

# **GWICH'IN BUSINESS POLICY AND PROCEDURES FOR WORK WITHIN THE GWICH'IN SETTLEMENT AREA**



**Gwìch'inat Eenjit Gàdatr'igwìjìlcheii Gidilii**

**Gwich'in Tribal Council**

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# **GWICH'IN BUSINESS POLICY**

## **1.0 POLICY STATEMENT**

A fundamental objective of the *Gwich'in Comprehensive Land Claim Agreement* (GCLCA) is to encourage the self-sufficiency of the Gwich'in and to enhance their ability to participate fully in all aspects of the economy.

## **2.0 GWICH'IN BUSINESS POLICY GOALS AND OBJECTIVES**

The goals of the Gwich'in Business Policy are to:

- develop Gwich'in competencies, skills and expertise;
- ensure that economic opportunities are offered to Gwich'in;
- encourage meaningful participation by Gwich'in in all aspects of the economy; and
- increase Gwich'in wealth and self sufficiency

These goals can best be achieved through Gwich'in owned businesses competing on a preferred basis. The GTC - representing Gwich'in Participants and as trustees of the Gwich'in Settlement Lands under the GCLCA - has created a Gwich'in Business Policy that provides preferential access to Gwich'in owned businesses so that:

- the Gwich'in can access opportunities to participate fully in all aspects of the regional economy, on a preferred basis in Unity;
- the Gwich'in receive maximum economic benefit from business and government within the Gwich'in Settlement Area and Settlement Lands;
- businesses in the resource development sector have a clear understanding of their responsibilities when doing business within the GSA;
- the Gwich'in Participants and Gwich'in communities can be economically self-sufficient;
- Gwich'in Participants have an opportunity to develop business capacity skills and resources;
- Gwich'in communities can build and develop economic development capacity;
- value earned from developments on Gwich'in land will be reinvested into the Gwich'in economy; and
- the traditional Gwich'in economy can be maintained, strengthened, and enhanced while embracing business opportunities.

### 3.0 CONFLICT PROVISIONS

This Business Policy is subject to the terms of the GCLCA and to the extent there is a conflict between the Business Policy and the GCLCA, the provisions of the GCLCA shall govern to the extent of the inconsistency.

### 4.0 DEFINITIONS

This section provides definitions for the terms used throughout this policy.

**“Participant”** means a Gwich’in participant enrolled and defined in the GCLCA.

**“Best Total Value”** means:

- a) safety and environmental management systems and performance;
- b) quality, including technical and operational capabilities;
- c) cost competitiveness, based upon the area in which such work will occur;
- d) Gwich’in content plan; and
- e) provide the Goods and Services within a timely manner as specified;

**“Gwich’in Content Plan”** includes:

- a) employment and training opportunities;
- b) business opportunities;
- c) detailed transportation utilization plan;
- d) management, monitoring and report categories (a) – (e) inclusive; and
- e) implementation

**“Gwich’in Settlement Lands”** means “settlement lands” which are defined in s.2.1.1 of the GCLCA, as Gwich’in Lands outside local government boundaries and granted pursuant to s.18.1.2 of the GCLCA.

**“Land Use Agreement”** means an agreement in which the Gwich’in Tribal Council authorizes a person or company to use Gwich’in lands.

**“Designated Gwich’in Organization”** means a Gwich’in Organization designated pursuant to Chapter 7 of the GCLCA.

**“Government”** means federal, territorial or municipal government, its employees, agents and contractors and includes the Canadian Armed Forces;

“**GSA**” means Gwich’in Settlement Area all that portion of the NWT lying within the boundaries of the settled land claim.

“**Annual Status**” means a designated Gwich’in Business may maintain its designation from year to year by annually filing a report in the specified format certifying its status or capacity.

“**Registered Gwich’in Business**” means a Gwich’in business which has been designated by the Gwich’in Tribal Council as a Registered Gwich’in Business and which has satisfied the criteria for designation set forth in section 9.0 of this policy.

## **5.0 BACKGROUND**

On April 22nd, 1992, the Gwich’in Tribal Council (GTC), the Government of Canada and the Government of Northwest Territories signed the GCLCA in Fort McPherson, Northwest Territories.

