

Government of Nunavut Contracting Procedures Manual

- 2nd Edition -



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FOREWORD



The Government of Nunavut (GN) operates its procurement and contracting operations in a manner which is open, fair and transparent. Our policies and procedures support the promotion of the competitive bidding process. We believe that in promoting competition, we ensure that we receive the best value for the GN and all Nunavummiut. Through the GN web site, and further supported through written materials, the Community and Government Services Department (CGS) Procurement, Logistics & Contract Support Services Section makes our policies and procedures available to everyone. These documents explain how we will conduct our procurement and contracting operations.

We follow the procedures as outlined and we report on our activities. We believe that potential suppliers to the GN can better compete for our business if they have a clear understanding of the rules which govern our procurement activities. The most common method of communication is through public advertising on the GN's Nunavut Request for Tenders/Proposals web site and through northern newspapers. As a minimum, on an annual basis, the GN publishes the results of our annual contracting activities. These publications list all contracts over \$5,000 that have been awarded by the GN. The publications outline the method of contracting and the award value associated with each.

The procurement officers who work for the GN all subscribe to the Code of Ethics as outlined by the Purchasing Management Association of Canada (PMAC). We are all members of PMAC and as procurement professionals we have adopted the "Ethical Procurement Framework" that has been outlined with the cooperation of Government professionals from across Canada. As procurement professionals, we are constantly seeking to improve our knowledge and operations. We do this by regular attendance at professional training and development seminars, by regular self study and by reading industry publications.

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1. ABOUT THIS MANUAL



- 1.1 In carrying out the Government of Nunavut's (GN's) contracting activities, public officers must follow the acts, regulations and policies that have an effect on the undertaking of GN contracts for goods and services. The procurement policies and procedures of the GN must be open, fair and transparent.
- 1.2 In carrying out the GN's contracting activities, the *Financial Administration Act* (FAA), Contract Regulations made pursuant to the FAA, and the Nunavummi Nangminiqatunik Ikajuuti (NNI Policy) are the primary pieces of legislation and policy affecting government contracting.
- 1.3 This contracting procedures manual provides guidance and assistance to all public officers and contract authorities in carrying out contracting on behalf of the GN in accordance with the Contract Regulations and the NNI Policy.
- 1.4 This manual has a detailed table of contents, an index and a glossary of terms for quick reference and convenience of use. While this manual attempts to answer all questions and provide guidance on all aspects of government contracting procedures, some areas may not be addressed or adequately covered. Questions should be addressed to the Department of Community and Government Services (CGS) directly to the attention of the Manager of Purchasing, Logistics & Contract Support (Purchasing).
- 1.5 The GN's contracting policies and procedures are approved by Cabinet. Any deviation from these approved policies and procedures must be approved in writing by the contracting department's Deputy Minister.
- 1.6 CGS Purchasing, Logistics & Contract Support will provide Nunavut Tunngavik Inc. (NTI), GN departments, crown agencies and all hamlets and municipalities with a copy of this manual in the language they request. Updates to this manual will also be made available for download. NTI will forward this information to the Regional Inuit Associations (RIAs).
- 1.7 Purchasing has also developed a number of short guidelines in support of this procedures manual and program activities. They are appended to this manual by way of reference and will be listed in Chapter 24 – Appendices and Directives. These documents are available on request.
- 1.8 Should you have a question on any procedure in this manual or a question about something that is not covered, please contact CGS Purchasing, Logistics & Contract Support.

2. ABOUT CONTRACTING – GENERAL



2.1 Requirement for Competitive Requests for Tenders/Proposals

2.1.1 The foundation of GN contracting is the competitive bidding process. The legal requirement for this is set out in section 8(1) of the GN Contract Regulations:

“A contract authority shall, before entering into any contract, issue an invitation to tender.”

2.1.2 Section 9(1) of the Regulations states that all contracts valued in excess of \$5,000 must be obtained by formal invitation to tender.

2.1.3 Note that the terms Invitation to Tender/Request for Tenders (RFT) will be used interchangeably in this manual. The term “tender call” may also be used.

2.1.4 Section 14(1) of the Regulations provides that, if it is deemed more appropriate, a Request for Proposals (RFP) may be issued instead of an RFT. Note that in certain circumstances, as discussed in further detail below, even contracts worth more than \$5,000 may be entered into without issuing a formal invitation to tender (see section 10 of the Regulations).

2.1.5 With certain exceptions, a formal process must be used for contracts over \$5,000. Formal means ‘in writing’. The GN has many standardized contracting forms and templates for use in its formal contracting activities. Generally, the value and type of activity will determine the format of contract template and method of competition to be used.

2.1.6 An informal process, which may be oral or written, can be used for contracts that do not exceed \$5,000, and which therefore do not require a written or competitive request for tender or proposal process. These contracts are generally a Local Contract Authority or Purchase Order (LCA/LPO).

2.1.7 When undertaking a competitive contracting process, CGS subscribes to the following principles:

- i. complete the contract for the best price or value;
- ii. on time and on budget;
- iii. ensure fairness is shown to all bidders;
- iv. support the involvement of Nunavut and Inuit workers and businesses.



2.2 Difference Between Requests for Tenders and Requests for Proposals

- 2.2.1 It is extremely important to understand the difference between RFTs and RFPs since they are awarded by different rules under the GN Contract Regulations.
- 2.2.2 A tender call is used when the owner knows exactly what it is looking for, and is seeking only the best or lowest price to do that specific job.
- 2.2.3 A contract resulting from a request for tender may only be awarded to the tenderer who is “responsive and responsible”, and who, after application of the NNI Policy, has submitted the lowest bid. Responsive is defined in the Regulations as “in relation to a tenderer, that the person has submitted a tender which confirms in all material respects to the invitation to tender.” Responsible means “the capability in all respects to perform fully the contract requirements and the integrity and reliability to assure performance of the contract obligations.”
- 2.2.4 An RFP is used when the owner is not exactly sure what is wanted or how exactly to perform the work and is looking for ideas, suggestions and recommendations concerning a solution for the problem at hand. In addition to price, the proposed solution, implementation plan, delivery schedule and capability of the proposing team will be evaluated.
- 2.2.5 A contract resulting from an RFP may only be awarded to the proponent who is responsible (meaning capable of performing the contract requirements) and who, after application of the NNI Policy, is ranked the highest. The highest ranked proponent will potentially provide the best value to the GN.
- 2.2.6 It is also worthwhile to know that simply calling your document a RFT or RFP does not automatically make it a RFT or RFP. In case of uncertainty, courts have the power to decide whether the document is a RFT or RFP. The following section provides some information on the distinctions between RFT and RFP documents and the legal principles that apply.



2.3 Law of Tenders and Proposals

- 2.3.1 There is a special set of legal principles that apply to all invitations to tender and some requests for proposals. These rules say that there are actually two contracts created by the bidding process, not just one. These contracts are called 'Contract A' and 'Contract B'. This Contract A / Contract B paradigm was established by the Supreme Court of Canada in a case known as *Ron Engineering*¹.
- 2.3.2 Contract A comes into being upon the submission of a bid by a bidder, without need for any further formality.
- 2.3.3 Contract A is also sometimes called a bid contract. It is a unilateral contract formed when the bid is submitted. Contract A is a notional contract that governs the relationship between the parties during the tendering process. The owner has a separate contract A with each bidder who submitted a bid in response to the request.
- 2.3.4 One of the consequences of Contract A for bidders is that they cannot withdraw their bids after the bid closing. The successful bidder is obligated to enter into Contract B (the work contract) with the owner. Contract A also serves to impose a number of obligations on the owner, including the following:
- i. follow the rules set out in its own request;
 - ii. award to the lowest responsive and responsible bidder;
 - iii. not accept a non-compliant bid;
 - iv. treat all bidders equally and fairly.
- 2.3.5 The terms of Contract A are referred to as the Instructions to Bidders or Proponents and are found in the GN's standardized RFT and RFP templates.
- 2.3.6 Contract B occurs when the successful bidder is notified by the owner that its bid has been accepted. That bidder is now compelled to enter into Contract B, also referred to as the work contract. This contract is the contract between the successful bidder and the owner for the purposes of carrying out the work contemplated in the request.
- 2.3.7 The refusal by the successful bidder to enter into Contract B is a breach of Contract A, which entitles the owner to damages such as the right to keep the security deposit, if any, that accompanied the bid.

¹ *Ontario and the Water Resources Commission v. Ron Engineering and Construction (Eastern) Ltd.*, [1981] 119 DLR (3rd) 267 (SCC).

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2.4 Determining the Procedure to Use

2.4.1 To determine whether to use an RFP or an RFT, consider the following.

Use an RFT if you know what you want done and how it should be done:

- i. if the good or service required is clearly defined; and
- ii. if there is a detailed methodology, procedure, or material and performance specification.

2.4.2 Use an RFP if you know what you want done, but you do not know how it should be done:

- i. if the good or service is not clearly defined;
- ii. if there is no detailed material or performance specification;
- iii. if you are looking for a general solution to a problem; or
- iv. if the solutions are expected to be quite varied and/or difficult to evaluate.

2.4.3 In either case, a request for tenders or a request for proposals will usually result in a contract award.

2.4.4 The GN subscribes to the following advertising principles for invited and public RFTs and RFPs based on the type and estimated value (threshold) of the contract:

Over \$5,000 –	Post on GN RFT/RFP Notification Listing ² ;
\$5,001 - \$25,000 –	Invite Nunavut based companies only, post on RFT/RFP Notification Listing;
\$25,001 and Over –	Except Construction and Architectural/Engineering (A/E) – publicly advertise (newspaper ad) for one week, post on RFT/RFP Notification Listing;
\$100,001 and Over –	Construction and A/E – publicly advertise (newspaper ad) for one week; post on RFT/RFP Notification Listing, post in NWT Construction Association Bulletin; post Local Public Notice.

² Do not post the RFT/RFP on the Notification Listing if the contract will be awarded through sole sourcing.



2.5 Restriction on Specifying Brands

- 2.5.1.1 RFTs and RFPs for goods and services should be based on performance specifications and standards rather than specifying particular brands or suppliers. This helps to ensure that bias is avoided and competitive bids are obtained.
- 2.5.1.2 Clients may specify an item by brand specification, as long as the marketplace is competitive and at least two competitive bids can be obtained. If a competitive marketplace is not available, the tender call specifications must provide for other brands providing performance characteristics equal to the specified brand.
- 2.5.1.3 If the alternate brand is not acceptable to the client, a negotiated contract is necessary and the client will be required to support the necessary Cabinet submission.

2.6 Restrictions on Releasing RFT and RFP Documents

- 2.6.1 All RFT or RFP documents from the business community are subject to the following restrictions:
- i. In accordance with section 11.3 of the NNI Policy, RFTs and RFPs for goods and services estimated at up to \$25,000 may be invited only from businesses located in Nunavut if there are three or more available and capable of performing the contract requirements. RFT or RFP documents should only be sent to non-Nunavut businesses when the resultant contract value exceeds this amount or there is not sufficient competition.
 - ii. RFTs for goods and services valued in excess of \$25,000 and \$100,000 for construction must be made available without restriction.

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2.7 Inviting Tenders or Proposals Up To \$25,000

- 2.7.1 Contracts estimated to cost \$25,000 or less can be awarded by an invitational process. This means that although request documents are sent only to selected contractors or suppliers, any other qualifying contractor or supplier is free to request the documents and submit a bid or proposal.
- 2.7.2 However, the NNI Policy allows the invitation of tenders or proposals up to \$25,000 from companies based only in Nunavut if there are three or more available and capable of performing the contract.
- 2.7.3 Contract authorities may invite companies not based in Nunavut to compete for contracts up to \$25,000 when it is determined that there is not sufficient competition within Nunavut.
- 2.7.4 When inviting tenders or proposals, the contract authority should ensure that all qualified Nunavut based firms that are in a position to undertake the work are provided with the opportunity to respond.
- 2.7.5 Contract authorities must take care when considering excluding a Nunavut-based company from a competitive process on the basis of not being capable. Contact CGS Contract Support for advice and assistance.
- 2.7.6 In order to ensure adequate competition, a minimum of three suppliers should be invited to respond. In addition to faxing or e-mailing directly to invited firms, posting the opportunity on the GN's Requests for Tenders/Proposals (RFT/RFP) web site (www.nunavuttenders.ca) is required.

2.8 Restricting Invitations to a Specific Group, Community or Area

- 2.8.1 Sometimes a contract authority may want to limit competition for a particular service to a specific community or communities.
- 2.8.2 In this case, documents would be sent only to contractors or suppliers specifically selected to submit bids or proposals.
- 2.8.3 The contract authority should ensure that there is sufficient competition and that all local companies who are capable and available are invited to participate in the process.
- 2.8.4 RFT or RFP documents are not released to any other business. Accordingly, bids or proposals from any company not specifically invited must not be accepted.
- 2.8.5 In this case, you would not be required to post the competition on the RFT/RFP web site (www.nunavuttenders.ca).

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2.8.6 A restricted invitational request for tenders or proposals must be approved by the originating department's Deputy Minister.

2.9 Publicly Requesting Tenders or Proposals

2.9.1 Public requests for tenders are open to the general public. Anyone may bid on a public request for tenders. All contracts for goods and services of estimated value over \$25,000 and construction (including architectural/engineering services) exceeding \$100,000 will be publicly invited and advertised accordingly.

2.9.2 Where a contract authority feels that the firm requesting the document is not capable of performing the contract requirements and, therefore the contract authority does not want to release the document to that firm, the CGS Contract Support should be contacted for advice and assistance.

2.10 Methods of Advertising and Making Announcements

2.10.1 In public sector (government) contracting, there is a professional and legal obligation to obtain the best possible price or value for the funds to be expended on the goods or services for which the government is contracting. The most visible method of meeting this objective is by advertising the contractual requirements via the following:

- i. posting on the GN RFT/RFP web site (www.nunavuttenders.ca);
- ii. newspaper advertising and posting Local Public Notices in the project community;
- iii. posting notice of construction contract opportunities in the Northwest Territories Construction Association (NWTCA) Bulletin; or
- iv. advertising in any other industry specific publication.

2.11 Posting on the GN RFT/RFP Web Site (www.nunavuttenders.ca)

2.11.1 The GN RFT/RFP web site is a listing of current business opportunities issued by various GN departments. This web site is updated daily and downloaded and posted by NTI and Regional Inuit Associations (RIAs) and all municipal government offices. The listing is also frequently visited by many Nunavut businesses and suppliers who can download RFT/RFP documents directly from this site.

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- 2.11.2 The listing and web site are maintained by CGS Contract Support. The web site supplements the requirement for advertising contracting opportunities in Nunavut newspaper media, and is available for all other departments, boards and agencies to publish their RFTs and RFPs.
- 2.11.3 All RFTs or RFPs, the resulting contract value of which is expected to exceed \$5,000, must be listed on the GN's RFT/RFP Notification Listing whether or not they are publicly advertised in newspapers.
- 2.11.4 It is the responsibility of all GN departments, boards and agencies to ensure their RFTs and RFPs are included on this list.
- 2.11.5 Notice must be given to the CGS Contracts Coordinator prior to issuing the RFT or RFP. Ensure that there is sufficient time before closing so that vendors may obtain the document, prepare a bid or proposal and submit in time for the deadline. Closed RFTs and RFPs will be removed from the listing.
- 2.11.6 Upon initiating the RFT or RFP process, provide the reference number, issue and closing dates, a description of the contract requirements, a contact person and phone number to the CGS Contracts Coordinator. Do not report RFTs or RFPs up to \$5,000 for inclusion on this list.
- 2.11.7 NTI may, from time to time, forward the listing and advise any or all Inuit Firms of any opportunity they feel the firm may be interested in.
- 2.11.8 All Nunavut municipal offices download this listing for posting on their public bulletin board so local contractors and suppliers can have access to the GN's business opportunities.
- 2.11.9 Vendors and contractors are encouraged to monitor these postings and request documents for opportunities of interest.
- 2.11.10 This is a free advertising service offered by CGS Contract Support. The following information is published on the web site:
- i. RFT/RFP reference number;
 - ii. contract title and project location;
 - iii. issue and closing dates;
 - iv. contact person and phone information;
 - v. contract type.

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2.12 Newspaper Advertising

- 2.12.1 The GN requires that newspaper advertisements be utilized when it is estimated that the value of the contract will exceed \$25,000 for goods and services, or \$100,000 for architectural/engineering and construction.
- 2.12.2 The advertisement should clearly state the:
- i. description and location of the work/requirement;
 - ii. closing date, time and location;
 - iii. contact person from whom documents may be obtained.
- 2.12.3 CGS has provided standardized GN RFT and RFP advertising templates.
- 2.12.4 CGS Contract Support, together with the Department of Human Resources, has established a standing offer agreement with a local advertising agency to have public RFT and RFP ads, as well as employment ads, placed in newspapers in Nunavut and elsewhere.
- 2.12.5 Contact the advertising agency directly with your draft ad and tell them which paper(s) you want the ad placed in, in which languages, and the dates for placement. It is customary to advertise in both Nunavut newspapers. Pay for the ad using an LCA or service contract depending on the estimated costs for the advertising service. Rates are published in the SOA which is available to all GN staff for viewing.
- 2.12.6 GN public RFT/RFP ads should generally be placed in either the Nunatsiaq News or the Nunavut/News North, but, depending on the location of the work and the targeted bidding community, the ad may be placed in a more appropriate paper.
- 2.12.7 For example, if the work is to be located in the Kitikmeot Region and you want to target bidders in that region, advertise in a western paper. For the Kivalliq, it may be more appropriate to advertise in the Kivalliq News.

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2.13 Local Public Notices of Invited or Public Process

- 2.13.1 Where the contract authority deems it appropriate, public notices of invited and advertised RFTs and RFPs should be posted in the community office where the contract work is to be done. This is to encourage participation and involvement at the local level.
- 2.13.2 In the case of public RFTs for construction, posting a local public notice of an advertised RFT is required. This notice is accompanied by a letter to the Municipal Liaison Officer (MLO) at the community level asking for the Notice to be posted on local bulletin boards.
- 2.13.3 Posting public notices of invited or advertised RFTs or RFPs in Iqaluit for contract work in Iqaluit is not required.
- 2.13.4 CGS provides a standardized public notice template for use with invited and advertised requests for tenders or proposals.

2.14 NWT Construction Association Bulletin (A/E and Construction Contracts)

- 2.14.1 For construction contracts over \$100,000, fax the RFT advertisement and send one copy of the RFT documents to the Northwest Territories Construction Association (NWTCA).
- 2.14.2 The NWTCA has many Nunavut members and will include the RFT information in its weekly bulletin and will put the RFT documents on display in the plan room for any potential bidder to view.
- 2.14.3 CGS Contract Support pays for the CGS departmental NWTCA membership on behalf of headquarters and our Regional Offices, therefore, CGS Regional Offices need not pay annual membership fees for this association. However, each Regional Office must designate a contact person for electronic receipt of the weekly bulletin.
- 2.14.4 Notice of RFPs for architectural/engineering services should also be posted in the NWTCA Bulletin.
- 2.14.5 Send a fax or e-mail to the NWTCA office indicating the reference number, project number, project name and community and brief description of the contract work along with the closing date and project officer contact information. Ship the RFT/RFP documents by air cargo and pay for the air freight by Local Contract Authority (LCA).

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2.15 Translation of Advertisements

- 2.15.1 Advertisements, where practical, may be published in all four official Nunavut languages. RFTs that are not advertised in the four official languages of Nunavut should have an explanation placed in the file.
- 2.15.2 GN public RFT/RFP ads should be placed in English and Inuktitut. However, depending on the location of the work and the targeted bidding community, the ad should be placed in a more appropriate language. For example, if the work is to be located in the Kitikmeot Region and you want to target bidders in that region, advertise in English and Inuinnaqtun.
- 2.15.3 If targeting Eastern and Central Arctic business communities, place ads in the Nunatsiaq News and/or Nunavut/News North, and have them translated into Inuktitut. If targeting the Western Arctic business community, place ads in a western paper and have them translated into Inuinnaqtun. RFTs or RFPs targeting the French language community may be placed in L'Aquilon.
- 2.15.4 The GN has a standing offer agreement in place with a local advertising agency for the placement of GN contracting opportunity advertisements in newspapers. This agency will also arrange for translation.
- 2.15.5 For public notices of advertised RFTs or RFPs, the translation work should be done through the Language Bureau of the Department of Culture, Language, Elders & Youth (CLEY) or through a freelance translator.
- 2.15.6 Notices for the NWTCA bulletin need not be translated.

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2.16 Minimum RFT and RFP Closing Periods

- 2.16.1 For contracts valued from \$5,001 to \$25,000, the minimum closing period will be determined at the discretion of the procurement officer. The minimum time period can be extended depending on the complexity of the project and scope of the contract under consideration.
- 2.16.2 It is essential that there be sufficient time between issuing the request for tenders or proposals and the closing date in order for potential contractors to obtain documents and prepare a meaningful and accurate response. Factors to consider should at least include:
- i. the type of contract (i.e. standard or non-standard);
 - ii. particulars and complexity of the requirement;
 - iii. the marketplace and availability and location of suppliers or contractors in relation to the project site;
 - iv. whether bids/proposals can be submitted by fax.
- 2.16.3 RFTs for air charter services may be issued with a shorter closing period as the GN deals with local suppliers who have set rates and do not require fifteen (15) days to prepare a bid.
- 2.16.4 For contracts of more than \$25,000, the GN prescribes a minimum time period of fifteen (15) calendar days between the issuance of the request and the deadline for submission, with the exception of RFTs for air charters.

2.17 Keeping a Bidders'/Proponents' List (Plan Holder's Log)

- 2.17.1 When requesting tenders or proposals, a list recording the names and addresses of all companies which have been invited or which have requested and received documents should be maintained. The list is public information and is available at any time prior to or after the closing date and time.
- 2.17.2 The information contained in the list may be provided over the telephone or by fax to the person requesting the information. The person requesting the list will use the information to determine who is a prime or general contractor and who is a subcontractor or supplier. Extreme care must be taken so that incorrect or misleading information is not provided during the competitive process.

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- 2.17.3 Immediately prior to closing, caution should be exercised if no general contractors, or only one, have received documents. If an interested bidder knows this information, that bidder will be aware that there is no competition and may bid accordingly. In this case, the list should still remain public, but the circumstances should be documented prior to releasing the information. Following the closing deadline, a review should be conducted to determine whether the submission in fact represents competitive pricing. In extreme circumstances, and only following discussion with the Regional Director should the list be deemed confidential. Consult with CGS Purchasing, Logistics & Contract Support for advice and assistance.
- 2.17.4 For construction RFTs, a plan holder's log must be maintained. RFT document sets must be numbered sequentially and referenced in the log as they are distributed. If drawings or contract documents are available in several centres, you must also advise the person making the inquiry. It is then up to that person to obtain the plan holder's log from those other centres.
- 2.18 Receiving Tender and Proposal Submissions**
- 2.18.1 The use of facsimile transmissions is legally acceptable and provided for in many GN standardized contracting templates.
- 2.18.2 When contemplating receipt of tenders by fax, the contract authority shall consider whether or not bid security is required and obtain approval of the originating department's Deputy Minister to waive it, if it is deemed that doing so will not impose any risk to the GN.
- 2.18.3 To protect the Government from the possibility of claims for breach of confidentiality, technical breakdown and other issues related to the receipt of tenders, the 'Instructions' section of GN RFT and RFP templates contains conditions under which facsimile transmissions will be accepted.
- 2.18.4 Current GN standard RFT and RFP templates do not contain such conditions for submission of tenders or proposals by electronic mail. Accordingly, CGS Purchasing does not recommend receiving tender or proposal submissions by e-mail.
- 2.18.5 Contract authorities wishing to allow e-mail submissions must contact CGS Contract Support for advice and assistance.



2.19 Contracting Without Competition

2.19.1 The Government Contract Regulations permit the awarding of contracts through a non-competitive process where certain criteria are met. These are referred to as:

- i. sole sourcing; and
- ii. negotiating.

2.19.2 Greater details on the specific requirements for these types of non-competitive contracting methods are discussed later in Chapter 6 – About Sole Sourcing and Negotiating Contracts. This section sets out the basic requirements.

2.19.3 Section 10 of the Contract Regulations permits a contract authority to enter into a contract without promoting the submission of competitive tenders or issuing a formal invitation to tender when the contract authority believes, on reasonable grounds, that any of the following criteria are met:

- (a) the goods, services or construction are urgently required and delay would be injurious to the public interest; or
- (b) only one party is available and capable of performing the contract; or
- (c) the contract is an architectural or engineering contract that will not exceed \$25,000 in value or is any other type of contract that will not exceed \$5,000 in value.

2.19.3.1 A contract entered into pursuant to section 10 of the Contract Regulations is called a “sole source” contract. It is called this because the contract is entered into by going directly to one specific contractor or supplier, rather than opening the process up to consider other potential contractors or suppliers. It is important to note that a ‘sole source’ is not a specific contract type, rather, it is a method for awarding a contract.

2.19.3.2 For contracts not exceeding \$5,000, bids can be requested and received verbally or in writing by fax or e-mail. Generally, most contracts up to this value threshold will be awarded using the GN’s Local Contract Authority (LCA) form.

2.19.3.3 Deputy Minister approval is required for sole sourcing any contract exceeding \$5,000 in value, and the reason for sole sourcing must fall within the criteria set out in the Contract Regulations.

2.19.4 Section 5 of the Government Contract Regulations permits the Executive Council (Cabinet) to enter into a contract with any person, even if that person would not have been awarded the contract under the Regulations. This is referred to as a ‘negotiated’ contract, and only Cabinet can approve using this method to award a contract.

3. OTHER PROCUREMENT OPTIONS



3.1 Other Options

- 3.1.1 There are other options available in the procurement process, which do not result in contract awards. These are steps that can be taken early on in the project planning process and will usually result in the issuing of an RFT/RFP. For greater clarity, contracts cannot be awarded as a result of the following processes:
- i. Expressions of Interest;
 - ii. Request for Information;
 - iii. Request for Qualifications (Pre-Qualification of Vendors).
- 3.1.2 Expressions of Interest (EOI), Requests for Information (RFI) and Requests for Qualification (RFQ)³ can be confusing and mistakenly treated as a request for proposals. Information received as a result of any of the above exercises is to be used to determine the capability and/or suitability of contractors for the next step in your procurement process, usually a request for proposals.
- 3.1.3 CGS Contract Support has developed a standardized advertisement template for use with these activities. For any of these processes, the public advertisement must indicate if the process will be used to select or pre-qualify vendors to participate in a subsequent RFT or RFP call. Care must be taken not to use language that may be interpreted as an offer or formal RFT or RFP process or anything that might lead to the creation of a legally binding Contract A. Contact CGS Contract Support for advice and assistance.

³ Not to be confused with Request for Quotation.

3. OTHER PROCUREMENT OPTIONS



3.2 Expressions of Interest

- 3.2.1 Expressions of Interest (EOI) are publicly advertised notices intended to solicit interest from a targeted business community. It is a first step used either to determine if there are capable companies interested in providing a service or to establish a short list of qualified contractors that may be invited to submit tenders or proposals for a particular purpose.
- 3.2.2 EOIs must never be used to obtain pricing or other specific information that would normally be required in the RFT/RFP process or to suggest that a contract will be awarded as a result of the process.
- 3.2.3 The EOI advertisement should clearly state the purpose for the EOI and identify whether or not respondents will be short-listed for a future tender or RFP call. It should also state that only the companies deemed capable will be invited. Standards representing minimum capability or acceptability for selection must be set out. If short-listing, do not exclude capable Inuit-owned firms from the companies that responded.
- 3.2.4 The Expression of Interest advertisement should include:
- i. a brief project description or objective;
 - ii. instructions about the information that the company should provide, such as:
 - team/corporate partners and key personnel;
 - financial capacity;
 - similar project experience and current clients.
 - iii. a statement of whether or not the EOI is being used to establish eligibility for a future RFP or RFT;
 - iv. a statement of whether or not only those responding to the EOI will be permitted to participate in the future RFP or RFT process;
 - v. if intending to short-list, a statement of whether the companies responding and considered capable, or only the companies considered the most suitable will be invited to submit a tender or proposal.

3. OTHER PROCUREMENT OPTIONS



3.3 Request for Information

- 3.3.1 A Request for Information (RFI) is a useful tool for investigating the market place and exploring options in an area where you have little to no information, knowledge or experience. The RFI is used to solicit ideas about how a project or issue can be approached.
- 3.3.2 An RFI is not a request for tenders or proposals and should not be treated as such. Accordingly, do not ask for pricing or suggest a contract will be awarded as a result of the process. Structured evaluation criteria should also be avoided.
- 3.3.3 A Request for Information document should describe the project goals, priorities, objectives and desired results and should ask for information about:
- i. the company's corporate profile and financial capacity;
 - ii. the company's products and lines of business;
 - iii. the employees and key personnel;
 - iv. how the company's products and services might satisfy your needs;
 - v. a general project approach and potential solutions or options for your project/program needs;
 - vi. a sample project management plan with time lines.
- 3.3.4 This process also needs to:
- i. identify the minimum requirements or standard tests that each contractor must satisfy in order to be invited to participate in a future RFT/RFP;
 - ii. set out the criteria that would otherwise appear as "mandatory" in the RFT or RFP;
 - iii. identify the intent of the process, that is, whether or not the process will be used to create a list of companies to invite on a subsequent RFT /RFP.

3. OTHER PROCUREMENT OPTIONS



3.4 Request for Qualifications (Pre-Qualifying Contractors)

3.4.1 A Request for Qualifications or Pre-Qualification is a process that will enable you to pre-qualify proponents for a particular requirement and avoid having to struggle with a large number of lengthy proposals or to eliminate unsuitable or unqualified contractors from a future tender call.

3.4.2 This process is useful when you anticipate a great deal of interest and need to screen many contractors so you can:

- i. move quickly to a short list of qualified proponents or bidders for a full RFT or RFP process;
- ii. eliminate unqualified contractors for work of an unusually technical nature;
- iii. limit the number of potential bidders going to the expense of preparing a detailed and expensive bids or proposals.

3.4.3 A Request for Qualifications document must:

- i. describe the project including specific technical requirements;
- ii. include any tests, standards and qualifications respondents must meet in order to be considered capable or qualified;
- iii. provide a project plan with time lines;
- iv. clearly present your priorities;
- v. provide financial constraints/considerations (optional - this will ensure companies responding have the financial capacity to perform the contract without hardship or difficulties);
- vi. suggest a submission length; and
- vii. ask for the same basic contractor information as an Expression of Interest.

3.4.4 This process also needs to:

- i. specify the minimum requirements or pass/fail tests that each contractor must satisfy in order to be invited to participate in the RFT /RFP;
- ii. set out the criteria that would otherwise appear as “mandatory” in the RFT or RFP.

3. OTHER PROCUREMENT OPTIONS



- 3.4.5 There are several benefits to using this process:
- i. unqualified or inexperienced contractors are removed from the selection process;
 - ii. it is less costly to potential bidders/proponents;
 - iii. you will likely receive better bids/proposals from contractors who feel they have a good chance of winning;
 - iv. fewer bids/proposals will reduce the evaluation burden.

3.4.6 At no time should a contract award result from an EOI, RFI or Pre-Qualification process.

3.5 Restricted Invitational RFTs and RFPs

3.5.1 In this case, RFT/RFP documents are sent only to contractors or suppliers specifically selected to submit bids. Documents will not be sent to, nor will bids be accepted from, bidders who have not been invited.

3.5.2 By virtue of the NNI Policy, all RFTs and RFPs up to \$25,000 should be restricted to Nunavut-based vendors where there is sufficient competition (i.e., three or more capable and available).

3.5.3 All RFTs/RFPs in excess of \$25,000 (or \$100,000 for architectural/engineering and construction) are required to be publicly advertised. Therefore, a restricted invitation to tender in excess of \$25,000 (or \$100,000 for architectural/engineering and construction) must be approved by the originating department's Deputy Minister.

3. OTHER PROCUREMENT OPTIONS



3.6 Standing Offer Agreements (SOAs)

- 3.6.1 SOAs are not contracts. They are pricing agreements with suppliers or contractors covering anticipated requirements over a defined period of time. They may be used in the contracting for frequently required low value goods or services.
- 3.6.2 Each time a good or service is required under an established SOA, an individual contract must be awarded. Refer to Chapter 14 – About Standing Offer Agreements (SOAs) – for more information.
- 3.6.3 Standing offers are distinct from As and When Required Services (Unit Price) contracts, which are utilized for clearly defined requirements for services in which the total demand can be estimated.
- 3.6.4 Standing offers may be available for use by many departments and may be non-exclusive.

3.7 As and When Required Services (Unit Price) Contracts

- 3.7.1 As and When Required Services contracts (Unit Price contracts) can be utilized for routine contracted services requirements. These are unit price contracts where the total value of the contract can be calculated by multiplying identical units of work by a fixed unit price. An estimate for the total amount of work required over the duration of the contract must be provided by the contract authority when establishing the As and When contract.
- 3.7.2 There can be confusion between this type of binding contractual arrangement and standing offer agreements, which are not binding contracts. While a standing offer can also be a unit price contract, it generally is structured as a pricing agreement which provides prices or a pricing formula for a range of goods or services.
- 3.7.3 As and When contracts must always be awarded to the lowest responsible and responsive bidder. These contracts are usually exclusive to one vendor but may be non-exclusive if the nature of the services is such that it is preferable for a contract authority to award to more than one contractor.
- 3.7.4 Refer to Chapter 15 – About As and When Required Services – for more information.

4. ABOUT REQUESTING TENDERS (RFTS)



4.1 Introduction to the Request for Tenders (RFT) Process

- 4.1.1 This chapter deals with the administrative requirements of the GN's RFT process, and discusses the preparation of RFT documents and related operational procedures.
- 4.1.2 The requirement to maintain consistent application of generally accepted procurement practices and GN specific requirements with respect to achieving the objectives of Article 24 of the Nunavut Land Claims Agreement (NLCA) is primarily the responsibility of the contract authority. Accordingly, this procedure applies to all requests for tenders undertaken by the GN departments.
- 4.1.3 This chapter also explains the responsibilities of GN boards, public agencies and municipal governments to ensure that their contracting policies and practices are consistent with the objectives and requirements of public sector procurement and the NNI Policy. Accordingly, this chapter should be used by the various GN boards and public agencies, and any municipal government office in carrying out its requests for tenders processes.
- 4.1.4 When dealing with tenders, whether at the request, receipt, opening or review stage, remember the following: during the RFT process, our actions must not only appear beyond reproach, but they must also be beyond reproach. The bidders must believe in the process and know that the process is fair and of integrity.

4. ABOUT REQUESTING TENDERS (RFTS)



4.2 An Overview of the Tendering Process

- 4.2.1 The tendering process begins when the documents (properly authorized requisition⁴) describing the work (plans and specifications) for supplies or services have been received or prepared.
- 4.2.2 The terms tender and bid are often used interchangeably and may occasionally be referred to as price, quotation, or submission.
- 4.2.3 The tender call is the first stage of the tendering process, and includes all activities from the preparation of the RFT document to approval and issue up to the receipt and evaluation of tenders.
- 4.2.4 The principal steps are as follows:
- i. approval to issue RFT: receipt of a properly authorized requisition for supplies and services or RFT Data Approval form;
 - ii. preparation of the RFT document and scope of work⁵;
 - iii. administration of the RFT process: advertising, maintaining the plan holder's log; modifying or clarifying the specifications, etc.;
 - iv. receiving tenders: protecting the confidentiality of the bidders, receiving amendments, chairing the tender opening, releasing the tender register information;
 - v. evaluating tenders: conducting the administrative, technical and NNI bid adjustment reviews to determine the lowest responsive and responsible tenderer.

⁴ Public officers should be aware that RFTs for goods or air charter services may only be issued by the Purchasing, Logistics & Contract Support Division of CGS. There are few exceptions to this rule. For A/E and construction contracts, a RFT Data Approval form is required.

⁵ For A/E and construction contracts, generally the terms of reference or scope of work will have already been prepared prior to the RFT Data form being filled out.



4.3 Preparation of Request for Tender Documents

- 4.3.1 A request for tenders is used when the contract authority knows exactly what good or service is required and is only looking for the lowest price to deliver it. The contract authority must be able to describe in detail exactly what is required so that all contractors are bidding on exactly the same good or service. Accordingly, the contract authority will prepare a detailed description of services or scope of work which depends on the nature of the project.
- 4.3.2 Scopes of work should be written simply so that the reader is able to understand the document and is able to bid. Technical language beyond what is required to complete the contract should be avoided.
- 4.3.3 This section deals with the minimum requirements for the preparation of RFT documents by departmental staff and includes information commonly required in the tendering process such as bid security, fees for documents, plan holder's/bidders' logs, facsimile tenders, and FOB (Free on Board) issues.
- 4.3.4 CGS has RFT templates for specific contract types which are discussed in greater detail in Chapter 11 – About Contracting Forms and Templates.
- 4.3.5 Contracts that include a labour component must contain a mandatory minimum percent of the total labour component of the work, by dollar value, for the use of Inuit labour. The amount of Inuit labour required should be reasonable and consistent with the principles of competitive bidding. That is, it is important to maintain a competitive marketplace, while also promoting increased Inuit participation.
- 4.3.6 In order to ensure maximum participation, departments, boards, and agencies should be certain that in preparing RFTs, they avoid specifying employment skills requirements that are not essential to the fulfillment of the contract.
- 4.3.7 Every RFT shall include the following phrase so that all potential respondents are aware of the requirement:
- "For the purposes of this tender, the provisions of the Nunavummi Nangminiqagtunik Ikajuuti (NNI Policy) apply."*
- 4.3.8 RFTs for goods are normally based on performance specifications and should not specify particular brands or suppliers. This helps to ensure that competitive bids are obtained. Refer to Chapter 2 – About Contracting – General – for more information on specifying brands.

