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Grand Council of the Crees (Eeyou Istchee)
Grand Conseil des Cris (Eeyou Istchee)

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Cree Nation Government
Gouvernement de la Nation Crie

Cree Nation Government

BYLAW 2011-31

2023 Consolidated By-Law Concerning the Procedures and Requirements Relating to the Calling of Tenders and Awarding of Construction Contracts

Adopted December 14, 2011

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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 ("JBNQA") 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 has in recent years assumed large and important responsibilities in regard to the implementation of numerous sections of the JBNQA, notably Section 18 relating to Justice, Section 19 relating to Policing and Section 28 relating to Economic and Social Development;

Whereas, as a consequence thereof, the Cree Nation Government will be awarding in the next few years numerous and valuable construction contracts for a variety of projects;

Whereas it is therefore appropriate to adopt procedures and requirements for the awarding of construction contracts 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 businesses to a reasonable extent;

NOW THEREFORE the Cree Nation Government adopts this By-law, as follows:

1. Purpose

1.1 The purpose of this by-law is to establish procedures and requirements relating to the calling of tenders and awarding of construction contracts 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 businesses to a reasonable extent.

2. Administration and General Provisions

Responsible Authority

2.1 The Director of Capital Works of the Cree Nation Government is entrusted with the application and implementation of this By-law.

Supplemental Procedures

2.2 The Director of Capital Works may issue uniform written procedures to supplement the procedures set out under this By-law. In the event of inconsistency or conflict between this By-law and any such Supplemental Procedures, this by-law shall prevail to the extent of the inconsistency or conflict.

Responsible Contractors

2.3 The Cree Nation Government shall award construction contracts only to responsible entities which hold all required licences and authorizations to carry out construction activities in Quebec 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 contractor 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 contractor's past performance.

Documentation

2.4 All construction contracts will be documented in writing. Tender documents and contractual documents will be prepared under the responsibility of the Director of Capital Works and will respect to a reasonable extent the Canadian Construction Documents Committee model construction tendering and contracting terms and conditions for similar construction contracts adapted to take into account the provisions of this By-law and of the Supplemental Procedures. The records relating to all its construction contracts must be retained by the Cree Nation Government for a minimum period of five (5) years after final payment.

Cost Estimates

2.5 A cost or price analysis will be performed in connection with construction contracts, including contract modifications, in the manner determined by the Director of Capital Works. 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.

Cancellation of Solicitations

2.6 Upon the Director of Capital Works' 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 Director of Capital Works to be in the best interest of the Cree Nation Government.

Rejection of All Bids or Proposals

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

2.8 Confidentiality During the procurement process, information contained in proposals or bids will be confidential, and will not be publicly disclosed or available until the Director of Capital Works determines that disclosure will not prejudice the open and competitive procurement process. However, all construction contracts awarded on a sole-source procurement basis pursuant to this By-law shall be made public by the Director of Capital Works within thirty (30) days of the signing of such contract. All proposals made outside a public tender process pursuant to this By-law shall be made public by the Director of Capital Works after a notice of award has been issued or the applicable contract has been negotiated and signed. All sealed bids in a public tender process under this By-law will be made public by the Director of Capital Works at the time of the opening of bids. Proprietary information may be protected from public disclosure when this is deemed in the best interest of the Cree Nation Government by the Director of Capital Works or when the owner of such proprietary information requests in writing beforehand that the Director of Capital Works keep such proprietary information confidential and such request is deemed reasonable by the said Director.

3. Awarding of Construction Contracts of Less than $50,000

3.1 Construction contracts the value of which is less than fifty thousand dollars ($50,000) may be awarded by the Director of Capital Works on a sole source contracting basis or, at the discretion of the said Director, following one or more invitational proposals from one or more contractors identified by the Director.

3.2 In awarding construction contracts of less than fifty thousand dollars ($50,000), preference shall be given in the following order of priority:

a) First: Local Cree Contractor;

b) Second: Other Cree Contractor;

c) Other contractor. In all cases, the Local Cree Contractor, Cree Contractor of other contractor 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 Director of Capital Works.

4. Awarding of Construction Contracts of Less than $2,000,000

4.1 Construction contracts the value of which is fifty thousand dollars ($50,000) or more but less than two million dollars ($2,000,000) may be awarded by the Executive Committee upon recommendation from the Director of Capital Works following public tendering to Cree Contractors and involving at least three (3) Cree Contractors. The Director of Capitals Works shall take reasonable measures to invite as many Cree Contractors as reasonably possible to submit proposals for such construction contracts, including posting an invitation on the Cree Nation Government’s website for a period of at least fifteen (15) days.