The GTC has developed the Gwich’in Business Policy which is consistent with Chapter 10 and 20 of the GCLCA. These specific Chapters of the GCLCA clarify the need to ensure the Gwich’in Tribal Council adopt and enforce a Gwich’in Business Policy in order to assert the rights of the Gwich’in. The Gwich’in Business Policy allows opportunities to be effectively shared with all Gwich’in participants.

The Designated Gwich’in Organizations (DGO’s), the GTC, related Gwich’in Community Development Corporations and businesses owned by participants currently participate in a variety of joint venture relationships and business enterprises. All such business organizations may periodically have the opportunity to supply goods and services to third parties that are non-Gwich’in businesses as a direct result of the Gwich’in Business Policy.

The Gwich’in Business Development department is an administrative body of the Gwich’in Tribal Council and is responsible for the implementation of the Gwich’in Business Policy.

## **6.0 GUIDING PRINCIPLES**

This section refers to the guiding principles to be used during the implementation of the Gwich’in Business Policy to ensure fairness, consistency and transparency.

- ✓ Provide economic incentives to Gwich’in participants and facilitate the development of Gwich’in business expertise;
- ✓ To regulate access to Gwich’in Settlement Lands by non-Gwich’in businesses;
- ✓ Provide Gwich’in with greater opportunities to develop business, administrative and management skills;

- ✓ Retain economic value within the Gwich'in Settlement Area to the extent possible;
- ✓ Provide preference to Gwich'in Business;
- ✓ Ensure clarity and certainty for non-Gwich'in Business within the Gwich'in Settlement Area ("GSA");
- ✓ Ensure the collective rights of the Gwich'in are respected and protected, as stated in the GCLCA;
- ✓ Provide a policy for the Gwich'in Development Corporation, Gwich'in Community Development Corporations and Gwich'in Companies to conduct business within the GSA and on Settlement Lands;
- ✓ Create an inventory of Gwich'in business skills, services and goods available;
- ✓ Reduce conflicts of interest among the Gwich'in;
- ✓ Create wealth among the Gwich'in in an influential and principled way; and
- ✓ Foster the growth of the Gwich'in economy;

## **7.0 SPECIFIC LAND CLAIM PROVISIONS**

Chapter 20 of the GCLCA describes the access to Gwich'in Lands (i.e. Gwich'in Settlement Lands and Gwich'in Municipal Lands which are larger than 4 hectares and which are not developed). The Gwich'in Tribal Council has been mandated to implement Chapter 20. Any developments in the Gwich'in Settlement Area which will involve the use of Gwich'in Lands require the agreement of the Gwich'in Tribal Council. Specific terms and conditions are required. For specific detail on access to Gwich'in Lands refer to the Gwich'in Tribal Council Land Management and Control Guidelines available at [www.gwichin.nt.ca](http://www.gwichin.nt.ca).

Businesses working within Gwich'in Lands must obtain proper authorization as referenced in the GTC Land Management and Control Guidelines prior to entering Gwich'in Lands.

## **8.0 CO-OPERATION AND BENEFITS AGREEMENTS**

On occasion, the GTC enters into Co-operation and Benefits Agreements and/or Access and Benefits Agreements with companies doing work within the GSA. These agreements outline the terms and conditions under which companies will provide employment, training and business opportunities to the Gwich'in. These Agreements will recognize the Gwich'in Business Policy and provide an opportunity for Registered Gwich'in Businesses to provide goods and services to companies wishing to do business within the GSA.

## **9.0 REGISTERED GWICH'IN BUSINESS CRITERIA**

A Registered Gwich'in Business may do business on Gwich'in Lands, subject to other applicable rules and policies. A business that is not a Registered Gwich'in Business is not permitted to conduct business on Gwich'in Lands without specific approval from the Gwich'in Tribal Council.