4. ABOUT REQUESTING TENDERS (RFTS)



4.4 Approval to Issue Request for Tenders (Initiation)

- 4.4.1 Undertaking the RFT process introduces legal obligations upon the Government. GN Contract Regulations state that only a contract authority may enter into contracts on behalf of the GN. Accordingly, if you are not a contract authority, you must obtain approval to request tenders and award a contract.
- 4.4.2 A Requisition for Supplies and Services (RSS) can be used to acquire approval to request tenders for most types of goods and services contracts.
- 4.4.3 However, for construction and maintenance type services, invitational and public RFT Data Approval forms should be used to obtain approval to initiate the RFT process. For RFTs for construction contracts, this form is the source document for the public advertising process.
- 4.4.4 A minimum of one to two weeks is usually required from the submission of the RSS or RFT Data Approval form to the date of the advertisement first appearing in newspapers.
- 4.4.5 The RSS must be signed off by the appropriate authorities, or approved in the TBAII Purchasing System prior to a procurement officer acting on it. The RFT Data form (for minor and major construction) must be signed off by the person having authority to award and sign contracts on behalf of the GN. This will usually be a manager or director and depends on their signing authority limits.
- 4.4.6 As a practical approach, the RFT document should be prepared and ready for review by the contract authority. Once the approval is given, the document can then be issued.

4.5 Document Distribution and Tender Opening Centres

- 4.5.1 A tender opening centre is a location from which RFT and RFP documents may be distributed and where tenders and proposals may be received and opened.
- 4.5.2 The contract authority shall designate in the RFT the locations to which tenders may be submitted. These locations shall include the regional office and, where possible, a GN office in the community where the work will be performed.
- 4.5.3 CGS has three regional distribution and opening centres in Nunavut which are primarily for conducting construction and maintenance contracts on behalf of GN departments, although these regional centres do also award other types of contracts.

4. ABOUT REQUESTING TENDERS (RFTS)



- 4.5.4 CGS has a headquarter distribution and opening centre in Iqaluit which is used for distributing RFTs and RFPs at the headquarter level, and for all client department RFTs and RFPs.

Baffin Regional Office	Pond Inlet
Kivalliq Regional Office	Rankin Inlet
Kitikmeot Regional Office	Cambridge Bay
Headquarters	Iqaluit

4.6 Plan Holder's Log

- 4.6.1 For construction RFTs, two lists should be maintained to keep track of who has received specifications and blueprints (commonly referred to as tender documents); one for the contractors who are invited and/or pick up the documents, and a separate list for documents distributed internally, i.e., contract sets, client department, Fire Marshall, Electrical Inspector, MLO, NWTCA, etc.
- 4.6.2 For minor works RFTs, documents should be numbered sequentially and referenced in the log as they are distributed.
- 4.6.3 For major works RFTs, documents must be numbered sequentially and referenced in the log as they are distributed. Also, if documents are available from another location, ensure the person distributing documents at the other location maintains a plan holder's log with sequential numbers that indicate the region the document is issued from.

4. ABOUT REQUESTING TENDERS (RFTS)



- 4.6.4 For all other RFTs and RFPs, the procurement officer need only maintain one list, but should ensure sufficient copies are distributed internally for the following:
- i. for preparation of contracts;
 - ii. for evaluation committee members;
 - iii. for NTI on request.

4.7 Plan Holder's Log is Public Information

- 4.7.1 The restriction on information does not include the release of the plan holder's log. This list of contractors who have been given the RFT documents is public information and is available to any bidder or person who requests it at any time prior to or after the RFT closing deadline.
- 4.7.2 This information may be given over the phone or by fax to the person requesting the information.
- 4.7.3 For RFTs where documents are available from another location, advise the person making the inquiry to request the plan holder's log from the other location.
- 4.7.4 Exercise caution where, immediately prior to the RFT closing, no general contractors or only one general contractor has picked up the RFT documents. If a bidder knows that it is the only bidder, it may bid knowing there is no competition or submit an amendment to change its price if it has already submitted a bid. In this case, if the log is released, make a note of the circumstances.
- 4.7.5 If the only contractor to receive the RFT documents has also received the plan holder's log immediately prior to the RFT closing time, and was the only contractor to submit a bid, that bid must be reviewed to determine whether it in fact represents competitive pricing or if the price is inflated as a result of knowing there was no competition.
- 4.7.6 Refer to CGS Contract Support to determine if the plan holder's log may be deemed confidential and not released.

4. ABOUT REQUESTING TENDERS (RFTS)



4.8 Whether to Request Faxed or Sealed Bids

- 4.8.1 Every tender call must identify whether bids will be submitted in a sealed envelope or if a facsimile submission is acceptable.
- 4.8.2 For minor works RFTs and RFTs for goods, the use of facsimile (fax) transmissions is legally acceptable and has become widespread and routine over the past number of years. To protect the GN from the possibility of claims for breach of confidentiality, technical breakdown and other issues related to the receipt of bids by fax, the 'Instructions to Bidders' section of the RFT documents contain conditions under which facsimile tenders will be accepted.
- 4.8.3 For major works construction RFTs, sealed bids are required to ensure receipt of valid bid security. CGS Purchasing, Logistics & Contract Support must be consulted prior to waiving bid security and allowing receipt of major works tenders by fax.

4.9 RFT Document Fee (Charge for Construction Documents)

- 4.9.1 Contractors must pay a fee, which includes GST, for major works construction tendering documents. The Financial Management Board sets this fee, which should not be confused with bid security and contract security.
- 4.9.2 Payments may be made by cash, bank draft, money order or certified cheque at any time during the RFT period, or after the RFT closing date on receipt of an invoice. Refer to CGS Finance Division for general and interim receipt books and request for invoicing procedures.
- 4.9.3 The RFT document fee is not charged to internal plan holders such as construction associations, hamlet/community offices, regulatory authorities or client departments.
- 4.9.4 Refunds may be made by way of credit note only if the:
- i. project is cancelled;
 - ii. contractor did not receive the RFT documents within a reasonable timeframe and was unable to bid as a result.

4. ABOUT REQUESTING TENDERS (RFTS)



4.10 Bid Security

4.10.1 Bid security is required with all major works construction tenders (over \$100,000) and is used to certify that the lowest acceptable bidder will:

- i. execute (sign) the contract documents; and
- ii. provide the specified contract security within the time specified in the contract (usually fourteen (14) days after the bidder receives notice of acceptance of the bid).

4.10.2 Bid security may be required for tenders for services which are estimated at up to \$100,000 in circumstances where the contract authority feels it necessary to ensure that bidders will honor their bid.

4.10.3 Bid security can be either a security deposit equal to at least 5% of the tender, or a bid bond equal to at least 10% of the tender.

4.10.4 Bid security is returned to unsuccessful bidders with the regret letters after a contract is awarded, or with the cancellation letter if the RFT is canceled.

4.10.5 Security Deposit

4.10.5.1 A security deposit shall be either a certified cheque, bank draft, an Irrevocable Letter of Guarantee by a bank, or such other security acceptable to the GN. The security deposit shall be equal to at least 5% of the tender and payable to the Government Nunavut.

4.10.5.2 The GN may keep the security deposit of the successful bidder as damages if the bidder:

- i. refuses to enter into a contract; or
- ii. refuses or is unable to provide the required contract security; or
- iii. withdraws the tender during the tender acceptance period and prior to the acceptance by the GN.

4.10.6 Bid Bond

4.10.6.1 A bid bond will be in a form approved by the Federal Treasury Board, and from a company whose bonds are acceptable to the GN. The bid bond is equal to at least 10% of the tender and is payable to the Government of Nunavut.

4. ABOUT REQUESTING TENDERS (RFTS)



- 4.10.6.2 Once a bidder's tender is accepted by the GN, the surety (bonding company) is liable under the bid bond. The surety will be liable if the bidder:
- i. refuses to enter into a contract; or
 - ii. refuses or is unable to provide the required contract security; or
 - iii. withdraws the tender during the tender acceptance period and prior to the acceptance by the GN.
- 4.10.6.3 The surety will be liable under the bid bond for damages suffered by the GN. These damages can be:
- i. the difference between the defaulting bidder's tender and the next lowest tender; or
 - ii. the inconvenience and expense of calling new tenders; or
 - iii. additional damages resulting from delays in the commencement of the work.
- 4.10.6.4 The maximum damages payable under the bid bond, regardless of the actual loss, is the face value of the bond. The damages suffered by the GN must be specific and measurable.
- 4.11 Confidential Information**
- 4.11.1 Extreme care must be taken so that confidential, incorrect or misleading information is not provided during the RFT process.
- 4.11.2 The following types of information must not be divulged before the RFT closing:
- i. budgetary estimates;
 - ii. project files;
 - iii. bids and contracts from previous years;
 - iv. the engineer's/architect's estimate; and
 - v. any information about bids already received.
- 4.11.3 This information is considered confidential and is withheld to ensure a fair process. Estimates are not always accurate, and previous contract prices may relate to a different scope of work or specifications. Divulging information relevant to bids already received could result in a non-competitive situation. For example, if a bidder learns that no bids have been received immediately prior to the RFT closing, the bidder has the opportunity to submit a high price.

4. ABOUT REQUESTING TENDERS (RFTS)



4.12 Modifying Tender Information – Addendum and Clarification

- 4.12.1 For all contractors to bid on the same specifications, an addendum or clarification must be used to ensure that all bidders receive written notification of changes or clarifications made during the tender call period. This is done to comply with the legal duty of fairness to treat all bidders equally.
- 4.12.2 An addendum is any change or clarification to the tender documents which must be issued prior to the RFT closing date. Due to the impact on price, changes to the specifications should be made well in advance of the closing date. The cut-off date for questions or enquiries and issuance of addenda should be added to the supplementary instructions to bidders, if not already stated in the standard RFT template Instructions.
- 4.12.3 Addenda should only deal with issues that have a major impact on the work requirements. Minor items that will not have a significant impact on the cost or schedule can be dealt with by way of clarifications prior to RFT close, or by change order once a contract is awarded.
- 4.12.4 Discretion should be exercised as the excessive use of addenda tends to discourage bidders from participating in the process and can increase costs. For best results, ensure the specifications are as close as possible to 100% prior to issuing the call for tenders.

4.13 Pre-Tender Meetings

- 4.13.1 A pre-tender meeting is conducted to discuss complex requirements with potential bidders. These meetings can be held prior to release of the RFT (or RFP), depending on the complexity of the project requirements. In any event, the meeting should not be mandatory and must be done prior to the closing date.
- 4.13.2 Pre-tender meetings guarantee the benefits of full and free competition by clarifying possible points of confusion concerning government requirements so that all potential bidders can submit tenders on equal footing with equal understanding. Remarks and explanations at the meeting will not qualify the terms of the tender call.
- 4.13.3 Attendees must be advised that unless the tender requirements are amended in writing they will remain unchanged, and if an amendment or addendum is issued, normal procedures relating to the acknowledgement and receipt will apply.
- 4.13.4 Where necessary, appropriate interpretation should be provided.

4. ABOUT REQUESTING TENDERS (RFTS)



4.14 Site Visits

- 4.14.1 Site visits that allow prospective bidders to view the physical conditions of the work site are another form of pre-tender meeting.
- 4.14.2 Careful consideration should be given when calling mandatory pre-tender site meetings. They should only be called when it is essential that tenderers be present to observe conditions of the work or project or where the information to be provided is significant.
- 4.14.3 Bidders should be advised that non-attendance at a mandatory site meeting could result in the tender being considered non-responsive and rejected during the tender evaluation.
- 4.14.4 Following a pre-tender meeting or site visit, any information exchanged that was not within the issued tender documents must be issued formally in the form of an addendum. The addendum must be issued to all bidders on the plan holder's log, regardless of whether or not they attended the meeting or site visit.

4. ABOUT REQUESTING TENDERS (RFTS)



4.15 Receipt of Bids

4.15.1 The RFT process must treat all potential bidders fairly and equally, so that the procurement officer can be confident that competitive prices have been received from all interested bidders. This section describes how to ensure that tenders are properly handled to achieve this objective.

4.15.2 Every tender call includes a closing date and time for the submission of tenders. As the closing time approaches, bidders will submit their bids. As soon as these bids are received, the date and exact time of their receipt must be confirmed and noted on the face of the tender envelope. The person receiving the envelope must also initial or sign beside the date and time.

4.15.3 If a late tender is accepted, other bidders may be able to claim damages from the GN on the basis that they suffered prejudice and were denied fair treatment as a result of the acceptance of the late tender in question. If you receive a late tender, you should seek advice from CGS Contract Support immediately.

4.15.4 It is extremely important NOT to accept a bid unless it is intended for you OR unless you are able to take responsibility for its receipt and can ensure its timely delivery to the person for whom it is intended. In most cases, a bid will be considered received as long as it has been knowingly received by any representative of the GN.

4.15.5 All bids received must be kept in a private and secure area.

4.15.6 Timing of Receipt and Rejecting Late Submissions

4.15.6.1 An official clock should be designated as the clock to be used for receipt of tender submissions. The date and time that the tender is received is to be recorded on each tender and tender amendment upon receipt.

4.15.6.2 The GN Contract Regulations require that any tender received after the time and date stated in the request must be returned unopened to the person who submitted it. A late tender is therefore to be declared non-responsive.

4.15.6.3 Bids received after the closing time should be date and time stamped, and returned unopened by registered mail, with a covering letter noting that the bid was received late and is therefore unacceptable in accordance with the GN Contract Regulations.

4.15.6.4 Before returning a late bid, a photocopy of the tender envelope showing the date and time of receipt and the transmittal letter should be placed in the RFT file.

4.15.6.5 Late tender amendments also must be rejected.

4. ABOUT REQUESTING TENDERS (RFTS)



4.16 Protection of Bids

- 4.16.1 Information pertaining to bids that have been received is strictly confidential. For example, the number of bids received and the names of bidders are confidential and must not, under any circumstances, be divulged to anyone before tenders are opened.
- 4.16.2 Releasing this information may affect the price a bidder submits, or may even convince a bidder not to bid at all. If a bidder learns, just prior to closing time, that no bids have been submitted, that bidder would then have the opportunity to submit a high price and potentially be the successful bidder. This situation is unusual, but must be anticipated and avoided.

4.17 Sealed Bids

- 4.17.1 If it is a requirement that the tender be submitted in a sealed envelope, then it must be submitted in the envelope provided with the RFT, or in any other envelope clearly marked as a 'Tender'. The envelope should also display the following information:
- i. RFT reference number and name;
 - ii. closing date;
 - iii. name and address of the person or firm submitting the tender.
- 4.17.2 The bidder is responsible for ensuring that the sealed envelope is delivered to the appropriate tender opening location or office. This location will be identified in the RFT documents, and must not be changed by the procurement officer except through a written addendum.

4.18 Faxed Bids

- 4.18.1 In cases where fax bids have been allowed, the bids must receive the same degree of security and control as is afforded to sealed tenders. Fax bids must be inserted into an envelope and sealed immediately upon receipt. The sealed envelope must then be marked with the appropriate tender information details (as listed above under Sealed Bids) and initialed by the person receiving the tender.
- 4.18.2 Bids must be received in their entirety on or before the time set out in the request. This means that the time of receipt for the last page of the bid must indicate that the fax was completely received on or before the receiving deadline.

4. ABOUT REQUESTING TENDERS (RFTS)



4.19 Tender Amendments

- 4.19.1 Tender amendments may be received by fax prior to the deadline for receipt of tenders. The value of the bid must not be disclosed. The faxed amendment is attached to the bidder's tender envelope and kept in a secure area.
- 4.19.2 Amendments to bids which have been received after the official time set for receipt of tenders are considered late and are treated in the same manner as a late tender. They cannot be accepted.

4.20 No Bids Received

- 4.20.1 If no bids are received by the closing time, the tender opening committee should prepare a Tender Register duly noting, 'No Bids Received'.
- 4.20.2 The procurement officer should try to identify the reasons why no bids were received and should make appropriate changes to any future tender calls for the same requirements.

4.21 Illegible or Unmarked Envelopes

- 4.21.1 An illegible or unmarked envelope, which is received and appears to be a bid, may be opened prior to the closing deadline to determine its contents. This should only be done in the presence of at least one witness.
- 4.21.2 If it is a bid, the envelope may be resealed after it is appropriately identified with the information required on the face of every tender (see Sealed Bids earlier in this section). The envelope may then be reopened with the other tenders in the usual manner. A note should be attached or made on the envelope that the document was received unmarked, and was opened, identified and resealed. This note should be signed by the person opening the envelope and by the witness.
- 4.21.3 The bidder submitting the unmarked or illegible envelope should be informed of what happened, and advised that in future this may lead to a rejection of the bid. Rejection would occur because the insufficient or improper identification would mean that the bid would not be opened until it is too late.

4. ABOUT REQUESTING TENDERS (RFTS)



4.22 Requirement for a Public Opening

4.22.1 In accordance with the GN Contract Regulations, all tenders submitted as a result of a formal invitation to tender shall be opened publicly by a tender opening committee.

4.22.2 Tenders should be opened as soon as possible after the closing time. A late opening will prompt bidders to ask why the opening was delayed and whether late bids were accepted.

4.22.3 To ensure that the RFT process is open and fair to all bidders, CGS allows the public to attend all tender openings, including those tenders requested by formal invitation. Additionally, to be fair to all bidders, the opening must be timely and must be conducted in a professional manner.

4.22.4 It should be noted that the use of fax tender receipt procedures does not eliminate the regulatory requirements for a public opening by a tender opening committee. Envelopes containing facsimile tenders should be opened in the same manner as sealed bids.

4.22.5 If this process is not followed, it may be seen as a failure to respect the integrity of the bidding process.

4.22.6 Conducting the Opening

4.22.6.1 A tender opening committee will open tenders. A chairperson presides over the opening. The GN Contract Regulations require that the committee be made up of a chairperson and at least one witness. However CGS Contract Support recommends having a three person committee consisting of a chairperson, a secretary, and a witness.

4.22.6.2 The committee opens all bids that have been received on time, and records them on a Tender Register which each committee member signs.

4.22.6.3 Bids are not reviewed at the tender opening.

4. ABOUT REQUESTING TENDERS (RFTS)



4.22.7 Information to be Announced

- 4.22.7.1 Prior to opening the bids, the chairperson should announce that all tenders received are subject to audit and review prior to any recommendation for award, and that no questions concerning tenders will be answered during the opening.
- 4.22.7.2 The chairperson should then announce the official name of the project for which tenders are being opened and the RFT reference number.
- 4.22.7.3 Upon opening each envelope (for sealed tenders), and for tenders received by facsimile, the chairperson must announce and record only:
- i. the name of the person or company who submitted the tender;
 - ii. if applicable, whether or not bid security is provided (the type of security only, but never the amount);
 - iii. the amount of the tender (the total only);
 - iv. any amendments to the tender price which are announced and recorded as additions to or deletions from the total amount of the tender;
 - v. the final tender price, which is the tendered price plus or minus any amendments. If amendments were received, the final contract price is calculated by two (2) committee members.
- 4.22.7.4 No other announcements should be made, nor should any other information be provided.

4.22.8 Filling Out the Tender Register

- 4.22.8.1 After each announcement by the chairperson, the secretary records on the Tender Register:
- i. the correct legal name of the bidder from the tender form (may differ from envelope)
 - ii. if applicable, the type of security provided: bid bond, certified cheque, etc.;
 - iii. the amount of each bid, the amendment amounts, and the final tender price (calculated by at least two committee members).
- 4.22.8.2 Each committee members initials the bid page where the price is indicated, and signs the Tender Register.
- 4.22.8.3 If no bids are received, this is indicated in the Tender Register and signed by the committee.
- 4.22.8.4 After the tender opening the Tender Register information is available to the public. If contractors were present for the tender opening they may be given a photocopy of the Tender Register if they request it. Otherwise, it can be faxed out on request.

4. ABOUT REQUESTING TENDERS (RFTS)



4.22.9 Release of Tender Register and Other Information

- 4.22.9.1 The Tender Register is public information and can be faxed or copied to any bidder or person who requests it.
- 4.22.9.2 The Tender Register must be kept in the RFT file.
- 4.22.9.3 For tenders for the supply of goods only, the NNI adjusted prices may be released to all bidders in lieu of a Tender Register. For greater clarity, NNI evaluations for any other type of contract, whether by RFT or RFP, must not be released to anyone other than the NNI Secretariat in the event of an NNI appeal.
- 4.22.9.4 A bidder or proponent may request and receive their own NNI evaluation but not the NNI evaluation of any other bidder or proponent.

4. ABOUT REQUESTING TENDERS (RFTS)



4.23 Evaluating Tenders

4.23.1 The tender evaluation determines the lowest responsive bid submitted by a responsible bidder. This process may disclose errors, anomalies and omissions in the bids and may also point out weaknesses in the RFT documents, or improper tendering practices by bidders.

4.23.2 The following sections provide general procedures for carrying out detailed evaluations of tenders. However, in some cases, contract authorities may require additional advice and assistance with respect to evaluating a particular bid. Consult with CGS Contract Support prior to requesting clarification from the bidder.

4.23.3 This section describes three levels of evaluating tenders.

- i. Administrative review (Is the bid responsive?)
- ii. Technical review (Is the bidder responsible?)
- iii. NNI review (Will the NNI bid adjustments affect the outcome of the award?) Refer to Chapter 18 – About the NNI Policy – for detailed procedures on application of NNI in evaluating bids.

4.23.4 Administrative Review

4.23.4.1 “Responsive” means, in relation to a bidder, that the person has submitted a bid that complies in all material respects to the invitation to tender. This includes both contractual and formal compliance (i.e., compliance with the formalities of the tendering process) and procedural compliance (i.e., adherence to the procedural rules set out in the particular tender call). If a requirement is not complied with (e.g., failure to provide bid security where bid security is required with the tender), then the bid is non-responsive and must be disqualified.

4.23.4.2 Note that CGS has determined that a strict standard of compliance will apply. Strict compliance means that a bidder **MUST** comply with **ALL** mandatory elements of the RFT/RFP. If a bidder fails to comply with an essential element, its bid must be rejected as non-compliant.

4.23.4.3 Thus, the question is to determine what a mandatory element is. Things that are mandatory are usually phrased as “shall” or “must”. Things which are discretionary or optional are usually phrased as “may” or “should”.

4. ABOUT REQUESTING TENDERS (RFTS)



- 4.23.4.3.1 Because of this legal requirement that a non-compliant bid be disqualified, it is extremely important that careful attention be paid to the preparation of RFT/RFP documents in order to avoid future problems. The person responsible should ensure that all of the mandatory terms are clearly set out in the RFT/RFP documents using the word “shall”. Keep in mind that if the word “shall” is used, and if the bidder does not comply with that requirement, then the bid must be disqualified.
- 4.23.4.3.2 It is also extremely important that the strict compliance standard be clearly mentioned in the RFT/RFP documents in order to help avoid future confusion or conflict.
- 4.23.4.3.3 If you have questions about whether or not a tender is compliant, you should seek advice from Contract Support before making a decision. In certain circumstances, it may also be necessary to obtain a legal opinion.
- 4.23.4.4 **Bid is Qualified or Conditional**
- 4.23.4.4.1 A bid is qualified or conditional when a bidder submits a bid that does not comply with the requirements of the call for tenders.
- 4.23.4.4.2 Qualifications, reservations or conditions contained in a bidder’s tender can lead to situations where a bidder fails to accept the owner’s offer to enter into Contract A and is found to be making a counter-offer that renders its tender non-compliant.
- 4.23.4.4.3 In such cases, owners are under a duty to disqualify the bidder who failed to accept the Contract A offer. Owners who fail to disqualify such tenders run the risk of having their process challenged by compliant bidders.
- 4.23.4.4.4 If you have questions about whether or not a bid is compliant, you should seek advice from Contract Support before making a decision.

4. ABOUT REQUESTING TENDERS (RFTS)



- 4.23.4.4.5 Some examples of qualified or conditional tenders are when the bidder:
- i. does not meet the minimum Inuit labour requirement (major works tenders only);
 - ii. does not accept the terms of payments;
 - iii. proposes different insurance coverage;
 - iv. proposes different guarantees than those specified;
 - v. is not prepared to provide a certain component as specified in the call for tenders, but proposes something of different quality and performance (i.e., alternative materials);
 - vi. indicates that tender price is irrevocable in less than thirty (30) days;
 - vii. submits a tender on documents that are changed or not on the forms provided;
 - viii. submits incomplete pricing or appendices;
 - ix. is missing some appendices.
- 4.23.4.4.6 A bid is incomplete and subject to disqualification if the bidder has neglected to include significant information such as:
- i. lump sum or unit pricing;
 - ii. a signed tender form;
 - iii. Appendix B (minor works tenders);
 - iv. bid security (major works tenders);
 - v. failed to submit the bid on time;
 - vi. failed to comply with any other mandatory requirement.

4. ABOUT REQUESTING TENDERS (RFTS)



4.23.5 Technical Review

4.23.5.1 Responsible means, in relation to a bidder, the capability in all respects to perform fully the contract requirements and the integrity and reliability to assure performance of the contract obligations.

4.23.5.2 In deciding whether a bidder is responsible, factors to be considered include:

- i. financial resources,
- ii. organization, plant and equipment,
- iii. personnel - managerial and technical,
- iv. experience on similar types of contracts,
- v. record on previous projects with the GN,
- vi. references from other procurement officers/owners.

4.23.5.3 To assist in this assessment, financial and technical reports should be obtained on the bidders under consideration (usually the low bidder only).

4.23.5.4 Price Too Low

4.23.5.4.1 When the lowest price bid is obviously inadequate, and/or the bidder does not appear to have the necessary resources to complete the work, the bidder must be made fully aware of the situation and be requested to review the tender. Following this review, the possible outcomes are as follows:

4.23.5.4.2 If the bidder agrees that the tendered price is unrealistic and requests that the tender be withdrawn, the bidder should be permitted to withdraw the tender without penalty (not for major works tenders where bid security is provided).

4.23.5.4.3 If the bidder insists that the tender is correct and is in strict accordance with the tender documents, the two possible courses of action are as follows:

4.23.5.4.4 If the procurement officer agrees with the bidder's review of the price and the explanation of why the price is lower than the estimate, and considers the bidder to be responsible, then the officer should request confirmation of the tender price in writing and award the contract accordingly;

or

4.23.5.4.5 if the officer does not agree with the bidder's review of the price and the explanation of why the price is lower than the estimate and considers the bidder to be not responsible, the bid should be disqualified and the contract awarded to the next lowest responsible and responsive bidder.

4. ABOUT REQUESTING TENDERS (RFTS)



- 4.23.5.4.6 Under no circumstances may the bidder be permitted to increase the offer originally tendered.
- 4.23.5.5 **Price Too High**
- 4.23.5.5.1 Where all bids, including the lowest tender, are obviously excessive and over budget, the tender call should be canceled, and a review of the scope of work to be done by the contract authority to determine whether the contract estimate was correct.
- 4.23.5.5.2 However, in the case of major works construction contracts where cancellation of the tender may result in the project being delayed by a construction season or fiscal year, the GN may not wish to cancel.
- 4.23.5.5.3 In such a case, the first thing to do is to request additional funding from the client department to award the contract and to ask all bidders to hold their prices for the additional period of time necessary to secure funding.
- 4.23.5.5.4 Acceptance of the lowest bid as submitted can only happen where the client department agrees, in writing, to increase the budget so the lowest tender can be accepted. If the client does not agree to the additional cost to award the contract as tendered, then the next step is to review the scope of work with the client, CGS Regional Projects, and Technical Services Divisions and the design consultant to find ways to downsize the project.
- 4.23.5.5.5 The Instructions to Tenderers in the GN's major works construction RFT allows the GN to negotiate the tendered prices solely with the low bidder (after NNI Adjustments) in order to achieve a reduced price and scope of work up to a maximum of 15%. To achieve a reduced price and scope of work in excess of 15%, the GN can re-invite bids from the low bidders without re-issuing a public call for tenders, or fundamentally changing the scope of work or the intent of the project⁶. The GN can also cancel the tender in whole or in part, meaning accepting part of the price for part of the work. Consult the Manager of Project Support, CGS Technical Services for advice and assistance.

⁶ Major Works Construction Tender and Contract Document, Instructions to Tenderers, clause 18 "Acceptance".

4. ABOUT REQUESTING TENDERS (RFTS)



- 4.23.5.5.6 Following the review, a report to the responsible manager should be made. The report should summarize the events and the findings, and should recommend a course of action, which could be any one of these options:
- i. Review the scope of work to determine reductions not exceeding 15% and negotiate solely with the low bidder; or
 - ii. if a 15% scope reduction is not achievable, determine scope reductions in excess of 15% and re-invite all bidders without re-issuing a public call for tenders; or
 - iii. cancel the RFT, revise the scope of work and re-issue a public RFT;
 - iv. ask the bidders to hold their prices until the next fiscal year if the client department does not want to provide the additional funding or change the scope of work (Note: bidders are not likely to agree with this);
 - v. cancel the RFT, revise the scope of work and re-issue a public tender call.
- 4.23.5.5.7 Reviewing the scope of work with the client department and architect/engineer to achieve a reduction in the scope of work will form the basis for negotiations with the low bidder or the re-invitation to all bidders.
- 4.23.5.5.8 Any achieved scope changes with the lowest bidder must be clearly defined in writing and agreed to by both parties. Consult with CGS Contract Support for advice and assistance on handling any post-tender negotiations.
- 4.23.5.5.9 The same approach can be followed for minor works tenders, however, the Instructions to Bidders for this type of contract allows the GN to seek a reduced scope of work and price up to a maximum of 15% by negotiating solely with the lowest responsive and responsible bidder.
- 4.23.5.5.10 No other GN RFT or RFP Instructions to Bidders or Proponents allows for this activity with respect to bids that are over budget. The only option is to cancel, revise and re-issue.

4. ABOUT REQUESTING TENDERS (RFTS)



4.23.5.6 Technical Inconsistencies in the Tenders

4.23.5.6.1 The technical review may reveal that a bid is not in compliance with all the technical requirements and specifications. A bidder may offer alternatives. However, the bidder **must** also provide a base bid that conforms to the RFT specifications.

For Example: Rather than providing pricing for the heating system specified in the tender call, the low bidder submitted a price based on a product of substantially lower quality and performance. In such a case, the bid would have to be disqualified as being non-compliant.

4.23.5.6.2 If the bidder had provided a price for the specified heating system and indicated pricing for an alternative product on the bidder options form included in the RFT document, the bid would be compliant and the option, if appropriate, could be evaluated to see what benefits it may provide.

4.23.5.6.3 All bids must be based on the same information so that no bidder has an unfair advantage. This is essential to maintain the integrity of the RFT process and protect the GN from legal liability.

4.23.5.7 Identical Low Bids

4.23.5.7.1 According to section 13(3) of the Contract Regulations, when two identical low bids are received, the Minister responsible for the contract will decide to whom the contract will be awarded. The following factors should be considered:

- i. a bidder with an overall satisfactory performance record should be given preference over a bidder who is known to have an unsatisfactory performance record, or no record at all;
- ii. where time is an important factor, the bidder offering the best completion or delivery date may be given preference.

4.23.5.7.2 Preference may be given to a local bidder only if the RFT documents included the provision for local preference. Generally, local preference should only be considered as additional support for a recommendation of choice between two identical tenders, and not as the sole criteria.

4.23.5.7.3 Preference may be given to the bidder who has been operating for the past one or two years and has received the smallest volume of work during that time.

4. ABOUT REQUESTING TENDERS (RFTS)



4.23.5.7.4 Issuing a revised tender call may be the only choice available if:

- i. no decision is possible;
- ii. time allows for re-tendering;
- iii. a change of scope is possible.

4.23.5.7.5 However, since this can cause extra expense to the bidders, re-tendering should only be used where absolutely necessary.

4.24 Requesting Clarification and Substantiation

4.24.1 Additional information can be requested from bidders to confirm or substantiate information about subcontractors, suppliers and labourers provided in the bid. Care must be taken not to provide bidders the opportunity to amend their bids.

4.24.2 If a bidder has not provided an accurate name for itself, a subcontractor or a supplier, but the accurate name can be reasonably guessed or figured out by using NNI and NTI lists and a telephone directory, the proper name of the company should be confirmed with the bidder before giving or denying the NNI adjustment. Spelling mistakes do not constitute grounds to deny a bid adjustment.

4.24.3 If in doubt, contact NTI for information about a company's Inuit Firm status. Document any instructions received from NTI. Ask for a fax copy of the company's certificate of Inuit Firm status. The same should be done for companies claiming to be NNI registered Nunavut Businesses. Contact the NNI Secretariat and document any direction or instructions to file before proceeding. Ask for a fax copy of the company's Nunavut Business approval letter. Keep the fax copies in the RFT file with the tender in question.

4.25 Post Tender Addendum or Amendment

4.25.1 In the event that bids are over budget, the scope or description of work should be reviewed to determine whether any items of work can be removed to achieve a lower price. All bidders must be asked to provide a reduction in price amount for reduction in scope. This is referred to as a post-tender addendum or amendment.

4. ABOUT REQUESTING TENDERS (RFTS)



4.26 Awarding Contracts - General

4.26.1 Prior to entering into a contract, a number of important tasks need to be undertaken:

- i. obtain authority to enter into the contract (if necessary);
- ii. provide for financial commitment; and
- iii. document contract details for reporting purposes.

4.27 Tender Acceptance and Notification of Award

4.27.1 Once the contract authority has signed off his/her approval to accept the tender, you can proceed with finalizing the contracts, notifying the successful bidder and processing the financial obligation of contract funds paperwork.

4.27.2 Once internal authority or approval has been obtained to award a contract, the successful bidder must be notified of the acceptance with minimum delay. This is especially important with RFT awards.

4.27.3 Tender Acceptance Period

4.27.3.1 Although an award may be made at any time after the RFT closing, the bidder is not bound to accept the award after the specified tender acceptance period. If it appears unlikely that an award will be possible before the tender acceptance period expires, the bidders may either be notified that the acceptance period has been extended, or requested to extend the terms of their bids beyond the acceptance period. The procedure for extending the acceptance period depends on the type of RFT document that is used. In all cases, it must be noted on the Award Recommendation/Obligation Transmittal form.

4.27.3.2 While a formal acceptance period does not apply to proposals, they too can be time sensitive and should be awarded without undue delay.

4.27.4 Methods of Award Notification

4.27.4.1 Methods of award notification used for GN contracts are a contract, purchase order or a letter of acceptance (award letter).

4. ABOUT REQUESTING TENDERS (RFTS)



4.27.4.1.1 **Contract**

4.27.4.1.1.1 A formal contract incorporating the terms described in the RFT and successful tender may be sent to the successful bidder for execution. Generally, the contract included in the RFT documents will be the contract that will be signed by the GN and the successful bidder.

4.27.4.1.1.2 Most contract templates used by the GN constitute both the tender call and resulting contract documents. The bidder will fill out the bid forms, sign them and submit them to the GN by the closing time stipulated. The GN will then sign them in order to signify its acceptance the offer. This becomes the signed contract and it is faxed back to the successful bidder as the award notification.

4.27.4.1.1.3 This is the recommended method for general services contracts, minor construction or maintenance and consulting services.

4.27.4.1.2 **Purchase Order**

4.27.4.1.2.1 The purchase order is the contract used to notify successful bidders for all goods RFTs. In addition to acceptance of the tender, the purchase order serves to provide specific information relative to shipping and invoicing.

4.27.4.1.3 **Letter of Acceptance (Award Letter)**

4.27.4.1.3.1 A letter of acceptance is a formal acceptance of an offer; it constitutes a legal agreement and is binding on the GN and the successful bidder.

4.27.4.1.3.2 CGS does not recommend using acceptance letters for any type of contract except the architectural/engineering full services agreement and the major works construction RFT and contract.

4.27.4.1.4 **Letters of Intent**

4.27.4.1.4.1 It is important to understand the difference between a letter of acceptance and a letter of intent. A letter of acceptance formally accepts an offer. A letter of intent does not accept an offer; rather, it merely indicates the intention to accept an offer at some point in the future on the condition that specific conditions are met by the bidder.

4.27.4.1.4.2 A letter of intent does not constitute an agreement between two parties; however, if improperly construed, it can cause a great deal of difficulty. For this reason, letters of intent should not be drafted or issued without first consulting Contract Support for advice and assistance.

4. ABOUT REQUESTING TENDERS (RFTS)



4.27.5 **Award Recommendation/Funds Obligation Transmittal Form**

4.27.5.1 This form serves two purposes:

- i. to recommend and obtain approval to award a contract; and
- ii. to provide financial coding and contract value information for financial obligation of funding to pay for the contract.

4.27.5.1.1 **Award Recommendation**

4.27.5.1.1.1 The Recommendation to Award/Obligation of Funds Transmittal form should be used by public officers who do not have authority to sign and award the contract. Generally, a director will have authority to sign most contracts. If in doubt, check with your internal finance division.

4.27.5.1.1.2 Complete the form and forward it to the appropriate contract authority with the necessary supporting documentation. Provide the necessary financial coding information with budget values and the contract award value and multi-year obligation schedule where applicable.

4.27.5.1.1.3 In cases where the contract value exceeds a public officer's signing authority, the form provides for a written recommendation to the contract authority and the public officer can sign as a recommender.

4.27.5.1.2 **Financial Obligation**

4.27.5.1.2.1 The form provides a standard GN financial obligation format including signature blocks. After awarding the contract, attach a copy of the award notification and fax confirmation sheets. Make a copy for your contract file and forward the original to your internal finance division for obligation of funds into the GN's financial operating system (FreeBalance).

