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TSAWWASSEN FIRST NATION

Tsawwassen First Nation

Procurement Policy (2022)

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Kim Baird
Interim Chief Administrative Officer

Table of Amendments

Section(s) Amended	Date	Order number	Come Into Force Date
This Policy replaces the Procurement Policy (2010)	26/04/2022	O.037-2022	26/04/2022
Schedule A amended	15/05/2023	O.036-2023	15/05/2023

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1. Authority

This Procurement Policy (this “**Policy**”) is established pursuant to section 7(1) of the *Financial Administration Act*, which permits the TFN Executive Council to establish policies and procedures on any matter relating to the financial administration of TFN.

This Policy replaces the Tsawwassen First Nation Procurement Policy that was approved on February 17, 2010.

2. Definitions

In this Policy

- a) “**Bid**” means a quotation, proposal, expression of interest or tender submitted by a Supplier in response to a Call.
- b) “**Bid Price**” means the total price for the goods and/or services in a Bid.
- c) “**Call**” means any request or invitation by TFN or a TFN Related Entity, whether formal or informal, public or non-public, for a Bid, including without limitation, requests for quotations, requests for proposals, requests for expressions of interest and invitations to tender.
- d) “**Direct Award**” means a purchasing process where a contract is awarded to a Supplier without issuing a Call.
- e) “**Member**” means an individual who is enrolled as a member of TFN in accordance with the *TFN Membership Act*.
- f) “**Pre-Qualified Member Business**” means a Supplier that is more than 25% owned by one or more Members and qualifies for the preferential treatment described in Section 10 of this Policy in accordance with TFN’s procedures at the time.
- g) “**Public Call**” means a Call that is publicly advertised in the TFN Community Notice and such other forum(s) as staff determine.
- h) “**TFN Related Entity**” means any entity wholly-owned by: (i) TFN; (ii) an entity wholly-owned by TFN; (iii) TFN and one or more TFN Related Entity(ies); or (iv) one or more TFN Related Entity(ies). TFN Related Entity also includes the TFN Community Housing Society and the Tsawwassen First Nation Trust Society.
- i) “**Supplier**” means a supplier of goods or a provider of services.
- j) “**Total Price**” means the estimated total price payable for all goods and services under a contract over the term of the contract (but not including taxes payable and not including

options to purchase additional goods or services). Where multiple purchases are expected to be made by a Department from a Supplier, the calculation of Total Price shall include the anticipated Total Price of all purchases from that Supplier during TFN's fiscal year.

- k) **"Tsawwassen Government"** means the government of TFN as referred to in clause 2 of Chapter 16 [*Governance*] of the TFN Final Agreement.
- l) **"TFN"** means Tsawwassen First Nation.

3. Purpose

The purpose of this Policy is to guide decisions relating to the purchase of goods and services by TFN. It sets out the principles and processes that the TFN Executive Council has approved for making procurement decisions. This Policy is intended to be public, and to provide for transparency and accountability.

4. Application

This Policy applies to elected officials, TFN staff, and any other persons with authority to conduct procurement activities on behalf of TFN or a TFN Related Entity. This Policy applies to all types of procurement.

It is the responsibility of all staff to be aware of and abide by this and other applicable financial policies. Failure to follow TFN policy may be grounds for disciplinary action up to and including dismissal. Any questions of interpretation should be directed to the TFN Chief Administrative Officer, TFN General Counsel or the TFN Director of Finance.

5. Principles

The following section outlines high-level principles that are intended to guide TFN procurement decisions. Many of these principles are supported by the following requirements found in the TFN *Members' Guarantee Act* or the TFN *Constitution Act*:

- Tsawwassen Government is to make best efforts to improve the quality of life for all the Members of TFN.
- Tsawwassen Government will provide support to business enterprises of individual Tsawwassen Members.
- Tsawwassen Government will not favour Tsawwassen Government business projects over individuals' projects.

- Tsawwassen Government will manage all Tsawwassen lands and resources on a sustainable basis and will take reasonable measures to protect the natural environment and to develop a green economy.