- A. All Registered Gwich'in Businesses, including the Gwich'in Tribal Council and its subsidiaries, must agree to follow the Gwich'in Business Policy.
- B. A Registered Gwich'in Business must agree to hire participants under the GCLCA without compromising its ability to carry out a safe, efficient and cost-effective operation. This preferential access condition may be adjusted by the Gwich'in Tribal Council in a particular case for the following reasons:
  - Reciprocal arrangements with other land claim bodies which give Gwich'in participants preferential rights in return for similar rights in the Gwich'in Settlement Area. This could apply in a case where a major project crosses several land claim regions.
  - Cases where special business terms are negotiated which provide benefits for Gwich'in employees in return for concessions for non-Gwich'in employees.
  - To allow for the use of employees with technical skills which are not normally available within the Gwich'in Settlement Area.
- C. The Gwich'in Tribal Council and its subsidiaries shall award contracts for the supply of goods and services within the Gwich'in Settlement Area to a Registered Gwich'in Business provided such goods and services can be supplied on a competitive and timely basis and the business can meet all technical, qualification criteria, health, safety and environmental standards.
- D. All Registered Gwich'in Businesses are required to demonstrate the following criteria:

### **Bona Fides**

Corporations, partnerships and sole proprietorships can be designated as a Registered Gwich'in Business provided they truly represent a legitimate Gwich'in enterprise and are not set up solely to meet minimum conditions for preferential access.

### **Gwich'in Participants/Owners actively participate in the business.**

- Gwich'in participants in management and/or professional positions;
- Capacity development plan in place;



- Retention and/or Training Plan, where applicable;
- Preferred hiring plan or capacity building plan in place for Gwich'in participants;
- Direct employment of Gwich'in participants;
- 51% Ownership and/or Control of Registered Gwich'in Business;

**Local office, local assets and management roles by Gwich'in.**

- Business presence (office, facilities and/or equipment) in the GSA;
- Gwich'in asset investment in the business or asset acquisition commitments in place;

**Demonstrates the ability to meet the definition of “Best Total Value”.**

- A health, safety and environmental safety plan;
- Quality, including technical and operational capacities;
- Maintain cost competitiveness;
- Gwich'in content plan;
- Provide goods and services within a timely manner as specified;
- Demonstrate the ability to be insurable and bondable;
- Ability to supply and deliver contracts as identified by a Company's scheduling requirements;

**Compliance with all government requirements to operate a business in the Northwest Territories.**

- WCB Clearance Letter in Good Standing;
- Legally Registered with Corporate Registry in the NWT;
- BIP Registered – where applicable benefits can be incurred;

**Commitment to purchase and/or contract goods and services from Gwich'in businesses wherever possible.**

Note: The Gwich'in Tribal Council and its subsidiaries also agree to utilize goods and services offered by Gwich'in Registered Business.

**10. ASSESSMENT POLICY AND REVIEW PROCESS**

All applications to be a Registered Gwich'in Business shall be approved by the Gwich'in Tribal Council. The GTC shall provide for a transparent application review process and supply an application form to apply as a Registered Gwich'in Business to all Participants upon request.

The Manager of Business Development will perform an assessment to determine whether a business should be designated as a Registered Gwich'in Business and listed for the

business capabilities identified in application. This assessment will be based on standard criteria fairly applied.

## **11. COMPETENCIES AND CAPACITIES REQUIRED FOR LISTING**

A Registered Gwich'in Business will be included in the Registered Gwich'in Business List that is provided to companies seeking to do work within the GSA.

The Business List provides information about the business and identifiable procurement category listings. Once a business has been designated a Registered Gwich'in Business, it can be listed under as many business categories as it can demonstrate capability. A registered business can bid or seek to do work in any category, but not necessarily be listed as capable in that field. A Registered Gwich'in Business may have multiple capabilities. Each capability must be justified prior to inclusion on the list. Each capability will be verified annually.

## **12. COOPERATION AND COMMUNICATION WITH GWICH'IN COMMUNITIES**

The GTC represents all Gwich'in participants. At the same time, the GTC recognizes the importance of each Gwich'in community developing its business capacity through its Development Corporations, joint ventures and individual Gwich'in businesses. Therefore, the following shall be applicable:

1. Consultation with the local DGO and Community Development Corporation will occur on all projects or activities affecting the specific community.
2. It is not the intent of the Gwich'in Development Corporation to undertake smaller projects in communities where there is already the qualified capacity and resources within the community to perform the work.
3. The Manager of Business Development, GTC will be in contact with all Registered Gwich'in Businesses to ensure business opportunities are communicated and opportunities for joint ventures and contracting/sub-contracting opportunities are discussed.
4. The GTC website will provide information on the Gwich'in Business Policy.