4.27.5.1.2.2 Note that this form can also be used to obligate funds for any type of contract that does not have a financial obligation coding section on it. It is not required for service contracts, Local Contract Authority purchases (LCAs) or purchase orders⁷ because those contract forms have their own financial coding sections.

⁷ This form is not necessary to obligate funds for SC, LCA and PO contract forms because those are signed by the contract authority prior to awarding, and these forms each have a section for financial coding and funds obligation.

4. ABOUT REQUESTING TENDERS (RFTS)



4.27.5.1.2.3 The GN's standard service contract (SC) form can be used in lieu of this Award Approval/Obligation form to financially obligate contract funds, however, if you are awarding a form of contract that is not the SC form, DO NOT have the successful contractor sign the SC. This will void the terms of the contract you want to award⁸.

4.27.6 Important Points of Award Notification

4.27.6.1 The award notification should be reviewed carefully to ensure the following details are accurate:

- i. the award is made to the approved bidder;
- ii. the bidder's name and address are identical with those under which the offer was made (care must be taken that you are contracting with the proper legal entity);
- iii. the description of the goods/service/project and the delivery location is identical to that quoted in the tender or proposal;
- iv. the contract price shown conforms with the bidder's offer, including any amendments (which should be noted);
- v. the offer being accepted is correctly identified – i.e., options or alternatives need to be identified if they are being accepted, etc.

4.27.6.2 Notification of contract award is normally sent by facsimile. It is important that a confirmation of transmission is received and kept on file. In most situations, the original award document should also be sent by mail.

4.27.7 Letters of Regret

4.27.7.1 Letters of regret are used to notify the unsuccessful bidders that a contract has been awarded to another party.

4.27.7.2 Letters of regret, or some other form of written communication, should be used for all RFTs greater than \$25,000.

4.27.7.3 CGS Contract Support has a standardized regret letter template for implementation of this procedure.

⁸ GN Financial Administration Manual (FAM), Chapter 800, Directive 808 – 5.1.1 and 5.1.2
Purchasing, Logistics & Contract Support procurement@gov.nu.ca January 2010

5. ABOUT REQUESTING PROPOSALS (RFPS)



5.1 Introduction to the RFP Process

- 5.1.1 This section introduces the concept of using requests for proposals (RFP) to obtain prices. A well-prepared RFP can go a long way to creating effective programs with reliable contractors.
- 5.1.2 In addition to the procedures set out in this chapter, contract authorities are also encouraged to review Directive 808-1 of the GN Financial Administration Manual (FAM), which provides directives and guidelines on the RFP process.
- 5.1.3 An RFP is a document inviting companies to propose a solution to a defined problem and sets out the criteria and basis on which the proposed solutions will be evaluated. This section explains when the RFP process should be used and provides the procedures to follow when undertaking an RFP on behalf of the GN.

5.2 RFPS Different from RFTs (Requests for Tenders)

- 5.2.1 The difference between a tender and a proposal is well explained in the NWT court decision *Socanav Inc. v. Northwest Territories (Commissioner) et al.*, [1993] NWTR 369 at para. 21:
- "When the government knows what it wants done and how it should be done (such as a construction project), it will already have its plans and specifications and is looking simply for the best price. On the other hand, when the government knows what it wants done, but not how to go about doing it, it seeks proposals on methods, ability, and price. Then it can negotiate on the best method to achieve the best value."*
- 5.2.2 Essentially, an RFT is used when an owner knows exactly what good or service it wants and is looking for the best price to deliver it. An RFP is used when an owner is seeking proposals and recommendations for solutions.
- 5.2.3 An RFP is generally a non-binding offer to negotiate and is generally not considered to give rise to contractual relations between the parties. This is contrasted with an RFT, which creates a legal relationship (Contract A) when a compliant bid is submitted and requires that the owner must enter into Contract B with the successful compliant bidder.

5. ABOUT REQUESTING PROPOSALS (RFPS)



- 5.2.4 It is important to note that simply calling a document an RFP will not be enough to protect someone from the obligations arising out of the law of competitive bidding. The following are factors that a court will look at in order to determine whether an RFP created a Contract A:
- i. the formality of the RFP process;
 - ii. whether there is a deadline for submission;
 - iii. whether bids or proposals are required to be irrevocable;
 - iv. whether there is a duty to award Contract B;
 - v. whether Contract B has specific conditions not open to negotiation; and
 - vi. whether there is a statement that the RFP was not a tender call.

5.3 An Overview of the RFP Process

- 5.3.1 The RFP process begins with the recognition of a need and the desire to achieve a solution to a known problem. At this stage, the problem and work or services required to achieve the desired solution are articulated and documented.
- 5.3.2 Once draft terms of reference are prepared, an Approval to Request Proposals or a Requisition for Supplies and Services is prepared and issued to the contract authority to approve the RFP process.
- 5.3.3 The terms of reference are finalized and the RFP document is prepared and released to the business community in accordance with the GN's invitation and advertising requirements. Refer to Chapter 2 – About Contracting – General.
- 5.3.4 The principal steps of the RFP process are as follows:
- i. approval to request proposals: receipt of a properly authorized Requisition for Supplies and Services or RFP Data Approval form;
 - ii. preparation of the RFP document;
 - iii. administration of the RFP process: advertising, maintaining the proponents' list; modifying or clarifying the RFP information, etc.;
 - iv. receiving proposals: protecting the confidentiality of the proponents, receiving amendments, chairing the proposal opening, releasing the proposal register information;
 - v. evaluating proposals: conducting the administrative, technical and NNI Policy reviews of the proposals to determine the proposal offering the best value to the GN;
 - vi. finalizing and forming the contracts.

5. ABOUT REQUESTING PROPOSALS (RFPS)



5.4 Approval to Request Proposals

5.4.1 A properly signed and authorized Requisition for Supplies and Services or RFT/RFP Data Approval form is required before requesting tenders or proposals. Refer to Chapter 4 – About Requesting Tenders – for information on obtaining approval to engage in contracting activities on behalf of the GN.

5.4.2 CGS Contract Support has provided standardized RFP templates for general goods and services, and for architectural/engineering services. Please contact CGS Contract Support for advice regarding all RFPs. A GN standard RFP template must be used as the basis for your RFP. The template will be modified to suit the special needs of your particular circumstances.

5.5 What to Include in the Request for Proposals

5.5.1 The following sections describe the RFP document in detail and discuss what should and should not go into it.

5.5.2 The RFP should be structured in the following manner:

- i. Instructions to Proponents
- ii. Terms of Reference
- iii. Scope of Work
- iv. Evaluation Criteria and Response Guidelines
- v. Pro-Forma or Service Contract
- vi. Attachments (Appendices, Schedules, Reference Documents)

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5.6 Instructions to Proponents

- 5.6.1 First the administrative ground rules are set out so that proponents have a clear understanding of the process.
- 5.6.2 The instructions to proponents section of the GN's RFP template includes information and instructions on the administrative parameters of the proposal call and includes the following:
- i. a general title and description of the goods or services required and the purpose or objectives of the RFP;
 - ii. the location, date and time fixed for submission of proposals;
 - iii. a designated contact person and instructions for inquiries during the RFP period;
 - iv. instructions regarding late proposals;
 - v. instructions for receiving proposal submissions (hand deliver or facsimile) and the number of copies required with the original submission (for the evaluation team);
 - vi. instructions for modifying the RFP information;
 - vii. instructions for how proponents can change or amend their proposal submission;
 - viii. instructions on how a contract will be awarded and what it will include;
 - ix. instructions setting out the GN's right to cancel the RFP;
 - x. instructions regarding privacy protection;
 - xi. instructions regarding costs for submitting proposals and what will be done with them after the process ends.
- 5.6.3 The instructions have been reviewed and approved by the Department of Justice and should not be changed with the exception of:
- i. a brief description of the requirements of the project so that proponents have an understanding of what is being sought, and can tell immediately whether they are interested enough to read the entire document;
 - ii. a contact person for inquiries during the period between RFP release and closing date;
 - iii. an RFP reference number, title and project location, and the number of copies to submit along with the original proposal.



5.7 Terms of Reference

5.7.1 Following the instructions to proponents, the project or problem is described in detail along with the level of service expected from the contractor and the timeframes in which to complete the project.

5.7.2 The terms of reference section should typically include the following areas:

- i. RFP purpose and project objectives;
- ii. background information;
- iii. role of the project within the department's operations;
- iv. constraints;
- v. contract administration requirements.

5.7.3 The contents of the terms of reference section should adequately describe the department's circumstances, the project purpose, and the desired objectives, goals and outcomes of the contracted service.

5.7.4 This is the section of the RFP template that will require modification and detailed definition by the contract authority. Accordingly, the terms of reference will be developed by the person or persons with the technical knowledge of the goods or services required and who will be responsible for evaluating the proposal submissions.

5.7.5 It is important to include as many pertinent details about the problem and scope of the project as are available at the time of the proposal call. RFPS that do not have well-defined terms of reference will most likely result in large variations in the proposed methodology and fees, thus making it more difficult to analyze and compare.

5.7.6 RFP Purpose and Project Objectives

5.7.6.1 The terms of reference should set out the objective or reason for the RFP. Provide a statement or paragraph describing the general intent of what is to be achieved through the RFP process.

5.7.7 Background Information

5.7.7.1 In order for proponents to develop an understanding of the problem and formulate a comprehensive and meaningful solution, provide as much background information describing the situation leading to the requirements and the RFP.

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5.7.8 **Role of the Project within the Department's Operations**

5.7.8.1 Explain the role that the project will play in delivery of the department's programs. Describe the end users of the final product and how it will be used. Identify all parties with an interest in the project including desired impact(s) on the targeted user group and details of client support and responsibilities. Essentially, describe how this project is expected to impact operations for the section, division or department and why.

5.7.8.2 A description of the department and how the project will relate to the department's programs may help the proponent with an understanding of the requirement. Clearly define the details of the GN's roles and responsibilities under the project. Also provide the department's mandate and mission statement if it is felt that including it will assist proponents in better understanding the objectives of the RFP.

5.7.9 **Constraints**

5.7.9.1 Describe the known constraints under which the proposed solution will be required to operate. These will include government policies and standards, requirements of the Nunavut Land Claims Agreement, current and proposed related activities, security, sensitivity to other interests, protection of the environment, conservation of resources and other restrictions.

5.7.9.2 Nunavut's climate, environmental and geographic constraints should also be discussed where it is expected that the required solution cannot be provided from within Nunavut. Weather concerns should be addressed where it may impact performance of the contract.

5.7.9.3 Identify details of any special Inuit, Nunavut and local approaches that are to be undertaken during the performance of the work including setting minimum requirements for Inuit, Nunavut and local content where feasible.

5.7.9.4 The financial limits of the budget and cash flow are discretionary and should not be included if this might mislead proponents, result in improper proposals or diminish the possibility of the GN receiving the best value.

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5.7.10 Contract Administration Requirements

5.7.10.1 Finally, proponents are advised of any additional terms that will apply in addition to the contract terms and conditions provided to govern any agreement arising from the RFP and the accepted proposal.

5.7.10.2 Detailed requirements should be set out for the following:

- i. contract term extensions;
- ii. changes in the work;
- iii. invoicing and payment terms.

5.7.10.2.1 Contract Term Extensions

5.7.10.2.1.1 A contract should not be extended beyond the date set for the final completion of the work (contract term “end” or “completion” date) unless there is a clause in the contract that allows for such an extension. Accordingly, to permit extending the term of the contract, include an extension term. CGS has standardized extension clauses that can be used in all GN contracts. Contact Contract Support for assistance.

5.7.10.2.2 Changes in the Work

5.7.10.2.2.1 Like changing the contract term, sometimes additional work may be required of the contractor. Also, there may be cases where less work than anticipated will actually be required. Accordingly, you should set out a detailed mechanism for handling changes to the scope of work.

5.7.10.3 Invoicing and Payments

5.7.10.3.1 Contractors should be asked to submit detailed reports setting out their progress on the work to date. In all cases, contract payments should be directly linked to actual performance or delivery of the goods or services contracted for. Include approval and acceptance requirements relating to the performance of each stage. Payment for the service should not be released until it is certified that the work was actually done.

5.7.10.4 Refer to Chapter 9 – About Managing Contracts – for more information on contract administration requirements.



5.8 Scope of Work

5.8.1 RFPs must be written with the objective of receiving comparable proposals. It is strongly recommended that careful thought be put into developing this section so that your requirements and goals are clearly described. RFPs that do not have well defined terms of reference often result in large variations in the proposed solutions, capabilities and fees presented in the proposal submissions. That makes the evaluation committee's job much more difficult and subjective than it ought to be.

5.8.2 The scope of work is a detailed description of what is to be achieved and must be included in the RFP. The purpose of the scope of work section is to define and quantify the limits and expected outcomes of the project.

5.8.3 Generally the scope of work will include, but does not need to be limited to, the following:

- i. definitions;
- ii. technical requirements (desired features and benefits);
- iii. quality control and standards;
- iv. risk management;
- v. mandatory requirements;
- vi. minimum standards;
- vii. schedule/timeframe for completion;
- viii. deliverables (contract performance).

5.8.3.1 Definitions

5.8.3.1.1 A definitions section is not always required. However, it should be provided to clarify the meaning of any technical terms used in the RFP. This section will be especially important for 'high profile' contracts (highly technical, high risk and high value).

5.8.3.2 Technical Requirements (Desired Features and Benefits)

5.8.3.2.1 Consider the following and provide appropriate information:

- i. quantify requirements whenever possible;
- ii. ensure project objectives are clearly stated and easily understood (anticipated results of a successful solution);
- iii. determine if requirements are large enough to warrant a staged process calling for interim deliverables;
- iv. beware of bias - if some proponents may not be able to meet mandatory requirements, either remove them completely or justify them from a business case perspective;
- v. clearly describe desirable features and benefits and give an indication of how important they are.

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- 5.8.3.2.1.1 It is also a good idea to try to anticipate any questions proponents might ask and respond to those requests. This way you will be reducing the number of questions you get about the project requirements while the RFP is out. This will decrease the number of addenda to be issued.
- 5.8.3.2.2 **Quality Control and Standards**
- 5.8.3.2.2.1 Clearly establish minimum levels of experience including certifications and designations.
- 5.8.3.2.2.2 Include any minimum standards you feel will be necessary for successful achievement of the project objectives minimum product and operating standards.
- 5.8.3.2.2.3 These standards will form the basis or 'benchmark' which your evaluation team will use to award a 'starting score' i.e., a 7 out of 10 (i.e. good) for proponents who meet the standard, a higher score for proponents exceeding the standard and a lower score for proponents falling short.
- 5.8.3.2.2.4 These considerations will be especially important where a project is complex and the proponent's past or relevant experience, project team skills and abilities, and proposal pricing, etc., are very important.
- 5.8.3.2.2.5 Establishing 'tests' and structure to the RFP process will go a long way to attracting sound and meaningful solutions with clear pricing structures and make evaluations objective and, therefore, more defensible in the event of a challenge from an unsuccessful proponent.
- 5.8.3.2.3 **Risk Management**
- 5.8.3.2.3.1 Identify potential risk factors and ask proponents to provide risk management plans in their proposals.

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5.8.3.2.4 **Mandatory Requirements**

5.8.3.2.4.1 Unlike an RFT, the nature of an RFP is that it requires suggesting a solution to a problem instead of meeting a detailed specification. However, in some cases it will be necessary to specify a requirement that absolutely must be included in the proposed solution. This is called a mandatory requirement.

5.8.3.2.4.2 If a proposal does not meet a mandatory requirement, then the proposal must be rejected for that reason. Accordingly, be careful to clearly describe the mandatory requirement(s) and to specify that failure to comply with such mandatory requirement(s) will result in disqualification of the proposal submission.

5.8.3.2.4.3 When describing mandatory requirements, use the terms “must” or “shall”. The absence of these mandatory requirements is automatic grounds for rejection of a proposal.

5.8.3.2.4.4 Because of the “pass or fail” nature of mandatory requirements, Purchasing recommends keeping them to a minimum, and they should be clearly listed in a separate section of the RFP Terms of Reference.

5.8.3.2.5 **Minimum Standards**

5.8.3.2.5.1 Unlike with mandatory requirements, the failure to achieve a minimum standard will not result in a proposal being rejected as non-compliant. Instead, a minimum standard provides the evaluation committee with a useful tool to measure whether the proposed alternative satisfies the desired outcome or project objective.

5.8.3.2.5.2 Minimum standards should be included in the proposal call in order to set benchmarks for the purposes of proposal evaluations. It is important to establish minimum standards by which to measure quality and justify the level of points awarded on a particular evaluation criterion.

5.8.3.2.5.3 For example, indicating that proponents are expected to have at least three to five years experience in the field or profession related to the services you want performed will better enable you to defend awarding a lower score to a proponent with less experience and a higher score to a proponent with more experience.

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- 5.8.3.2.5.4 Using minimum standards as a baseline for determining the qualitative aspects of proposals serves to provide clear guidelines to both proponents and the evaluation committee members, and will go a long way to taking the subjectivity out of the proposal evaluation process and result in fewer chances of having to reject sound proposals.
- 5.8.3.2.5.5 When setting out minimum standards, use terms like “should”, “may” and “can” to indicate what is desired or expected from proponents. These words indicate that something is an important requirement, but not one that is so important that its absence will mean automatic disqualification. For example, proponents should have at least five years of experience in the field or an acceptable combination experience and education. The acceptable combination should also be further defined.
- 5.8.3.2.6 **Schedule/Timeframe for Completion**
- 5.8.3.2.6.1 A schedule for the work with as much detail as possible should be included in the RFP. Critical milestone dates that must be met should be specifically brought to the attention of the proponents (i.e. preliminary report dates, final report dates, etc.).
- 5.8.3.2.6.2 Depending on the timeframe available to complete the project, and the amount of project planning that has been achieved to date, there may or may not be a lot of time available for completion of the project.
- 5.8.3.2.6.3 Any time constraints on the project impacting the amount of time the successful proponent will have to complete the work must be identified in the RFP with as much detail as possible, including critical milestone dates that must be met (i.e., preliminary and final report due dates, etc.).
- 5.8.3.2.7 **Deliverables**
- 5.8.3.3 Give clear direction on what is expected from the contractor in terms of a final or finished product. This may include reports, drawings, reproductions, product specifications, manuals, and inspection or testing requirements that will have to be met in order for the finished product to be accepted. Deliverables also includes a final delivery deadline.
- 5.8.3.4 Some basic examples of project deliverables include studies and reports, software systems, designs, project management services or any other type of service required to carry out the project requirements.
- 5.8.3.5 Clearly itemize and detail the requirements for submissions or reports. This will be a list of tasks or items indicating the stages at which they will be required, the level of detail to be achieved at each stage, and where applicable, the number of submission copies required.



5.9 Proposal Selection Methods

5.9.1 Proponents must be told how proposals will be evaluated and should also be told what information to provide in their proposals. This is a critical section of the RFP template that requires input and additional modification by the user department.

5.9.2 There are three parts to the Selection Methods section of the RFP:

- i. Evaluation Criteria;
- ii. Proposal Response Guidelines; and
- iii. NNI Incentive Forms and Proposal Rating Schedule.

5.9.2.1 Evaluation Criteria

5.9.2.1.1 The evaluation criteria can usually be broken down into three key areas: solution, proponent capability, and price. The GN standard method for evaluating proposals includes a weighted evaluation of the following criteria:

- i. Methodology (Proposed Solution and Method for Implementation)
- ii. Project Schedule
- iii. Training Programs
- iv. Relevant and Past Experience of the Company
- v. Skills and Experience of Project Team
- vi. Fees and Expenses
- vii. Inuit, Nunavut and Local Content

5.9.2.1.2 By law, the RFP must provide the criteria by which proposals will be evaluated. To encourage proposals that effectively prioritize the GN needs, the percentage weightings of the criteria to be used for evaluation must be listed in the RFP.

5.9.2.1.3 Evaluation or rating criteria and their associated weights should be carefully selected so that the evaluation will properly reflect the project requirements and result in the selection of a proposal that will provide the best potential value to the GN.

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5.9.2.2 Assigning Weights to Evaluation Criteria

- 5.9.2.2.1 Weights for rating criteria should be assigned based on the importance of the criteria in relation to the project requirements. For instance, the weight for relevant experience would be higher than the weight for price if you were looking for a brain surgeon because ensuring that the proponent knows what she or he is doing would be more important than how much she or he would charge you for the services.
- 5.9.2.2.2 This is not to say that the weight for price is not important. The idea is that you need to set these weights carefully using both real and hypothetical scenarios based on what the outcome would possibly be if the weights for solution and proponent capability criteria were too low and price criteria too high, or vice versa.
- 5.9.2.2.3 There may be an exceptional occasion where the complexity of the project is such that the weighting criteria would not be disclosed. This may occur in a situation where the department or division has never contracted for that particular service before and delay to establish weights for the RFP would unduly delay or impact implementation of the project. In this case, it may be too early in the procurement process to be requesting proposals at all and an alternative procurement option may be necessary. These situations are extremely rare and must be discussed with the Manager of CGS Procurement, Logistics & Contract Support. Refer to Chapter 3 – About Other Procurement Options – for more information.
- 5.9.2.2.4 The NNI Policy requires an Inuit content evaluation criterion which must carry a weight of 15% of the total weight assigned to all criteria (100%). The weight assigned to the Inuit Content criterion must be calculated at 10% for Inuit employment and 5% for Inuit ownership respectively in accordance with the NNI Policy.

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5.9.2.3 **Proposal Response Guidelines**

5.9.2.3.1 To further encourage meaningful solutions and consistent pricing among proponents, guidelines as to what you are looking for in terms of ideal responses should also be provided to assist proponents in preparing their submissions. This tool will be especially helpful in setting minimum parameters for proposal submissions, but will also assist the evaluation committee to maintain their focus on the project requirements and offer some objectivity to the overall process.

5.9.2.3.2 The quality of the proposed solutions depends to a great extent on the amount of accurate, detailed information that you provide to proponents. The level of detail about the evaluation criteria influences proponent behaviour and that of the evaluation committee. Accordingly, you should guide the proponents to provide the information you want in the manner consistent with how you are going to evaluate their responses.

5.9.2.3.3 For each evaluation criterion, identify the level of information needed in order to determine whether or not the proponent is capable of delivering a quality service within a reasonable time frame and satisfy yourself that the project goals and objectives will be met within your estimated contract budget.

5.9.2.3.4 List each evaluation criterion in the same order as it is listed in the Selection Methods section of the RFP template.

5.9.2.4 **Methodology**

5.9.2.4.1 Ask proponents to describe their proposed solutions and how they intend to successfully implement them and achieve the desired outcomes of the project. The methodology should be summarized in either a work plan or flow chart format which identifies specific tasks and the person responsible for completing the tasks.

5.9.2.4.2 Proponents should also be asked to include the proposed means of working with the GN contract manager and levels of authority within the proposed project team.

5.9.2.5 **Project Schedule**

5.9.2.5.1 Proponents should be asked to include a schedule or work plan that outlines the sequence of events in performance of the contract. The schedule should identify the necessary tasks and time frames allocated for completion. The schedule should comply with or be as close as possible to the schedule set out in the Terms of Reference.

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5.9.2.6 **Consultant/Project Team – Knowledge, Skill, Related Experience**

5.9.2.6.1 Proponents should be asked to clearly identify everyone who is to be involved in the project, including a description of what their duties and responsibilities under the project will be. Lines of communication within the team should be clearly established. A project leader should also be identified with duties and responsibilities clearly set out in the proposal.

5.9.2.6.2 To demonstrate knowledge, skill and related experience of each member proposed to carry out work on the project, the proponent should be asked to provide a detailed list of similar projects completed in the past and identify who the projects were completed for. For each project, ask for a brief description of the work that was done.

5.9.2.6.3 To demonstrate the proponent's knowledge, skill and related experience in the industry or field of profession you are seeking the services of, personal résumés for each of the proposed project team members may be provided to support the claims made in the proposal.

5.9.2.6.4 Letters of reference from past clients and other governments may also be requested to support the claims made in the proposal. References from persons in your section or on the evaluation team are not acceptable due to potential conflicts of interest and proponents should be advised of this.

5.9.2.7 **Proposal Pricing (Fees and Expenses)**

5.9.2.7.1 In order to receive consistency in the structure of proposal pricing, specific criteria for establishing fees must be stated in the RFP.

5.9.2.7.2 Provide proponents clear guidelines on how to present the fees and expenses proposed for carrying out the work. As a minimum, proponents should be asked to provide a lump sum price which will be the maximum cost of the services. This price should then be broken down to identify completely how the lump sum price for the proposed service was determined, including any goods and services provided by sub-contractors and suppliers and payroll costs.

5.9.2.7.3 Proponents should also be asked to identify and provide estimates for disbursements (reimbursable expenses) if these will be payable under the contract.

5.9.2.7.4 Hourly and per diem rates for all personnel and equipment and for additional work can also be identified, however, avoid asking proponents to base their proposed pricing solely on hourly or per diem rate pricing⁹.

⁹ Refer to FAM Directive 808-5 Employment Contracts

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5.9.2.8 **NNI Policy and Inuit Content**

- 5.9.2.8.1 Proponents must be asked to identify all Inuit, Nunavut and Local content, including providing the names of the subcontractors and suppliers and their associated dollar amounts. Proponents must also be asked to provide a breakdown of local and non-local Inuit, Nunavut and other (non-Inuit and non-Nunavut) payroll estimates. These values will be substantiated by the level of detail provided by the proponent about their proposed project team.
- 5.9.2.8.2 Failure to ask for this level of detail makes application of the NNI Policy and evaluation of Inuit content subjective and difficult for the evaluation committee to defend.
- 5.9.2.8.3 Requesting this level of detail will set the minimum standard by which proposals can be evaluated and will better enable an evaluation committee to justify awarding low points for a proponent's failure to provide adequate detail or low percentages of Inuit and Nunavut content in comparison to the proposed fees and expenses. Conversely, a higher mark would be warranted for explicit detail and justified for high percentages of Inuit and Nunavut content in comparison to the lump sum proposed price.
- 5.9.2.8.4 Guidelines on evaluating Nunavut, Inuit and Local content are provided later in this chapter.

5.9.3 **Proposal Evaluation/Rating Form**

- 5.9.3.1 The GN RFP template contains a sample Proposal Rating form. This form must be filled out and used in your RFP and it must also identify the same evaluation criteria and weights as identified in the Selection Methods section of the RFP. Further, the evaluation committee must follow the point scoring legend provided on the form.
- 5.9.3.2 Each evaluation criterion is rated on a scale of 0 to 10 unit points, and the awarded unit point value is then multiplied by the weight for that criterion to arrive at a subtotal score. The subtotal scores are then added together to determine the total score, or ranking, of the proposal. The proposal with the highest ranking score is the one that potentially offers the best value to the GN and is therefore the proposal that is selected as a result of the evaluation. Accordingly, the use of a rating form for the evaluation process is highly recommended. More information on this process is provided in detail in section 5.17 of this chapter.

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5.10 Pro-Forma Agreement or Service Contract

- 5.10.1 The GN's RFP template comes with a Pro-Forma Agreement for Consultant Services attached. This contract is attached with the RFP to notify proponents of the terms that will govern any contract resulting from the RFP process. This is done to standardize contract terms acceptable to the GN's needs and to reduce the time it could otherwise take to negotiate these particular contract terms.
- 5.10.2 In some cases the pro-forma contract may be replaced with the service contract or another form of contract that is more appropriate to the goods or services being purchased. Generally this will be for a lower value and low risk service that does not involve consultants.
- 5.10.3 The GN pro-forma agreement and service contract forms are templates that have been reviewed and approved by the Department of Justice. Accordingly, nothing in the template should be revised except for:
- i. the parties to the contract;
 - ii. the duration of the contract;
 - iii. the terms of reference and scope of services to be provided.
- 5.10.4 If you are not contracting for consultant or general services, or any other services for which a standardized contract template is available, it may be appropriate to not attach a pro-forma contract, and to instead leave the contract terms open to negotiation. Consult with Contract Support for advice and assistance before proceeding¹⁰.

5.11 Attachments (Appendices, Schedules, Reference Documents)

- 5.11.1 Reference materials, statistics and historical data, and any other bulky documents or reports or that may be useful background information or help to define the scope of work, but are not critical at the proposal writing stage, may be referenced as available for viewing during the RFP period.
- 5.11.2 It is preferred that these documents be attached by way of reference only and be made available to proponents on-line.

¹⁰ FAM Directive 808 Appendix A
Purchasing, Logistics & Contract Support

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5.12 Other Considerations

5.12.1 Holding a Proponents' Meeting

- 5.12.1.1 If the requirement is complex, or you are anticipating concerns, you may find it worthwhile to hold a proponents' meeting.
- 5.12.1.2 It will usually be held a week or two after you have issued the RFP, and a few weeks before you close it.
- 5.12.1.3 The date and time of the meeting should appear in the RFP.
- 5.12.1.4 If possible, the meeting should be held in the community where the work is going to be done. You might also consider allowing out-of-town proponents to participate in the meeting by teleconference.
- 5.12.1.5 Depending on the circumstances, it may be necessary to provide for interpretation at the meeting. Consideration should be given to this well in advance of the meeting.
- 5.12.1.6 A proponent's attendance at the meeting should be optional unless the meeting incorporates a site visit to illustrate conditions that could not be described adequately in the RFP.
- 5.12.1.7 Minutes of the meeting should be kept and sent to everyone who has attended. You can take the minutes yourself or arrange for a transcription service to produce a verbatim transcript.
- 5.12.1.8 If you open the meeting with a description of the requirement, keep it brief. Most of the proponents will have read the RFP so you should not have to repeat what is there, just briefly describe what the intent of the RFP or the project is. You generally do not ask proponents to introduce themselves at the meeting but you may pass around an optional attendance sheet. You may choose to provide written minutes of the proceedings to all attendees, depending on the complexity or sensitivity of the requirements.
- 5.12.1.9 The RFP should ask proponents to submit complex questions or those requiring anonymity in writing in advance of the meeting. That gives you time to prepare a thorough answer. Then, at the meeting, you can read out those questions and answers (not identifying who asked the question) and invite further questions from the floor. If there are questions you cannot answer, you can defer those questions, and send the answers out later with the minutes.

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5.12.2 Minimum Scores

5.12.2.1 Applying a minimum or baseline score can be a good way to avoid ending up with a winner who demonstrates sound competency in most areas but is totally unacceptable in another. It is also an effective alternative to heavy reliance on mandatory requirements to ensure quality of service.

5.12.2.2 If using a minimum score method to evaluate, you need to advise proponents that not achieving the minimum score on a given criteria will result in the proposal not receiving further consideration during evaluation.

5.12.2.3 As you can see, this method carries with it the risk that most or all proponents may not meet the minimum requirements resulting in a process that you may well be forced to cancel and start over again. If the weights for the evaluation criteria have been carefully set using hypothetical scenarios, there should be no need to employ a minimum score evaluation method in the RFP. This approach should be further discussed with CGS Purchasing, Logistics & Contract Support.

5.12.3 Presentations/Short Lists

5.12.3.1 If the intent is to short-list the highest ranked proponents and invite them to make presentations to the evaluation committee, this must be stated in the RFP. The methodology for how the evaluation committee will handle short-listed proposals or presentations must be established before either event takes place.

5.12.3.2 The following options are available for consideration:

- i. an additional set of marks is available for presentations;
- ii. marks for the presentation are included in the total assigned weight; or
- iii. presentations will be used to support the evaluation of the information contained in the proposal.

5.12.3.3 It is a preferred methodology to not have separate evaluation criteria for presentations but to make original criteria include that which might be presented in a presentation. Furthermore, presentations should not introduce concepts that were not included in the original proposal.

5.12.3.4 As you can see, the potential for an aggressive proponent to hijack the proposal evaluation process and lead it into what may then be perceived as contract negotiations is a real risk and could very well lead to complaints from unsuccessful proponents feeling they were treated unfairly.

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- 5.12.3.5 For this reason, evaluation committees wishing to use shortlists and presentations to assist them in arriving at a final decision on a successful proponent should seek advice and assistance from CGS Purchasing, Logistics & Contract Support before proceeding.



5.13 What NOT to Include in the RFP Document

5.13.1 To clearly establish that an RFP is intended to be an RFP, and is not to be confused with an RFT, the words 'request for tender', tender, or 'bid' should not be used at all in the RFP documents.

5.13.1.1 Bid Security and Irrevocability Clause

5.13.1.1.1 Since a proposal is one proponent's unique solution to a need or problem, the terms of a proposal cannot be absolutely set out in the proposal call. Usually, some level of further negotiation will need to take place before the final terms of the contract are agreed upon. Ultimately, any one of the various proponents may not be able or willing to contract on the terms eventually developed. Therefore, RFPs must not include the requirement for bid security nor shall they require proposals to be irrevocable for any period of time.

5.13.1.1.2 Proposals that contain a validity clause, e.g., "This proposal is valid for ninety (90) days from the date set out herein." should be considered qualified proposals and proponents should be asked to remove the qualification from their proposals. This will be especially important for highly technical proposals that may require more than ninety (90) days to evaluate.

5.13.2 Budget

5.13.2.1 Although it has not been found that including financial or budget limits in RFPs is misleading to proponents, resulting in improper proposals or a diminished possibility of the GN receiving the best value for the dollars to be expended on the contemplated contract; including financial information in the RFP is not recommended. This will be at the discretion of the contract authority. However, estimates for the specific contract contemplated by the RFP should not be included.

5.13.2.2 There must be a balance between giving proponents enough information so that they can prepare a sound proposal, and providing so much information that you lose the advantages of competition.

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- 5.13.2.3 Some alternatives to consider about disclosing the budget:
- i. Do not give the budget. Rather, let the proponents offer their best price, and give points during the evaluation. Unless the value assigned to price is significant, a proponent with a high price, who also scores high for solution and capability, could win while a proponent quoting half the price and with an equally acceptable solution and qualifications could lose.
 - ii. Tell the proponents how much of a budget they have to work with and then either do not award points for price (do not include as a rating criteria) or assign a very low weight for the price rating criteria.
 - iii. Do not give the budget and accept the lowest priced proposal that meets a minimum standard(s). You will need to have established minimum standards and the minimum scores to be attained in order for the proposal to be considered.
 - iv. Do not give the budget. Divide the proponent's price by the sub-total number of points its proposal scored in order to rate the price, then accept the proposal that offers the lowest cost per point. Or use another mathematical formula for rating price. Consult with Contract Support for advice and assistance.

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5.14 Safekeeping the Integrity of the RFP Process

5.14.1 It is important to maintain the integrity of the RFP process. The following suggestions are provided for your consideration when handling enquiries and communicating with potential proponents throughout the RFP process:

- i. identifying a contact person;
- ii. modifying RFP information;
- iii. receiving and opening proposals.

5.14.2 If the estimated value of the contract you plan to award is more than \$25,000 you must publicly advertise your RFP. Refer to Chapter 2 – About Contracting – General – for details of the invitational and public advertising requirements for RFTs and RFPS.

5.14.3 Identifying a Contact Person

5.14.3.1 By identifying a contact person in the RFP through whom all communication between potential proponents and the government will flow, all proponents will receive the same information.

5.14.3.2 The contact person should receive questions, obtain answers and distribute the answers to all known proponents.

5.14.3.3 All contact with proponents should be formal and should be documented.

5.14.4 Modifying RFP Information (Clarifications and Changes)

5.14.4.1 The RFP can be changed by a Letter of Clarification or Letter of Amendment depending on the nature of the communication. There is also a GN standard form of RFP addendum that can be used to communicate changes to those proponents who have a copy of the RFP document.

5.14.4.2 The letter or amendment document should make reference to the RFP section, paragraph number, title or header and page number followed by a detailed description of what the change is.

5.14.4.3 It is important to send the changes out to all companies which have been given the RFP document, regardless of whether they have indicated their intention to submit a proposal or not.

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- 5.14.4.4 All addenda or amendments and clarifications should be identified as such and numbered and logged onto the proponents list with the issue date to keep a record of when the amendment was sent out and who it was sent to. Fax confirmation sheets are to be kept on file or if sending by e-mail, send with a delivery or read receipt.
- 5.14.4.5 Issuing or distribution of minutes of proponents meetings, where applicable, must also be similarly documented.



5.15 Receiving Proposals

5.15.1 This section describes how proposal submissions should be received and opened. It discusses how to deal with late proposals and amendments, how to conduct a formal public proposal opening and what to announce at the proposal opening.

5.15.2 Unlike tenders, the ultimate success of a proposal depends on the evaluation of all criteria presented rather than dollar value alone. Notwithstanding, the conditions for the receipt of proposals as spelled out in the Instructions to Proponents shall be adhered to in order to avoid any public perception that a proposal submission has been dealt with unfairly.

5.15.3 Time and Method of Receipt

5.15.3.1 You must make sure there is no uncertainty about when a proposal was received. It is strongly recommended that, when received, proposals are marked with the date and time of receipt and placed unopened in a secure storage area. Proposals should not be opened or read by anyone prior to the closing time.

5.15.3.2 Faxed Proposals

5.15.3.2.1 Proposals and amendments may be submitted by fax transmission, however, the entire fax transmission must be completed on or before to the closing deadline.

5.15.3.2.2 The time of receipt on the last page of the proposal fax transmission must be no later than the time deadline set out in the request. Faxed proposals must also be complete.

5.15.3.2.3 If receiving proposals by fax, the proposal submission must be received in its entirety before the closing deadline. This is in accordance with the Instructions to proponents which must be adhered to.

5.15.3.2.3.1 For greater certainty, 'received in its entirety' means that the fax transmission has ended and the complete proposal submission has been fully and completely printed by the receiving fax machine and the fax transmission end time printed on the last and final page of the proposal submission is no later than the time fixed for receipt of proposals.

