



Listuguij
MI'GMAQ GOVERNMENT

Tender Policy

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Listuguj Mi'gmaq Government
TENDER POLICY

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Purpose

The Listuguj Mi'gmaq Government (LMG) will call for public tenders to ensure best value, fairness, prudence, probity and sound contract management. This policy is meant to promote the economic development of the Listugujewaq through policies and procedures deemed appropriate and necessary by the LMG Chief and Council to achieve the objectives.

This policy aims to:

- Promote transparency in contract awarding;
- Treat competitors equitably and with integrity;
- Maximize efficiency and provide a useful, uniform mechanism for expediting the purchasing process and for simplifying follow-up procedures;
- Ensure the purchase or lease of goods and services at the best possible prices; with a fair competition of quality, delivery and after-sales service; and,
- Outline accountability regarding the responsible use of funds.

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Part I - General Provisions

Definitions

1. Definitions

- a) **Aboriginal person** means those persons so defined by the Canada Act, RSQ1982.
- b) **"Aboriginal Contractor"** means a sole proprietorship, limited company, cooperative, partnership, or not-for-profit organization where:
 - (i) at least 51 percent of the firm is owned and controlled by Aboriginal people; and,
 - (ii) 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 a joint venture or consortium:

- (iii) 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.

- c) **bid** means an offer or proposal or tender, submitted in response to a request for bids, to supply goods or services for a service contract under stated terms and conditions.
- d) **bid security** means a security given by a bidder to guarantee their price, such as a bid bond.
- e) **bidder** means a person, partnership or corporation who submits a bid.
- f) **director** means an employee of the Listuguj Mi'gmaq Government responsible for projects authorized by Chief and Council to spend money under the Listuguj Mi'gmaq Government directorate budget.
- g) **construction contract** means a contract for the construction, building, purchase, moving, repair, renovation or extension of houses, any kind of building, and other structures such as roads, streets and municipal infrastructure, and other civil engineering works. It also includes design-build contracts where the bidder both designs and builds the structure. It does not include contracts for design work.

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- h) **contract security** means a deposit of securities or bond with the Listuguj Mi'gmaq Government given by the contractor that provides enough money to the Listuguj Mi'gmaq Government so that it can carry out the work if the contractor does not meet their obligations.
- i) **consulting service contract** means a contract for services that proposes solutions to problems. It includes contracts for architectural, engineering, planning, project management, legal, accounting, and other professional services.
- j) **employment contract** means a contract of service that establishes an employer/employee relationship. This generally means that the Listuguj Mi'gmaq Government directs and has control over the work and owns the tools and equipment, and that the employee depends on the Listuguj Mi'gmaq Government for his/her remuneration and has no chance of profit or risk of loss. The Listuguj Mi'gmaq Government's Personnel Policy governs **Employment contracts**.
- k) **evaluation criteria** mean criteria against which bids or proposals are evaluated to determine which bids or proposals qualify; and the ranking of bids or proposals.
- l) **estimated contract value** means the total estimated value of the contract before issuing the request for bids.
- m) **Senior Director** means the person employed by the Listuguj Mi'gmaq Government who reports to Chief and Council and to whom all other staff report.
- n) **invitational tender** means a request for bids on a contract given to a number of selected bidders.
- o) **non-professional services contract** means a contract for services where the service provided is not a solution to a problem, and does not involve professionals. Examples include janitorial work, wood cutting, equipment rental, catering, security, water delivery, fire-fighting.
- p) **proposal** means an offer of services or bid or tender on a service contract (consulting contracts and non-professional services contracts).
- q) **project lead** means an employee of the Listuguj Mi'gmaq Government delegated the responsibility to oversee the project.

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- r) **public tender** means a request for bids made through public advertisements and where anyone qualified can submit a bid. A public tender is advertised in local newspapers, electronic tendering platforms for the Listuguj Mi'gmaq Government, Federal and Provincial governments and/or MERX (Canadian Public Tender).
- s) **Purchasing contract** is a contract for the purchase of physical goods, including installation where required.
- t) **request for bids** means a document defining the requirements, standards, plans and specifications of the work to be done under a contract so as to permit the evaluation of bids.
- u) **request for proposals** means a document defining the requirements, terms of reference, and bid evaluation criteria of the work to be done under a service contract (consulting and non-professional contracts) so as to permit the evaluation of bids or proposals.

Objectives of Tender Policy

- 2. This document expresses the Listuguj Mi'gmaq Government's policy concerning the selection of contractors and suppliers. The objectives of this policy are to ensure best value, prudence, probity, sound contract management and maximum benefits to the community in contracts and purchases while at the same time promoting local socio-economic benefits.