## **13. MEMORANDUM OF UNDERSTANDING - GOVERNMENT OF NORTHWEST TERRITORIES AND CANADA**

The GTC, through the GCLCA Chapter 10 Section 10.1.6 and specific agreements such as the ("MOU") with the Government of Northwest Territories, can establish a process towards improving the participation of Gwich'in businesses in GNWT contracting

opportunities, within the Gwich'in Settlement Area, in addition the GTC has the right to pursue economic opportunities offered by the Government of Canada.

The priority of receiving contracts shall be all Registered Gwich'in Businesses.

#### **14. GWICH'IN BUSINESS DEVELOPMENT WEBSITE**

The establishment of a Gwich'in Business Development Website will provide a current list of Registered Gwich'in Businesses identified by Procurement Categories and will be maintained by the GTC Business Development Office.

#### **15. PROCEDURE FOR ACCESSING THE LIST**

The List can be accessed by contacting the Manager, Business Development or the website: [www.gwichin.biz](http://www.gwichin.biz).

The Manager, Business Development or its delegate will update The List and make available upon request.

No fees will be charged to companies using The List to find Gwich'in Businesses.

#### **16. PROCEDURE FOR MAINTAINING (A LISTING ON THE GWICH'IN BUSINESS LIST)**

A Registered Gwich'in Business that fails to keep in good-standing may lose its Registered Gwich'in Business status.

If the Gwich'in Tribal Council proposes to remove a Gwich'in business as a Registered Gwich'in Business, it shall give notice of the decision to remove the Gwich'in business from the Registered Gwich'in Business List and give the owner of the business the opportunity to make representations to the GTC.

#### **17. APPLICATION OF GWICH'IN BUSINESS POLICY**

This policy is effective once passed by the GTC Board. It remains in effect until revised, amended or eliminated by the GTC.

This policy will be reviewed as necessary and at least once every 3 years.

#### **18. FEES FOR ASSESSMENT AND LISTING**

Application – No Fee

Approval – No Fee

Re-registration – No Fee

Registration after removal \$500 dollars to be paid upon re-registration

## **APPENDIX “A”**

### **PROCEDURE FOR APPLICATION**

#### **1.0 INTRODUCTION**

The GTC would like to provide a competitive advantage to existing Gwich'in Businesses and to encourage the development of more Gwich'in businesses.

The GTC also wishes to be fair to all Gwich'in Businesses provided they truly represent a legitimate Gwich'in enterprise and are not set up solely to meet minimum conditions for preferential access.

The GTC will maintain an ongoing review of the Registered Gwich'in Business list, together with the criteria for becoming designated businesses.

Applicants that meet the criteria will be listed as a Registered Gwich'in Business. Applicants that fail to meet the criteria will not be registered.

Any business currently listed as a Registered Gwich'in Business that subsequently cannot meet the criteria will have its Registered status removed.

#### **STEP 1: APPLICATION**

A business makes an application for a Registered Gwich'in Business shall follow the designated procedure.

Upon completion and submission, the application is reviewed and a decision is communicated to the business. Once a company has been approved as a Registered Gwich'in Business, it is eligible to conduct business within the Gwich'in Settlement Area for business activities, subject to any other requirements of the Gwich'in Tribal Council.

Every business, including sole proprietorships, partnerships and corporations, seeking to conduct business activities on Gwich'in Settlement lands must submit a completed application and relevant supporting documents to the Manager, Business Development.

#### **STEP 2: ASSESSMENT PROCESS**

The Manager, Business Development will assess each application to determine whether it meets the criteria established under this policy. The assessment will be conducted within a reasonable time of the application receipt date.

Applications that are incomplete, unclear or do not have the proper supporting documents, will be returned to the applicant for completion.



Each assessment will be conducted in an impartial manner based upon the criteria determined by the GTC. These criteria have been established to foster economic development for the Gwich'in.

## **2.0 TEST FOR ASSESSMENT**

It is the intent of the assessment process to ensure Registered Gwich'in Business represents a legitimate Gwich'in enterprise and is not set up solely to meet minimum conditions for preferential access.

A sole proprietorship that is owned by a Gwich'in participant qualifies as a designated Gwich'in Business.