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5.15.3.2.4 If a proponent fails to fax in any documents, such as appendices or résumés, prior to the closing deadline, these cannot be considered in the evaluation even if they are submitted later with the original and requisite number of copies. Proponents must be notified that such documents will not be evaluated. Copies of the proposals are forwarded to the evaluation committee members with the information that was missing from the fax removed from the hard copies submitted after the deadline.

5.15.3.3 **Sealed Proposals**

5.15.3.3.1 Proposals that are received in sealed envelopes or boxes will have the date and time of receipt stamped on the envelope or box. It is best to use a time stamp clock, but if one is not available, designate an office clock as the official time clock for receiving proposals. This clock must have the same time as the fax machine designated for receiving proposals.

5.15.3.4 **Electronic Proposals**

5.15.3.4.1 The GN's RFP process currently does not allow for acceptance of proposals by e-mail. Contract authorities wishing to receive proposals by e-mail must contact CGS Purchasing, Logistics & Contract Support for advice and assistance to develop appropriate submission instructions that meet the legal requirements for a fair and competitive process and IT considerations.

5.15.4 **Late Proposals and Amendments**

5.15.4.1 Late proposal submissions cannot be received. Any proposals or amendments received even one minute late should be returned to the proponent with a covering letter explaining why the proposal was rejected.

5.15.5 **Only One Proposal Received (Sole Proposals)**

5.15.5.1 Receiving and subsequently accepting a sole proposal does not result in a sole source contract. On the contrary, the contract will have resulted from an invited or public RFP process where only one company responded.

5.15.5.2 If only one proposal is received, it must be evaluated to ensure compliance with the mandatory terms of the RFP and acceptability to the GN.

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- 5.15.5.3 Also review the RFP terms of reference and scope of work to rule out any possibility of bias, and determine whether the RFP gave enough information to encourage competitive responses.
- 5.15.5.4 Where bias or insufficient scope is found, the RFP should be cancelled and the terms of reference and selection guidelines re-written in such a way as to promote competition.
- 5.15.5.5 Contact CGS Contract Support for assistance in making the decision.

5.16 Opening Proposals

- 5.16.1 Refer to section 4.22 of Chapter 4 – About Requesting Tenders – for details on conducting an opening meeting.
- 5.16.2 It is important to note that the only and most significant difference between proposal and tender openings is that for proposals, the proposal price is NOT announced or recorded on the register. For this reason, a proposal register differs from a tender register.
- 5.16.3 All submissions received by the closing time will be opened either formally or informally.

5.16.4 Formal Opening

- 5.16.4.1 The decision to hold a formal opening will depend on the nature and magnitude of the proposal. High-profile RFPS should generally be opened formally.
- 5.16.4.2 In a formal opening, each proposal will be opened as soon as practicable after the closing time designated in the RFP. The name and address of each proponent will be listed on a Proposal Register.
- 5.16.4.3 No other information about any proposal is provided.

5.16.5 Informal Opening

- 5.16.5.1 In general, for most RFPS, a formal public opening is not required. In these cases, information regarding the date and time of the receipt of the proposal should be recorded, the proposals may be opened at a later time or date but not later than what is reasonable.

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5.16.6 Release of Information

- 5.16.6.1 If a formal public opening is held, only the name and address of the proponent is identified publicly and recorded in the Proposal Register. Once proposals have been opened, formally or otherwise, only the proper legal name and address of each proponent as recorded may be released to any inquiring party.
- 5.16.6.2 The dollar value of a proposal shall not be recorded. Since the dollar value is only one of the criteria on which an award is made, the lowest priced proposal may not necessarily be the successful one.
- 5.16.6.3 Only the dollar value of the successful proponent is released after a contract has been awarded.

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5.17 Evaluation of Proposals

- 5.17.1 This section explains how to evaluate proposals once they have been received.
- 5.17.2 A selection/evaluation committee will evaluate proposals. This committee will consist of personnel who are familiar with the services to be provided as well as applicable GN contracting policies and procedures. All members of the RFP team and subsequent evaluation committee must sign and date the evaluation committee responsibilities form.
- 5.17.3 It is recommended that the committee have a minimum of three and a maximum of five members, depending on the size and complexity of the work. Each member of the evaluation team must have signed an evaluation committee agreement prior to participating in the process. The committee will appoint a chairperson. Often, this will be the procurement officer.
- 5.17.4 Prior to opening proposals, the committee should meet and determine the evaluation process. If any particular criteria weighing is to be sub-divided, then the numbers should be clearly identified and agreed upon and an agreement as to whether a consensus or averaging method of tabulating scores will be used.
- 5.17.5 As they will be entrusted with or have access to information governed by the *Freedom of Information and Protection of Privacy Act*, committee members must be aware of the need for confidentiality. Evaluation committee members will be expected to:
- i. keep the proposals, and any notes they might make relating to them, in a secure place where others will not have access to them;
 - ii. not discuss the proposals or disclose their contents to anyone other than their fellow committee members;
 - iii. keep all notes, discussions, and point ratings confidential and not disclose their substance or details to anyone;
 - iv. evaluate the proposals strictly in accordance with the evaluation criteria stated in the Request for Proposal;
 - v. evaluate proposals solely on information contained therein, not on the committee's previous knowledge of the proponent or its business; and
 - vi. score proposals strictly in accordance with the established points ratings.
- 5.17.6 Committee members will also be required to dedicate their time to the evaluation process and to declare any conflicts of interest that would prohibit them from conducting a fair and objective unbiased evaluation.

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- 5.17.7 A conflict of interest exists where the GN employee or contractor that assisted in drafting the RFP or is rating proposals also owns a company that submitted a proposal.

5.18 Selection Procedure

- 5.18.1 The proposals will be evaluated by the evaluation committee to determine which proposal appears to offer the best overall value to the GN, while also maximizing the opportunity for Inuit, Nunavut and local businesses and workers.

- 5.18.2 Each member of the evaluation committee should initially review or evaluate the proposals separately, using the rating form included in the RFP. The final evaluation and rating of the proposals and the recommendation for award will represent a consensus reached by the committee, although this consensus may be reviewed by the ultimate contract authority, who may provide additional information. Normally the evaluation committee will recommend that the contract be awarded to the firm with the highest total score.

- 5.18.3 During the evaluation process it is important to treat all proponents fairly and equally and to evaluate their proposals in accordance with the process described in the RFP. Care must be taken throughout the process not to take any actions or make any decisions that could be construed as providing an unfair advantage to any proponent.

5.19 Compliance Review (Mandatory Requirements)

- 5.19.1 The first thing the evaluation committee will do when it gets together to score the proposals is check each proposal in turn for its compliance with any mandatory criteria that may have been included in the RFP. Assessing the mandatory criteria should be a matter of the proposal either meeting or not meeting each criterion; any proposal not fully meeting every one of the mandatory criteria must be rejected without further consideration.

- 5.19.2 If the proponent submits an alternative without responding to a stated mandatory criterion, or if the information is missing altogether, the proposal is non-compliant and therefore cannot be evaluated any further.

- 5.19.3 Unless otherwise rejected for not meeting any required mandatory requirements, all proposals received must be evaluated, even obviously poor proposals. This ensures that the process is fair, and will enable a constructive debriefing of the unsuccessful proponents afterwards.



5.20 Scoring Methodology

5.20.1 The Financial Administration Manual, Directive 808-1, provides an example of a rating methodology that has proven useful. This methodology suggests that evaluation criteria must be established and that a weight must be given to each criterion based on its relative importance.

5.20.2 Note that the cost elements of proposals may be objectively evaluated by comparing them to the budget, historic cost, or, if appropriate, to the average cost figures for all proposals.

5.20.3 The assigned weight for each criterion is multiplied by the proponent's rating for that criterion. The total points are added to get the total score, which represents the overall degree of satisfaction with the specific proposal.

5.20.4 The evaluation will be based only on the evaluation criteria established in the RFP. The exception to this would be criteria established in a post-proposal call addendum, as discussed in more detail later in this section.

5.20.5 Assigning Rating Points (Scores)

5.20.5.1 The evaluation criteria are given assigned weights according to relative importance. This is done before the RFP is issued and is normally included in the RFP document.

5.20.5.2 For each rating criterion, the evaluation committee will assign points on an 'out of ten' basis according to the following degrees of satisfaction:

- | | |
|-------------------|---------------|
| i. Poor | 1 - 3 Points |
| ii. Fair | 4 - 6 Points |
| iii. Good | 7 - 8 Points |
| iv. Excellent | 9 - 10 Points |
| v. No Information | 0 Points |

5.20.5.3 The assigned weights are then multiplied by the points awarded to arrive at subtotal scores for each criterion. The subtotal scores are then added up to determine the total score of the proposal. This score represents the evaluation committee's overall satisfaction with the proposal. Accordingly, the proposal with the highest score is determined to potentially provide the best value to the GN.

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5.20.5.4 The following table is provided as a guide to assigning an appropriate score relative to the quality of the proposal submission:

If the Quality of the Response is:	Award the Following Points
No information provided. Requirement was not mandatory, but proponent did not provide any information or address the issue. No Inuit content.	0
Poor: Falls short of meeting basic expectations; has a low probability of success.	1 – 3
Fair: Acceptable at a minimum level; meets our basic requirements; has a reasonable probability of success; some objectives may be met.	4 - 6
Good: A sound response; fully meets most of our requirements; very good probability of success; achieves all objectives in a reasonable fashion.	7 - 8
Excellent: Meets all of our requirements; exceeds expectations; excellent probability of success in achieving all objectives; very innovative.	9 - 10

5.20.5.5 Note that a zero (0) score is reserved only for instances where the proposal does not address an issue that was requested in the RFP or where desired information is not provided. A zero (0) would be used in the event of a proponent not having any Inuit content or for not meeting a minimum standard. It should not be confused with failure to address a mandatory requirement which would render the proposal non-compliant and warrant rejection without further consideration.

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5.21 Averaging versus Consensus Scoring

- 5.21.1 The evaluation committee may decide to use the method of averaging the members' individual ratings. This method may not work well if there is a large difference in the points assigned by the committee members, especially where there may be a bias or potential conflict of interest.
- 5.21.2 It is up to the committee to do the rating as they see fit. However, it will be necessary, after the initial rating, for the committee to discuss further to ensure that everyone is following the same method of rating and that members have not missed something when reviewing the proposals. This is particularly important where there are large variances in points awarded by members. On resolving the variances, individual members should then prepare final rating forms or have final consensus rating forms completed.
- 5.21.3 When problems arise that cannot be resolved within the evaluation committee, a request should be made for advice on how to proceed. The chairperson may discuss with the project manager or contact CGS Purchasing, Logistics & Contract Support.
- 5.21.4 The final ratings forms should be attached to the letter of recommendation from the committee chairperson and the recommendation must conform to the attached rating forms. All rating forms including notes of discussions and revisions are to be kept in the RFP file.

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5.22 Applying NNI Policy Nunavut, Inuit and Local Adjustments

5.22.1.1 The GN Contract Regulations require that before awarding a contract based on a request for proposals, the contract authority shall apply the NNI Policy as a part of the proposal selection process. Therefore, NNI adjustments must be done on price before rating points are awarded.

5.22.2 This is accomplished by applying the bid adjustment factors outlined in the NNI Policy to the proposal pricing before assigning or awarding points for the price rating criterion and analyzing the dollar value of goods and services to be provided by Inuit businesses and persons in comparison to the total proposal value, before assigning or awarding points for Inuit content.

5.22.2.1 Bid adjustments to price are given on the qualifying subtotal dollar amounts based on the inclusion of the proponent and the named subcontractors and suppliers on the NNI and NTI approved firms registries and on the subtotal payroll amounts for named employees based on the residency and beneficiary status of the employees. The employees and payroll estimates of subcontractors should be identified. Inuit, Nunavut and local adjustments are not applicable where a proponent has not given payroll estimates.

5.22.3 CGS Purchasing, Logistics & Contract Support has recently developed standardized NNI pricing breakdown forms for inclusion in RFPS and for use in applying NNI adjustments prior to evaluating a proposal's cost criterion.

5.22.4 Evaluating Inuit Content

5.22.4.1 Inuit Firms:

5.22.4.1.1 Points are awarded in direct ratio to the percentage of work, in terms of total proposal value, being done by Inuit firms, including work provided by the proponent. To qualify for points, the company must be included in the NTI Inuit Firms Registry.

5.22.4.1.2 Points are awarded in direct ratio to the percentage of work, in terms of total payroll value, being done by Inuit workers or employees. Inuit persons should be enrolled as a beneficiary under the Nunavut Land Claims Agreement in order to receive consideration. To confirm a person's beneficiary status, contact NTI.

5.22.4.2 Inuit Employment (Labour):

5.22.4.2.1 Points are awarded in direct ratio to the percentage of work, in terms of dollar value, being done directly by Inuit persons. This requires an analysis of the proponent's payroll estimates and identification and residency/location of the employees.

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- 5.22.4.2.2 Proponents will only score the maximum 100 points if one hundred percent (100%) of the work is being done by Inuit employees, whether they are the employees of the proponent, or employees of any other sub-contractor, and regardless of the status of the proponent company. In this area, we look at the status of the people involved in carrying out the work, not the status of the companies (which is evaluated in the Inuit firms criterion and discussed above).
- 5.22.4.3 Refer to Chapter 18 – About the NNI Policy – for an example of how to apply NNI bid adjustments on prices and award points for Inuit content.

5.23 Seeking Clarifications and Additional Information

- 5.23.1 Additional information may be requested from proponents without allowing them to correct or amend their proposal. Clarifications, confirmations and additional information must be received in writing from the proponents.
- 5.23.2 During a proposal evaluation, additional information may be requested from the proposer. Unlike the invitation to tender, the request for proposal process allows for the receipt of information after the close of the proposals if the GN requests information in order to:
- i. substantiate any part of the proposal;
 - ii. provide additional detail;
 - iii. confirm or clarify any aspects of the proposal that are not clear.

5.23.3 Reference Checks

- 5.23.3.1 If the RFP requires proponents to provide references, they should be checked for all proponents who meet the mandatory requirements. Only references supplied by the proponent should be contacted. Questions asked should be objective and relate directly to the evaluation criteria and the same questions should be put to all references. Both questions and answers should be recorded.

5.23.4 Proponent Interview

- 5.23.4.1 Additional information may also be obtained through an interview with any or all of the proponents. In the interview, both parties may further explore concerns and questions related to the project and the proposed solution.

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5.23.5 Post-proposal Addendum

- 5.23.5.1 The GN may request that all proponents amend their proposals by responding to a post-proposal addendum which may add or change any part of the original proposal call.

5.24 Keeping Notes

- 5.24.1 It is important to document supporting comments for both high scores and low scores. All members of the evaluation committee are equally responsible for recording notes and comments to support the scores they award. One member should be elected to keep a master record of the scores and supporting notes. Where CGS Purchasing is managing the RFP on a client department's behalf, the Purchasing representative will maintain the originals and master file.
- 5.24.2 A benefit of documenting both high and low scores is that when it comes to debriefing the losers, the experience is more pleasant for everyone if you are able to praise the proposal's strengths as well as point out its weaknesses.

5.25 Recordkeeping and Filing (ARCS)

- 5.25.1 ARCS is the GN's Administrative Records Classification System. This is a filing and records management system governed by legislation. By law, as public officers, we are required to keep proper records of public service documents.
- 5.25.2 The file coding for RFPs in ARCS is 4280-30. CGS Contract Support recommends using "RFP" as the tertiary for all RFPs. An individual RFP file or reference number should also be created by the RFP committee or assigned by the department's contract reporting coordinator.

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5.26 Accepting a Proposal

- 5.26.1 This section describes awarding the contract and notifying proponents. Once the proposal evaluation process has been completed, the contract authority should be in a position to either award the contract or to obtain approval to make the award.
- 5.26.2 Where the evaluation committee does not have authority to award the contract (i.e., it is not a contract authority), the Recommendation to Award Contract/Obligation of Funds Transmittal form and a supporting Recommendation to Accept Proposal letter are required to obtain approval to award the contract. Refer to section 11.11 of Chapter 11 – About Contracting Forms and Templates – for more information. These documents should be prepared by the chairperson of the evaluation committee.
- 5.26.3 The proposal rating sheets for each proposal, showing the final scores arrived at by consensus of the evaluation committee, should be attached to the Award Recommendation form with the award recommendation letter as supporting documentation for review by the person having authority to sign the contract.
- 5.26.4 Once internal authority or approval has been obtained to accept the proposal and award the contract, the successful proponent must be contacted and final negotiations undertaken to conclude a contract with minimum delay.
- 5.26.5 Do not advise the successful proponent that it has won if contractual items still remain to be finalized. Doing so would greatly hinder your negotiating position.
- 5.26.6 Instead, you may wish to advise it that, after initial evaluation, its proposal was rated the highest and could potentially provide the best value, but that a final written contract still needs to be prepared. Ensure that the proponent understands that until such contract is finalized, there is no contractual relationship.
- 5.26.7 At this point the contract terms can be finalized based on final negotiation and modification of clarification items raised in the evaluation and acceptance of any additional options proposed that differ from the Scope of Work. This proponent is also reminded that there is no obligation on either party until the contract is signed.

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5.27 Finalizing the Contract

5.27.1 If you have included the pro-forma consultant agreement as part of the RFP, you have already established the essential contract terms that are considered as mandatory to the process.

5.27.2 It may be necessary to undertake negotiations with the winning proponent in order to conclude the contract. These negotiations are likely necessary to finalize details of the work, deliverables, costing or contract terms.

5.27.3 Caution: negotiations do not mean fundamentally changing the requirements or the RFP. Minor negotiations necessary to finalize the contract and provide clarity and understanding of the respective roles and responsibilities are acceptable. In some cases, it may be necessary to revise the scope of the work, but this should not be a significant change.

5.27.4 While the RFP documents and proposal will normally be incorporated into the contract, you must ensure that all negotiated points and understandings are explicitly incorporated into the contract language, including finalized pricing details, deliverables and schedules.

5.27.5 Negotiations

5.27.5.1 After the proposals have been evaluated, the evaluation committee may find that one or more of the proposals are clearly superior. Negotiations may be undertaken with the apparent winner or with a short list of proponents. Such negotiations may be done to clarify points contained within the proposal, contract terms, or minor modifications to the scope of the work.

5.27.5.2 It may be advantageous to conduct final contract negotiations with more than one proponent, so as to obtain the best contract terms as a part of the overall selection process. If this is being considered, then all the proponents who will be involved in the final negotiations should be made aware of the process and the purpose of these negotiations.

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5.28 Notifying Unsuccessful Proponents

5.28.1 A regret or debriefing letter must be sent out to unsuccessful proponents on the same day that the contract is awarded. This will be the date that the contract is signed and faxed back to the successful proponent to notify them of the contract award.

5.28.2 The regret or debriefing letter will set out the names of the proponents who responded, the name of the winning proponent, and a summary of the proposal's strengths and weaknesses. They should also be told how they could have done better in this particular RFP.

5.28.3 CGS Contract Support has a standardized sample regret and debriefing letter templates available for notifying unsuccessful proponents of how they did, and who was selected for a contract award.

5.28.4 Debriefing Unsuccessful Proponents

5.28.4.1 Unsuccessful proponents are also given the opportunity of a debriefing session so they can understand why their proposals were not selected, and be notified of the challenge and appeal clauses of the NNI Policy.

5.28.4.2 The debriefing meeting can be intimidating for both parties. It is common to schedule the debriefing meetings for some point after you have signed a contract with the winner, although they may have to be scheduled prior to signing if negotiation is expected to take a considerable length of time.

5.28.4.3 Although the unsuccessful proponent may be disappointed at not having won, as long as you evaluated proposals and conducted the process the way you said you would in the RFP, there should be nothing for you to worry about and the tone of the meeting should be businesslike. The courts defend our right to establish criteria and assign weightings as we deem appropriate. It is only if points are awarded inconsistently or we do not follow our own process that we might have cause for concern.

5.28.4.4 The proponent will see the debriefing as an opportunity to find out where it went wrong and learn how to do better next time. In preparation for the meeting, it is a good idea to prepare a copy of the proponent's score sheet, showing where points were awarded and where they were lost, and providing supporting comments for each. If you are able to make positive comments throughout the meeting, everyone will feel better about the experience.

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- 5.28.4.5 The entire committee need not attend the debriefing. The chairperson and/or one or two other members should attend to discuss the committee's findings. The purchasing representative will often take the lead on debriefings.
- 5.28.4.6 The chairperson should open the meeting by introducing the evaluation committee members present. He or she may also briefly set an agenda and timeframe.
- 5.28.4.7 Before starting the review, it is valuable to give the proponent a chance to voice any concerns or introduce items for discussion. This shows a willingness to respect the proponent's investment in the process. Often the proponent's concerns are satisfied during the debriefing once he or she sees that the process was conducted as described in the RFP and points were allocated fairly and consistently.
- 5.28.4.8 During the debriefing, the proponent should be told why its proposal did not win and where it could have been better. The proponent's responses should be compared to the evaluation criteria, not to other proponents' responses. No details of the successful proposal or any other proposal should be discussed.
- 5.28.5 **Release of Information**
- 5.28.5.1 Information commonly released to a proponent during the meeting, once the contract has been signed, includes:
- i. names of other proponents;
 - ii. name of winner and contract award value;
 - iii. where its proposal did well; and
 - iv. areas where its proposal could have improved.
- 5.28.5.2 Information not released during the debriefing includes:
- i. unit prices or hourly rates quoted by other proponents;
 - ii. details of the contract negotiation with the winner;
 - iii. information about who the winner is going to assign to work on the project; and
 - iv. detailed information provided by other proponents and the associated scoring information.

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5.29 Rejecting (Disqualifying) a Non-Responsible Proponent

- 5.29.1 The disqualification letter should use the words "not responsible" rather than "disqualified" to match the terminology used in the Contract Regulations and in GN procedures, etc.
- 5.29.2 For a proponent to be considered "not responsible" there must be just cause to believe the contractor is not able to perform the terms of the contract. Past performance can be considered, but you should have documentation on file about the past performance problems in case this decision is challenged by the proponent. In any event, past performance is a rating criterion in the RFP so at the most, low points would be given rather than rejecting.
- 5.29.3 For publicly advertised RFPs you are not at liberty to restrict access to the RFP document, therefore, you have less control over ensuring that capable contractors are competing for the work. For highly technical RFPs requiring specialized skill sets, you may want to consider pre-qualifying proponents. Note that Article 24 of the Nunavut Land Claims Agreement prohibits requiring a level of skill unnecessary for the completion of the contract.
- 5.29.4 For example, a university degree in engineering will be required for professional engineering services, but a degree would not be required for bookkeeping services. In many cases, a university degree in the field of study necessary for the contract is highly desirable, but not mandatory. These minimum standards should be clearly laid out in the RFP and the evaluation committee should agree to point allocations for education prior to evaluating.
- 5.29.5 In this case the evaluation committee will agree that any proposed project teams with a higher level of education or experience (or both) in their field will be awarded higher points than those who do not. Those with equivalencies will be given second highest ratings and those with the least education and experience will receive the lowest points.
- 5.29.6 Refer to the Preparing an RFP section in this chapter for information on developing proposal response guidelines and establishing weights for contractor's skills, knowledge and past relevant experience.

6. ABOUT SOLE SOURCING AND NEGOTIATING CONTRACTS



6.1 Introduction to Sole Sourcing Contracts

6.1.1 Section 10 of the GN's Contract Regulations provides that a contract authority may award a contract without competition where there are reasonable grounds to believe that:

- (a) *the goods, services or construction are urgently required and delay would be injurious to the public interest (public harm);*
- (b) *only one party is available and capable of performing the contract; (sole vendor); or*
- (c) *the contract is an architectural or engineering services contract that will not exceed \$25,000 in value (A/E ≤\$25,000), or is any other type of contract that will not exceed \$5,000 in value (≤\$5,000).*

6.1.1.1 Public Harm: This means that there is a real potential for injury to the public interest. This type of risk would generally be a health and safety risk and a real emergency to be dealt with. Generally this should not mean delay of a project unless it can be justified that the harm to the public is measurable and failure to go ahead with the contract would be detrimental to the well being of the community. Urgency should not be linked to potential loss of budget money due to poor planning.

6.1.1.2 Sole Vendor: This means that there is really only one contractor or supplier that provides the good or service required, or there is only one capable contractor available to perform the work at the required time. Contract authorities should not use this criterion to justify purchasing specified brands or to eliminate potential contractors based on the timing of the contract.

6.1.1.3 Architectural/Engineering up to \$25,000: This means a contract for the professional services of an architect or engineer for design or engineering services. The contract value must not exceed \$25,000.

6.1.1.4 Any type of contract up to \$5,000: This means the contract, regardless of type, will not exceed \$5,000. This will generally be a LCA contract, unless the vendor or contractor is not from Nunavut. In that case a service contract will be required. Deputy Minister approval is not required for contracts that will not exceed \$5,000.

6. ABOUT SOLE SOURCING AND NEGOTIATING CONTRACTS



- 6.1.2 To sole source a contract, the contract authority will complete the following steps:
- i. If any of the criteria for a sole sourcing described above are met, a contract may be sole sourced. Substantiate the decision by documenting the facts and proceed with the contract.
 - ii. Where the estimated contract price will exceed the regional or divisional signing authority, prepare an explanation summarizing the situation, and explain why sole sourcing is recommended.
 - iii. Forward it to the Deputy Minister for approval.
- 6.1.3 A situation that does not meet any of the stipulated criteria for sole sourcing must be competitively tendered or approved by Cabinet as a negotiated contract.

6.2 Negotiated Contracts (Cabinet Prerogative)

- 6.2.1 A negotiated contract is a contract that is awarded to a specific firm without following a competitive tender or proposal process and without meeting the requirements permitting a contract authority to sole source. This type of activity is referred to as “Cabinet Prerogative” and is permitted by section 5 of the Contract Regulations.
- 6.2.2 The contractor must be a Nunavut business as defined by the NNI Policy and the majority of the owners must be local residents. A negotiated contract must meet certain criteria including:
- i. the work must be completed using local, Inuit and or Nunavut sub-contractors;
 - ii. the contract must result in benefits to the community that would not be available through the normal competitive tender process.
- 6.2.3 Cabinet approval of a negotiated contract is required.

6. ABOUT SOLE SOURCING AND NEGOTIATING CONTRACTS



6.3 Negotiated Contracts with Invitations for Expression of Interest

- 6.3.1 A request that a contract be negotiated would originate in the community or region affected and would be made by the community or region following community consultation¹¹. As discussed in the community consultation procedures chapter in this manual, NTI and the respective Regional Inuit Association (RIAs) would be invited to participate in the community consultation process.
- 6.3.2 The community or the region could propose the firm with which it is intended that the contract be negotiated.
- 6.3.3 If Cabinet is in agreement with the community and/or regional objectives and is prepared to negotiate a contract, then the GN will provide public notice. The public notice will be a newspaper advertisement. No later than the date on which the newspaper advertisement appears, notice of the intent to enter into a negotiated contract must be sent to NTI and the respective RIAs.
- 6.3.4 The public notice shall indicate that a negotiated contract is contemplated with a particular company, and will invite expressions of interest from any qualified Inuit firm interested in undertaking the contract
- 6.3.5 If it is determined that one or more other qualified Inuit firms have expressed an interest and can meet the objectives and be financially capable of carrying out the contract, the contract will be awarded through a competitive process.
- 6.3.6 The competitive process would be accomplished through an invitational tender. Mandatory Inuit requirements with respect to training and employment would be included.

¹¹ Refer to Chapter 19 – About Community Consultation

6. ABOUT SOLE SOURCING AND NEGOTIATING CONTRACTS



6.4 Negotiated Contracts without Expressions of Interest

6.4.1 Certain negotiated contracts may be awarded under a more restrictive set of criteria. These contracts are intended to be directed to Inuit firms located in small communities.

6.4.2 NTI must be notified of any negotiated contracts that proceed without public notice at least fifteen (15) days before the GN enters into formal negotiations with the Inuit firm to whom the contract is being directed.

6.4.3 A request that a contract be negotiated would originate in the community or region affected and would be made by the community or region following community consultation. Negotiated contracts, including expressions of interest, which proceed without public notice must adhere to the following criteria:

- i. the GN waives advance notice and/or provision for any public notice that invites expressions of interest from qualified Inuit firms;
- ii. negotiated contracts be restricted to Inuit firms on the list of Inuit firms maintained by NTI pursuant to Article 24.7.1 of the NLCA;
- iii. negotiated contracts be restricted to firms that are owned and controlled in the community to which the work relates;
- iv. the firm receiving the negotiated contract has the support of the hamlet council of that community to receive a negotiated contract;
- v. there is only one company in the community capable of carrying out the work;
- vi. there be a ceiling of \$1,000,000 on negotiated contracts for any given company;
- vii. not have as majority owners any individuals who have owned a company that has already received maximum benefits from the negotiated contract policy.

6.4.4 To obtain approval to enter into a negotiated contract, the contract authority should complete the following steps:

- i. Regardless of contract value, prepare a Deputy Minister briefing and a draft Cabinet Decision Paper supporting the recommendation. It must include a description of the situation, reasons for a negotiated contract including economic and political factors, and the project and negotiation schedule.
- ii. Forward the request to the Deputy Minister.

6.4.5 Unless one of the conditions for sole sourcing a contract are met, or approval is obtained from Cabinet to negotiate a contract, a competitive request for tenders or proposals must be issued.

7. ABOUT AWARD CHALLENGES & NNI APPEALS



7.1 Introduction to Defending Your Contract Awards

- 7.1.1 Any contractor who has unsuccessfully submitted a tender or proposal in response to a request, and who feels that its submission was not evaluated properly or given fair consideration, is entitled to question the evaluation process and resulting award. Accordingly, it is extremely important to follow the instructions regarding contract awards that are set out in your request.
- 7.1.2 In RFT documents, these rules are called the “Instructions to Bidders” or “Instructions to Tenderers”.
- 7.1.3 In RFP documents, these rules are called the “Instructions to Proponents”.
- 7.1.4 Furthermore, and as stated in Chapter 2 – About Contracting – General – public procurement is highly scrutinized by the contracting community and general public. Therefore, not only must we take care to follow our own contracting rules, policies and procedures, we must also be seen and believed to be ‘practicing what we preach’.
- 7.1.5 Taking the necessary care and due diligence in the evaluation and selection of the successful bidder or proponent may result in avoiding a challenge of your award.

7.2 Responding to an Award Challenge

- 7.2.1 Unsuccessful bidders who wish to challenge an award may do so within five (5) days of receiving notice of the award announcement. The challenge must be directed to the contract authority.
- 7.2.2 The award challenge must set out the following:
- i. the name, address, telephone and if available fax number and e-mail address of the party challenging the award;
 - ii. the tender or RFP number and/or title;
 - iii. the issue(s) to be reviewed by the contract authority; and
 - iv. the remedy sought by the contractor.
- 7.2.3 The contract authority shall have five (5) business days to respond in writing and shall copy the response to the NNI Policy Advisor at the NNI Secretariat Office of the Department of Economic Development & Transportation (EDT).

7. ABOUT AWARD CHALLENGES & NNI APPEALS



- 7.2.4 Notwithstanding that an award challenge or appeal may be pending, the contract authority, in its discretion, may enter into a contract with the successful bidder. This would be in the case of a major works construction tender or architectural/engineering full services agreement or any other type of contract where a binding Letter of Acceptance is used to bind the successful bidder before a formal contract is signed.
- 7.2.5 Refer to section 4.23 of Chapter 4 – About Requesting Tenders – for more information on the administrative, technical and NNI review of tenders. In lieu of responding to an award challenge in writing, you may invite the unsuccessful bidder to a meeting to review its tender submission and provide an explanation of where the bidder made mistakes, or lost any bid adjustments permissible under the NNI Policy. Minutes of the meeting should be kept on the RFT file.
- 7.2.6 Refer to section 5.28 of Chapter 5 – About Requesting Proposals – for more information on providing unsuccessful proponents with feedback on their unsuccessful proposals.
- 7.2.7 If five (5) business days have passed and the unsuccessful bidder is not satisfied with the response of the contract authority, or if no response has been received from the contract authority, and if the unsuccessful bidder is of the opinion that the contract authority erred in the application of the NNI Policy in making the award, the unsuccessful bidder may then appeal the award to the NNI Appeals Board by directing its appeal to the NNI Secretariat. Note that the ONLY ground on which an appeal can be brought to the NNI Appeals Board is that the contract authority erred in the application of the NNI Policy in making the award. An appeal to the NNI Appeals Board CANNOT be brought on the sole basis that the bidder was not successful if there is no connection to the NNI Policy.



7.3 Responding to an Appeal

- 7.3.1 In accordance with sections 18.12 (a), (b) and (c) of the NNI Policy, the appeal of the award must be in writing and directed to the Secretary of the NNI Appeals Board (“Board”) within fifteen (15) business days of the award announcement (i.e., within five (5) days of receiving an unsatisfactory response to their initial challenge).
- 7.3.2 The appeal must set out the following:
- i. the name, address, telephone and if available fax number and e-mail address of the party challenging the award;
 - ii. the name of the contract authority that issued the RFT or RFP (this is the department name and title of the contract authority, i.e., Director - Division)
 - iii. the RFP number and name or title;
 - iv. the issue(s) to be reviewed by the Board including the reasons why the contractor believes the application of the NNI Policy is incorrect; and
 - v. the remedy sought by the contractor.
- 7.3.3 The Secretary of the Board shall immediately give notice of the appeal to the contract authority and to NTI and shall hold a hearing no later than ten (10) business days after the appeal has been filed.
- 7.3.4 The contract authority shall turn over the complete RFT/RFP document and the bid or proposal submitted by the appellant at the request of the Secretary of the Board.
- 7.3.5 The proceedings of the appeal hearing will be informal and can be done in person or by teleconference and will be documented by the Board. The hearing will be conducted in accordance with the GN’s language policies and, where required, an interpreter will be provided.
- 7.3.6 The appellant, contract authority and NTI have the right to participate in proceedings of a particular appeal before the Board. The Board may also permit any other person to participate in the proceedings.
- 7.3.7 The Board will respect the provisions of the RFT or RFP regarding Access to Information and Protection of Privacy.



7.4 Decisions of the Appeals Board

- 7.4.1 Upon hearing the appeal, the Board may:
- i. dismiss the appeal;
 - ii. allow the appeal and recommend to the contract authority that remedial action, consistent with sound procurement policy and practice, be taken, which may include:
 - iii. requiring the contractor to undertake additional measures;
 - iv. providing the contractor with specific information as to Inuit persons or companies who are available and qualified;
 - v. putting the proposed contract in abeyance until the dispute is resolved, except in cases of urgency;
 - vi. changing any procedure or policy followed by contract authorities;
 - vii. in exceptional circumstances involving long term contracts, terminating a contract in whole or in part, and a reassessment or re-issue of tenders.
- 7.4.2 The Board may also uphold the award on dismissal of an appeal.
- 7.4.3 The decision(s) shall be made as soon as possible after the hearing.
- 7.4.4 The decisions of the Board shall be by consensus, and failing consensus by a majority vote. The Board shall give reasons for its decisions.
- 7.4.5 Where consensus is not reached, the dissenting commissioner(s) shall give reasons for the dissent. The report shall be signed by the commissioners and a copy of the decision shall be provided to all parties to the appeal. The report shall also be made public.
- 7.4.6 Decisions of the Board are non-binding recommendations. They shall be submitted to the contract authority for consideration. The contract authority can follow the recommendations at their discretion. If the contract authority chooses not to follow the recommendations, they must respond, in writing, explaining why they chose not to follow the recommendations. This written document also becomes a public document.
- 7.4.7 An annual report, including financial statements shall be prepared by the Board and submitted to the GN.
- 7.4.8 The Board will submit an annual report to the GN Cabinet and NTI Board of Directors and make it available to the public.



7.5 Jurisdiction of the NNI Appeals Board

- 7.5.1 An appeal to the Board may be made on the ground that the contract authority has made a mistake in applying the NNI Policy when making the award.
- 7.5.2 An appeal cannot be made for a contractor's failure to perform an existing contract. Sometimes a contractor who was unsuccessful in winning a contract will make complaints and allegations when the successful contractor appears to be in default of the contract obligations. This is a contract administration issue between the owner and the contractor and is outside of the jurisdiction of the Board.
- 7.5.3 The Board has jurisdiction to consider and make recommendations on any matter relating to the application of the NNI Policy that is referred to it in writing jointly by the GN and NTI.
- 7.5.4 Where the appeal does not fall within the jurisdiction of the Board, it will be dismissed without a hearing.
- 7.5.5 The NNI Appeals Board, made up of representatives from the GN, NTI and Regional Chambers of Commerce, is governed by section 18 of the NNI Policy.

8. ABOUT FORMING AND SIGNING CONTRACTS



8.1 Forming the Contract

- 8.1.1 A contract is not formed until it is formalized in writing and signed by both parties. In the GN, the only exceptions to this are the major works construction contract and the architectural/engineering full services agreement which use award letters to bind the parties before formal contracts are assembled and signed.
- 8.1.2 For many GN contracts, the Bid form of the RFT document is also a contract signature page. Accordingly, contracts arising from these RFTs are formed on the basis of the GN or owner signing the “Owner Acceptance” section of the ‘Bid Form/Contract Signature Page’. An award letter is not necessary to notify the contractor of the award. Instead, the signed contract signature page is faxed to the contractor to notify them of the award.
- 8.1.3 The foregoing is applicable to the following contract template forms:
- i. Local Contract Authority (LCA);
 - ii. Service Contract (SC);
 - iii. Request for Tenders – Construction or Services Contract (for contracts not exceeding \$100,000; this template form is also referred to as the ‘Minor Works Front End’).
- 8.1.4 For LCAs, the GN employee must have signing authority to purchase and sign LCA contracts. The contract is signed by the GN representative and the contractor at the time of the purchase or before the work is started. Work under these contracts must be performed in thirty (30) days and multiple LCAs cannot be used to pay for goods or prolong services in excess of \$5,000. The LCA terms and conditions should also be attached.
- 8.1.4.1 The white copy of the LCA is given to the contractor/vendor for their records. The green copy is forwarded to the finance division with a copy of the invoice or Scope of Work attached. A separate copy should be kept in your files until the services are complete and the invoice is received. For frequent LCA contracting, it is useful to keep a general file ARCS coded as 4280-25-LCA.
- 8.1.5 For service contracts, the bidder provides pricing and signs the contract form. If the price is acceptable to the GN, the person having authority to accept the offer will sign the contract in the signature block next to the contractor’s signature. This then becomes a signed contract and it is faxed back to the contractor – this is the ‘award’. The scope of work and contract terms and conditions are attached and referenced in the description of services area of the SC form.

