring claimant groups, must be complied with, despite the fact that they may appear to be inconsistent with corresponding provisions in the AIT.

- 4.013 (2004-12-10) Contracting officers should note that when the procurement is covered by more than one agreement, the procedures to be followed are the procedures which are considered the most rigorous, for example, for limited tendering reasons, procurement covered by NAFTA, WTO-AGP and AIT, only the limited tendering reasons that are common to all three agreements are available as options. (See [5.031](#).)

Canadian International Trade Tribunal

- 4.014 (2005-12-16) NAFTA, WTO-AGP and AIT require that each party to the specific agreement maintain an independent bid challenge authority. The [Canadian International Trade Tribunal](#) (CITT) has been designated as the bid challenge authority for Canada for NAFTA, WTO-AGP and AIT. A potential supplier may file a complaint concerning a procurement action to the CITT, on the grounds that any aspect of the procurement process relating to a requirement covered by NAFTA, WTO-AGP or AIT is unfair or discriminatory.

Complaints to the CITT should be addressed to:

Canadian International Trade Tribunal
Procurement Review Division
Standard Life Centre
333 Laurier Avenue West
Ottawa, Ontario K1A 0G7

Telephone: (613) 990-1988
Facsimile: (613) 992-3686

- 4.015 (2005-12-16) The Tribunal's mandate authorizes it to receive complaints pertaining to any aspect of the procurement process up to and including contract award, conduct inquiries and make determinations. In dealing with a complaint, the Tribunal must determine whether the government institution responsible for the procurement under review has complied with the requirements of NAFTA, WTO-AGP and AIT and such other procedural requirements, as prescribed in the *Canadian International Trade Tribunal Procurement Inquiry Regulations*.
- 4.016 (2005-06-10) All Public Works and Government Services Canada (PWGSC) actions in response to a complaint filed with the CITT are coordinated through the PWGSC Acquisitions Strategy and Relations Directorate (ASRD). All requests, decisions, reports, letters, etc., to the CITT shall be coordinated by ASRD in consultation with Legal Services and the procurement organization. The procurement organization is responsible for preparing a chronology of events that will form the "backbone" of the Government Institution Report (GIR); legal services will produce the remaining sections, with input from the procurement organization, other departmental specialists, and the client department, as required. The procurement organization's management remains responsible to review and approve the GIR prior to sign-off.

The Assistant Deputy Minister, Acquisitions Branch, is the signing authority for requests for the rescission of Postponement of Award Orders; the GIR; replies to determinations where PWGSC is committing funds to pay complaint costs, bid preparation costs and/or lost profit to a prevailing complainant; and, any letters specifying the amount PWGSC is willing to pay.

Contracting officers must ensure that complete documentation and records, including a signed and dated record of all communications with suppliers, are maintained in order to substantiate that the procurement process was carried out in accordance with the obligations of the trade agreements.

Throughout the complaint process, PWGSC will keep the client informed of actions taken in response to the complaint, as well as any notices, decisions, information, etc., received from the CITT.

- 4.017 (2001-12-10) Prior to initiating a complaint to the CITT, suppliers should be encouraged to resolve problems directly with PWGSC by first making the appropriate contracting officer aware of the matter giving rise to the problem. All objections brought to the attention of the contracting officer should be handled with a minimum of delay, while exercising due care and judgement.

Experience demonstrates that there are often minor errors, omissions, or other inadvertent actions which can be quickly clarified or corrected to the satisfaction of all concerned thus removing the basis of many problems and concerns at the outset.

- 4.018 (2004-05-14) Contracting officers may contact the APPD, either by telephone at (819) 956-6411 or by facsimile at (819) 956-1265, for assistance with respect to an actual or potential CITT action.

Details about the CITT, including its complaint and inquiry process, are in the publication [Procurement Review Process - A Descriptive Guide](#). As well on the CITT Website, the [CITI Determinations](#) and [Notices of Motion and Orders](#) can be viewed.