For other businesses the following test is applied.

### **a) OWNERSHIP TEST**

The partnership or corporation is 51% or greater owned by Gwich'in participants or by a Registered Gwich'in Business.

Ownership certification will include a statement that the net profits for common equity and any net proceeds from any dissolution are equally distributed according to ownership.

### **b) GWICH'IN PARTICIPATION TEST**

Gwich'in participants are in management and/or professional positions and/or a capacity development plan is in place. There is an expressed commitment to purchase and/or contract goods and services from Gwich'in businesses wherever possible.

### **c) LOCAL OFFICE TEST**

The business has a local office in the GSA.

### **d) HUMAN RESOURCE TEST**

The business has Gwich'in employees, sub-contractors or the sole proprietor is self employed.

### **e) ASSET TEST**

The business has Gwich'in assets that are used in the business.

## **f) BUSINESS TEST**

The business complies with all Federal and Territorial government regulations. All contractual agreements are in the name of the Gwich'in business. A health, safety and environmental safety plan is in place.

## **3.0 APPROVAL PROCESS**

When the application is approved, the business will be listed as a Registered Gwich'in Business and listed on the Gwich'in Business list. This status allows that business to conduct business activities on Gwich'in land, subject to other restrictions set by the Gwich'in Tribal Council.

If a business is approved, the applicant will be sent an approval letter attaching terms and conditions of the approval.

Should the applicant not be approved, the Manager will outline any requirements still not met and advise the applicant what is required for the applicant to be approved.

## **4.0 PROCEDURE FOR INCLUSION IN THE CAPABILITIES LIST**

Once a business receives a Registered Gwich'in Business status, the business is eligible to be enrolled on the Gwich'in Business Development Website.

This Gwich'in Business Development Website provides information about specific capabilities of Registered Gwich'in Businesses to non-Gwich'in businesses seeking to perform business activities within the GSA.

The List identifies Registered Gwich'in Businesses by standardized procurement categories listing for marketing and other purposes and is an effective way for Gwich'in Businesses to promote their services and products.

On the list there is no limit to the number of business specialties a registered Gwich'in Business can be listed under. However, all listed businesses must show some measure of capability in each area prior to listing (or how that capability will be developed.)

For a detailed list of all Goods and Services refer to Procurement Categories Listing on Website.

Failure to be included on The List does not preclude a Registered Gwich'in Business from doing work in that field.

## **5.0 TESTS FOR BUSINESS CAPABILITY AND INCLUSION ON THE LIST**

To be included on the Registered Gwich'in Business List in a specific procurement category, businesses must demonstrate their capability. A Business's capability in each product or service area will be tested using the following criteria:

There are a possible 8 points available. If a Business scores 5 or higher, it can be included on The List under the designated category.

A Business with a score below 5 will not be included on The List until it can raise its score.

A Business can be listed under multiple categories if it has the capacities and must pass the test in each area applied under the application.

### **CRITERION 1 – Business experience in selected area:**

The Business must demonstrate in its application that it has performed similar work before and provides references. (2 points)

The Business has demonstrated that it has some related business experience and that the current business category is a logical expansion for this business. (1 point)

### **CRITERION 2 – Internal Capacity:**

The Business can demonstrate that it has direct or associated capacity to do similar work, even if the Business has not done similar work to date. This would include experience of personnel gained from other businesses, journeyman status, or special education.

The Business has demonstrated that it has direct or associated capacity to do the work, competent personnel and experience normally required to operate a business in the area. (2 points)

The Business has demonstrated that it has a limited amount, of management capability, personnel experience and education normally required to operate a business in the area. (1 point)

### **CRITERION 3 – Assets Available:**

The Business currently has assets available for work requiring specialized tools, equipment or other assets.

The Business demonstrates that it has or will shortly acquire the assets required to operate a business in the area. (2 points)

The Business demonstrates that it will acquire the assets required to operate a business in the area. (1 point)

**CRITERION 4 – Business Plan:**

The Business has a precise, feasible Business Plan on how it will become capable in the specific business area. This plan is written to incorporate all aspects of the business including; marketing, financing, and operations, and demonstrates how the Business can compete against existing commercial businesses. (2 points)