8. ABOUT FORMING AND SIGNING CONTRACTS



- 8.1.6 For minor works contracts, the bidder has provided pricing and a signature on the Bid Form/Contract Signature Page (or Unit Pricing Table where applicable). The contract authority signs the bid in the “Owner Acceptance” section at the bottom of the bid form. This then becomes the signed contract and is faxed to the successful bidder to notify them that its bid was accepted – this is the ‘award’.
- 8.1.6.1 Two contracts are assembled with the forms of the accepted tender replacing the blank forms of the two extra tender packages kept on file for this purpose (contract sets¹²): one for the GN’s records, and the other for the contractor. A photocopy of the unsigned successful bid is kept in the RFT file.
- 8.1.7 The types of contracts that will have to be written up or assembled and prepared for signatures are:
- i. Consultant Services (Pro-Forma Agreement);
 - ii. Architectural/Engineering Short Form and Full Services Agreements;
 - iii. Major Works Construction Contracts.
- 8.1.7.1 Consultant Services (Pro-Forma Agreement)**
- 8.1.7.1.1 This contract is prepared by the RFP team leader, usually the procurement officer or chairperson of the evaluation committee, and will also involve the project manager designated in the successful proposal.
- 8.1.7.1.2 The proposed services and scope of work are briefly described in section 1.1 with the RFP terms of reference and accepted proposal attached and referred to as appendices or schedules to the contract.
- 8.1.7.1.3 The contract payment terms are set out in section 1.2 and the appropriate section of the accepted proposal is referred to;
- 8.1.7.1.4 Any modifications or agreements arrived at as a result of clarification questions, interviews, etc., are to be clearly documented in section 1.3 of the template. Refer to section 5.27 of Chapter 5 – About Requesting Proposals – for more information on finalizing consultant contracts.

¹² See Chapter 4 – About Requesting Tenders – , 4.6.1 Plan Holder’s Log

8. ABOUT FORMING AND SIGNING CONTRACTS



8.1.7.2 Architectural/Engineering Services (Short Form)

- 8.1.7.2.1 The short form of this agreement is prepared by the project offer or procurement officer, or the person who will be managing the contract.
- 8.1.7.2.2 A brief description of the project and contract work is provided on the contract cover (which is also the contract signature page) and a reference to Appendix C is made here.
- 8.1.7.2.3 The contract amount and payment terms are set out in Appendix A. CGS Contract Support recommends using fixed amount pricing for these contracts.
- 8.1.7.2.4 The contractor is required to provide insurance certificates in accordance with Appendix B.
- 8.1.7.2.5 A detailed description of work is set out in Appendix C of the template, including contract start and end dates, project deliverables and any additional terms that will govern the administration of the contract. Attachments or additional appendices are also listed here and attached.
- 8.1.7.2.6 Two contracts are assembled and issued to the contractor for signature and return. Contracts should be sent out with a document transmittal. Keep a copy of the transmittal in the contract file as it is a record of when the contracts were sent to the contractor. Contractors should also be given a deadline for signing and returning the contracts to the owner.
- 8.1.7.2.7 The Architectural/Engineering Full Services Agreement (also called the “Long Form”) is also prepared by the project officer or person managing the contract.
- 8.1.7.2.8 These agreements are not straightforward and require interpretation of the proposal submitted by the consultant. This should be done by someone with a construction management background and in consultation with the Department of Justice. Accordingly, the project officer needs to determine what fee option or combination of options is applicable, what percents of price for each phase are applicable, what was negotiated, etc., for the particular agreement and complete the appendices for the Contract Support staff.
- 8.1.7.2.9 CGS recommends Option B – fixed costs plus a maximum upset limit for estimated field expenses – as the payment term of the agreement. Option D is not recommended. However, if it is used, a change order to the contract will be necessary once a construction contract is awarded, to amend the A/E contract value to reflect the correct percentage of construction cost.

8. ABOUT FORMING AND SIGNING CONTRACTS



8.1.7.2.10 Once the agreement terms are finalized, two contracts can be assembled by support staff with the assistance and direction of the project officer. The award letter is inserted at the front of the A/E agreement, and the successful proposal and RFP are attached as appendices.

8.1.7.3 Major Works Construction Contract

8.1.7.3.1 Once the contract is awarded, the successful bidder has fourteen (14) days to submit the required contract security and insurance certificates.

8.1.7.3.2 Contracts are assembled using the original tender. GN will keep the contract containing the original tender and return the contract with the copy to the contractor. A photocopy of the successful bid is also retained in the RFT file.

8.1.7.3.3 On receipt of the contract security and insurance certificate, two (2) contracts are assembled using spare tender packages as follows:

- i. The contract cover page replaces the RFT cover page;
- ii. the award letter (signed in duplicate) is inserted immediately following the contract cover in front of the Table of Contents (letter includes amendments resulting from options, appendices or acceptance clauses);
- iii. the blank tender forms and appendices are replaced with those from the successful bid;
- iv. a copy of the bid security is inserted in front of the tender form;
- v. tender amendments are also inserted with the tender form;
- vi. copies of the insurance certificate replaces the insurance appendix;
- vii. all addenda are inserted after Appendix J in front of the Articles of Agreement;
- viii. copies of the contract security are inserted after addenda (originals are kept in a safe or on file);
- ix. the Articles of Agreement are filled out with information from the tender form and award letter;
- x. the Table of Contents is updated to reflect the contents of the contracts.

8.1.7.3.4 Assembled contracts are then sent out for the contractor's signature and return. Once they have been returned, the GN signs the Articles of Agreement and sends one copy back to the contractor.

8. ABOUT FORMING AND SIGNING CONTRACTS



8.2 Execution of the Contract Documents

- 8.2.1 The execution of a contract refers to the affixing of signatures and seals to the contract document. This requires appropriate signatures by both the contractor and the owner.
- 8.2.2 The requirements for execution of the document vary depending on the company structure (i.e., sole proprietorship, partnership, limited company).
- 8.2.3 Check with the Legal Registries Division of the Department of Justice who will tell you what type of entity the business is. They can also confirm that the company is registered and in good standing. If the company has not registered with the companies registries, they will have to do so in order to do business in Nunavut.

8.3 Signature by the Contractor

- 8.3.1 A contract will be an agreement between the GN and one of the following types of corporate structures:
- i. corporations
 - ii. partnerships
 - iii. sole proprietorships
 - iv. societies
 - v. Inuit and Community Development Corporations
 - vi. municipalities
- 8.3.2 Information on the type, legal status and legal identity of an organization can be obtained from the Legal Registries Division, Department of Justice.
- 8.3.3 The contract must be signed by a signing officer of the organization and sealed or witnessed. The requirements for determining who has signing authority will vary, depending on the organization. It is essential that the GN contract authority ensure that the person signing for the contractor has the authority to enter into a contract for that organization and that the correct legal name of the company or organization is being used. This can be done by obtaining verification of authority directly from the contractor's office.
- 8.3.4 A contract may also be entered into by a valid power of attorney for the contractor. If the contract documents are signed by a party acting with power of attorney, they must be accompanied by the original power of attorney document or a certified copy.

8. ABOUT FORMING AND SIGNING CONTRACTS



8.4 Corporate Structures

8.4.1 Corporations

8.4.1.1 A corporation is the business entity most frequently used to carry on commercial activities. A corporation is a legal entity separate from its owners (which are its shareholders). The corporation can, in its own name:

- i. own property;
- ii. carry on business;
- iii. enter into contracts;
- iv. sue and be sued;
- v. possess rights;
- vi. incur liabilities.

8.4.1.2 A shareholder's liability in a corporation is limited to the value of shares it has in the corporation.

8.4.1.3 A corporation may contract under seal, in writing or orally, in the same way as a natural person. If the contract is made in writing or orally, a restriction on the validity of the contract is that the party/person contracting on behalf of the corporation has the appropriate signing authority to be able to bind the corporation. If in doubt, ask for the company's signing bylaws.

8.4.1.4 It should be noted that a corporation may only do what is authorized by its bylaws, resolutions, and charter. For example, if the bylaws of a corporation do not authorize the entering into of contracts, then the contract will be void, since the corporation is acting outside its powers.

8.4.2 Partnerships

8.4.2.1 A partnership is another common form of business enterprise. A partnership is formed when two or more people (corporations or individuals) carry on business with a view to profit. The members of the partnership are called partners. Unlike the corporation, a partnership is not a separate legal entity from its partners. The two types of partnerships are a general partnership and a limited partnership.

8.4.2.2 In a general partnership, the general partners are jointly liable for all debts and obligations of the partnership. There is no limit to the amount of their liability.

8. ABOUT FORMING AND SIGNING CONTRACTS



- 8.4.2.3 In a limited partnership, the limited partner's liability is restricted to the amount of money or other property that partner contributes to the partnership. For example, if a partner contributes \$5,000, then the maximum amount that partner can lose is \$5,000.
- 8.4.2.4 Under a partnership, each partner becomes an agent of the partnership when acting in the normal course of business or in what reasonably appears to be so. Under the law of principal and agent, the action of one partner will bind all the other partners. The only time when the actions of one partner will not bind the partnership is when it is apparent that the partner is not acting within the scope of the partnership's normal business activity, or when a third party knows the partner has no authority to act for the firm in a particular case. Therefore, in a partnership, any of the partners has the authority to contract with another party.
- 8.4.3 Sole Proprietorships**
- 8.4.3.1 In a sole proprietorship, an individual carries on business for their own account, without using any other form of business organization. The individual is the sole owner of the business, but may employ others to assist with the business. The owner is personally responsible for any financial loss of the business. In a sole proprietorship, the owner has the authority to contract.
- 8.4.4 Societies**
- 8.4.4.1 A society is created for purposes other than to carry on a trade or business. Societies are usually formed for charitable, religious, educational, sporting, artistic, scientific, literary or other useful purposes. A society may be incorporated.
- 8.4.4.2 An incorporated society is a legal entity, and has the advantage of releasing its members from the liability or debts of the organization. A society may sue, be sued, or contract as an entity. It will contract in the same manner as a company.
- 8.4.4.3 An unincorporated organization has no legal existence apart from that of its members. It cannot bring an action in court or enter into legally enforceable contracts in its own name. An action in court may proceed by a representative action where one or more members act on behalf of the other members. An unincorporated organization may also contract, but only in the name of its members.

8. ABOUT FORMING AND SIGNING CONTRACTS



8.4.5 Inuit and Community Development Corporations

8.4.5.1 An Inuit or community development corporation registered under the *Business Corporations Act* may contract in the same manner as an ordinary corporation. It should always be verified whether or not the development organization is registered as a corporation with Legal Registries.

8.4.6 Municipalities

8.4.6.1 A municipal corporation has the power to contract for municipal purposes, in accordance with the municipality's bylaws and relevant legislation. It should be noted that a municipality may only contract in accordance with the scope of its legally authorized powers. In other words, if the bylaws and/or legislation do not authorize a contract, the contract may be void.

8.5 Signature by the Owner

8.5.1.1 When properly executed documents have been received from the contractor, they should be examined and signed as soon as possible by the contract authority.

8.5.1.2 In some cases the contractor may fail to deliver within the specified period the properly executed contract, the contract security, the required insurance or other documents required by the contract. These cases should be discussed with the Manager of CGS Purchasing, Logistics & Contract Support Division to determine whether a default situation exists and whether the appropriate action should be to:

- i. allow the contractor additional time to deliver the documents, if circumstances warrant this; or
- ii. take the work out of the contractor's hands;
- iii. for construction, we may look to the bid security to offset the costs of contracting with the next low bidder or re-competing the work, if necessary.

9. ABOUT MANAGING CONTRACTS



9.1 Introduction to Contract Administration

- 9.1.1 This chapter is provided to assist contract authorities in managing the business relationship and ensuring that the contract is performed on time and in accordance with the provisions of the contract.
- 9.1.2 Refer to FAM Directive 003 and Directive 802-1 for more information on managing and financial signing authorities for expenditures.
- 9.1.3 Once a contract is awarded and formally put into place, the contract authority will be required to manage the contract and ensure the contractor is delivering the services that the owner is paying for. This activity is commonly referred to as “contract administration”.
- 9.1.4 It is important to inspect progress and process payments on a timely basis and within the terms of the contract, since failure to pay when payment is due is a fundamental breach of contract. The timing of GN contract payments follows the Financial Administration Manual, Directive 803-3, and is dependant upon the date of receipt of substantiated invoices from the contractor. Accordingly, invoices or requests for payment must be date stamped upon receipt.

9.2 Contract Management Activities

- 9.2.1 The contract manager must have sufficient knowledge of the service being provided. He or she must know the marketplace and what constitutes standard business practice in that market or industry and understand how to manage the contract in accordance with its terms to ensure that the required outcomes are provided within the agreed timeframe.
- 9.2.2 A Contract Management Checklist is provided to assist in this process:
- i. Contract Start-Up Meeting
 - ii. Insurance and Workers' Safety
 - iii. Contract Security
 - iv. Communicating Feedback and Direction
 - v. Monitoring Progress and Approving Payments
 - vi. Problem Solving and Dispute Resolution
 - vii. Amending the Contract
 - viii. Accepting the Work
 - ix. Keeping Records

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9.3 Contract Start-Up Meeting

- 9.3.1 Establish and maintain a good relationship with the contractor. Be knowledgeable of the market and understand the contract and performance requirements. Treat the contractor as an equal and not as a servant.
- 9.3.2 It is preferable to resolve any outstanding issues and ensure they are written into the final contract before signing it. However, if an issue which is not included in the signed contract cannot be resolved during the start-up meeting, it can be incorporated into the contract by way of amendment or change order.
- i. Review scope of work and performance deliverables.
 - ii. Review schedule and set out requirements for invoicing.
 - iii. Agree on performance indicators.
 - iv. Agree on mechanisms for resolving problems as they arise.
 - v. Discuss Workers' Safety and Compensation and other insurance requirements.
 - vi. Discuss contract security or holdbacks on payments if applicable.

9.4 Insurance and Indemnities

- 9.4.1 Contractors are required to indemnify the government against third party liability claims. To back-up this indemnification, various insurance policies are required. All GN contracts must contain terms and conditions that ensure adequate insurance coverage for contractors to protect the GN from claims for injuries, death and damages to property.
- 9.4.2 This section briefly describes the various insurance policies that the GN requires contractors to carry. Refer to FAM Directive 808, Appendix B, for the insurance and indemnity clauses that are required to be included in all GN contracts.
- 9.4.3 Note: The GN is to be listed as an insured under all insurance policies except for Workers' Compensation insurance and professional liability insurance as mentioned in FAM Directive 808, Appendix B, paragraph 3.
- 9.4.4 All contractors must provide a certificate of insurance in the prescribed form. This certificate must be provided by the contractor before the work is started and should not be accepted on non-standard forms without approval of the Risk Management Division of the Department of Finance.

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9.4.5 Workers' Safety and Compensation Coverage

9.4.5.1 It is a statutory requirement that all persons working in Nunavut be covered under the Workers' Compensation program, even if their employer is not a Nunavut-based company¹³. Accordingly, GN standard contracts call for Workers' Compensation (WC) coverage and advise that if any contractor is assessed any extra levies or assessments as a result of an accident causing injury or death to an employee (worker) of the contractor or subcontractor, or due to unsafe working conditions, these extra amounts will not be reimbursed by the GN.

9.4.5.2 Pursuant to Section 3 of the *Worker's Compensation Act*, the Act applies to all employers and workers in Nunavut. Consequently, there are no waivers from the Nunavut legislative provisions available to contractors through their home provinces' workers compensation legislation. Section 2 of the Act stipulates that the GN is bound by the Act.

9.4.5.3 Prior to releasing the first payment on any GN contract, the contract manager must ensure that the contractor is in good standing with the Workers' Safety and Compensation Commission (WSCC). This can be done by phone or fax. The specific Clearance Request form is available on the WSCC website:
<http://www.wcb.nt.ca/employers/Forms/RS020%200110%20Clearance%20Request.pdf>

9.4.6 Comprehensive General Liability

9.4.6.1 This insurance covers contractors for bodily injury, death and damage to or loss of use of property. Contractors are required to carry this insurance coverage in an amount not less than \$2,000,000 per occurrence. For major works construction contracts, the coverage requirement is \$5,000,000 per occurrence.

9.4.6.2 If you have any questions about this insurance or feel it should be reduced or waived for service or consultant contracts, or increased for a contract with a particularly high potential for risk, contact the Purchasing, Logistics & Contract Support Division of CGS or the Risk Management Division of the Department of Finance for advice and assistance.

¹³ Section 80 prescribes contractors' liability and Section 3 prescribes to whom the *Act* applies. See legislation at http://action.attavik.ca/home/justice-gn/attach-en_conlaw_postdiv/consSNu2007c152.pdf
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9.4.7 Motor Vehicle, Watercraft, Snow craft Standard Liability

- 9.4.7.1 This insurance covers the contractor for injuries and property damage on vehicles, boats, snowmobiles, ATVs, etc., used in the performance of the contract. The contractor must carry at least \$2,000,000 for vehicle hazards and at least \$2,000,000 for bodily injury to or death of one or more passengers and loss of or damage to passenger property in one accident.
- 9.4.7.2 This coverage must extend to all owned or non-owned, operated and/or licensed vehicles used by the contractor in the performance of the work.
- 9.4.7.3 This includes rental cars where a contractor is renting a car while on contract to the GN. Contractors can obtain certificates from the insurance brokers of the renting companies evidencing coverage of the vehicle. However, the contractor should pay the premium for the liability insurance coverage on the rented item and include it as an expense in its proposed budget.

9.4.8 Aircraft Liability

- 9.4.8.1 This insurance is required on all air charter contracts. If using an LCA to charter an aircraft, please ensure the carrier's insurance certificate is on file with the Logistics Manager at CGS Purchasing, Logistics & Contract Support.
- 9.4.8.2 Insurance is required on any aircraft owned or non-owned, operated and/or licensed by the contractor and used in the performance of the work. It must be cover against bodily injury, death, property damage and passenger hazard up to \$6,000,000 inclusive. These limits may be set higher depending on the level of risk involved.

9.4.9 Professional Liability

- 9.4.9.1 This insurance is sometimes called 'Errors and Omissions' and is required for all contracts where the contractor is providing a professional service such as architectural, engineering, legal or medical services, etc. These contractors must carry this insurance to cover themselves against claims arising out of their failure to render the services at the standards of care required by their professions. The limits are at least \$250,000 per claim and \$500,000 in total annually. Please refer to Risk Management if you think that there is a need for higher limits.
- 9.4.9.2 Contracts for semi-professional (accountant, auditor, consultant, researcher, etc.) services may or may not require Errors and Omissions or professional liability insurance. Contact the Risk Management Division of the Department of Finance for advice and assistance.

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9.4.10 Property Insurance (“All Risks” Course of Construction)

- 9.4.10.1 Property or course of construction insurance is physical damage insurance for the project while it is under construction. This insurance protects against most risks of physical loss of or damage to the materials and work in progress.
- 9.4.10.2 The contractor is responsible for obtaining and maintaining this form of insurance to protect all those who directly participate in the construction project, including the GN.
- 9.4.10.3 Course of construction insurance coverage is the responsibility of the contractor for hamlet or settlement buildings when the GN owns the materials during the management of construction and where full authority or block funding is provided to the hamlet and the municipality undertakes the project on their own behalf.

9.4.11 Marine Cargo

- 9.4.11.1 Marine carriers have insurance to cover goods during transportation. Their liability insurers will pay the damages to the goods if the carriers have been found negligent. It is recommended to contact Risk Management if you need your own insurance to cover direct damages to goods during transportation.

9.4.12 Deductibles

- 9.4.12.1 The contractor is responsible for deductibles, exclusions and/or insufficiencies of coverage related to any policy they carry.
- 9.4.12.2 In the case of course of construction insurance, the contractor is responsible for a portion of the deductible, as follows:
- i. For contracts valued in excess of \$100,000, an amount equal to 5% of the considered insurable loss to a maximum of \$10,000 per occurrence.
 - ii. For contracts not exceeding \$100,000, an amount equal to 5% to a maximum of \$5,000 per occurrence.

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9.4.13 **Advising Risk Management – Construction and Renovation Contracts**

9.4.13.1 Certain information is required by the Risk Management Division of the Department of Finance for construction and renovation contracts valued in excess of \$250,000. The “Risk Management Notice Form” is to be completed and forwarded to Risk Management no later than sixty (60) days after contract award.

9.5 **Contract Security (Construction Contracts)**

9.5.1 The purpose of contract security is to guarantee that the contractor will:

- i. perform and complete the work according to the contract requirements;
- ii. discharge lawful obligations and satisfy lawful claims against the contractor;
- iii. ensure that subcontractors discharge their lawful obligations and satisfy lawful claims against them.

9.5.2 **Requirements**

9.5.2.1 Contract security is normally required in construction contracts where the contract amount is expected to exceed \$100,000.

9.5.3 **Forms of Contract Security**

9.5.3.1 For all construction contracts where contract security is required, the contract security can be:

- i. a performance bond and a labour and material payment bond, each in an amount of 50% of the amount payable under the contract (the bonds referred to must be in a form approved by the Federal Treasury Board and from a company whose bonds are acceptable to the GN); or
- ii. a security deposit in an amount, equal to 10% of the contract amount (normally the 5% bid security plus an additional 5% security) for construction contracts and at least 10% for other contracts.

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9.5.4 Performance Bonds

- 9.5.4.1 A performance bond is a surety bond provided by the contractor that guarantees completion of the work according to the terms of the contract. Any breach or failure on the part of the contractor to complete the work according to the terms of the contract in its entirety will entitle the GN to be indemnified by the bonding company for any loss suffered. For example, the bonding company will be liable for all excess costs of completion of the work, up to the face value of the performance bond.
- 9.5.4.2 When the contractor is declared by the GN to be in default under the contract, the GN has the option of taking the work away from the contractor.
- 9.5.4.3 The bonding company's obligations under the performance bond are as follows:
- i. When the work is not taken away from the contractor, the bonding company must remedy the default of the contractor.
 - ii. When the work is taken away from the contractor and the GN directs the bonding company to complete the work, the bonding company will complete the work according to the terms of the contract. If a contract is formed for the completion of the work, that contract must be between the contractor and the bonding company. The selection of the completing contractor will be subject to the approval of the GN.
 - iii. When the work is taken away from the contractor, and the GN (after reasonable notice to the bonding company) does not direct the surety to complete the work, the bonding company will assume the financial responsibility incurred by the GN for the cost of completion in excess of the money available to the GN under the contract.
- 9.5.4.4 The bonding company is not entitled to either the contractor's holdback or earned, but unpaid, progress money to which the contractor may have been entitled to at the time of the contractor's default. Upon satisfactory completion of the work, the GN may, however, pay this money to the surety, provided that they are not required for the purposes of the contract.
- 9.5.4.5 The limitation period for the GN to initiate a legal action against the surety for failing to fulfill its obligations under the performance bond must be no later than six (6) years after final payment is due under the contract.

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9.5.4.6 There are strict time limits for making a claim under a performance bond. Therefore, project officers and managers are advised to maintain contact with the bonding company whenever there is cause for concern regarding the contractor's performance. Once the contractor has defaulted on its obligations under the contract, no unilateral actions may be taken by the GN. The GN must inform the bonding company, in writing, of its intentions with regard to the continuance of the contract and obtain the concurrence of the surety in respect to further action.

9.5.4.7 The surety must also be notified of any changes to the contract and impacts on the completion date. Failure to notify the surety of significant changes to the value, scope and completion date for the work may result in nullification of the bonds.

9.5.5 Labor and Material Payment Bond

9.5.5.1 A labour and material payment bond is a surety bond, provided by the contractor to guarantee payment of the lawful accounts of certain persons, firms, or companies (claimants) who have not been paid, in connection with obligations performed under the contract. These are workers and materials suppliers.

9.5.5.2 Labour and material includes water, gas, power, light, heat, oil, gasoline, telephone service, or rental of equipment that is directly applicable to the contract. Rental of equipment does not include rent applied towards the purchase of the equipment.

9.5.5.3 Any unpaid account that represents a capital expenditure, overhead, or general administration cost incurred by the contractor in performing the contract is not recognized by the labour and material payment bond.

9.5.5.4 Check the bond itself to determine what the limits are.

9.5.5.5 Under the labour and material payment bond, a claimant has a direct contract with the contractor or any subcontractors for labour, material, or both that are used or reasonably required for use in the performance of the contract. The Federal bond form is different from the Canadian Construction Documents Committee (CCDC) bond in that it covers sub-subcontractors as well as subcontractors.

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- 9.5.5.6 A claimant who does not have a direct contract with the contractor may claim under the payment bond as long as the following conditions are respected:
- i. The creditor of a subcontractor (sub-subcontractor) of the contractor (claimant) must notify the contractor of its entry into a contract with the subcontractor.
 - ii. The notice must indicate the work, the nature of the contract and the name of the subcontractor.
 - iii. The notice must be given before the creditor performs any work or supplies any material. Note that an employee of a subcontractor is not required to give notice to the contractor.
- 9.5.5.7 All claimants under a labour and material payment bond must give written notice, by registered mail, to the bonding company (surety) and to the contractor (principal) of their unpaid accounts. These notices must state with substantial accuracy the amounts claimed and must be received within specified time limits; otherwise, the claims will be disallowed under the terms of the bond.
- 9.5.5.8 A notice of claim for work performed or material supplied under the contract must be given within one hundred and twenty (120) days after the date on which the claimant performed the last of the work or supplied the last of the material for which claim is made.
- 9.5.5.9 A notice of claim for a holdback must be given within one hundred and twenty (120) days after the claimant should have been paid in full under the contract.
- 9.5.5.10 The surety's maximum liability is the amount specified in the bond, and that amount is reduced by any payments properly made under the bond.
- 9.5.5.11 The surety is not entitled to claim any contract money. However, the GN may pay to the surety any contract monies not required for the purposes of the contract to compensate the surety for fulfilling its obligations under the bond. This payment must not be made until the surety has paid all valid accounts of claimants under the payment bond.
- 9.5.5.12 If a claimant has not been paid, as provided for under the terms of the contract, within ninety (90) days after the date on which the claimant performed the last of the work or supplied the last of the materials, the GN may sue on the payment bond.
- 9.5.5.13 The project officer should ensure that a copy of the labour and material bond is posted on the work site and must make information regarding the bond available to subcontractors and employees upon request.

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9.5.6 Security Deposits

9.5.6.1 When contract security is required, the contractor may, in lieu of a performance bond and a labour and material payment bond, provide a security deposit.

9.5.6.2 When a security deposit is delivered, it must be for 10% of the contract price for construction contracts and for at least 10% for other contract types. The deposit must be either a certified cheque, bank draft, an Irrevocable Letter of Guarantee or Credit from a bank, or such other security considered acceptable by the GN. The security deposit will be payable to the Government of Nunavut.

9.5.6.3 Security deposits must be handled as follows:

- i. certified cheques, cash or bank drafts must be forwarded to Finance Division personnel for depositing. The cheque should be coded to the project budget, if possible, for ease of returning at substantial completion;
- ii. Irrevocable Letters of Guarantee or Credit must be retained in a fireproof safe for the duration of the contract.

9.5.6.4 Return of Contract Security

9.5.6.4.1 Performance bonds and labour and material payment bonds are retained on file and are not normally returned to the contractor because at the completion of the contract they have no value.

9.5.6.4.2 Security deposits will be returned with the interim certificate of completion payment with the exception of any portion retained for the purposes of rectifying deficiencies, settlement of claims (unpaid subcontractors) or for completion of unfinished work, etc.

9.5.6.4.3 Irrevocable Letters of Guarantee or Credit must be returned to the contractor upon completion of the contract or upon expiration, if so provided.

9.5.6.5 Changes in the Contract Security

9.5.6.5.1 A performance bond refers to a specific contract. Therefore, any changes to that contract that materially, or substantially, affect the risk of the bonding company, may release the bonding company of its obligations under the bond unless the surety is notified.

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- 9.5.6.5.2 Changes that would materially or substantially affect the surety's risk include, but are not limited to, the following:
- i. one large change or several small changes substantially increasing the scope of work and contract price (15% of original contract price);
 - ii. changes in the terms of payment;
 - iii. changes in the work that involve the contractor or one of the sub-contractors doing work in which they are inexperienced;
 - iv. substantial changes that shorten or lengthen the time for completion of the work;
 - v. stop work orders.
- 9.5.6.5.3 The bonding company's consent must be obtained for any change that materially or substantially affects its risk. If there is a question about whether or not the proposed change is material, the surety should be notified of the change and asked their opinion. If, in their opinion, the proposed change is substantial, their consent and that of the contractor must be obtained.
- 9.5.6.5.4 Change orders should always be signed by the contractor and the project officer should always respond to the surety when asked for information about the contract. As a best practice, the surety should also be sent a copy of all change orders, regardless of their value.

9.5.7 Unpaid Accounts

- 9.5.7.1 This section outlines recommended procedures applicable to situations where a contractor or subcontractor has apparently failed to make lawful payments to subcontractors or suppliers for performance of some part of the contract.
- 9.5.7.2 **Objectives**
- 9.5.7.2.1 In dealing with unpaid account situations, the objectives, in order of priority, should be:
- i. completion of the work;
 - ii. payment of any statutory accounts or demand notices directly related to the contract (i.e. Revenue Canada, Workers' Compensation Board);
 - iii. payment of workers', subcontractors', suppliers' or sub-sub-contractors' lawful claims that are directly related to the contract;
 - iv. payment of other garnishee summons.

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9.5.7.2.2 Principles of Administering Unpaid Accounts

9.5.7.2.2.1 The following are basic principles or rules for the administration of unpaid accounts:

9.5.7.2.2.2 By contract, the GN is legally bound to pay the general contractor for performance of the work, and in turn, the general contractor is legally responsible for the subcontractor. The GN does not have a contract with the subcontractor or supplier and therefore has no legal obligation to do anything in response to a claim by a subcontractor or supplier against the contractor or GN.

9.5.7.2.2.3 Do not withhold money from a contractor based on a claim made by a subcontractor or supplier. Such an action could be considered to be a breach of the contract with the general contractor.

9.5.7.2.2.4 Do not pay the subcontractor directly. A direct payment by the GN to a subcontractor/supplier may introduce a contractual relationship which could potentially absolve the contractor of his/her contractual obligation to the subcontractor.

9.5.7.2.2.5 Although there is no legal obligation to do so, the contract manager may investigate the claim with the general and the subcontractor/supplier to determine whether it has merit.

9.5.7.3 In determining if the claim is legitimate, the contract manager must ensure that the general contractor and the subcontractor/supplier agree in writing that:

- i. they agree on the work performed and the amount of the payment;
- ii. they confirm that the payment represents full and complete satisfaction of the debt; and
- iii. they both request the payment be made by the GN directly to the subcontractor/supplier; and
- iv. that the payment will not absolve the contractors of their remaining contractual obligations or result in a contractual relationship between the GN and the subcontractor/supplier.

9.5.7.3.1 In **very rare** circumstances an application may be made to the Comptroller General to authorize the assignment of a debt owed by the GN, for example, to pay a subcontractor directly. This is very strictly governed by the Assignment of Government Debt Regulations (R.R.N.W.T. 1990,c.F-1) and Directives 873 and 9902 of the GN's Financial Administration Manual (FAM).

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9.5.7.3.2 The basic requirements for such an assignment are as follows:

- i. Approval is subject to review and recommendation of the Department of Justice and submission of appropriate back-up documentation as outlined in Appendix A of Directive 873;
- ii. If the Department of Justice recommends the assignment, the requesting department must forward the Request for Assignment and back-up documentation to the Comptroller General;
- iii. The Comptroller General will review the application and decide whether the assignment is authorized, as per the Assignment of Government Debt Regulations (R.R.N.W.T. 1990,c.F-1) and FAM Directives 873 and 9902.

9.5.7.4 Administration of Unpaid Accounts

9.5.7.4.1 Unpaid accounts should be administered in consultation with the contract manager's divisional director, the CGS Manager of Purchasing, Logistics & Contract Support and the Justice Director of Legal and Constitutional Division. Each situation will present different parameters which must be examined on an individual basis to determine the appropriate approach.

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9.5.8 Before Considering Claims

9.5.8.1 The following steps should be considered prior to taking any action on unpaid accounts. Get written notice of the unpaid account. No action can be taken until this is done:

- i. unpaid accounts must be received in writing;
- ii. upon receiving a written notification, notify the contractor that a claim has been received and ask the contractor to verify or provide substantiation to refute the claim.

9.5.8.2 Notify both the general contractor and the subcontractor or supplier making the claim. The notification letter should request that the matter be resolved and that the subcontractor/supplier advise when the matter is resolved. If the claim cannot be refuted, the contractor should be warned to rectify the problem or have the value of the claim held back from the next payment to satisfy the claim.

9.5.9 After Written Notice Received

9.5.9.1 No further action is taken until written notice is received from both parties. This will be a notification of one of the following:

- i. The matter has been successfully resolved: the outstanding debt has been paid by the general contractor and the subcontractor/supplier agrees that it is no longer owing.

Action: Release held funds to the general contractor.

- ii. The matter has been successfully resolved by the parties and they agree on the claim. They also agree that the GN should pay the agreed amount to the subcontractor/supplier directly on behalf of the general contractor.

Action: Make payment to subcontractor.



- iii. The general contractor and the subcontractor/supplier cannot resolve the matter amiably, but no legal action has been undertaken.

Action: Continue to withhold the monies. Write a second letter to both parties, requiring them to take action (i.e., dispute resolution, mediation or some other process other than courts) to resolve the matter. The letter should stipulate that if such action is not taken within a specified period, the held funds will be released to the general contractor. Once the stipulated deadline is up, and if there is still no resolution to the problem, release the money to the general contractor and recommend that the subcontractor/supplier seek legal advice to resolve the matter in the courts.

9.6 Communicating Feedback and Direction

- 9.6.1 Keep written records of all dealings with the contractor including filing notes of all telephone conversations, e-mails and all other correspondence and meeting minutes, etc.
- 9.6.2 Give limited direction; the contractor is not an employee.
- 9.6.3 Comply with the notice provisions of the contract. Specific directions are to be given in writing to the address and contact information specified in the contract.

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9.7 Monitoring Progress and Approving Payments (Accepting the Work)

9.7.1 Measurement and payment for performance of the contract is one of the most important aspects of contract administration. The *Financial Administration Act* states that contract payments must be accurate and in accordance with the contract.

9.7.2 This section outlines the general considerations of measuring performance and making payments at the various stages of contract performance.

9.7.3 Refer to FAM Directive 803-3 “Account Verification – Timing of Payment” for details on the specific procedures for administering contract payments. Payment should only be made when the services are delivered, or for longer term contracts, in keeping with the scheduled and satisfactory delivery of services as set out in the contract.

9.7.4 Monitor the contractor’s performance against the agreed performance indicators. These indicators are generally the specified quality and quantity of the product requested, the cost of the product or services and the timeframe in which the goods or services are to be provided. These are also referred to as ‘deliverables’ and must be clearly stated in the contract.

9.7.5 Partial Performance

9.7.5.1 Most contracts for the purchase of goods involve a single contract payment at full performance of the contract, usually delivery of the goods. However, for many GN contracts, the work is spread over several months or longer. In these cases, partial contract payments or progress payments are usually made to the contractor on a monthly basis.

9.7.5.2 For consultant services, the basic work requirements are stated up front in the RFP terms of reference. The consultant will have provided a detailed work plan and schedule in their proposal. The work plan and schedule form fundamental terms of the contract, and are used by the contract manager to ensure the consultant delivers the services as promised.

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9.7.6 Evaluating Payment Requests

- 9.7.6.1 Progress payments must reflect the amount of work actually performed. Invoices or requests for contract payment received from the contractor must be evaluated for conformance with the contract terms, and to ensure that the amount requested represents only the value of work performed during that payment period. This may include any part of the work that has been completed and any material that has been delivered to the work site, but not yet incorporated into the work.
- 9.7.6.2 It is very important that progress payments reflect, as much as possible, the amount of work actually performed. If in the case of default by the contractor, another contractor must be employed to complete the work, difficulties will arise if the original contractor has been overpaid. Employment reports or other backup to invoices required by the contract must be received and reviewed before payment is made.
- 9.7.6.3 Ensure scheduled tasks are being performed on time and at agreed percentages of the total fee.
- 9.7.6.4 Ensure work as described in progress report has actually been done before signing off on the payment request or invoice. FAM Directive 803 talks about 'certification'. When a contract manager signs off on his or her approval for payment, he or she is certifying that the work has been done and payment can be released.