4.2 Such a construction contract will normally be awarded to the Cree Contractor which can carry out the works set out in the contract within the timeframe and following the terms and conditions deemed appropriate and reasonable by the Director of Capital Works and

which submits the lowest price among the proposals received.

4.3 In the event the lowest priced proposal exceeds the cost estimate for such contract performed under the responsibility of the Director of Capital Works pursuant to subsection 2.5 of this By-law, the said Director or his designated representative, at their discretion, may negotiate with the concerned Cree Contractor in order to secure a price which is deemed fair and reasonable by the Director of Capital Works or his designated representative.

4.4 In the event at least three (3) Cree Contractors capable of carrying out the work do not submit proposals, or in the event no agreement can be reached on a fair and reasonable price following negotiations carried out pursuant to subsection 4.3 of this By-law, the Executive Committee may, upon the recommendation of the Director of Capital Works, proceed to public tenders for the contract following the procedure set out in section 5 of this By-law.

5. Awarding of Construction Contracts of $2,000,000 or More

5.1 Construction contracts, the value of which are two million dollars ($2,000,000) or more shall be awarded by Executive Committee upon recommendation from the Director of Capital Works following a public tendering process open to all contractors.

5.2 The public tender will define the works requested and provide sufficient notice to ensure timely responses by contractors. The tender documents will be made available to any interested person upon payment of the reasonable fee determined by the Director of Capital Works. A summary of the tender documents shall be advertised in the manner deemed appropriate by the Director of Capital Works with the goal of obtaining as many bid responses as possible from contractors. Required insurances, tender bonds, contract performance bonds and other bonds shall be stated in the tender documents.

5.3 The tender documents will state the date and time for the bid opening. The date and time will be set so as to allow a reasonable timeframe for an adequate number of contractors to submit bid responses.

5.4 A bid response shall be made solely by sealed documents submitted within the required timeframe to the Director of Capital Works or his designated representative. All sealed bids received shall remain sealed in the custody of the Director of Capital Works or his designated representative until the date and time set for the opening of bids.

5.5 Where deemed appropriate by the Director of Capital Works, the tendering process established through the Bureau des soumissions déposées du Québec shall be followed.

5.6 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 Director of Capital Works or 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 actually received prior to the bid opening.

5.7 A bid received after the date and time set for bid opening is late. Late bids will not be considered, and will be held unopened and shall be returned to the bidder.

5.8 In determining bid pricing, the Director of Capital Works or his designated representative may waive formalities, and allow correction of obvious typographical or clerical errors.

5.9 All bids received for a particular contract shall be opened by the Director of Capital Works or 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.

5.10 Subject to the terms of this By-law, the contract shall normally be awarded to the Responsive Bidder submitting the lowest bid.

5.11 The Director of Capital Works may provide incentives to bidders of up to ten percent (10%) of the overall contract value to encourage Responsive Bidders to 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.

5.12 In the event the lowest priced proposal exceeds the cost estimate for such contract prepared under the responsibility of the Director of Capital Works pursuant to subsection 2.5 of this By-law, the said Director or his designated representative, at their discretion, may negotiate with the lowest bidder who is a Responsive Bidder in order to secure a price which is deemed fair and reasonable by the Director of Capital Works or his designated representative.

5.13 If only one bid is received, or only one Responsive Bidder has submitted a bid, the Director of Capital Works or his designated representative may, at 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 is determined by the Director of Capital Works or his designated representative to be fair and reasonable.

6. Standards of Conduct

6.1 If any contractor or prospective contractor of the Cree Nation Government, 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 construction contract procurement, 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 contractor 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 five hundred dollars ($500).

6.2 No Cree Nation Government employee, officer, agent or consultant (including architects and engineers) will participate in the selection or award of a construction contract by the Cree Nation Government if such participation constitutes a conflict of interest. In addition, all employees, officers, agents and consultants will diligently guard against the appearance of impropriety or conflict of interest, and will disclose in advance any potential conflicts of interest.

6.3 In the event of violation of this By-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 Director of Capital Works may:

a) cancel, rescind, terminate or void any affected construction contract;

b) recover the amounts expended by the Cree Nation Government to the concerned contractor;

c) if the violation was innocent or did not actually prejudice the integrity of the contract award process, elect to continue the process.