Application of tender policy

- 3. This policy applies to
 - a) **construction contracts** issued by the Listuguj Mi'gmaq Government,
 - b) **consulting contracts** issued by the Listuguj Mi'gmaq Government,
 - c) **non-professional service contracts**, issued by the Listuguj Mi'gmaq Government;
 - d) **purchases of goods**, equipment, materials, or supplies including installation where required by the Listuguj Mi'gmaq Government;
 - e) **service contract**, an agreement between the contractor and LMG covering the maintenance and serving of equipment over a specific time period; and/or others such as training,

It does **not** apply to:

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- f) employment contracts;
- 4. Chief and Council may authorize a yearly review of the policy.

Holdbacks

- 5. On any contract, there will be a minimum holdback of 10% of the total value of the contract until the work is completed as per contract document to the Listuguj Mi'gmaq Government's satisfaction. This holdback will also apply to partial or interim payments.

Conflict of interest

- 6. A Listuguj Mi'gmaq Government's employee, Councillor or Chief **shall not** sign a contract with a direct relative unless this relation was disclosed during the tender process and approved by the Finance Committee. (Mother, father, brother, sister, son, daughter, husband or wife). Such a contract will be invalid.

Staff spending limits

- 7. As stated in the Listuguj Mi'gmaq Government Financial Administration By-Law, Directors have the authority to enter into contracts up to a maximum of \$10,000.00. The Senior Director will have the authority to enter into contracts up to a maximum of \$50,000.00 and the Finance Committee must approve any contract or purchases more than \$50,000.00 but less than \$250,000.00 without going to tender. Any contracts over \$250,000.00 will be discussed and awarded at the Chief and Council level upon review of the evaluation presented by the Senior and Departmental Director.

Part II - Construction Contracts

- 8. All construction contracts must abide by the financial by-law requirement for signature or approval by the appropriate level of authority. Failure to do so may constitute the contract to be deemed invalid and/or disciplinary action.
- 9. There will only be labour contracts where the Listuguj Mi'gmaq Government supplies the materials for project less than \$50,000.00. All other construction contracts will be for both labour and materials.

Local Hire Policy

- 10. The Listuguj Human Resource Department will maintain a hiring lists of qualified individuals and trainees for each occupation and priority group. Individuals will be ranked on that list based on the hiring priorities.
- 11. The working of the **hiring list** referral system will be as follows:

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- a) Listuguj Mi'gmaq Government members will be entered on the hiring list based on a Human Resource Data Pool. The onus may be on individuals to have their names entered on the list. They may also be entered on other lists upon request by showing that they have the required qualifications or experience.
- b) Contractors will be required in their contracts to obtain a minimum of 30% of their labour from the hiring list, until the list is exhausted. In general, at least every third worker should come from the list as long as there are qualified workers on the hiring list.
- c) Workers will be referred from the hiring list on a first-come first served basis, by priority group. Any worker who obtains a job or refuses a job goes to the bottom of the list.
- d) Contractors may directly ask for workers they have previously employed, even if they are not at the top of the hiring list. However, these workers must be from the current top priority group to count as part of the 30%.
- e) Contractors may refuse to hire a certain individual on the hiring list if the contractor directly had a negative experience with that worker in the past by providing written proof.
- f) Contractors may not fire or terminate or lay-off workers referred from the hiring list except for cause (e.g. lack or end of work in the worker's trade, incompetence, substance use on the job, absenteeism). The contractor must, prior to taking any action to terminate the employment of a worker, notify the Listuguj Mi'gmaq Government Department Director, Human Resource Department of all lay-offs or employment terminations of referred individuals and must provide the reason.

Employment Insurance

12. All construction contractors with a contract of \$50,000.00 or more must show to the Listuguj Mi'gmaq Government that they are making Employment Insurance contributions for Listuguj Mi'gmaq Government members they employ.
13. All construction contractors must provide evidence that their workers are covered by CSST, Health and Safety Standards.
14. For small contractors, the Listuguj Mi'gmaq Government may provide payroll services on small contracts for a fee as long as there are two or more Listuguj Mi'gmaq Government members employed by the contractor. The fee will be determined by the Finance Department for current rates.

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Builder's Insurance

15. All contractors for construction contracts over \$250,000 must provide proof of Direct Damage and Liability Insurance or other insurance acceptable to the Listuguj Mi'gmaq Government. The Listuguj Mi'gmaq Government may also require insurance on smaller contracts. Contractors will consult with the Director for current insurance.

Request for bids or contracts

16. Except for emergencies as provided in section 24 below, the director or Senior Director will invite **bids** in accordance with this policy before entering into any **construction contract**.