9.7.7 Initial Progress Payments (First Payment)

- 9.7.7.1 Before certifying the initial contract progress claim, the contract officer must verify that the contractor has submitted all the required documents as applicable:
- i. signed contract documents;
 - ii. contract security if applicable;
 - iii. insurance policies;
 - iv. WSCC clearance for service or construction contracts;
 - v. Inuit/Nunavut/Local employment reports, schedule of values or other substantiation that are specified in the contract;
 - vi. Inuit employment bonus or penalty (for construction contracts).
- 9.7.7.2 Do not process contract payments until these documents are received.
- 9.7.7.3 Contract officers should ensure that the minimum threshold percentage requirement for Inuit employment (as set out in the RFT document) is maintained. Refer to Chapter 18 – About the NNI Policy.

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9.7.7.4 Progress claims may include an Inuit content component. The contract officer must ensure that the Inuit employment and goods and services levels are in keeping with, or in excess of the minimum thresholds set out in the contract. Contractors are entitled to a financial bonus if the percentage of payroll to Inuit employees exceeds a specified level. Conversely, the contract officer may levy an employment penalty against the progress payment if the minimum level for Inuit employment has not been maintained.

9.7.8 Materials/Goods on Site (Construction Contracts)

9.7.8.1 Equipment, materials or goods that are delivered to the work site or possession of the GN, or are delivered to the work site but not yet incorporated into the work, are eligible for payment.

9.7.8.2 In rare cases, it may be justified to pay the contractor for materials or work that the GN has not yet received or are not yet at the work site. This may occur where there is a substantial amount of off-site prefabrication of materials, or goods are held in transit for an extended period of time for some reason. In these cases, the work can only be accepted and paid for if it is held in a bonded warehouse in the name of the GN. In no case should the goods or materials be paid for if they are still in the contractor's possession or are not in bonded facilities.

9.7.8.3 Additionally, if further transportation of the goods will take place after they have been accepted and paid for by the GN, the contractor is required to carry the appropriate transportation insurance on the goods. Insurance requirements for these situations should be discussed with the Risk Management Division of the Department of Finance, to ensure that the GN is fully covered against possible loss.

9.8 Problem Solving and Dispute Resolution

9.8.1 If any part of a progress claim is questionable or unsatisfactory, the contract officer should:

- i. discuss the questionable areas with the contractor, requesting time sheets, subcontractor invoices, waybills or manufacturers' packing slips, etc. as required to substantiate the progress claim;
- ii. If the claim cannot be substantiated, adjust the amount of the payment to reflect the correct value of the work performed that can be substantiated;
- iii. forward a copy of the adjusted claim to the contractor, along with a letter explaining the rationale for the adjustment.

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9.8.2 Performance Holdbacks

9.8.2.1 Construction contracts provide for the retention or holdback of a percentage of the contract payment. This holdback is a security fund, intended to protect the interest of the GN and those who performed work or supplied materials to the contractor. Holdbacks of this type are not usually retained from payments on goods or consulting contracts. However, they may be applied in situations where there will be significant labour under the prime contract.

9.8.3 Legal Limitations on Contract Disputes

9.8.3.1 In Nunavut, under the *Limitation of Actions Act*, the limitation period for the initiation of legal action arising out of a contractual dispute is six (6) years from the date of final completion or performance of the contract. All documents and files relating to the request for bids, tender, evaluation, award, and performance of contracts must be kept for a minimum of seven (7) years from the date of final contract completion or performance.

9.8.3.2 After this time period has elapsed, these files may be destroyed according to GN records management procedures, unless a lawsuit has been initiated.

9.8.3.3 Construction specifications, as-built drawings, and operations and maintenance manuals are not subject to the same destruction schedule and should be kept as long as the GN has ownership of the facility or work. If and when GN turns over ownership, these documents become the property of the new owner.



9.9 Changing or Amending the Contract

9.9.1 In most GN standard contracts, various stipulations allow the contract authority to make changes to the original contract. With the exception of A/E and construction, contracts may only be changed by written agreement between the contractor and the GN.

9.9.2 This section discusses principles of changing contracts, common reasons for changes, and the two contract change forms which are used for changing contracts: the amendment and the change order.

9.9.3 Principles of Changes to Contracts

9.9.3.1 Although every contract change must be individually evaluated, the following basic principles apply:

- i. Legal principles dictate that changes to a contract must be consistent with the general intent of the original contract and agreed to in writing by both parties.
- ii. All GN contracts require that contract changes must be in writing and approved by the contract authority.
- iii. Changes should be documented and processed as soon as practical, and ideally before the work affected has started.

9.9.4 Reasons for Changes

9.9.4.1 Countless reasons for changes may impact a contract. The reasons for changes will fall roughly into one of three possible categories: scope, logistics, or error. Some of the more typical reasons are as follows:

- i. change to the work site or the known conditions of the site;
- ii. change to the delivery destination or the terms of delivery;
- iii. ambiguous definition of the contract scope (specifications, plans, etc.);
- iv. change to the magnitude, design or scope of the work;
- v. change in regulatory requirements;
- vi. late or defective owner-supplied material or equipment;
- vii. interference or lateness of another CGS contractor involved in the work;
- viii. poor contract administration by the owner (late approvals, decisions, or inspections).

9.9.4.2 When these causes are due to actions or lack of action by the GN, the contractor may receive additional reimbursement to cover damages.

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9.9.5 Time Extensions / Delays (Impact on Project Cost and Schedule)

9.9.5.1 In addition to influencing the cost of the contract, many changes may also influence the time required to complete the work. Similarly, in some circumstances, time is the only aspect of the contract to be affected.

9.9.5.2 Time extensions are normally not granted for delay caused by factors within the contractor's control and responsibility, such as the following:

- i. poor planning and organizing;
- ii. inadequate resources (labour, equipment);
- iii. insufficient weather protection.

9.9.5.3 In situations where the delay is caused by the contractor, the GN may assess the contractor costs incurred because of the delay.

9.9.5.4 Time extensions may be granted when completion of the contract has been delayed due to circumstances beyond the contractor's control. Examples of causes beyond the contractor's control are:

- i. strike at the work site or manufacturer's plant;
- ii. change in the work that affects magnitude or delivery;
- iii. delay caused directly by the GN (work suspensions, late approvals or decisions);
- iv. delay caused by other GN contractors;
- v. extraordinary weather conditions.

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9.9.6 Format for Changes

9.9.6.1 Two formats are used to change contracts:

- i. change order (A/E, construction and maintenance contracts); and
- ii. letter of amendment (other contracts)

9.9.7 Change Order (A/E and Construction Contracts)

9.9.7.1 A contract change order is used to modify GN architectural/engineering and major works construction contracts. A change order is prepared on the standard change order form. The change order outlines the details of the modification to the contract scope, price, and completion date as appropriate. Pricing and effect on completion date are usually negotiated with the contractor. The change order is normally signed for acceptance by the contractor, recommended by the consultant if applicable, and approved by the contract authority.

9.9.7.2 Specific details on the administration of change orders in different contract applications are found in the CGS Project Management Manual. Refer also to the May 2009 Contract Change Order directive.

9.9.8 Letter of Amendment (Other Contracts)

9.9.8.1 A purchase order contract for goods is changed by an amendment. The standard purchase order form is used. The original purchase order number, with the addition of the appropriate amendment number, is used to identify the amendment.

9.9.8.2 The amendment will outline the change or modifications to the original purchase order contract and indicate the revised total contract price. The amendment is approved by the appropriate contract authority, but is not normally signed for acceptance by the contractor. Contractor acceptance of the amendment is usually provided by a letter confirming the changes in the amendment.

9.9.9 Communicating Changes

9.9.9.1 Contract amendments and change orders may be issued by facsimile transmission or e-mail of a scanned document. It is good practice to verify receipt of the transmission. Similarly, formal acceptance of the change order or amendment by the contractor may be received by facsimile or e-mail of a scanned signed document.



9.10 Accepting the Work (Construction)

9.10.1 Substantial Completion

9.10.2 Substantial completion applies primarily to the administration of construction contracts; it does not normally apply to general service, goods or consulting contracts. This manual only includes brief guidelines on substantial completion.

9.10.3 A contract is considered to be substantially complete when the contract is performed to the point where the facility or works can be safely used for the purpose intended. The remaining work should be relatively minor and should not restrict the use or jeopardize the health or safety of users.

9.10.4 Statutory Declarations

9.10.4.1 One of the requirements for granting substantial completion of a contract is that the contractor must provide a statutory declaration. A statutory declaration is a written declaration by the contractor that all current obligations with respect to the contract work have been paid. This includes all subcontracts, labour, materials, services, and all assessments and levies under applicable acts or legislation.

9.10.4.2 The contractor must recognize the significance of the statutory declaration; a false declaration is punishable as a criminal offense. Also, the contract officer must recognize the significance to GN of the declaration, and ensure that the declaration is made in good faith by the proper authority for the contractor.

9.10.5 Release of Security and Holdback Funds

9.10.5.1 The effects of issuing a Certificate of Substantial Completion significantly reduce the GN's protection against contractor default, because:

- i. The contract security, if a cash equivalent was provided, must be returned to the contractor. The security or a portion of the security may be retained, if it is considered as necessary leverage in having the contractor complete the remainder of the contract.
- ii. The holdback money, other than that retained for identified deficiencies and uncompleted work, damages, penalties or other monies owed to the GN must be returned to the contractor.

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9.10.5.2 Because of these effects, a Certificate of Substantial Completion should not be issued prematurely. It is very important that the contract officer's evaluation of the contractor's performance be accurate and thorough prior to the issue of the certificate. A WSCC Clearance form is required at substantial completion for payment of construction contracts.

9.10.6 Start of Warranty Period

9.10.6.1 The issuance of a Certificate of Substantial Completion is also important because it can trigger the start of the contract warranty period. Under the terms of most GN contracts, the contractor must rectify and make good any defect or fault that appears in the work within twelve (12) months from the date of initial use or occupancy. In most cases, the date of occupancy coincides with date of substantial completion.

9.10.7 Final Completion

9.10.7.1 The term "final completion" is used primarily in service and construction contracts, while goods contracts will refer to "total performance" or "total acceptance". These terms essentially have the same meaning: a contract is considered to be complete when, in the opinion of the contract authority, the contractor has fulfilled all of its obligations under the terms of the contract. The work must be totally complete, with no items remaining to be completed. The only obligation of the contractor after contract completion would be warranty/guarantee work.

9.10.8 Statutory Declarations

9.10.8.1 For construction contracts and some service contracts, the contractor is required to provide a statutory declaration, prior to granting a Certificate of Final Completion or Total Performance. Refer to the previous discussion on "statutory declarations" in this section. A final WSCC Clearance form is required for service and construction contracts prior to final payment being made.



9.11 Keeping Records (Retention of Contract Documents)

9.11.1 This section deals with the minimum retention period for documents relating to the request and receipt of bids, tender, evaluation, award and performance of the contract.

9.11.2 Contracts are considered to be administrative records. They are to be retained in accordance with the GN's Administrative Records Classification System (ARCS) manual. The ARCS primary code for contracts is 4280 and the manual sets out the filing, coding and retention period requirements.

9.11.3 A/E and construction contracts are operational records and are to be retained according to relevant Operational Records Classification System (ORCS).

9.11.4 The retention periods of contract documents and files vary depending on the nature of the goods or services being contracted.

9.11.5 This section deals only with the minimum requirements for documents relating to contracting. Other administrative and operational records should be retained in accordance with ARCS and CGS Records Management procedures.

9.11.6 Originals

9.11.6.1 Master copies of contracts are to be kept on-site until the contract is completed, superseded or terminated. Then it can be forwarded to the GN Records Centre where they will be retained for seven (7) years.

9.11.6.2 Master copies of successful tenders and proposals and their request documents, etc., are to be retained as noted above.

9.11.6.3 Master copies of unsuccessful tenders, proposals, etc., should be properly filed as soon as the successful proposal is awarded and a contract entered into. Files will be given appropriate project numbers and coding according to the GN's ARCS or ORCS manuals. Closed files will be forwarded to the GN Records Centre and retained in accordance with ARCS/ORCS disposition schedules.

9.11.7 Copies

9.11.7.1 Copies of contracts are retained on-site until the contract is concluded or cancelled and then forwarded to the Records Centre for immediate destruction. Copies of tenders, proposals, etc. are to be destroyed after contract award.

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9.11.8 Impact of Legal Litigation on Record Retention

9.11.8.1 In Nunavut, under the *Limitation of Actions Act*, the limitation period for the initiation of legal action arising out of a contractual dispute is six (6) years from the date of final completion or performance of the contract. For this reason, disposition of records under a retention schedule is halted in the event of legal action until such time as the legal action has been resolved.

9.11.8.2 In the event of legal action, do not destroy or otherwise dispose of any documents and files relating to the request, submission, evaluation, award, and performance of the contract.



10.1 Introduction to Contract Reporting

- 10.1.1 Section 15 of the NNI Policy sets out the following provisions for application of monitoring and enforcement procedures.
- 10.1.1.1 Section 15.1 reads as follows: “Each contract authority within the Government of Nunavut is responsible for monitoring and enforcement of contracts under which it expends funds”.
- 10.1.1.2 Section 15.2 reads as follows: “Each contract authority within the Government of Nunavut shall provide monitoring and enforcement information to the responsible department in a manner that may be stipulated by that department”.
- 10.1.1.3 Section 15.3 reads as follows: “The Government of Nunavut, through the responsible department shall provide Nunavut Tunngavik Incorporated with information in a timely manner regarding the outcomes of its monitoring and enforcement activities.”
- 10.1.2 Therefore, the collection of data having to do with the contracting for goods and services in Nunavut is the responsibility of the department, board or agency awarding the contract.
- 10.1.3 This section sets out the basic procedures for reporting contracting activity to monitor consistent application of the GN’s contracting policies and procedures and use of standardized contracting forms and templates.

10.2 Scope

- 10.2.1 At least once a year, the GN will assess the nature of its contracting for goods and services as explained in this procedure.
- 10.2.2 At least once a year, the NNI Policy Review Committee shall review measurable contracting performance targets, and establish performance targets for the next year and make any recommendations to GN procurement policies and implementing measures that are necessary to meet the objectives of the NNI Policy.
- 10.2.3 The GN has developed a "Contract Awards" public site on the Internet. All contracts resulting from RFTs and RFPs listed on the Requests for Tenders and Proposals web site must be published on this Contract Awards page <http://public.gov.nu.ca>.



10.3 Monitoring and Evaluation Procedures

10.3.1 All GN departments, with the exception of the Legislative Assembly, will provide the contracting information required in accordance with this procedure to the Department of Community and Government Services, Purchasing, Logistics & Contract Support Section by May 31st of each year, and will be responsible for the verification of such information whenever necessary.

10.3.1.1 CGS will assist departments in verifying the accuracy of the data and compile it into the following annual reports for tabling in the Legislative Assembly:

- i. Procurement Activity Report;
- ii. Contract Activity Report;
- iii. Lease Activity Report.

10.3.2 All public and crown agencies, boards, hamlets and the City of Iqaluit will provide the contracting information required,¹⁴ in accordance with this procedure, to the NNI Secretariat of the Department of Economic Development & Transportation (EDT) by May 31st of each year, and will be responsible for the verification of such information whenever necessary.

10.3.3 Whenever necessary, the GN will review and modify these procedures. This review will be undertaken by the NNI Review Committee in consultation with all GN departments, boards and agencies.

10.3.4 The NNI Policy Review Committee will be responsible to coordinate consultation between the GN and NTI on procedures that will be used to monitor and evaluate GN contracts.

10.3.5 The Legislative Assembly will report directly to Cabinet.

10.4 GN Contract Reporting Database (CRDB)

10.4.1 CGS Finance Division has implemented a standard process for collecting GN contracting activity data and coordinating the results in order to produce annual contracting activity reports. This data collection program is referred to as the GN Contract Reporting Database (CRDB).

10.4.2 All GN departments, with the exception of the Legislative Assembly, have access to this database for the purposes of reporting and tracking their RFTs, RFPs and contract award activities.

¹⁴ NNI Policy s.5.1 and s.14.1(c)

10. ABOUT REPORTING CONTRACTS



- 10.4.3 Each department has a designated contract reporting coordinator responsible for ensuring their department's contracting activity is reported in a timely manner.

10.5 CRDB Reporting Requirements

- 10.5.1 Report all contracts greater than \$5,000 in value, entered into by way of RFT, RFP, sole source or negotiated, including:

- i. air charters,
- ii. architectural/engineering services,
- iii. consultant contract,
- iv. construction contracts,
- v. maintenance contracts,
- vi. service contracts,
- vii. real property leases,
- viii. any other type of contract.

- 10.5.2 Reporting RFT and RFP Information:

- 10.5.2.1 Report RFT and RFP results information using the Contract Management Reporting form upon issuing the RFT or RFP. Forward the original to your departmental contract reporting coordinator for data entry into the CRDB and retain a copy for your file.

- 10.5.2.2 The following information must, at a minimum, be reported:

- i. RFT/RFP reference number;
- ii. name or brief description of the contract;
- iii. name of community or location benefiting from the contract;
- iv. contracting method (i.e., public or invited, RFT, RFP or sole source);
- v. contract type (i.e., air charter, architectural/engineering, consultant, construction, service contract, etc.)
 - for construction RFTs, report the minimum Inuit labour percent requirement;
- vi. RFT/RFP closing date (i.e., deadline for receiving bids/proposals);
- vii. contact information:
 - name of the person issuing the RFT/RFP documents;
 - phone number for vendors to call to request documents and ask questions about the work.

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10.5.2.3 RFT and RFP information must be included on the GN's RFT/RFP web site www.nunavuttenders.ca. Refer to Chapter 2 – About Contracting – General – for more information on how to include your RFT or RFP on this web site. Also e-mail the information listed above to Contract_Reporting@gov.nu.ca.

10.5.3 Reporting Tender/Proposal Evaluations and Contract Awards

10.5.3.1 Report evaluation and award information using your copy of the Contract Management Reporting form previously used to report the RFT/RFP notice. Fill out all remaining fields on the form and forward it to your departmental contract reporting coordinator for entry into the CRDB. Retain a copy for your file.

10.5.3.1.1 The following evaluation data must be reported:

- i. the total number of bid or proposal submissions received;
- ii. the number of submissions from companies included on the GN's NNI Registry;
- iii. the number of submissions from companies included on the NTI Inuit Firms Registry;
- iv. for RFTs only, the 3 low bid values (this is not required for RFPs);
- v. the number of rejected or disqualified bids if any;
- vi. did the application of NNI adjustments affect who won the contract;
- vii. was the RFT or RFP was canceled (i.e., no contract awarded).

10.5.3.1.2 The following contract award information must be reported:

- i. name of successful bidder or proponent;
- ii. location of the contractor's office;
- iii. contractor's NNI status (i.e., Nunavut Business, Inuit Firm, local or other);
- iv. award date (this is the date that the contract is signed,
- for architectural/engineering and major works construction contracts it is the date of the award letter);
- v. award value (at the time of contract award – do not include subsequent changes or increases in value and for multi-year terms, enter the full award value of the contract);
- vi. for construction contracts, enter the total labour value and the Inuit labour value;
- vii. contract start date;
- viii. contract end or completion date;
- ix. if there is an extension clause in the contract;
- x. the action date for extending the contract or for Initiating new competitive process.

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- 10.5.3.1.3 The following construction and maintenance contract completion information must be reported on final completion:
- i. total labour and total Inuit labour values achieved at the end of construction or at the end of the maintenance contract;
 - ii. Inuit labour NNI bonus or penalty value and whether or not it was paid or assessed.

10.5.4 Report all extensions of existing contracts.

10.6 Preparation of Annual Contracting Activity Report

10.6.1 CGS Purchasing, Logistics & Contract Support Section will prepare the annual Contracting Activity Report (CAR) and make it available to the NNI Policy Review Committee through the NNI Secretariat Division of the Department of Economic Development and Transportation (EDT).

10.6.2 The Report will analyze the following information:

- i. the total number and value of all contracts awarded;
- ii. the number and value of contract types;
- iii. the number and value of contract types awarded through a competitive RFT or RFP process (e.g. public and invited);
- iv. the number and value of contract types awarded through a non-competitive process (e.g. sole source, sole vendor or negotiated);
- v. the number, value and nature of sole sources to other (non registered) firms;
- vi. the number, value and percentages of contracts awarded to Inuit Firms, Nunavut Businesses and other (non-registered) firms, overall and by contract type;
- vii. the number and value of contracts awarded to local businesses;
- viii. the number of bids and proposals received from Inuit and Nunavut firms for contract types;
- ix. the average percentages of Inuit labour required, bid and achieved on construction and maintenance contracts;
- x. the value of Inuit labour bonuses payable on construction contracts, by region;
- xi. the value of Inuit labour penalties assessable on construction and maintenance contracts; and
- xii. a comparison to results for prior years.

10. ABOUT REPORTING CONTRACTS



- 10.6.3 The data noted above will be analyzed on an annual basis to provide the following:
- i. change in number of all contracts awarded by the GN over the prior year;
 - ii. change in value of all contracts awarded by the GN over the prior year;
 - iii. change in number, value and percent by number and value of contracts awarded to Inuit firms, Nunavut Businesses, and other (non-registered firms) over the previous year.
 - iv. change in average percent of Inuit labour required, bid and achieved by region over the prior year.
 - v. changes in value of anticipated Inuit labour bonuses, value of bonuses paid and value of Inuit labour penalties assessed over the prior year.

- 10.6.4 Where appropriate this analysis will be undertaken based on the community and region where the work took place and by contract type.

10.7 Annual Plan

- 10.7.1 In order to plan for the various reviews and reports required by these procedures, the responsible department, as defined by the NNI Policy, will develop an annual plan that shall include the following:
- i. a proposed work plan and schedule of meetings for the NNI Policy Review Committee;
 - ii. a proposed schedule for regular contracting workshops;
 - iii. a proposed schedule for the translation of contracting procedures manuals, contract template documents and workshop materials into Inuktitut, Inuinnaqtun and French.

10.8 Do Not Report

- i. Grants or contribution agreements;
- ii. contracts or purchase orders awarded by CGS Purchasing on your behalf – Purchasing will report them for you.

11. ABOUT CONTRACTING FORMS AND TEMPLATES



11.1 Contract Form Selection Guide

11.1.1 CGS Contract Support has developed a four-step contract form selection guide for use in determining which contract forms and RFT/RFP templates to use:

Step 1: Determine whether to Request Tenders or Proposals:		
1) I know exactly what I want and how to do it; I only need to know the price: RFT		
2) I know what I want but not how to do it. I need ideas and a price: RFP		
Step 2: Determine whether to Sole Source, Invite or Advertise Publicly		
Activity	Threshold	Contracting Method
All Contracting Activities	Up to \$5,000	Sole Source
<u>Except A/E and Construction</u>	\$5,001 - \$25,000	Invite
	Over \$25,000	Advertise Publicly
<u>A/E and Construction</u>	\$5,001 - \$100,000	Invite
	Over \$100,000	Advertise Publicly
Step 3: Determine what forms to Use		
Activity	Value	Form(s)
All (except A/E)	Up to \$5,000	LCA (Nunavut Only) or SC (Outside Vendors)
Air Charter (AC)	Over \$5,000	Contact CGS Purchasing – Logistics Manager Requisition - Air Charter Request
Architectural/ Engineering (A/E)		Contact CGS Technical Services
	No Design	A/E Services Agreement (Short Form)
	Design	A/E RFP & Full Services Agreement (A/E Long)
Consultant Services (CS)	Over \$5,000	RFP with Pro-Forma Agreement attached
Construction	\$5,001 - \$100,000	Contact CGS Asset Management
or As & When Maintenance (MC)		RFT Construction or Services (Minor Works)
Construction (C)	Over \$100,000	Contact CGS Technical Services Construction Tender & Contract (Major Works)
Goods (PO)	Over \$5,000	Requisition - Supplies or Services (RSS)
Services (SC)	\$5,001 - \$25,000	RFQ or RFP with SC Terms Attached
	Over \$25,000	RFT or RFP with SC Terms Attached
Real Property Lease (PL) (including office space & temporary accommodations)		Contact CGS Property Management Real Property RFP & Lease Agreement
Standing Offer Agreement (SOA)		Requires Requisition - Contact Purchasing
As & When Required Services		Requires Requisition - Contact Purchasing
Step 4: Determine whether your department has authority to contract for:		
AC >\$5,000, A/E, C, MC, PL and PO		CGS
LCA and AC <=\$5,000, CS, SC		All Departments
Insurance Contracts		FIN
Legal Services		JUS

11. ABOUT CONTRACTING FORMS AND TEMPLATES



11.2 Standard GN Contract Forms and Templates

- 11.2.1 The Financial Administration Manual (FAM) Directive 808 controls the formation and administration of government contracts other than employment contracts.
- 11.2.2 A standardized contract is a type of recurring contract approved by the Legal Division of the Department of Justice, where the terms and conditions remain unchanged, except for the particulars of the parties involved and the description of the work.
- 11.2.3 CGS has developed a number of standard contract form documents which have been reviewed and approved by the Department of Justice and are available for general use by GN departments, boards and agencies.
- 11.2.4 FAM Directive 808 requires that contracts exceeding \$50,000 in value that are not on a standardized form or template must be approved by the Legal Division, Department of Justice. CGS Contract Support recommends that non-standard contracts not exceeding \$50,000 comply with the requirements of FAM Directive 808 Appendix A, (a) through (f).
- 11.2.5 When a non-standard contract form or template is to be used, the document must be forwarded to CGS Purchasing, Logistics & Contract Support prior to issuance for coordinating the legal review and approval. Similarly, if an altered version of a standard contract form is to be used, the alterations must be forwarded for legal review and approval.
- 11.2.6 This chapter provides information and procedures for using the standardized contract templates that CGS and Justice have provided for use when contracting for the GN.

11.3 Forms for Sole Sourcing

- 11.3.1 A “sole source” is not a contract type – it is a contracting method. Sole sourcing simply means asking only one supplier to submit a tender or proposal. The contract form to use is determined by what good or service is being purchased.

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11.3.2 Local Contract Authority (LCA)

11.3.2.1 The most common form of contract that can be used for sole sourcing contracts of any contracting activity is the Local Contract Authority (LCA). This form is provided to facilitate purchasing of most basic types of goods and services that will not exceed \$5,000. Use of the LCA is governed by FAM Directive 808-3.

11.3.2.2 LCA restrictions:

- i. must not exceed \$5,000;
- ii. goods or services must be provided within thirty (30) days;
- iii. must not be used to purchase goods or services from suppliers located outside of Nunavut;
- iv. must not use more than one LCA to cover a single purchase of goods or services;
- v. employment contracts are not permitted.

11.3.2.3 LCA administration

- i. LCA books are available from the CGS Warehouse Revolving Stock Catalogue. Contact your internal Finance Division to find out if your Division or Section has an LCA book or order one using a Requisition for Stock Items form.
- ii. You must have financial signing and contract authority to sign LCAs. If you do not have authority to enter into contracts on behalf of the GN, you cannot sign these contracts.

11.3.2.4 Each purchase using an LCA requires a copy of the invoice to be attached to the yellow copy in the LCA book. The original of the invoice is attached with the green copy and forwarded for financial processing. Keep a copy of the invoice and LCA for your file.

11. ABOUT CONTRACTING FORMS AND TEMPLATES



11.4 Forms for Requesting Tenders

- 11.4.1.1 The GN has the following forms available for those activities normally associated with requesting tenders:
- i. Request for Tenders - Air Charters
 - ii. Request for Tender and Purchase Order – Goods
 - iii. Service Contract
 - iv. Request for Tenders – Standing Offer Agreement
 - v. Request for Tenders – Construction or Services Contract (Minor Works)
 - vi. Construction RFT and Contract Document (Major Works)
- 11.4.2 **Request for Tenders – Air Charter Services Contract (AC)**
- 11.4.2.1 This form is specifically designed for obtaining bids for aircraft chartering requirements. It is set out as a request for tender and contract form so that the successful bid can be countersigned to become the actual contract document.
- 11.4.2.2 Air charters (AC) up to \$5,000 may also be purchased on the LCA form, but the air charter form provides better protection for the GN in terms of aircraft insurance and conditions regarding who will be responsible for which costs in the event of bad weather. For this reason, CGS Logistics recommends using the GN AC form rather than the LCA.
- 11.4.2.3 Air charters should not be purchased on a purchase order form.
- 11.4.2.4 Departments may purchase air charters up to \$5,000, in accordance with the GN Air Charter Policy, using this form. Air charters in excess of \$5,000 must be competitively tendered by CGS Purchasing, Logistics & Contract Support, with few exceptions. The Air Charter Policy is set out in FAM Directive 815.
- 11.4.2.5 For air charters in excess of \$5,000, complete the air charter request form and forward it to the CGS Logistics Manager. Refer to Chapter 13 – About Requesting Air Charters – for more information.

11. ABOUT CONTRACTING FORMS AND TEMPLATES



11.4.3 Request for Tender and Purchase Order – Goods (RFTPO)

11.4.3.1 This form is used by CGS Purchasing to request quotes for goods over \$5,000.

11.4.3.2 For goods purchasing, departments must complete and submit a Requisition for Supplies or Services (RS) describing the good that is required. CGS Purchasing will then request tenders on the client department's behalf.

11.4.3.3 This form also allows CGS Purchasing to provide microcomputer specifications and incorporate specific supplementary terms and conditions in a standardized format.

11.4.3.4 For informatics related purchases, including software, hardware and program development, departments must complete and submit an RS describing the requirement. CGS Purchasing will then forward the RS to CGS IT for review and compliance with the GN's IT standards, and on approval, Purchasing will then request tenders on the client department's behalf.

11.4.4 Service Contract (SC)

11.4.4.1 This single form RFT and acceptance form is designed specifically for contracting for general services. This form should not be used to contract for consultant services.

11.4.4.2 Write a general description of services required in the description section of the form. Include units of measure and estimated quantities, such as hours of work or number of reports.

11.4.4.3 Ensure the purpose and requirements of the contract are clearly set out. Make reference to a detailed scope of work or terms of reference which must be attached as an appendix.

11.4.4.4 Refer to section 5.7 of Chapter 5 – About Requesting Proposals – for information on developing a terms of reference or scope of work. Also refer to FAM Directives 808 and 808-5 for procedures for contracts with a person or employee.

11.4.4.5 For contracts up to \$25,000, e-mail the SC in an Adobe .pdf file format or fax it to the vendors who have been invited to submit bids. Assign an RFT reference number, a closing date and time (a deadline for bids to be received) and a contact person's name, location and fax number for where the bids must be submitted.

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- 11.4.4.6 Bids must be signed by the bidder and be submitted on time. Late bids must be rejected as per the Contract Regulations.
- 11.4.4.7 The contract is awarded to the lowest responsive and responsible bidder after NNI adjustments are applied to the bid prices as per the Contract Regulations. Excel spreadsheets called 'NNI Bid Adjustment Calculators' are available for applying NNI adjustments to prices. Refer to Chapter 11 – About Contracting Forms and Templates' – for more information.
- 11.4.4.8 A copy of all invitations and bids received must be retained on the RFT file. For this reason, a copy of the lowest acceptable bid is made for the file before it is signed by the contract authority. Once signed, it is faxed back to the successful bidder to notify them of the contract award.
- 11.4.4.9 The original of the signed contract is forwarded for financial obligation. A copy is retained for the contract file. Since the SC form has its own financial obligation section, a separate obligation form is not required.
- 11.4.4.10 The SC form can also be used as the financial commitment or obligation form for contracts where the SC is not the actual contract. In this case, do not place any signatures on the SC form.
- i. Simply fill out the financial coding section of the form, provide a document reference or contract number (preferably the same as the RFT reference number) and simply write "Obligation Only – Contract Attached" in the description field.
 - ii. The contract authority need only sign in the financial obligation section of the form. The contractor's signature is NOT required. Refer to FAM Directive 808, section 5.1, and the terms and conditions of the SC form.

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- 11.4.5 **Standing Offer Agreement (SOA) – Goods or Services RFT**
- 11.4.5.1 CGS Purchasing uses this form when requesting tenders to establish SOAs on behalf of client departments. To set up a SOA, complete a Requisition for Supplies and Services (RS) and forward it to CGS Purchasing, Logistics & Contract Support.
- 11.4.5.2 CGS Purchasing will assist client departments requesting SOAs to determine their requirements and will require a commitment to use the agreement. Other departments will be advised of the request for SOA and will be invited to use the SOA as well.
- 11.4.5.3 Include an estimated or anticipated volume of work or goods into the RFT documents to encourage more favorable bids. Also set out the SOA term and value limit on contracts to be award under the SOA. CGS Contract Support recommends \$25,000.
- 11.4.5.4 In many cases it may be impractical or restrictive on competition to have SOAs exclusively with one vendor. For this reason, the RFT document should clearly indicate that the resulting SOA will be non-exclusive.
- 11.4.5.5 In the case of a non-exclusive SOA, the lowest acceptable bid must always be given the first right of refusal for the work. Because tenders have already been submitted to establish the prices, there should be no reason to request quotes from amongst the SOA vendors.
- 11.4.5.6 SOAs are not contracts so nothing needs to be signed until a contract is awarded. Individual contracts are formed only when goods or services are purchased under the SOA. Refer to Chapter 14 – About Standing Offer Agreements (SOAs) – for more information. Also refer to FAM Directive 808-4.
- 11.4.5.7 The individual contract form to be used under the SOA should be set out in the SOA RFT and will generally be the:
- i. LCA for goods/services up to \$5,000 and purchased in Nunavut;
 - ii. SC for services up to \$5,000 purchased outside of Nunavut or any other value not exceeding the SOA limit; or
 - iii. purchase order for goods purchased by CGS Purchasing.

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- 11.4.6 **Request for Tenders – Construction or Services Contract (MC)**
- 11.4.6.1 This single form RFT and contract acceptance form is designed specifically for contracting for low value construction, operations and maintenance work. It is more commonly referred to as the “Minor Works Front End”.
- 11.4.6.2 For the purposes of maintenance related services, contact the CGS Property Management Division with a work order rather than hiring a contractor with an LCA. Property Management will have the work done by their contractor under an existing As and When Maintenance contract.
- 11.4.6.3 For the purposes of minor alterations and renovation work, contact CGS Property Management to ascertain whether the work is operations and maintenance (O&M) or capital and if it can be done by Property Management under an existing As and When contract, or if it should be contracted out. For work that must be contracted out, CGS will manage the project on behalf of the client department.
- 11.4.6.4 The minor works RFT and contract form should be used to request tenders for any service that will involve a combination of labour and materials or equipment such as cleaning services, snow removal, minor construction or renovations, construction and installation of office furniture, etc.
- 11.4.6.5 When requesting tenders for campground facilities in Nunavut parks, add the “Parks Addendum”.

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11.4.7 **Construction Tender and Contract Document (CON – (Major Works)**

11.4.7.1 This document is a single form RFT and contract document specifically for construction in excess of \$100,000. This is the only form of contract resulting from an RFT that requires a letter for acceptance.

11.4.7.2 CGS and EDT are the only departments with authority to enter into construction contracts. Contact CGS Technical Services Division for advice and assistance.

11.4.7.3 The GN Construction RFT and Contract document provides for a two phase bidding procedure. This requires bidders to submit the tender on the stated closing date and time (Phase 1), and to submit the NNI related Appendix B-2 “Substantiation of Bid Adjustment” forms (Phase 2) within twenty-four (24) hours, excluding holidays and weekends.

- i. Phase I is the advertised RFT closing date and the date that tenders, amendments, and all appendices, with the exception of Appendix B-2, are due. For the Phase 1 closing, sealed bids and amendments received in time for the Phase 1 closing are not opened, but the name of the bidders are announced and recorded on a tender register. Tenders are then stored in a secure location until the following day.
- ii. As soon as possible after the Phase 2 closing date and time, the tender opening committee meets for the Phase 2 closing. The Phase 2 closing is conducted in the manner described in section 4.22 of Chapter 4 – About Requesting Tenders. Bids are opened by the tender opening committee, and the remaining tender information is announced, bid forms are initialed, and the tender register that was started at the Phase 1 closing is completed and re-signed by the Phase 2 tender opening committee.

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11.5 Forms for Requesting Proposals

11.5.1 The following RFP and contract forms have been developed to facilitate contracting for these services:

- i. A/E Services RFP
 - Full Services Agreement (Long Form)
 - Short Form Agreement
- ii. General Consulting Services RFP
 - Pro-Forma Agreement

11.5.2 A/E Services – RFP (for engineering and design work)

11.5.2.1 CGS, together with the Department of Justice, has developed a specific RFP template and criteria for requesting architectural/engineering services proposals.

11.5.2.2 Although departments have authority to contract for this service, when considering hiring an architect or engineer to perform a service, departments should consult with CGS Technical Services Project Support for advice and assistance due to the specialized, technical nature of the work.

11.5.2.3 CGS Technical Services will ensure that the consultants hired meet the requirements for registration in the NWT and Nunavut Association of Professional Engineers and Geoscientists (NAPEG) and that the work meets the requirements of GN, legal and building code standards.

11.5.3 Full Services Agreement (A/E Long Form)

11.5.3.1 This contract form must always be used when full design services are required. Consult with CGS Technical Services Project Support for assistance.

11.5.3.2 When requesting proposals for A/E services, the full services agreement is not attached to the RFP but is referred to in the instructions to proponents.

11.5.3.3 If using the short form agreement, change the contract reference in the RFP instruction.

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11.5.4 Short Form Agreement (Architects/Engineers but not a full design)

11.5.4.1 This contract form is more appropriate for geotechnical evaluations, site surveys, schematic drawings, feasibility studies, facility planning and any other work where an engineer or architect's services are needed but a full design is not required. The short form agreement should be attached to the A/E RFP.

11.5.5 Request for Proposals – General or Consultant Services (RFP)

11.5.5.1 This template is used to request proposals for general services or consultants and contains the standard pro-forma agreement for consultant services.

11.5.5.2 General consultant services will be any purchased service that involves the provision of professional advice such as business studies, non engineering/building feasibility studies, specialized project management or program development services, accounting, auditing and other professional services but not architects and engineers.