7. Definitions

7.1 “Cree band” means the Cree Nation of Chisasibi, the Whapmagoostui First Nation, the Cree Nation of Wemindji, the Cree Nation of Eastmain, The Crees of the Waskaganish First Nation, the Cree Nation of Nemaska, the Waswanipi Band, and the Cree Nation of Mistissini, respectively constituted as corporations by the Cree-Naskapi (of Quebec) Act, S.C. 1984, c. 18, as well as the Crees of Oujé-Bougoumou (also known as the “Oujé- Bougoumou Cree Nation”) represented by the Oujé-Bougoumou Eenuch Association until such time as the Oujé-Bougoumou Band is constituted as a corporation under the Cree-Naskapi (of Quebec) Act, S.C. 1984, c. 18, and thereafter the Oujé-Bougoumou Band.

7.2 “Cree beneficiary” means a Cree beneficiary under the meaning of the James Bay and Northern Quebec Agreement whose name appears on the beneficiary list maintained by Québec.

7.3 “Cree Contractor” means an entity authorized to carry on construction activities in Quebec, which is accredited by the Director of Capital Works as a bona fide Cree contractor and which answers the following minimum criteria:

a) a corporation i) with more than fifty percent (50%) of the corporation’s voting shares beneficially owned by one (1) or more Cree beneficiary, Cree Band or Cree Entity and ii) the board of directors of which is comprised by more than fifty percent (50%) of Cree beneficiaries and iii) which has itself carried out construction projects for a period of at least one (1) year;

b) a non-profit corporation i) with more than fifth percent (50%) of the members being Cree beneficiaries, Cree Bands or Cree Entities and ii) the governing body of which is comprised by more than fifty per cent (50%) of Cree beneficiaries and iii) which has itself carried out construction projects for a period of at least one (1) year;

c) a sole proprietorship operated by a Cree beneficiary which has on its own carried out construction projects for a period of at least one (1) year;

d) a Joint Venture, partnership or other similar arrangement between a Cree Contractor as defined in paragraphs a) to c) above and a third party may qualify as a "Cree Contractor" under the terms of this By-law if it is accredited by the Director of Capital Works as meeting the following criteria:

i) the Cree Contractor as defined in paragraphs a) to c) above is entitled to receive at least fifty percent (50%) of the profits of the joint venture, partnership or similar arrangement;

ii) the Cree Contractor as defined in paragraphs a) to c) above invests at least twenty-five percent (25%) %) of the capital and equipment required by the Joint Venture, partnership or similar arrangement, including working capital;

iii) Cree beneficiaries will carry out at least twenty-five percent (25%) of the overall man-hours of the labour required under the contract and a binding undertaking to this effect satisfactory to the Director of Capital Works is entered into by the third party and the Cree Contractor as defined in paragraphs a) to c) above. In all cases, the overall contract price, financial stability, experience in performing similar contracts, capabilities and abilities of the concerned Cree Contractor must meet with the approval of the Director of Capital Works. The Director of Capital Works may maintain a registry of Cree Contractors he has accredited under a qualification process which he may establish under Supplemental Procedures.

7.4 "Cree Entity" means the Grand Council of the Cree (Eeyou Istchee), the Cree Nation Government (including when acting through the Board of Compensation thereto), the James Bay Eeyou Corporation, the Opimiscow Companee, the Sakami Eeyou Corporation, the Cree Trappers' Association, the Cree Outfitting and Tourism Association, the Cree Native Arts and Crafts Association, the Cree Development Corporation, the Cree villages, a Cree landholding corporation, as well as any other Cree-controlled corporation, enterprise or legal entity referred to in the James Bay and Northern Quebec Agreement or created pursuant to the James Bay and Northern Quebec Agreement.

7.5 "Local Cree Contractors" means a Cree Contractor in which Cree beneficiaries affiliated to the Cree community in which the construction work is to be carried out or the Cree band on whose lands such work is to be carried out hold a controlling interest.

7.6 “Responsive Bidder” means a corporation, entity or individual that has submitted a bid that conforms in all material respects with this By-law and the tender documents and which answers the qualification criteria established by the Director of Capital Works for the concerned contract.

7.7 “Supplemental Procedures” means the uniform written procedures issued from time to time by the Director of Capital Works pursuant to subsection 2.2 of this By-law to supplement the procedures set out in this By-law.

Adopted: December 14, 2011

Paul John Murdoch, Corporate Secretary