Sourcing thresholds

17. Where the Listuguj Mi'gmaq Government wishes to tender a **construction contract**:
 - a) under \$10,000, the Director and/or Listuguj Mi'gmaq Senior Director may enter into a contract directly with a bidder (sole source).
 - b) between \$10,000 and less than \$50,000 **estimated contract value**, the Projects Director and Listuguj Mi'gmaq Senior Director may either invite bids from at least three sources (or fewer if three qualified sources cannot be identified)
 - c) between \$50,000 and \$250,000 **estimated contract value**, the Projects Director should obtain at least 3 quotes from different service providers. The recommended quote should be provided to the Director of Finance to present it to the Finance and Audit Committee for approval
 - d) Above \$250,000 **estimated contract value**, the Director will issue **public tenders** upon approval from Finance Committee.

Business Preference Policy

18. Every spring, before the start of the construction season, members will be informed of the Listuguj Mi'gmaq Government plans for the upcoming construction season through a mail-out.
19. Any requests for bids above \$5,000 estimated contract value must be advertised through posting notices in the community.
20. Any tender between \$5,000 and \$10,000 **estimated contract value** may be restricted or preference given to Listuguj Mi'gmaq Government Contractors.

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21. The Director or Listuguj Mi'gmaq Government Senior Director will maintain a list of preferred contractors that will, in the judgement of the Chief and Council, contribute to the objectives of this policy as set out in Section 2 herein. Aboriginal Contractors from Listuguj will be automatically put on this list. Contractors may be excluded from the list by the Finance Committee because of bad or inadequate performance.
22. The Finance Committee, the Director or Listuguj Mi'gmaq Mi'gmaq Senior Director may impose additional or other preference requirements in any tender, such as the use of local subcontractors or local materials.
23. The preference requirements will be described clearly in the **request for bids**.

Request for Bids required in an emergency

24. Notwithstanding the above sections, the Listuguj Mi'gmaq Government may enter into an emergency **contract** directly with a **bidder**:
 - a) in the event that there exists an immediate threat to the safety of a Listuguj Mi'gmaq Government tenant or to Listuguj Mi'gmaq Government property;
 - b) in the event of an emergency as defined by any level of government; and,
 - c) where immediate action is required to prevent or respond to injury or death to persons or animals, or damage to property;
25. All contracts entered into because of an emergency must be reported immediately to the Listuguj Mi'gmaq Government who shall report to Chief and Council.

Bids in excess of the estimated contract value

26. The Listuguj Mi'gmaq Government may refuse to enter into a contract where the bids exceed the **estimated contract value**.
27. The **Director** or Listuguj Mi'gmaq Government Senior Director may not award a contract over \$250,000 where the **request for bids** was through an **invitational tender**, unless expressly authorised to do so by the Finance Committee.

Information on requests for bids

28. Information released by the Listuguj Mi'gmaq Government to one **bidder** will be given to all other **bidders**.
29. Best efforts will be made to make changes or addenda to **requests for bids** available to all **bidders** at the same time.

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Information in request for bids

30. A request for bids will include the following information:
- a) the essential terms of the contract, including:
 - (i) a full description of the goods to be delivered, including plans and specifications where required;
 - (ii) the form, amount, and terms and conditions for any **bid security/bond**, contract performance security or any performance penalty;
 - (iii) the tentative completion date or any other timing considerations; and,
 - (iv) any local preference requirements such as the hiring of or subcontracting to the Listuguj Mi'gmaq Government members.
 - b) Terms and conditions for the submission of **bids**, including:
 - (i) the form in which bids are to be submitted;
 - (ii) the information required to be provided in the bid;
 - (iii) the place where bids must be submitted; and,
 - (iv) the closing date and time;
 - c) A full description of the manner in which bids will be evaluated, including:
 - (i) the method used to evaluate bids;
 - (ii) the **evaluation criteria**, stated in such a way that the **bidder** can provide all the information required;
 - (iii) if applicable, the weight assigned to each evaluation criteria; and,
 - (iv) the tax status of the Listuguj Mi'gmaq Government in relation to the Goods and Services Tax.
31. Public notices for requests for bids need not contain the full request for bids, but the notice must state where bidders may pick up the full **request for bids**.
32. The Listuguj Mi'gmaq Government may reject a **bid** received before the closing time where the **bid** fails to meet one or more of the following criteria:
- a) the bid was not submitted in the required form;

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- b) there are significant omissions of required information;
- c) a **bid** is not signed as required in the **request for bids**;
- d) the required **bid security** is not provided;
- e) the **bid** has conditions attached to it that are not authorized by the **request for bids**;
- f) the **bid** fails to meet one or more of standards specified in the **request for bids**; and,
- g) there is evidence, based on past performance or the **evaluation criteria**, that a bidder would be unable to carry out the contract as specified.

Late Bids

33. The Director or Listuguj Mi'gmaq Government Senior Director will reject any **bid** submitted after the **closing time**.