11.5.5.3 The RFP template is set up with standardized non-modifiable template text in black font and modifiable text in blue italics. The template consists of three main sections:

11.5.5.3.1 Instructions to Proponents: Provide an RFP reference number, closing date and time and location for proposal submissions, the RFP name and project location, and contact information for enquiries.

11.5.5.3.2 Terms of Reference: State the project goals and objectives and provide the who, what, when, where, why and how of the project's impact on the departments operations. Give enough information about the problem requiring the solution so that proponents can understand your needs and provide the best solution.

11.5.5.3.3 Evaluation: List the evaluation criteria in the order of their importance relative to the project with the highest weighted criterion at the top of the list and the lowest weighted at the bottom. Give proponents adequate proposal response guidelines to tell them what you expect to see in their responses. The RFP template response guidelines are provided as a draft only and are meant to prompt users as to what kind of information to request from proponents. Accordingly, they should be modified to suit the purposes of the RFP.

11.5.5.4 Refer to Chapter 5 – About Requesting Proposals – for more detailed guidelines on preparing an RFP.

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11.5.5.5 **General Consulting Services Pro-forma Agreement**

11.5.5.5.1 This template represents the terms and conditions of the contract that will ultimately be entered into as a result of the RFP. For hiring a consultant, use the standard RFP template with the pro-forma agreement attached.

11.5.5.5.2 Attaching the pro-forma allows all proponents to become familiar with the contractual terms and conditions that are considered to be mandatory. This precludes proponents from introducing their own standard form contract, which may likely contain terms unfavorable to the GN, as part of the proposal. Note that attaching a pro-forma to an RFP is one of the elements of Contract A.

11.5.5.5.3 Note that attaching a pro-forma or service contract implies a non-negotiable RFP, which is really closer to an RFT than an RFP; however, CGS Purchasing recommends that it be attached for standard goods and services contracts, including general consulting services.

11.5.5.5.4 A GN contract template would not be attached to an RFP for a unique or non-standard service where the terms and conditions of a standardized template are not adequate or appropriate, and where the GN wishes to negotiate the contract terms from scratch. An RFP of this nature should only be undertaken with the advice and assistance of CGS Purchasing, Logistics & Contract Support and the Department of Justice.

11.5.5.6 **Standing Offer Agreement – Services RFP**

11.5.5.6.1 This form accommodates requesting proposals to establish SOAs for low value, frequently required services.

11.5.5.6.2 The only thing different about this RFP compared to the general RFP are the instructions to proponents. The instructions to proponents have been modified to reflect FAM Directive 808-4 and they indicate that no contractual rights or obligations arise until an individual contract is awarded.

11.5.5.6.3 Departments wishing to establish a SOA through an RFP process must contact CGS Purchasing, Logistics & Contract Support. Complete a Requisition for Supplies or Services and forward it to CGS Purchasing for processing.

11.5.5.6.4 CGS Purchasing will work with the client department to ascertain needs, anticipated volumes, work/project requirements, etc., and will manage the RFP process on the client's behalf.

11.5.5.6.5 CGS Purchasing will require a commitment from the department that the SOA will be used and will invite other departments to use the SOA as well.

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11.6 Support Forms and Templates

- 11.6.1 CGS Contract Support has also developed a number of standard forms and templates for use in support of the GN's various contracting processes. These are standard forms of letters for inviting tenders or proposals, accepting tenders, rejecting bids and letters of regret to unsuccessful bidders.
- 11.6.2 A supporting form or template is available for facilitating application of most procedures set out in this chapter. CGS has developed RFT and RFP checklists to assist public officers with ensuring standard contracting procedures are followed throughout the contracting process.
- 11.6.3 This chapter identifies supporting forms in their order of appearance within the contracting process:
- i. approval and initiation;
 - ii. advertising forms;
 - iii. closing and evaluation forms;
 - iv. award and obligation forms;
 - v. contract administration forms.

11.7 Approval and Initiation Forms

- 11.7.1 Once approval has been given, public officers can then issue the RFT or RFP documents. This section sets out a number of forms used to secure approval contract on behalf of the GN.
- 11.7.2 **Requisition for Supplies and Services (RS):** A properly completed RS, including financial commitment, is the recommended document to use to obtain approval to proceed with requesting tenders or proposals. In addition to providing funding and information about the required product, this form also provides a unique reference number that can be used to identify the RFT/RFP and resulting contract or purchase order (PO).
- 11.7.3 **Request for Air Charter:** This form is used to record the charter requirements, including an itinerary (departure, destination, intermediate stops and hold times), number of passengers, estimated baggage/freight amounts, etc., and a budget.
- 11.7.3.1 A requisition for air charters must be filled out, including financial coding and financial signing authorities, and forwarded to the CGS Logistics Manager at least fourteen (14) days in advance of the required travel dates.

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- 11.7.3.2 A copy of the completed air charter request is to be forwarded to the requisitioning department's internal Finance Division to request commitment of funds for the charter.
- 11.7.3.3 Upon receipt of the completed air charter request form, the CGS Logistics Manager will solicit quotations or invite tenders on behalf of the requisitioning department. All contracts will be awarded to the lowest responsive and responsible bidder as per the Contract Regulations.
- 11.7.4 **Sole Source Data and Request for Approval Form:** This form is used to obtain Deputy Minister approval to request a tender or proposal from only one vendor. Provide the contract name and location, contract type, closing date, reason for sole source, and financial coding. The form must be signed off for approval by all applicable levels of authority prior to issuing the RFT/RFP or contract. A request for proposals is required where the scope of work cannot be specified by the owner. The proposal must still be evaluated to ensure the project objectives will be met.
- 11.7.5 **Invitational RFT/RFP Data and Approval Form:** This form is used to obtain approval to invite tenders for minor works construction and maintenance contracts or RFPs for A/E (building design) and general consulting services.
- 11.7.5.1 When preparing the Invitational RFT/RFP Data and Approval form, it is a requirement for departments to search the NNI and NTI registries to include Nunavut Businesses and Inuit Firms on the invitation list. Companies from outside Nunavut are only invited where there are not enough Nunavut companies to achieve sufficient competition (at least three capable and available).
- 11.7.6 **Public RFT/RFP Data and Approval Form:** This form is used to obtain approval to initiate and advertise a competitive RFT/RFP process for A/E or major works construction services on capital projects. A minimum of one week is required from preparation of the form to the earliest date the ad is to appear in the papers.

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11.8 Advertising Forms

11.8.1 **Individual RFT/RFP Ad:** CGS Contract Support has developed a single standardized newspaper advertising template for notifying potential bidders and proponents of general goods and services contracting opportunities, except construction, in the GN. This template can be used for the following activities:

- i. goods or general services RFTs/RFPs;
- ii. general services, A/E or consultant RFPs; and
- iii. parks RFTs/RFPs.

11.8.1.1 The RFT/RFP ad templates have certain parts in black text (non-modifiable) as well as parts in blue italicized text, which must be modified to suit the needs of the particular RFT or RFP. Template Instructions are provided on the second page of the ad template. Follow the instructions and delete them once the ad is complete.

- i. Delete the reference to RFT or RFP as applicable.
- ii. Put in the correct department (Minister name is optional).
- iii. Provide the project name, a brief description of work sufficient to allow vendors to know what's involved, and identify the project community for the purposes of the NNI local adjustment.
- iv. If the ad is for a parks contract, use the IIBA sentence and delete the NNI sentence.
- v. In the privilege clause (all or any tenders/proposals not necessarily accepted), delete the word "tenders" if you are requesting proposals or vice versa.
- vi. Provide a closing location, date and time where indicated.
- vii. Revise the inquiries section as appropriate and delete the reference to tender or proposal as appropriate in the obtain documents from and address inquiries to statements.
- viii. Delete the Template Use Instructions section and delete the document footer by double clicking on it.
- ix. Ensure all blue, italicized font is revised as appropriate and ensure the final ad is done in Arial Narrow, all black and size 10 font with no italics.
- x. Once the ad is ready, send it to ads@ayaya.ca for publishing with selected newspapers, dates and languages information.

11.8.2 Information about the RFT/RFP can also be placed on the Eastern Arctic TV channel through the advertising SOA.

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- 11.8.3 **Bulk RFT/RFP Ad:** CGS Purchasing has developed a generic bulk ad format for inclusion of basic information regarding GN business opportunities. This form of advertising provides a greater economic savings than individually advertising RFTs and RFPs. Departments are welcome to include their RFTs and RFPs in this bulk ad. Refer to RFT/RFP Notification Listing below to see what information is required for the bulk RFT/RFP ad. E-mail the particulars and contact information to the CGS Contracts Coordinator at ContractReporting@gov.nu.ca.
- 11.8.3.1 The bulk ad is published in the Nunatsiaq News weekly in English and Inuktitut. If your RFT or RFP is targeting a community that speaks Inuinnaqtun or French, be sure to request adequate translation for your ad or consider advertising separately.
- 11.8.4 **Major Works Construction RFT Ad:** Unless otherwise accommodated by the Bulk RFT/RFP ad, these RFTs may use a separate ad if the closing date, time and location, and RFT document fee requirements are not made available in the RFT document. The RFT template includes an optional ad which may form part of the RFT document to include the physical location for submission of sealed bids, a requirement for the bid to be on the forms provided, and a fee for blue prints and specifications. The fee for blueprint and specification documents is set by the Financial Management Board (FMB).
- 11.8.4.1 For these RFTs, the draft ad is required with the Public RFT/RFP Data and Approval forms.
- 11.8.5 **Public Notice of Invited/Public RFT/RFP:** Public notices are required for major and minor works construction or services RFTs and must be posted in the community where the work is required in English and Inuktitut (or Inuinnaqtun in Kitikmeot communities).
- 11.8.5.1 Use the same project name and location as provided in the RFT documents. Give a brief description of what is required (if for major works, use the same description as provided in the ad). Also provide the closing date, time and location, and contact information where potential bidders can call and ask for documents or questions about the work.
- 11.8.5.2 Request translation services from CLEY's Language Bureau or from a freelance translator.
- 11.8.5.3 The public notice form of advertising can also be used for non-construction related goods or services by other departments at the contract authority's discretion.
- 11.8.5.4 This notice is sent to the hamlet where the project work is required in care of the Municipal Liaison Officer (MLO) with an accompanying cover letter.

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- 11.8.6 **Municipal Liaison Officer (MLO) Cover Letter:** CGS regional projects offices use the MLO letter to send the public notice and a copy of the RFT document to the hamlet office of the project community.
- 11.8.6.1 This letter asks the MLO to post the notice on public bulletin boards within the community and to show the RFT/RFP document to interested contractors within the community. Contact information is also given for interested contractors to request a copy of the RFT document or inquire about the project.
- 11.8.6.2 The letter is initially faxed, with the public notice, and the originals are affixed to the RFT document and then sent to the hamlet office by air cargo. This is not done for RFTs in Iqaluit.
- 11.8.7 **Northwest Territories Construction Association Bulletin (NWTCA) by Fax:** This fax cover sheet is to be used by the CGS regional projects offices to request the NWTCA to include their RFTs and RFPs in the NWTCA weekly bulletin.
- 11.8.8 **Request for Tenders and Proposals Web Site:** All departments are required to include their RFT or RFP on the GN's RFT/RFP Notification Listing for all contracts over \$5,000. CGS maintains this listing on behalf of the GN and uploads it to the Nunavut Tenders web page daily (www.nunavuttenders.ca).
- 11.8.8.1 To have your RFT/RFP included on the website, send an e-mail to ContractReporting@gov.nu.ca and provide the following information:
- i. RFT/RFP reference number;
 - ii. project or contract name and location;
 - iii. issue date (date documents will be available to vendors);
 - iv. closing date (date bids/proposals must be submitted);
 - v. contact name, phone number and e-mail address (for document requests and inquiries).
- 11.8.8.2 If the business community is showing very little interest or no one has called for documents over a week into the RFT/RFP period, fax a copy of the ad to all known contractors providing the service you are contracting for. To find these companies, search the NNI and NTI registries and any other trade directory available such as the local phone book, Yellow Pages and Frasers. Also contact CGS Purchasing for assistance on locating potential vendors.

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11.9 RFT/RFP Administration Forms

11.9.1 **Contract Management Reporting Form:** This form is used to report your RFT/RFP information to your departmental contract reporting coordinator. Refer to Chapter 10 – About Reporting Contracts – or contact CGS Contract Support for more information on completing this form.

11.9.2 **Invitation to Submit Tender or Proposal – Fax Cover Sheet:** This fax cover sheet can be used for inviting tenders and proposals up to \$25,000. The black font is standard and need not be modified. Only the blue italicized text need be modified. Provide the RFT/RFP reference number, project name, location and a brief description of the work required. State the closing date, time and location and provide a contact person for inquiries.

11.9.3 **Document Transmittal:** This form is primarily used by CGS for minor and major works RFTs and A/E RFP and contract documents that are being sent out to contractors by air cargo. Any department can use this form to maintain a record of what is sent, when it is sent, to whom it is sent and why. It can be used for RFT, RFP and contract documents, or to track any other document being sent to other GN departments or to outside organizations.

11.9.4 **Plan Holder’s Log/Proponents’ List:** A plan holder’s log or proponents’ list, as appropriate, must be maintained to ensure everyone who has received the RFT/RFP document also receives any changes or amendments to the RFT/RFP call.

11.9.4.1 For RFTs, use the plan holder’s log, and for RFPs use the proponents’ list. For publicly advertised RFTs, the list must contain the name, address and contact information for the bidder and the set number, date and method the RFT document was sent out. This information is also required for document fee invoicing purposes.

11.9.5 **Fax Cover for Plan Holder’s Log/Proponents’ List:** This fax cover sheet is used to primarily by CGS regional projects offices to notify bidders or proponents if documents are being distributed from another RFT/RFP opening centre. For example, if documents are being issued from Pond Inlet and Iqaluit CGS offices, each office is responsible for maintaining their own plan holder’s log. If a bidder requests the log from the Iqaluit office, Iqaluit must notify the bidder of the list maintained by the Pond Inlet office so the bidder can request that list as well.

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- 11.9.6 **Duties and Responsibilities of Evaluation Committee – Sign-Off Sheet:** This form must be read and signed off by all members of the RFP team, especially those who will participate in the evaluation of proposals. It is important to get this form signed off as early as possible in the RFP process – preferably when the team commences drafting the RFP terms of reference.
- 11.9.7 **RFT Addendum:** This is a standard form for issuing a change to the RFT documents. Refer to the section, division, appendix, clause or page number, as applicable, so bidders will know exactly where to look and what is being changed. Make sure to include the number of pages of any attachments into the header and indicate the correct addendum number.
- 11.9.8 **RFP Addendum:** This form is similar to the RFT addendum but the instructions to proponents are different. In this addendum, reference should be made to the appropriate section, clause and page number of the RFP and detailed instructions should be provided so that proponents will know exactly what is being changed.
- 11.9.9 **Clarification Letter:** There is no standard format for clarifications but they must be in writing. The RFP addendum form can be modified for the purposes of requesting clarifications at the discretion of the contract authority.
- 11.9.10 **Not Bidding Regret Letter:** This brief letter is used to fax a confirmation of not bidding to a vendor who has notified the contract authority that they won't be bidding or submitting a proposal. The letter indicates regret that the vendor is not going to participate, and advises that GN will continue to invite it for future contract opportunities. This is an optional form.
- 11.10 **Closing and Evaluation Forms**
- 11.10.1 **Tender/Proposal Register:** This is a standard form for recording the submission results of an RFT or RFP. For RFPs, only the names and addresses of companies submitting a proposal, and whether any amendments were received, are recorded. For RFTs, the price and bid security are recorded in addition to the name of the bidder and the value of any applicable tender amendments.

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11.10.2 **Cancellation Letter:** This form letter is used to cancel an RFT or RFP process when none of the submissions are acceptable to the GN or where there is insufficient budget to award the contract. The reason for cancelling the process need not be disclosed.

11.11 Forms for Awarding Contracts

11.11.1 **Signed Contract:** For service contracts, LCAs, and purchase orders, the bidder signed the contract when it submitted its tender. The GN then signs to accept the tender. This constitutes the making of a contract and the accepted bid then becomes the contract. The signed contract is then faxed or given to the successful bidder to notify them of the award. This process works for all GN contract templates where the tender form is also a contract signature page.

11.11.2 **Fax Notice – Pick Up Signed Contract (Minor Works or Service Contracts):** Once a minor works tender is accepted it is signed off by the contract authority in the “Owner Acceptance” section on the bid form/contract signature page. To award the contract, the successful bidder is sent a fax to notify them that their tender was accepted and the contract is ready for them to pick up. The fax should include a request for the bidder to acknowledge the award and make arrangements with the project officer (contract administrator/manager) to pick up the contract and start the work.

11.11.3 **Recommendation to Award Contract and Obligate Funds Transmittal Form:** This form is primarily used by CGS regional projects offices to secure approval to award minor and major works construction and architectural/engineering services contracts and to obligate funds to pay for the contracts. This form is more commonly referred to as a commitment document or CT transmittal.

11.11.3.1 This form is primarily used by CGS for all types of contract awards except for service contracts and purchase orders. It has three distinct purposes:

- i. to obtaining approval to award the contract;
- ii. to provide financial coding for obligation of the contract funds; and
- iii. to centralize information for contract reporting purposes.

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- 11.11.4 The Recommendation to Award/Obligation of Funds Transmittal form should be completed as follows:
- i. address the form to the person having authority to award and sign contracts – this is the contract authority;
 - ii. indicate whether the form is for award approval or obligation of funds, or both;
 - iii. indicate the contract type and the contracting method used for obtaining the bids;
 - iv. indicate the RFT/RFP reference number and assign a contract number (can be the same);
 - v. enter the bid submission results and who is being recommended for the contract;
 - vi. indicate the FreeBalance main estimate or budget amount for the project and the value of funds to be obligated to pay for the contract (not more than the contract award value);
 - vii. indicate the financial coding string for FreeBalance obligation and the amount to be committed for the contract, including multi-year obligation values if applicable.
- 11.11.5 **Award Letter – A/E and Major Works:** This is a standard form of letter used by CGS regional projects to notify a bidder or proponent that its bid or proposal has been accepted and it is being awarded the contract. This form is only used for A/E full design services and major works construction contracts.
- 11.11.5.1 This letter should only be used for minor works contracts where the contract award is based on the bidder satisfying specific conditions or a change to the scope of work prior to the award. This would be done with the advice and assistance of CGS Contract Support and would not represent a regular occurrence. Otherwise, the award letter is not required and should not be used for awarding minor works contracts.
- 11.11.6 **Recommendation to Award Letter – Pro-Forma or Other Contract:** This is an informal letter requesting approval to award a contract. It is addressed to the contract authority and is signed by the chairperson of the evaluation committee. This letter should be used where the chairperson of the evaluation committee does not have authority to award or sign the service contract or pro-forma agreement.

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11.11.6.1 For some contract awards, a letter of recommendation to the signing authority may be used in addition to the information provided on the contract transmittal. Letters of recommendation should be written for contracts being awarded on the basis of a proposal call or where a contract is being awarded to someone other than the low bidder after application of the NNI adjustments.

11.11.6.2 Outline all the details of the tender or proposal call. Identify the names of proponents who submitted, the date the proposals were received, who evaluated, how the proponents ranked and ensure the recommendation to award the contract is made to the highest ranked proponent. It should also discuss the rationale or circumstances behind any recommendations that are made to award to other than the low bidder or highest score proposal.

11.11.7 **Notifying Successful Proponent:** There is no standard form letter for notifying a proponent that its proposal is successful and that you are awarding it a contract. Refer to section 5.26 of Chapter 5 – About Requesting Proposals – and Chapter 8 – About Forming and Signing Contracts.

- i. The RFP Instructions to Proponents clearly state that no contract is formed and no party has any rights under the contract until it is signed. Accordingly, it is best to advise a proponent by phone that it is the highest ranked proponent and that you are therefore sending it the contract to sign. Remind the proponent that there are no contractual obligations until the contract is signed by both parties.
- ii. Fax or e-mail the contract to the proponent indicating where to sign it and courier it back to you. Do not sign the contract until the contractor has signed it first. If e-mailing, be sure to send the document in an Adobe .pdf file format.
- iii. Ideally, the contracts should be prepared in duplicate. The contract manager should request that the contractor sign two originals and return them for signature by the GN. Where signing by fax, the contract should contain the following clause:

“This Agreement may be executed in counterparts and by facsimile, each of which counterparts shall constitute an original and all of which taken together shall constitute one and the same instrument. Delivery of an executed copy of this Agreement by facsimile transmission shall constitute valid and effective delivery.”

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- iv. CGS and Justice do not recommend the practice of having contracts signed by fax. Instead, they should be prepared and signed by both parties in duplicate. That being said, some courts have recognized the validity of contracts signed by fax. The recommended practice is for both parties to sign the originals.

11.12 Notifying Unsuccessful Bidders/Proponents

11.12.1 **Regret Letter – Unsuccessful Tenderer:** This is a standard form letter used to notify the unsuccessful bidders that they did not win. This letter is to be sent to all unsuccessful bidders for all types of contracts over \$25,000.

11.12.2 **Debriefing Letter – Unsuccessful Proponent:** This is a standard form letter to notify unsuccessful proponents that their proposal was not accepted. This letter is used for all RFPs regardless of estimated contract value. The letter must include the names of all proponents who submitted proposals, the name of the proponent who won the contract and information as to the strengths and weaknesses of the addressee's proposal. Adequate feedback is required in order to enable the proponent to improve their chances for success in future RFPs.

11.12.3 **Disqualify Bid/Proposal Letter:** This form is used to reject a non-compliant tender or proposal submission. Tenders or proposals that fail to meet mandatory requirements, including the requirement for submission on time, must be rejected and returned unopened to the bidder.

11.13 Contract Administration Forms

11.13.1 **Contemplated Change Notice – Construction:** This form is used to request a quote from a contractor when a change to the scope of work is under consideration.

11.13.2 **Contract Change Order – Construction:** This form follows the contemplated change notice discussed above. This form is used to itemize the changes to the work required and authorize the contractor to proceed according to the quote(s) provided in the change notices.

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11.13.3 **Contract Change Order – Non-Construction:** There are no standard forms for handling changes to a general services or consultant contract. The changes required to the scope of work should be itemized in a letter to the contractor/consultant which must be signed by both parties to the contract.

11.13.4 **Contract Termination Letter:** There is no standard GN contract termination letter. Note that, in the event a contract needs to be terminated for cause, the reasons or grounds according to which such termination can occur are set out in the terms and conditions of the applicable contract. Accordingly, the termination letter will cite the cause for termination and provide the reason for which the GN is enforcing the termination clause. Normally, this would include, but not be limited to, the contractor's failure to deliver on time, default of performance, failure to correct faulty or unsatisfactory work, etc. Before terminating a contract, contact CGS Purchasing for advice and assistance with rectifying the deficiencies in the contractor's performance.

11.14 NNI Policy Application Forms and Templates

11.14.1 **Tender and Proposal NNI Adjustment Forms:** One of the primary concerns of the NNI Policy Review Committee is the objective of consistent application of the NNI Policy across GN departments, boards and public agencies, and assistance to vendors in achieving the maximum benefits of the NNI Policy.

11.14.2 Accordingly, CGS and the NNI Secretariat have developed a number of generic forms for facilitating application of the NNI Policy in RFTs and RFPs across GN departments, boards, public agencies and Nunavut hamlets and municipalities.

11.14.3 This section describes the forms available for application of NNI in the RFT/RFP, evaluation and contract administration phases.

11.14.4 **NNI Policy Incentives Form – Appendix B (Minor Works):** It is mandatory to use this form in minor works RFTs; therefore, it is included in the minor works front end template.

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- 11.14.4.1 This form can also be attached with the service contract as Appendix B where there is a large labour component and an opportunity for Inuit labour. Be sure to list it as an attachment to the contract and ensure vendors fill it out and submit it with their bids. Contact CGS Contract Support for assistance in setting the minimum Inuit labour requirement.
- 11.14.5 **Substantiation of Bid Adjustments Forms – Appendix B-2 (Major Works):** For major works construction RFTs, because of the complexity of the bid where Nunavut, local, and Inuit cost components are identified, and because many subcontractors and suppliers will withhold their price until just before the RFT closing time in order to avoid having their price "shopped" by general contractors, a two-phase tender opening procedure has been implemented.
- 11.14.5.1 The Appendix B-2 forms may be submitted at the Phase 1 closing time or the Phase 2 closing. It is essential that bidders complete and submit these forms in order to receive NNI bid adjustments. The only amendment that is allowed between the Phase 1 and the Phase 2 closing is an amendment to the Appendix B-2 information. Appendix B-2 forms may be submitted by facsimile, and are to be rejected if not received in time for the Phase 2 closing.
- 11.14.6 **Application of NNI Adjustment – Proposal Evaluation:** CGS Purchasing has recently developed a standard form to use for the application of NNI when evaluating proposals. The form is included in the GN's RFP template along with instructions to proponents on completing the form.
- 11.14.7 **Contractor's Obligation to Provide Inuit and Nunavut Content – Appendix C or J:** This appendix sets out the requirements for the bidder to maximize Inuit and Nunavut content in its tender and in any subsequently awarded contract. It sets out the mandatory requirement for Inuit labour and the minimum level, as a percent of payroll, which the bidder must include in its tender and achieve on completion of the contract if the tender is accepted by the GN. The appendix also includes instructions on remedies if the contractor fails to comply with the requirement. One of the remedies is an Inuit labour penalty as prescribed by the NNI Policy.
- 11.14.7.1 For minor works RFTs use Appendix C and for major works RFTs use Appendix J. Note that major works tenders are not rejected where a bidder is low on Inuit labour. Instead, the bidder must commit to the minimum requirement before the bid is accepted.
- 11.14.7.2 This Appendix can be also be used with RFPs and service contracts.

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11.14.8 **NNI Evaluation Forms and NNI Bid Adjustment Calculators:** CGS has developed a number of Excel-based spreadsheets for facilitating application of NNI bid Adjustments in RFTs and RFPs.

11.14.8.1 CGS has programmed the following bid adjustment calculator spreadsheets for applying bid adjustments for the following contracting activity types:

- i. goods purchasing and service contracts
 - Purchasing Up To \$100,000 Quotes Register
 - Purchasing Over \$100,000 Quotes Register
 - LCA Quotes Register – April 2004.xls;
- ii. minor construction and maintenance
 - Bid Adjustments Calculator – Minor Works – April 2004.xls;
- iii. major construction
 - NNI Tender Analysis Workbook – June 2004.xls;
- iv. parks tenders
 - Parks Quotes Bid Analysis Register – June 2008.xls;
- v. parks proposals
 - Application of NNI Adjustment – Proposal Evaluation;
- vi. consultant proposals (including architectural/engineering)
 - Application of NNI Adjustment – Proposal Evaluation.

11.15 Monitoring Forms for NNI in Contract Administration

11.15.1.1 **Appendix D – Generic Employment Report (for Monitoring Inuit Employment)**: This generic report was developed by CGS and the NNI Secretariat in fiscal year 2006/07 and distributed to GN departments, boards and public agencies for use in monitoring payroll expenditures by contractors throughout performance of the contract. This form is used primarily to monitor Inuit employment and enforce application of the NNI Policy Inuit labour bonus and penalty clauses.

11.15.1.2 On final completion of the contract, the contractor is required to submit a consolidated employment report showing all employment activity on the contract, including all subcontractors' payroll expenditures, with its final invoice. The contract authority evaluates the final employment report to measure whether or not the contractor achieved or exceeded the minimum Inuit labour requirement for the contract.

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- 11.15.1.3 **NNI Inuit Labour Bonus/Penalty Calculator**: CGS has developed an Excel-based spreadsheet for calculating whether or not the contractor will be entitled to a bonus or assessed a penalty with respect to its Inuit payroll expenditures. These spreadsheets can be used to calculate NNI Inuit labour bonuses and penalties for all types of contracts.
- 11.15.1.3.1.1 This spreadsheet is programmed to calculate the bonus or penalty by entering the following information:
- i. total labour payroll expenditure value;
 - ii. total Inuit labour payroll expenditure value;
 - iii. minimum Inuit labour requirement.
- 11.15.1.3.2 Also enter the contract number, contracting department, division and section in the applicable fields.
- 11.15.1.3.3 The spreadsheet is programmed to calculate whether the contractor will be entitled to a bonus or subject to a penalty under the NNI Policy.

11.16 Electronic Forms and Templates Web Site

- 11.16.1 CGS has implemented an electronic forms system that is accessible from the GN's internal web site:
http://intranet/phase1/cgs/plc/purchase_guide/TemplateFrameset.htm

12. ABOUT PURCHASING GOODS



12.1 Introduction to Purchasing Goods

- 12.1.1 This chapter will be used primarily by departments, boards and public agencies having authority to purchase goods and sets out guidelines on the procurement of goods process.

12.2 The Purchasing Cycle

- 12.2.1 This section introduces the purchasing cycle for acquiring goods. The purchasing cycle is common for both government and business. The basic purchasing functions in any large organization are as follows:

- i. requisitioning goods;
- ii. issuing requests for tenders and awarding purchase orders;
- iii. expediting;
- iv. receiving goods;
- v. paying invoices.

12.3 Requisition for Supplies and Services (RS1999/0900)

- 12.3.1 The GN form - Requisition for Supplies and Services (1999/0900) - has been designed to collect the essential information required by procurement officers to satisfy program manager's goods and services requirements.

- 12.3.2 Goods purchases for the GN, other than Local Contract Authority (LCA), are the responsibility of CGS Purchasing, Logistics & Contract Support. All Requisitions for Supplies and Services must, when properly completed, including obligation of funds, be forwarded to CGS Purchasing for commencing the purchasing process.

12.4 Completing the Requisition for Supplies (RS)

- 12.4.1 For the procurement officer to effectively meet the requirements of a program manager when purchasing goods and services, the procurement officer must get complete information related to the manager's requested acquisition. This section explains how users can use the Requisition for Supplies to secure goods in a centralized purchasing environment.

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12.4.2 It is crucial to provide as much information about the required product to assist the procurement officer in the buying process. The RS form requests information related to the following key areas:

- i. logistics: destination and Free on Board (FOB) terms;
- ii. specifications: product description, quantity and quality;
- iii. performance requirements and equivalencies;
- iv. warranty considerations;
- v. authority to contract (payment and spending authority).

12.5 Logistics and Selection of Free on Board (FOB) Terms

12.5.1 The RS form has sections that provide logistical information to ensure the goods are delivered to the proper party and place. This information includes:

- i. originator - person who wants the goods;
- ii. phone number - so the procurement officer can contact the originator;
- iii. destination - where the goods are to be delivered to;
- iv. FOB term – who will own the goods in transit and who will claim and pay for damages.

12.5.2 Identify where and to whom the goods are to be delivered or shipped. This is especially important where goods are being brought in by seairlift. If the originator will be away when the shipment arrives, then an alternate must be identified in the RS so the goods can be properly received once delivered. This information is referred to as the “tag” information on the RS and Purchase Order forms.

12.5.3 The term FOB means Free on Board and is commonly used in pricing to establish the point at which title to the purchased materials passes to the owner. FOB is relevant to responsibility for insurance coverage, taxes, transportation costs, filing claims for damages and so on.

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- 12.5.4 It is important that contract authorities be fully aware of the correct definitions relating to FOB points. The following examples are provided to assist in the proper selection of FOB and freight terms:
- i. **FOB Origin, Freight Collect:** The buyer owns the goods in transit, bears and pays the freight costs and files any transportation claims.
 - ii. **FOB Origin, Freight Prepaid:** The buyer owns the goods in transit, files any transportation claims. The seller pays the freight charges and bears the freight charges.
 - iii. **FOB Origin, Freight Prepaid and Charged:** The buyer owns the goods in transit, bears the freight charges and files any transportation claims. The seller pays the freight charges and invoices the buyer.
 - iv. **FOB Destination, Freight Collect:** The buyer bears and pays the freight charges. The seller owns the goods in transit and files any transportation claims.
 - v. **FOB Destination, Freight Prepaid:** The seller bears and pays the freight charges, owns the goods in transit and files any transportation claims.
- 12.5.5 **Note:** In applying these examples, the terms 'origin' and 'destination' would usually be replaced with specific geographic locations.
- 12.5.6 FOB points and freight cost responsibilities must be determined in each instance by using sound judgment based on procurement principles and policy. The contract authority is responsible for ensuring that the best value is obtained for the Government.
- 12.5.7 It should be recognized that specifying a FOB destination in contracts provides the following benefits to the GN:
- i. risk to the GN of damage and loss in transit is minimized;
 - ii. local and Nunavut suppliers have an advantage because they are more familiar with transportation links to the community and may have low cost, bulk arrangements with transportation companies.
- 12.5.8 Conversely, the use of an FOB origin may hinder the Nunavut or local supplier's ability to do business with the GN, particularly if southern suppliers are involved.

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12.5.9 **Construction Contract Considerations:** Contract authorities involved in capital projects must consider the implications of FOB points when pre-manufactured building components or pre-fabricated structures are involved. It may be necessary to pay the contractor for such items, even though delivery to site is delayed.

12.5.9.1 In these cases it is important to ensure that title to the materials is passed on to the GN in case the supplier goes bankrupt. It may also be prudent to arrange for independent storage of the items for both security and protection from the elements. In all cases, the correct terminology must be used to identify each party's responsibilities.

12.6 Specifications

12.6.1 The procurement officer should ensure that the originator has provided a complete and comprehensive description of the requirements, including quantity and specifications.

12.6.2 To ensure that the correct goods are purchased, it is necessary to have detailed specifications. The specifications must clearly and accurately describe the requirements for the supplies, equipment or services. They must explicitly define the minimum requirements so that acceptable goods are received and written in such a manner as to ensure equal opportunity for all prospective bidders.

12.6.3 Generally, specifications are in the form of:

- i. written descriptions;
- ii. performance requirements;
- iii. drawings;
- iv. commercial designations;
- v. industry standards, and / or other descriptive references.

12.6.4 Avoid Brand Name Specifications

12.6.4.1 The use of brand name specifications is discouraged. Using specific brands, as purchase specifications should be limited to those instances that result from actual performance tests or fill a specific need exclusively.

12.6.4.2 Use of brand specifications due to convenience or user preference should be discouraged. Usually this results in a reduction in competition with associated higher prices and is unfair to the business community as a whole.



12.7 Suggested Vendors

- 12.7.1 There are a number of resources that can be used to determine sources of supply for goods. These include:
- i. Yellow Pages;
 - ii. the NNI Policy Registry and Inuit Firms listing;
 - iii. the suggested supplier as provided by the originator of the RS
 - iv. the Internet;
 - v. various industry catalogues and trade directories such as Frasers.
- 12.7.2 Generally, this field on the RS can be left blank and location of potential vendors left to the procurement officer to determine.

12.8 Authorization to Sell and Warranty Coverage

- 12.8.1 When selecting suppliers to invite to tender, it is important to consider whether or not they are authorized by the manufacturer to sell the particular goods. This is important so that the goods will be covered by the manufacturer's warranty.

12.9 Authority to Contract (Payment and Spending Authority)

- 12.9.1 Section 4.1 of Directive 808 of the Financial Administration Manual (FAM) specifies that before any contract is entered into on behalf of the government, an expenditure officer and an accounting officer must provide certifications pursuant to section 44 (1) of the *Financial Administration Act*.
- 12.9.2 Before taking action on a requisition, the procurement officer should ensure that:
- i. financial coding is provided by the program manager;
 - ii. sufficient funding has been committed in FreeBalance;
 - iii. the requisition has been properly signed by both the payment and spending authorities;
 - iv. the originator has provided complete details of the requirement, including specification sheets, catalogue pages, etc.



12.10 Issuing Requests for Tenders and Awarding Purchase Orders (POs)

- 12.10.1 A number of standard documents for requesting tenders and awarding contracts have been developed specifically for the purposes of goods purchasing. These provide a uniform appearance to suppliers and, more importantly, contain standard bidding instructions and contractual terms and conditions that have been approved by the Department of Justice for this purpose.
- 12.10.2 Because CGS is the contract authority for purchasing goods on behalf of the GN, the GN's contracting forms and templates used for purchasing goods are restricted to buyers and staff in the CGS Purchasing, Logistics & Contract Support Section.
- 12.10.3 Procurement officers are required to follow the procedures set out in this manual for requesting tenders and awarding contracts.

12.11 Amending Purchase Orders

- 12.11.1 There are numerous reasons for which changes may be made to a purchase order. The changes will likely be the result of:
- i. change to the delivery destination or the terms of delivery;
 - ii. change to the specifications;
 - iii. change in regulatory requirements; or
 - iv. change in quantity.
- 12.11.1.1 When changes are due to actions or lack of action by the GN, the supplier may receive additional reimbursement to cover damages.
- 12.11.2 Changes to contracts, including purchase orders, should only be done by way of a written agreement.
- 12.11.3 **Format for Changes**
- 12.11.3.1 It is recommended that changes to purchase orders be made via a "Purchase Order Amendment". The standard purchase order form should be used, with the addition of the appropriate amendment number, which is used to identify the amendment.
- 12.11.3.2 The amendment should clearly describe the change or modifications to the original contract and indicate the revised total contract price.

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12.11.3.3 For Example:

PURCHASE ORDER AMENDMENT

Amendment Number 1 dated August 30, 2007 to Purchase Order Number 123456 dated August 1, 2007.

Details of Amendment

1. Change the quantity from 1 to 2 units.
2. Revise unit price from \$10.00 to \$20.00.
3. Revise total contract price from \$10.00 to \$40.00.

12.12 Expediting

12.12.1 The procurement officer's responsibility does not end with the issuance of the PO. Rather, the responsibility continues until acceptable goods are actually delivered from the supplier.