5.1. Goods and services shall be acquired according to the following principles:

- 5.1.1. **Planning.** Goods and services should be acquired after consideration of needs, alternatives, timing and availability of funds.
- 5.1.2. **Value.** Purchases will balance quality and cost-effectiveness. Where possible, efficiencies should be sought.
- 5.1.3. **Fairness.** The process by which Suppliers compete for TFN business will be open, fair and consistent.
- 5.1.4. **Sustainability.** Purchases shall be sustainable – economically, environmentally and socially. TFN is committed to using environmentally sustainable and fair trade/ethical goods and services where possible.
- 5.1.5. **Community.** Where relevant, purchases should benefit Members (individually or the community as a whole).

6. Conflicts of Interest

Procurement decisions made pursuant to this Policy are subject to the TFN *Conflict of Interest Act*. A public official exercising their authority under this Policy must follow the requirements of the *Conflict of Interest Act*, including: (1) disclosing the particulars of a real or apparent conflict of interest; and (2) abstaining from discussing or making a procurement decision where they are in or may appear to be in a conflict.

7. Purchasing Process

This section sets out competition and other requirements based on the expected dollar value of the purchase. The method of procuring goods and services will be competitive where practicable, based on the dollar value and nature of the purchase, to ensure that the administrative costs of a competitive process is proportionate to the benefit derived from a competitive process.

7.1. Call Requirement. A Call must be issued for all purchases, except in the circumstances described in Section 7.4, and a Public Call must be issued for all purchases with an expected Total Price over \$75,000. Staff will endeavour to obtain a minimum of three Bids, where practicable.

7.2. Call Contents. All Calls must reference this Policy and indicate that the evaluation criteria in Section 9 of this Policy and the preferential treatment described in Section 10 of this Policy will be applied in the evaluation of Bids.

7.3. Member Suppliers List. Where a Public Call is not required by this Policy, staff are required to seek Bids from Suppliers on the Member Suppliers List (described in Section 8 of this Policy) that have the necessary qualifications.

7.4. Direct Award. Notwithstanding Section 7.1, a Call is not required in the following circumstances:

7.4.1. catering purchases with an expected Total Price of less than \$1,500 or all other purchases with an expected Total Price of less than \$5,000;

7.4.2. if there is a genuine emergency which requires the immediate purchase of goods and/or services to prevent injury, damage or further damage or to restore or maintain minimum service, a Call is not required, provided the purchase is made with such competition as is practical in the circumstances; or

7.4.3. if, in respect of purchases with an expected Total Price of less than \$75,000, the TFN Director of Finance (or in respect of a purchase by the Finance Department, the TFN General Counsel) or, in respect of purchases with an expected Total Price of \$75,000 or greater, the TFN Executive Council:

7.4.3.1. determines that there is only one Supplier reasonably available;

7.4.3.2. approves a written business case for not putting out a Call;

7.4.3.3. determines that there is a time constraint which reasonably limits the ability to put out a Call;

7.4.3.4. determines that the goods and/or services being sought are of a specialized or confidential nature that it would be impractical or disadvantageous to put out a Call;

7.4.3.5. approves the sole source purchase of second hand goods; or

7.4.3.6. approves the sole source purchase in order to build Member experience, provided the expected Total Price is less than \$25,000.

7.5. Form of Contract. Where practicable, TFN's standard form of contract must be used. If a Supplier requests a different form of agreement or an amendment to TFN's standard form of contract, then the TFN Legal Department may approve a different form or amendment.

8. Member Suppliers List

Tsawwassen Government will maintain a list of Suppliers that have registered with TFN, as either being more than 25% owned by Members or as having more than 25% Member employees, to ensure that those Suppliers are provided the opportunity to supply goods or services to TFN, even when a Public Call is not issued. The Member Suppliers List will be made accessible to every Manager and Director of each TFN Department. In circumstances where a Public Call is not required by this Policy, staff are required to seek Bids from Suppliers on the Member Suppliers List that have the necessary qualifications.

Tsawwassen Government is not responsible for ensuring the completeness of the Member Suppliers List; Suppliers are encouraged to contact the TFN Manager of Economic Development by email at info@tfnedc.com to be added to the list, noting the following information:

- name of the Supplier;
- percentage of the Supplier's Member ownership (if applicable);
- percentage of the Supplier's total employees that are Members (if applicable); and
- description of qualifications held by the Supplier.