Bid Evaluation

34. All bids will be evaluated based on the best interests of the Listuguj Mi'gmaq Government.
35. The selection of the successful **bid** is based on factors which may include the price, the economic benefit to the Listuguj Mi'gmaq Government, the effectiveness of the proposed solution, the experience, qualifications and financial capabilities of the **bidders**.
36. The evaluation criteria which may be applied to proposals may include but are not limited to:
- a) Price or dollar value of the **bid**;
 - b) Economic impact and local employment;
 - c) the experience of the **bidder** with similar contracts;
 - d) knowledge of local technical conditions and culture;
 - e) the qualifications of the **bidder**;
 - f) the means proposed by the **bidder** to carry out the contract;
 - g) the schedule proposed by the **bidder**; and,

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h) any other criteria relevant to the particular contract.

37. All evaluation criteria will be included in the **request for bids**.

Opening of bids

38. All publicly advertised tenders will be opened according to the following:

- a) the Director shall create a selection committee based on relevant expertise; and,
- b) all **bids** will be opened at a designated time and place in the presence of at least one witness; and,
- c) upon opening each **bid** the name of the **bidder**, the amount of the **bid**, and, if applicable, the amount and form of the **bid security** will be announced and recorded in a written log.

Subject to section, 24 a minimum of two bids are required for a project, in the event the minimum number is not reached, another call for request of bids will be announced **or** if for compelling reasons and with the approval of the Chief and Council the Listuguj Mi'gmaq Director may accept the bid.

Award of contract

39. The contract may be awarded to the lowest priced or highest ranking **bid** depending on the **evaluation criteria**.

Bid security

40. The Director or Listuguj Mi'gmaq Government Senior Director will determine the requirement and amount, if any, of the **bid security**. **Bid security** will be in the form of:

- a) a bid bond, acceptable to the Listuguj Mi'gmaq Government;
- b) cash, bank draft, certified cheques, Canadian postal money order, assignable redeemable term deposit, bearer or assignable bonds of the Government of Canada or of the government of a province, or irrevocable letter of credit.

Changes in scope of work

41. After the closing time on a **request for bids**, the Listuguj Mi'gmaq Government may, without re-tendering, negotiate changes to the scope or price of the contract with the lowest price or highest ranking **bidder**.

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Bonding and Contract Security

42. **Construction Contract security** (or bonding), will be required on bids where the **estimated contract value** is more than \$250,000 at least 50% labour and material bond and 10% bid bond.
43. **Contract security**, where required, will be in the amount specified in the request for bids and will be in the form of:
 - a) a security bond, acceptable to the Listuguj Mi'gmaq Government;
 - b) cash, bank draft, certified cheques, Canadian postal money order, assignable redeemable term deposit, bearer or assignable bonds of the Government of Canada or of the government of a province, or irrevocable letter of guaranteed credit.

Payments

44. On every construction contract, the Listuguj Mi'gmaq Government will assign an inspector. The responsibility of the inspector will be to monitor the work to ensure it is done according to the Listuguj Mi'gmaq Government's plans and specifications, and to recommend progress payments and change orders. The inspection work may be done by a certified professional such as an architect or by staff of the Listuguj Mi'gmaq Government.
45. There will be at least a 10% hold back on all payments for construction until the work is completed as per contract document.
46. Any payment will be based on the percentage of the value of the work put in place and will only be made after the inspector recommends payment.

Part III - Consulting Contracts

47. Any consulting contract requires a written proposal from the contractor that specifies the work to be done or the services to be provided, the time it will take to do it and the cost.

Proposal Evaluation

48. All proposals will be evaluated based on the best interests of the Listuguj Mi'gmaq Government.
49. The selection of the successful **proposal** will be based on factors which may include the effectiveness of the proposed solution, the experience, qualifications and financial capabilities of the **bidders**, the economic benefit to the Listuguj Mi'gmaq Government, and the price.

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50. The terms of reference and the proposal evaluation criteria on any request for proposal must be approved by the Finance Committee.
51. The evaluation criteria which may be applied to proposals may include but are not limited to:
- a) the experience of the **bidder** with similar contracts;
 - b) knowledge of local technical conditions and culture;
 - c) the qualifications of the **bidder**;
 - d) the means proposed by the **bidder** to carry out the contract;
 - e) the schedule proposed by the **bidder**;
 - f) Economic impact and local employment;
 - g) Price or dollar value of the **bid**; and,
 - h) any other criteria relevant to the particular contract.
52. All evaluation criteria will be included in the **request for bids**.

Information on requests for Proposals

53. Information released by the Listuguj Mi'gmaq Government to one **bidder** will be given to all other **bidders**.
54. Best efforts will be made to make changes or addenda to **requests for bids** available to all **bidders** at the same time.

Payments

55. No advance payments will be made on consulting contracts, except for legal retainers unless approved by the Finance Committee.
56. Except in cases where the contract is for verbal advice (such as lawyers), payments will only be made upon receipt of a final or interim report, product or other deliverable required by the terms of reference or contract.