Suppliers are responsible for contacting the TFN Manager of Economic Development if there is any change in the foregoing information.

9. Evaluation Criteria

9.1. The following general criteria apply in the evaluation of all Bids:

9.1.1. **Cost.** The cost of each purchase will be considered.

9.1.2. **Experience.** The reputation and experience of each Supplier will be considered.

9.1.3. **Schedule of Deliverables.** Each Supplier's proposed schedule for deliverables will be considered, to ensure that the delivery of agreed upon goods or services meets the required timing.

9.1.4. **Community Benefits.** Consideration will be given to whether a purchase will provide benefits to Members (individually or to the community as a whole).

9.1.5. **Environmental Impact.** The environmental impact of each purchase will be considered, if applicable.

9.1.6. **Public Health.** The potential public health impact of each purchase will be considered, if applicable.

9.2. Best Value. Bids will be evaluated to determine the Bid which is most advantageous to TFN. TFN may exercise discretion in selecting the Bid with the best value.

9.3. Additional Criteria. Calls must specify any additional criteria that will be considered in the evaluation of a Bid. If the Call is an invitation to tender, it must set out all evaluation criteria that will apply.

10. Preferential Treatment

To advance TFN's policy objectives and to fulfill the Tsawwassen Government's obligations under the TFN *Members' Guarantees Act* and the TFN *Constitution Act*, the preferences set out below will be applied in the evaluation of all Bids, provided that a Supplier indicates in its Bid that it satisfies the criteria to receive the applicable preference.

10.1. Onus on Suppliers. Suppliers should indicate in their Bid which (if any) criteria described in this Section 10 they satisfy and provide such supporting information as will allow for verification under Section 10.2.

10.2. Verification. The Manager or Director of the relevant department will conduct such review as is reasonable in the circumstances to verify that the relevant criteria are satisfied prior to applying a preference in the evaluation of Bids.

10.3. Member Ownership. Suppliers that are Pre-Qualified Member Businesses will receive a deduction from their Bid Price, as set out in the following table:

Member Ownership	Deduction
<ul style="list-style-type: none">>25%-50% Ownership	2.5% deduction from Bid Price
<ul style="list-style-type: none">>50%-75% Ownership	5% deduction from Bid Price
<ul style="list-style-type: none">>75%-100% Ownership	7.5% deduction from Bid Price

10.4. TFN Ownership. Suppliers that are more than 25% owned by TFN (including by TFN Related Entity(ies) or by TFN and TFN Related Entity(ies)) will receive a deduction from their Bid Price, as set out in the following table:

TFN Ownership	Deduction
<ul style="list-style-type: none">>25%-50% Ownership	2.5% deduction from Bid Price
<ul style="list-style-type: none">>50%-75% Ownership	5% deduction from Bid Price

<ul style="list-style-type: none"> • >75%-100% Ownership 	7.5% deduction from Bid Price
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10.5. Member Employment. Suppliers with more than 25% Member employees will receive a deduction from their Bid Price, as set out in the following table:

Member Employment	
<ul style="list-style-type: none"> • >25%-50% of employees 	2.5% deduction from Bid Price
<ul style="list-style-type: none"> • >50%-75% of employees 	5% deduction from Bid Price
<ul style="list-style-type: none"> • >75%-100% of employees 	7.5% deduction from Bid Price

10.6. TFN Endorsement. Suppliers that are on TFN Economic Development Corporation’s list of endorsed Suppliers will receive a 1.5% deduction from their Bid Price. For certainty, this is not the same as the Member Suppliers List described Section 8 of this Policy.

10.7. TFN or Member Subcontracting. If a Supplier subcontracts to or purchases from a business that is more than 25% owned by TFN or is a Pre-Qualified Member Business, and all other criteria are comparable in the evaluation of the Bids submitted, then that Supplier may be selected over a Supplier that is not in another preferred Supplier category described in this Section 10 and over a Supplier in the preferred Supplier category described in Section 10.8.

10.8. Indigenous Community. If a Supplier has any affiliation with an Indigenous community other than TFN and all other criteria are comparable in the evaluation of the Bids submitted, then that Supplier may be selected over a Supplier that is not in another preferred Supplier category described in this Section 10.

10.9. Multiple Preferences. For certainty, if a Supplier satisfies the criteria to receive more than one preference referenced above, then that Supplier will receive each preference that it qualifies for, up to the applicable maximum deduction set out in Section 10.10.

10.10. Maximum Deductions. The following table sets out the maximum deductions from a Bid Price that are possible under this Policy:

Bid Price	Maximum deduction
\$0 - \$25,000	12.5% deduction

\$25,001 - \$250,000	10% deduction
\$250,001 - \$1,000,000	7.5% deduction
\$1,000,001 +	7.5% deduction to a maximum of \$100,000

10.11. Examples. Schedule A to this Policy sets out examples of the application of the preferences outlined in this Section 10.

11. Indebted Suppliers

11.1. Indebted Supplier Exclusion. If a Supplier is indebted to TFN for an amount greater than \$5,000 for 90 days or longer at the time their Bid is submitted, then such Supplier's Bid will not be considered.

11.2. Set-Off. If a Supplier that is indebted to TFN and is not disqualified under Section 11.1 is awarded a contract, then TFN will set-off 25% of the value of the contract against that Supplier's debt. The Chief Administrative Officer may approve of a reduction of the debt set-off if the Supplier has provided acceptable written documentation showing that their margins are insufficient to cover the debt repayment, but may not reduce the set-off to less than 10%.

12. Administration of Contracts

The Manager or Director of the relevant TFN Department will have the primary responsibility for the administration and enforcement of each contract that Department enters into in connection with the procurement of goods and/or services, including ensuring that the provision of the good and/or service being supplied is satisfactory.

Schedule A

Examples of Application of Preferential Treatment provisions (Section 10)

Suppliers:

- 1) Supplier A – 76% of employees are Members
- 2) Supplier B – Pre-Qualified Member Business that is 51% Member owned and 80% of employees are Members
- 3) Supplier C – Pre-Qualified Member Business that is 100% Member owned
- 4) Supplier D – 50% TFN owned
- 5) Supplier E – Affiliated with an Indigenous community
- 6) Supplier F – Subcontracts to a Pre-Qualified Member Business
- 7) Supplier G – Does not meet preferential treatment criteria

Example 1:

Suppliers A, B and D submit Bids. Bids are equal on all criteria.

	Supplier A	Supplier B	Supplier D
Initial Bid Price	\$100,000	\$100,000	\$100,000
Deduction	(\$7,500)	(\$10,000)	(\$2,500)
Final Bid Price (for purpose of evaluation only)	\$92,500	\$90,000*	\$97,500
Notes	7.5% deduction for >75% Member employees	Criteria met for 12.5% deduction (5% for 51% member owned and 7.5% for >75% Member employees) but maximum for \$100,000 contract is 10%	2.5% deduction for ≥50% TFN owned

*Supplier B is awarded the contract for \$100,000.

[Amended by Order number O.036-2023]

Example 2:

Suppliers C, E and G submit Bids. Bids are equal on all criteria other than cost.

	Supplier C	Supplier E	Supplier G
Initial Bid Price	\$1,500,000	\$1,002,000	\$1,000,000
Deduction	(\$100,000)	No deduction	No deduction
Final Bid Price (for purpose of evaluation only)	\$1,400,000	\$1,002,000*	\$1,000,000
Notes	Criteria met for 7.5% deduction (for >75% Member owned) but maximum for \$1,500,000 Bid Price is 7.5% to a maximum of \$100,000)	Since Supplier E's Bid is comparable with Supplier G's Bid, Supplier E may be selected over Supplier G (since Supplier G is not in another preferred Supplier category).	

*Supplier E is awarded the contract for \$1,002,000

Example 3:

Suppliers E, F and G submit Bids. Bids are equal on all criteria other than cost.

	Supplier E	Supplier F	Supplier G
Initial Bid Price	\$149,000	\$150,000	\$149,000
Deduction	No deduction	No deduction	No deduction
Final Bid Price (for purpose of evaluation only)	\$149,000	\$150,000*	\$149,000
Notes		Since Supplier F's Bid is comparable with Supplier E and Supplier G's Bid, Supplier F may be selected (since Supplier G is not in another preferred Supplier category and Supplier E is a preferred Supplier described in Section 10.8 of this Policy).	

*Supplier F is awarded the contract for \$150,000