12.12.2 After a PO has been issued to a supplier, the procurement officer may wish to follow-up or expedite the order to ensure on time delivery.

12.12.3 Expediting means communicating with the supplier to ensure the contracted delivery date will be met.

12.12.4 Expediting should be necessary on only a small percentage of POs. The procurement officer should be in a position to know which suppliers are most likely to present delivery problems.

12.12.5 Additionally, the procurement officer should determine which requirements are of a critical nature and when it is mandatory to meet the scheduled delivery dates. An example would be goods ordered for delivery by sea lift.

12.12.6 When determining the proper method of expediting a particular order, two basic options can be used, as explained below:

- i. routine status check;
- ii. advanced expediting.

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12.12.6.1 **Routine Status Check:** This method can be time consuming. It involves contacting the supplier at pre-set intervals, so that you are able to inform your program managers of schedule delays at the earliest possible moment. It can offer the opportunity of working around the late delivery, rather than suffering through it.

12.12.6.2 **Advanced Expediting:** This is the most time-consuming method of all. It attempts to insure supply, instead of just providing warning of a late delivery. This method uses milestone, critical path, or similar scheduling techniques that identify critical steps in the supplier's manufacturing or distribution process. This identifies potential delays and allows the procurement officer to take corrective action to ensure timely delivery.

12.13 Receiving Goods and Paying Supplier Invoices

12.13.1 Accurate records regarding the receipt of goods are required to ensure that proper and prompt payment is made to suppliers. Detailed information regarding the payment of supplier invoices is found in Directive 803, Verification and Approval of Expenditures and Disbursements. Procurement officers are encouraged to ensure that payment procedures related to their contracting activities comply with these financial directives and guidelines.

12.13.2 In order to process payment of supplier invoices, it is necessary to confirm that the right goods have been received at the right place.

- i. Check the supplier's packing slip or carrier's waybill for accuracy as to the number of pieces shipped and received.
- ii. Inspect the shipment for damage.
- iii. Note damages or discrepancies in the shipment on the carrier's waybill, and ensure notations on the waybill are initialed by the carrier's representative.
- iv. Check the shipment against the packing slip.
- v. Make a record of the items received and send it to the procurement officer - this allows the procurement officer to process payment and to close the file; a copy of the purchase order may be used for this purpose.
- vi. Record shortages or overages and advise the procurement officer accordingly.

12.13.3 **Supplier's Packing List:** This document details the exact quantity of goods shipped, which usually matches the corresponding invoice.

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12.13.4 **Carrier's Waybill:** This document is prepared by a transportation company at the point of origin of the shipment. It specifies where the goods are being delivered to and how they are being transported to the destination.

12.14 **Transportation Claims/Procedures for Damages, Overages, Shortages**

12.14.1 The delivery of goods involves the risk of shipping damage and discrepancies. Originators (receivers) should ensure that claims against suppliers or carriers for damaged goods or shortages found in a shipment are handled expeditiously. This also will ensure that any overages that might occur are either returned to the supplier or are properly identified for the purpose of paying for the overage.

12.14.2 In most instances there is a time limit for filing claims. It varies depending on the mode of transportation used. Claims against suppliers or carriers should be filed expeditiously.

12.14.3 For shipping damage:

- i. Inspect the shipment for damage.
- ii. When obvious damages have occurred (by looking at the shipment), note the carton number or describe the damaged goods on the carrier's waybill.
- iii. Have the carrier sign the waybill besides the damage notation.
- iv. If damage is found after opening the cartons, contact the transportation company immediately to have them send a representative to inspect the damaged goods.
- v. Contact the claims department of the shipping company. Send a written notification to the claims department representative. Ensure that the claims process is understood. Follow all of the necessary claims steps. If you experience any difficulties, contact CGS Logistics Manager for advice and assistance.

12.14.3.1 If the shipment was shipped FOB destination, the report and correspondence should be forwarded to your Finance Division so that a claim may be initiated with the supplier and payment withheld pending resolution.

- i. Prepare a Request for Invoicing and forward it to your Finance Division.
- ii. Follow up with the carrier and Finance Division as required until the claim is settled.

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- 12.14.4 For an overage:
- i. During the quality check of the shipment, if you find an overage, that is more than what you ordered, write the discrepancy on the waybill. Have the carrier sign the waybill beside the overage notation.
 - ii. Advise the procurement officer of the overage.
 - iii. The procurement officer will contact the supplier and make arrangements to keep the overage or return it.
- 12.14.5 For a shortage:
- i. During the quality check of the shipment, indicate any discrepancies or missing pieces directly on the carrier's waybill.
- 12.14.5.1 Complete the documentation and forward it to the procurement officer, so that arrangements with the supplier may be made to rectify the problem.
- 12.14.5.2 **Note:** The originator of the RS may not want to be responsible for filing damages claims or it may not always be the GN's responsibility to file a claim. The FOB term selected for the purchase order will determine who is responsible for filing claims. Accordingly, ensure that FOB terms are used properly in the RFT and PO documents. If not, there may be some disagreement as to who must file the claim.
- 12.15 Marine Transportation (Sealift)**
- 12.15.1 Each year, CGS Purchasing issues a GN-wide notice of sealift cut-off dates. Failure by departments to submit their requisitions for sealift orders on time will result in the goods missing the ship. Purchasing will arrange for alternative transportation, however, in this event, the costs for flying the goods in will come from the originator's budget.
- 12.15.2 The GN has a number of marine transportation contracts established for sealift carriage to various Nunavut communities. The contracts are awarded based on a competitive bidding process and may change from time to time.
- 12.15.3 For specific sailing schedules, cut-off dates and contact information, contact the CGS Logistics Manager at 1-888-390-0111 or refer to the web site of each sealift company.

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- 12.15.3.1 **For the High Arctic, including North Baffin:** Arctic Bay, Clyde River, Grise Fiord, Nanisivik, Pond Inlet, Qikiqtarjuaq, and *Kugaaruk (*as far as Nanisivik for furtherance), and Resolute Bay:

Nunavut Eastern Arctic Shipping (NEAS)

By ships loading at the Montreal area Port of Valleyfield:

Toll free: (877) 225-6327

Fax: (514) 523-7875

<http://www.neas.ca/>

*for transport to **Kugaaruk beyond Nanisivik**, the carrier is:

Canada Coast Guard

Phone: (613) 998-1585

Fax: (613) 991-9261

CGS Logistics Manager: (867) 975-5437 or 1-888-390-0111

- 12.15.3.2 **For Foxe Basin:** Hall Beach, Igloolik, and Repulse Bay; **and Iqaluit; and South Baffin:** Cape Dorset, Kimmirut, and Pangnirtung:

Nunavut Sealink and Supply Inc. (NSSI)

By ships loading at the Montreal area Port of Ste-Catherine:

Contact: Daniel Desgagnés

Phone: (450) 635-0833

Fax: (450) 635-5126

<http://www.relaisnordik.com/en/home/2-2-5.cfm>

- 12.15.3.3 **For the Kivalliq Region:** Arviat, Baker Lake, Chesterfield Inlet, Coral Harbour, Rankin Inlet, Sanikiluaq, and Whale Cove:

NSSI (for cargo from Montreal only):

By ships loading at the Montreal area Port of Ste-Catherine

Contact: Daniel Desgagnés

Phone: (450) 635-0833

Fax: (450) 635-5126

<http://www.relaisnordik.com/en/home/2-2-5.cfm>

AND

Northern Transportation Company Limited (NTCL) (for cargo from Churchill only):

By barges loading at the Port of Churchill

Contact: Operations Manager

Phone: 1-866-505-0551 or (867) 979-6825

Fax: (867) 979-0099

<http://www.ntcl.com/index.html>

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- 12.15.3.4 **For the following communities in the Kitikmeot Region:** Bathurst Inlet, Cambridge Bay, Gjoa Haven, Kugluktuk (Coppermine), Taloyoak and Umingmaktok (Bay Chimo):

Northern Transportation Company Limited (NTCL)

By barges loading at Hay River, Northwest Territories

Contact: Jo-Ann Jensen

Phone: 1-877-770-6825 or (867) 874-5121

Fax: (867) 874-5155

<http://www.ntcl.com/index.html>

- 12.15.4 Service is scheduled throughout the shipping season commencing in June and ending as late as November for some communities. Most communities receive two sailings per year, whereas other communities receive three or more.
- 12.15.5 Shipping rates are available from the carriers at these contact numbers or on their web sites.
- 12.15.6 Procurement officers should ensure that goods are consigned to the appropriate address.
- 12.15.7 Shippers and/or suppliers must be advised to make prior arrangements for an appointment at the shipping yard by phoning ahead.
- 12.15.8 All shipments must include the purchase order number, name of consignee, final destination, FOB term and the gross weight clearly indicated on individual cases, crates, and packages. Failure to provide this information may result in refusal of the goods by the carrier or may result in delivery of the goods to the wrong destination.

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12.16 Local Delivery Services

12.16.1 CGS maintains various standing offer agreements and other contractual arrangements in communities for the pick up and delivery of mail and other goods.

12.16.2 **Local Cartage – Marine Transportation:** Local cartage arrangements in support of annual marine barge shipments generally encompass the following tasks:

- i. providing labour and equipment to move goods from the high water mark to assigned locations within the community;
- ii. ensuring priority handling of GN cargo;
- iii. exercising all necessary precautions to ensure the safe delivery of goods.

12.16.3 **Local Mail and Delivery Services:** CGS Purchasing has established a local mail delivery contract for delivery of mail in Iqaluit. If you have any questions about this service contact CGS Purchasing.

12.17 Importing Foreign Goods

12.17.1 Does your department order anything directly from foreign suppliers? If so, Canadian customs procedures must be followed. It is the law.

12.17.2 General Information

12.17.2.1 Free trade does not necessarily mean being free from paying duty. It all depends on what you are bringing across the border. You are still obligated to complete the necessary documentation and also remit duty or other taxes payable.

12.17.2.2 For most shipments shipped by road or air cargo, customs clearance will be necessary at the southern point of entry. In such cases you must use a customs broker. The GN uses the services of Livingstone International. This broker has offices in all major Canadian cities. Consult CGS Purchasing for more information.

12. ABOUT PURCHASING GOODS



- 12.17.3 **Postal Shipments (Canada Customs and Excise Form E-14)**
- 12.17.3.1 Where goods are valued under CAN\$1,600 and shipped via mail services, Canada Border Services Agency will allow direct shipping to the procurement officer. You are obligated to complete the E-14 *CBSA Postal Import Form* and return it expeditiously to the nearest Canada Border Services Agency office.
- 12.17.3.2 If the E-14 *CBSA Postal Import Form* is not processed after twenty-one (21) days from receipt of the hold notice, the goods will be returned to the supplier, in which event they may need to be re-ordered. Thus it is imperative that the form be completed. The GN is zero - rated for GST, and therefore does not have to pay this tax if it fulfils certain obligations. When dealing with a postal declaration E-14 form, GST is generally added to the invoice section. Inserting the code '81' on the form negates payments of the GST.
- 12.17.3.3 For goods worth CAN\$20 or less, Canada Border Services Agency will release the parcel without charging taxes. However, if you owe duty and tax, it will be indicated on Form E14 *CBSA Postal Import Form*, which will be attached to your mail item when it is delivered.
- 12.17.3.4 For more information on importing goods by mail, refer to the Canada Border Services web site <http://www.cbsa-asfc.gc.ca/import/postale/postale/menu-eng.html> .

12. ABOUT PURCHASING GOODS



12.17.4 Examination-Only Items

- 12.17.4.1 Preview copies of books, videos, software, etc. are covered by the same rules as if you were buying them. You will probably find an envelope with the E-14 form attached to the parcel. If you end up keeping the item(s), your nearest Canada Border Services Agency officer can assist you in determining if any amount is owed.
- 12.17.4.2 If you decide to return a mailed item to its sender after accepting delivery from Canada Post, you can be refunded any duty or taxes you paid on the item. However, you will still be charged the Canada Post CAN\$5 handling fee.
- 12.17.4.3 To request a refund of duty and taxes, simply complete the back of Form E14 - CBSA Postal Import Form and send it to the nearest Casual Refund Centre listed on the form.
- 12.17.4.4 You will have to provide proof that you returned the goods. For example, you could include a store's credit note or a letter from the sender.
- 12.17.5 Canada Border Services Agency can be contacted at these locations:

Canada Customs Border Information Services (BIS)
24 Hour Automated Service
Toll Free: 1-800-461-9999
French Language Toll Free: 1-800-959-2036
TTY: 1-866-335-3237
Web: www.cbsa-asfc.gc.ca
Yellowknife (867) 920-2446
Iqaluit Airport



12.18 Supplementary Purchasing RFT Clauses

- 12.18.1 The instructions to bidders clauses in standard GN purchasing forms remain consistent to ensure all bidders are following the same set of rules. CGS Purchasing uses the same instructions in all their RFT forms, with few exceptions.
- 12.18.2 However, for specific types of purchases, procurement officers must give potential bidders instructions that are specific to a particular tender call. This is done by way of appending supplementary instructions, or additional clauses, to the RFT document.
- 12.18.3 The following sections provide task-specific supplementary clauses for the following:
- i. Supply and Installation
 - ii. Motor Vehicles, Mobile and Heavy Equipment

12.19 Supply and Installation

- 12.19.1 **Installation:** Where applicable, installation shall include unloading materials, moving to site, assembly in accordance with floor plan, and fastening in place, as well as cleanup and clearing of site. Wherever possible, the use of local labour to aid in the installation phase, under the direct supervision of the successful supplier, is encouraged.
- 12.19.2 **Holdback:** The GN may hold back a percentage of the total value of the contract until such time as all goods specified within the resultant contract have been delivered, assembled or installed and inspected to the satisfaction of the originator. The remainder of the total value of the contract will be disbursed upon:
- i. delivery on-site at the designated location;
 - ii. un-crating of all goods ordered; and
 - iii. all goods requiring assembly are assembled and inspected by the originator and are deemed to have arrived on-site in 'good order'. All goods deemed not to have arrived on-site in 'good order', whether it be through damage during transportation, un-crating or assembly, will form part of the holdback and the holdback monies will only be released when the claim has been settled.

12. ABOUT PURCHASING GOODS



- 12.19.2.1 The holdback will be disbursed upon:
- i. successful installation in accordance with the floor plan(s), fastening in place where required, as well as clean-up and clearing of work site;
 - ii. the replacement and/or repair of all damaged items so that they are deemed to be in 'good order'; and
 - iii. final inspection, to the satisfaction of GN representatives, of furniture and furnishings.
- 12.19.3 **Cleaning of Site:** The supplier shall, at all times, maintain the work and the work site in a tidy condition and free from the accumulation of waste material and debris.
- 12.19.4 **Pre-shipment Inspections:** In order to ensure that the goods or materials supplied conform to contract requirements, the supplier may be required to make available the goods or materials, as ordered, for a pre-shipment inspection prior to any crating, containerization or any other form of packaging. The pre-shipment inspection shall be performed by the GN or its agents at a predetermined location.
- 12.19.4.1 The pre-shipment inspection shall not, in any event, constitute acceptance by the GN. Such acceptance shall only occur at the specified FOB point upon receipt of the materials and final inspection satisfactory to the GN.
- 12.19.4.2 **“Time is of the Essence”:** This is a common legal contract term. Delivery of the goods specified must be made within the time, in the manner and to the destination(s) stipulated in the contract. The GN may terminate the contract if the goods are not delivered by the stipulated delivery date. In the event that the contract has to be terminated, the GN reserves the right to exercise all available remedies including, but not limited to, the recovery of damages. “Time is of the essence” applies equally to the payment of invoices.

12. ABOUT PURCHASING GOODS



12.20 Motor Vehicles, Mobile and Heavy Equipment

- 12.20.1 **Procurement Strategy:** Purchasing mobile equipment is a major investment and calls for close co-ordination between the user and the procurement officer. The following procurement strategy is provided for guidance:
- 12.20.1.1 Early in the budgeting cycle (November to January) program managers should forward to CGS Purchasing a listing of all mobile equipment requirements by community, class and quantity. This enables purchasing activities to be initiated early enough so that the equipment will be available in time for marine transportation.
- 12.20.1.2 For purchasing purposes and to obtain maximum discounts, mobile equipment may be grouped as follows:
- i. fire trucks;
 - ii. water, fuel, sewage trucks;
 - iii. dump trucks, compactors, stake-bodied trucks;
 - iv. vans, light duty trucks and automobiles;
 - v. heavy construction equipment (loaders, bulldozers, graders, etc.);
 - vi. miscellaneous all-terrain vehicles and snowmobiles.
- 12.20.1.3 In conjunction with the program manager, establish a schedule for procurement that considers the time periods necessary for the RFT process, manufacturing, shipping and delivery. For some equipment, the manufacturing process may take in excess of eight to ten months.
- 12.20.1.4 Ensure that the funding provided is sufficient to cover the purchasing, marshalling and transportation of the equipment.
- 12.20.2 Include supplementary RFT clauses regarding contractual details for warranty, inspection, acceptance and shipping in the RFT.
- 12.20.3 Prior to delivery, the procurement officer or requisitioning department may wish to ensure that the equipment is inspected to ensure compliance with the specifications. This provides the opportunity to resolve discrepancies prior to the equipment being delivered and paid for. See the inspection clause above.

12. ABOUT PURCHASING GOODS



- 12.20.4 **Warranty:** Equipment or goods supplied by the bidder shall be protected by a minimum twelve month manufacturer's warranty and the GN shall be the direct beneficiary of such warranty.
- 12.20.4.1 Particulars of this warranty, together with particulars of any subsequent or additional warranties, must be provided in writing as part of the tender submission. Failure to provide warranty details, including costs, information on service depot, field and remote location service capabilities may result in the bid being disqualified.
- 12.20.5 **Service Support:** In order for tenders to be considered, all bidders shall:
- i. employ a qualified journeyman licensed welder and heavy duty mechanic able to undertake repairs on the tenderer's premises; and
 - ii. have a direct service phone line with qualified personnel to deal effectively with parts, service, sales, process warranty claims; and
 - iii. maintain an inventory of consumable part supplies which include, belts, air cleaners/filters, thermostats, engine overhaul kits, antifreeze, brakes and brake parts; and
 - iv. have or be able to supply one field service vehicle with qualified heavy duty mechanic for road repairs; and
 - v. have field service personnel for contract and warranty repairs in remote Nunavut communities; and
 - vi. be able to effectively manage all warranty claims with no incurred cost to the GN during the warranty period.
- 12.20.5.1 The GN reserves the option of requesting complete details of the bidder's service capabilities. Failure to provide such information may result in the bid being deemed non-responsive and disqualified from further consideration.
- 12.20.6 **Failure to Supply or Deliver:** If, subsequent to the award of any resultant contract, the successful bidder cannot provide the required services as tendered, the contractor may be disqualified from submitting future tenders involving similar equipment.
- 12.20.7 **Specification Alteration:** Each GN specification for mobile equipment has been written to describe the equipment required for a specific purpose. In developing such specifications, the GN relies upon information provided by manufacturers. Should any option, specification, attachment or accessory not be available or not recommended by the vehicle manufacturer and substitutions are to be offered, the supplier **MUST** advise the procurement officer prior to vehicle inspection.

12. ABOUT PURCHASING GOODS



- 12.20.7.1 If it is known that such specification item is unavailable or not recommended at the RFT stage, the bidder must provide such information as part of the tender.
- 12.20.7.2 Failure to comply with this condition may result in rejection of the bid as non-responsive, cancellation of the contract, or rejection of the unit at time of delivery, as the case may be.
- 12.20.8 **Source Inspections – Manufacturing:** The GN reserves the right to perform unscheduled source inspections of the goods at any time during the manufacturing process in order to verify the quality, quantity and workmanship of the items being manufactured. Such inspections, along with any final pre-shipment inspections prior to any crating, containerization or packaging, shall be performed by the GN or its agents.
- 12.20.8.1 Such inspections shall not, in any case, constitute acceptance by the GN. Acceptance occurs only when final acceptance is made at the FOB point and the goods are satisfactory to the GN.
- 12.20.8.2 If, as a result of the examination and/or installation of goods, it is established by the GN that the goods do not comply with the contract, the supplier shall pay to the GN, upon demand, all reasonable costs and expenses incurred by the GN in respect of such inspection.
- 12.20.9 **Inspections – Mobile Equipment:** Interim and/or final inspections shall be carried out at the discretion of an authorized representative of the GN based on the information provided by the supplier except as follows:
- i. Inspections may be performed on all fuel, water, garbage, fire, dump, and stake trucks, dozers, loaders, graders, and specialty units based on technical specification(s) prior to shipment from the manufacturer. Inspections will be performed by the GN at the supplier's premises or FOB point at the sole option of the GN. Inspections carried out at any other location at the request of the supplier, shall be at the expense of the supplier.
 - ii. If inspection reveals that the equipment is not substantially in the condition as reported in the status reports and if additional inspection costs are incurred by the GN, the supplier shall pay all travel costs incurred by the GN and the supplier shall reduce the unit cost of the vehicle accordingly.

13. ABOUT REQUESTING AIR CHARTERS



13.1 Introduction

- 13.1.1 When chartering aircraft, all departments must follow the GN's Air Charter Policy as set out in Directive 815 of the Financial Administration Manual (FAM) as well as the following procedures.
- 13.1.2 CGS recommends that each department should appoint an air charter liaison officer to coordinate departmental air charter requirements with the CGS Logistics Manager.
- 13.1.3 All users of aircraft charter services shall, when operationally practical, consolidate travel arrangements to minimize costs to the GN.

13.2 Charters Valued at \$5,000 or Less

- 13.2.1 GN departments may charter aircraft under established standing offer agreements where the value of the charter does not exceed \$5,000.
- 13.2.2 FAM Directive 808-3 provides information on the acquisition of services under established standing offer agreements through the use of a Local Contract Authority (LCA) contract form. However, CGS Logistics does not recommend using the LCA contract for air charter services due to the insufficient terms and conditions.
- 13.2.3 Where contracting for air charters with the GN's LCA contract form, please ensure that appropriate aircraft insurance coverage is requested. Contact the CGS Logistics Manager for additional contract terms and conditions that would better protect the GN.

13.3 Charters Valued in Excess of \$5,000

- 13.3.1 Staff in need of charter services must complete and submit a Request for Air Charter Services requisition form to the CGS Logistics Manager. The CGS Logistics Manager encourages departments to adhere to the following procedures when aircraft charter services valued in excess of \$5,000 are required.
- 13.3.2 The Request for Air Charter Services requisition form must include an itinerary indicating origin and destination, details about intermediate points and hold times, number of passengers and estimated baggage/freight amounts, as well as financial authorization to engage in contracting activities with the airlines.

13. ABOUT REQUESTING AIR CHARTERS



- 13.3.3 In regards to financial coding and spending authority, do not seek preliminary estimates directly from the airlines when filling out the cost estimate section of the request form. This may be construed as bid shopping and unfair to potential bidders. However, the requisitioning department must be able to indicate that sufficient budget is available¹⁵.
- 13.3.4 The completed Air Charter Request form must be processed by the requisitioning department's internal Finance Division in order to obligate funds for the charter prior to submitting it to CGS. Once the funds for the charter services have been obligated, the request can then be forwarded to the CGS Logistics Manager for processing.
- 13.3.5 The Request for Air Charter Services requisition form must be received by the CGS Logistics Manager at least fourteen (14) days in advance of the desired charter departure date. Requisitions received after this lead time may result in decreased availability of aircraft, decreased opportunity for the competitive process, increased costs, and potential client department disappointment with the end results.¹⁶
- 13.3.6 Upon receipt of the completed Air Charter Request form, the CGS Logistics Manager will solicit quotations or invite tenders on behalf of the requisitioning department. All contracts will be awarded to the lowest responsive and responsible bidder as per the Contract Regulations.
- 13.3.7 CGS will create an Air Charter Services contract outlining the work and financial arrangements. The contract will be forwarded to the client department's Finance Division for financial obligation. Carriers will be advised to send invoices to the client department for payment.
- 13.3.8 For the purposes of insurance/risk management reporting, departments, through their air charter liaison officers, will record information including purpose, itinerary, number of passengers and costs related to all departmental charters. For all air charter contracts, also ensure that the carrier provides the appropriate insurance certificates or confirm that adequate insurance is on file with the CGS Logistics Manager.

¹⁵ Contact the CGS Logistics Manager for assistance in preparing air charter cost estimates.

¹⁶ Once a Request for Air Charter Services form has been submitted to your internal Finance Division, follow up internally to ensure it has been processed and forwarded to CGS Logistics without delay. You may also give the CGS Logistics Manager a call to confirm receipt of the requisition and discuss the charter requirements.

14. ABOUT STANDING OFFER AGREEMENTS (SOAS)



14.1 Standing Offer Agreements (SOAs) Are Not Contracts

- 14.1.1 Another procurement option available to many GN departments is something called a standing offer agreement (SOA).
- 14.1.2 CGS establishes SOAs for commonly used services and products for use by all departments and agencies of the GN.
- 14.1.3 In cases where CGS has established an SOA, GN departments do not need to engage in a contracting process to acquire goods or services covered by the SOA.
- 14.1.4 The following information is provided to explain the SOA process.
- 14.1.5 Directive 808-4 of the Financial Administration Manual provides the following definition of standing offer agreement:
- “A Standing Offer Agreement means a price agreement between the Government and a supplier, wherein the supplier agrees to provide, on demand, specified goods or services under specified conditions during a set period at a defined price or discount structure.”*
- 14.1.6 SOAs are pricing arrangements that the government makes with suppliers or contractors covering anticipated requirements over a defined period of time. They may be used in contracting for goods or services. There is no legal obligation incurred.
- 14.1.7 SOAs are intended to increase the level of cost-effectiveness and service to users by:
- i. reducing the time required to acquire standard goods or services;
 - ii. reducing the overall administrative costs of acquiring low cost, frequently required goods and services; and
 - iii. maintaining competitive, best price expenditures.
- 14.1.8 With respect to goods contracting, SOAs provide the opportunity to establish, through an RFT or RFP process, pricing agreements that will offer lower costs for frequently-required goods and services, through the consolidation of demand. This is also known as achieving ‘economies of scale’.

14. ABOUT STANDING OFFER AGREEMENTS (SOAS)



14.2 Establishing an SOA through an RFT or RFP Process

- 14.2.1 The establishment of SOAs should result from a clearly defined need. Where such agreements are requested by program managers, there should be prior discussions establishing the scope of the requirement and a commitment from the department or departments to use the agreement.
- 14.2.2 CGS Purchasing, Logistics & Contract Support has arranged a wide range of SOAs on behalf of the GN. Information regarding these agreements may be obtained from the CGS Purchasing office.
- 14.2.3 SOAs should be entered into only after a competitive process in accordance with the Contract Regulations. You should incorporate an estimate of the amount of work or goods into the RFT documents, as an anticipated volume may result in more favorable pricing being offered.
- 14.2.4 Whenever possible, the request documents should clearly indicate that the resulting SOA will be non-exclusive. In certain circumstances, it may be practical to have SOAs for certain requirements exclusively with only one business. However, consideration for the livelihood of other businesses and the impacts on the marketplace must be considered before awarding exclusive SOAs.
- 14.2.5 Standard templates have been developed for the establishment of SOAs via an RFT or RFP process. Contact CGS Purchasing, Logistics & Contract Support for support and/or assistance with establishing your SOA.

14.3 Awarding Individual Contracts

- 14.3.1 A public officer can order goods or services under an established SOA provided they are a contract authority. This activity is not considered to be a sole source under the Contract Regulations since the SOA will have been established through a formal contracting process.
- 14.3.2 Some of the methods that may be used to issue contracts against SOAs include:
- i. Local Contract Authority (LCA);
 - ii. Service Contract (SC);
 - iii. Purchase Order (PO) through CGS Purchasing by requisition only;
 - iv. VISA through CGS Purchasing by requisition only.

14. ABOUT STANDING OFFER AGREEMENTS (SOAs)



- 14.3.3 As SOAs do not contain legal obligations to contract for all or any of the goods or services, they are not considered to be contracts. Consequently, there is no requirement for the obligation of funds until individual contracts are made under the terms and conditions contained in the SOA.
- 14.3.4 In the event of a non-exclusive SOA (multiple vendors), every effort should be made to contract first with the business offering the lowest tendered price – or the highest ranked proponent as applicable. Only if the preferred vendor is not available should the contract be offered to the next vendor in line.



15.1 As and When Required Services – Unit Price Contracts Based on Estimated Quantities

15.1.1 As and When Required contracts (“As & When”) are contracts where the total value of the contract can be calculated by multiplying units of work by a fixed unit price. These contracts can also be referred to as “Unit Price Contracts”. However, the most common term used for GN maintenance contracts is “As & When”. They are the same thing.

15.1.2 Unlike standing offer agreements, which are not legally binding contracts, As & When contracts are legally binding contracts in which both the GN and contractor have obligations.

15.2 Purpose

15.2.1 When used for the purpose of providing on-going services, As & When contracts allow the consolidation of relatively low value service requirements over a set period of time (normally one fiscal year) into one agreement that establishes labour and associated material charges. This ensures that a contractor is available when needed and eliminates the necessity of frequently requesting tenders and awarding individual contracts for low value work.

15.3 Restrictions

15.3.1 The scope of the intended service requirements must be clearly defined in As & When contracts.

15.3.2 Individual requirements valued in excess of \$10,000 should be treated as separate contracts and put out to competition accordingly.

15.4 Establishing As & When (Unit Price) Contracts

15.4.1 As & When contracts are established to provide for routine service requirements or emergencies. As such, there is no commitment to provide a fixed amount of work to the contractor. However, there is a clear legal obligation to employ the successful contractor for the work contemplated. The contractor that has won the contract must be utilized unless it is unavailable or unwilling to do the work.

15.4.2 The establishment of As & When contracts must follow the requirements for obtaining competitive prices.

15. ABOUT AS & WHEN REQUIRED SERVICES



- 15.4.3 Requests for tenders or proposals for this type of arrangement should include at least the following:
- i. purpose for the arrangement;
 - ii. clearly defined goals and objectives for the program or scope of work;
 - iii. clearly defined schedule of projects with contemplated delivery dates;
 - iv. a clear methodology for calling up work as and when required;
 - v. a clearly defined pricing methodology including reasonable estimates of time frames required each scheduled event;
 - vi. clear direction on the level of priority the contractor will give to the request;
- 15.4.4 Reliance on hourly or per-diem rates should be avoided.
- 15.4.5 The conditions according to which the contractor will not be utilized for the defined work must be clearly described in the RFT or RFP and the contract.
- 15.4.6 CGS Property Management uses As & When contracts for routine operations, maintenance and cleaning service requirements in all GN office buildings.
- 15.4.7 CGS Contract Support has also developed an As & When contract template for consultant services.

15.5 Preparing the RFT Document

- 15.5.1 CGS has prepared a standard As & When template for maintenance services including janitorial services.
- 15.5.2 CGS, together with the Legal Division of the Department of Justice, has also prepared a standard contract template form for As & When Required Consultant Services.
- 15.5.3 Refer to Chapter 11 – About Contracting Forms and Templates – for more options of templates available for use depending on the services required.

15.6 Reviewing the Tenders

- 15.6.1 Refer to section 4.23 of Chapter 4 – About Requesting Tenders – for more information and instructions on evaluating tenders.

15. ABOUT AS & WHEN REQUIRED SERVICES



15.6.2 Incomplete Unit Price Tables

- 15.6.2.1 For As & When required services contracts, bidders are asked to submit prices based on separate units and measures of work. For these types of RFTs and resulting contracts, the bid price is actually the unit price submitted and not the extension¹⁷ or total estimated tender price. The total tender price is merely an extension of the unit price based on the quantity of units estimated by the procurement officer. Accordingly, unit price tenders must be reviewed to ensure the mathematical calculations are correct. The unit prices govern as they were submitted. After the RFT closing, unit prices may not be changed, corrected, or added if missing. However, mathematical errors resulting in incorrect extensions may be corrected in accordance with the instructions in the RFT documents.
- 15.6.2.2 Where the bidder has omitted a unit price, the tender must be reviewed to determine if the missing unit price can be calculated based on the extensions.
- 15.6.2.3 If a detailed calculation and extension of all other unit prices prove beyond a doubt that the extension of the missing unit price is included in the total amount shown, then the tender may be considered. Confirmation of the missing unit price must then be obtained from the bidder, since it will be required for payment purposes.
- 15.6.2.4 If a detailed calculation proves beyond a doubt that the bidder failed to include a unit price, then the bid is non-responsive and the tender must be disqualified since permitting the bidder to provide the missing unit price at this point would be allowing it to change its bid and give it an unfair advantage over the other bidders.

15.7 Obligation of Funds

- 15.7.1 When contemplating the establishment of an As & When contract, an estimate of the amount of work and associated materials is required. This estimate is incorporated into the RFT or RFP and forms the basis of a financial commitment of funds.
- 15.7.2 This financial obligation does not result in a legal obligation to contract for any estimated amount of work.

¹⁷ For example: 800 widgets per month for 18 months @ \$16.00/widget. Here, \$16.00 is the unit price. $800 \times 18 = 14,400$ is the estimated quantity. Therefore $14,400 \times \$16.00 = \$230,400.00$ (the 'extension').

15. ABOUT AS & WHEN REQUIRED SERVICES



15.8 Ordering the Work

- 15.8.1 Individual requirements for services may be communicated to the contractor by way of:
- i. work order;
 - ii. Local Contract Authority (LCA) form;
 - iii. service contract (SC) form (in excess of \$5,000).



16.1 Introduction

- 16.1.1 In carrying out the GN's contracting activities, public officers must follow the acts, regulations and policies that have an effect on the undertaking of contracts for goods and services using Nunavut's public funds.
- 16.1.2 The undertaking of contracts is controlled by various formal and informal processes. Formal processes include the application of the *Nunavut Land Claim Agreement* (NLCA), various statutes and regulations, as well as various GN policies.
- 16.1.3 In addition, some federal legislation applies to Nunavut contracts and must be followed whether or not it is specifically referenced in the contract. Finally, there is the body of contract and procurement law which affects contracting in Nunavut as it does in all of Canada.
- 16.1.4 There are also various informal processes that apply, such as the cultural environment in Nunavut, which is an important factor in GN contract management. Note, however, that although these informal processes are important and must be recognized, they are beyond the scope of this manual.
- 16.1.5 This manual provides guidance and assistance to all public officers and contract authorities in carrying out contracting activities on behalf of the GN. Any deviations from the policies and procedures set out herein must be approved in writing by your Deputy Minister.

16.2 Federal Legislation

- 16.2.1 Standardized GN contract templates refer to various pieces of federal legislation, particularly tax legislation. Note, however, that it is not necessary to refer directly to any specific piece of legislation because it applies whether or not it is referenced in the contract.

16.3 Nunavut Legislation

- 16.3.1 In the same manner that some federal legislation applies to GN contracts, so does all Nunavut legislation. Such legislation does not need to be specifically referenced in the contract. In general, the only specific reference to legislation that needs to be made in GN contracts is to section 46 of the *Financial Administration Act* (FAA).

16. ABOUT LEGISLATION AND POLICY



- 16.3.2 The FAA is the most important piece of legislation affecting GN contracting activities. The FAA controls GN expenditures of public funds. It is explained in the Financial Administration Manual (FAM), which consists of directives issued by the Financial Management Board.
- 16.3.3 All GN contracting activities must be done in accordance with the Contract Regulations made pursuant to the FAA. In FAM, the Contract Regulations directive number is 9904. 9904 is explained in greater detail in Directives 808 and 808-1. Refer to Chapter 2 of this manual – About Contracting – General – for more information.
- 16.3.4 The *Nunavut Land Claims Agreement (NLCA)* is a constitutional document governing the creation of the Nunavut Land Settlement Area. Article 24 of the NLCA relates to both federal and territorial government contracting in the Nunavut Settlement Area. The main objectives of Article 24 are:
- i. increased participation by Inuit firms in business opportunities in the Nunavut economy ;
 - ii. improved capacity of Inuit firms to compete for government contracts; and
 - iii. employment of Inuit at a representative level in the Nunavut workforce.

16.4 Government of Nunavut Policies

- 16.4.1 The GN has a number of policies which specifically impact contracting activities, including the following:
- i. Nunavummi Nangminiqaqtunik Ikajuuti (NNI Policy)
 - ii. Umbrella Inuit Impact and Benefit Agreement (IIBA) - Parks Contracting Policy and Procedures
 - iii. Air Charter Policy and Procedures
 - iv. Green Procurement Policy



16.5 Nunavummi Nangminiqaqtunik Ikajuuti (NNI Policy)

- 16.5.1 In order to comply with the requirements of Article 24 of the NLCA, the GN, in consultation with NTI, developed the NNI Policy. Refer to Chapter 18 – About the NNI Policy – for more information on the NNI Policy.
- 16.5.2 It is a priority of the GN to maximize opportunities for Nunavut, Inuit and Local workers and businesses to benefit from our contracts. The NNI Policy gives preference to approved Nunavut, Inuit and Local businesses over non-approved businesses competing for GN contracts.
- 16.5.3 This preference is recognized and achieved through consistent application of the procedures and approaches set out in this manual. One of the most important aspects of the NNI Policy is the application of bid adjustments or bonus points when evaluating tender and proposal submissions from companies which are listed in the NNI Secretariat and NTI registries as approved Nunavut, Inuit and Local businesses. Companies which are registered are entitled to adjustments when competing for contracts; however, companies which are not registered do not receive the adjustments.
- 16.5.4 During the first year of the GN's operations (1999 – 2000) the Nunavut Business Incentive Policy (BIP) and Nunavut Settlement Area Contracting Procedures were in place. The first NNI Policy came into affect on April 1, 2000 and replaced the BIP. The GN Contract Procedures Manual replaced the Nunavut Settlement Area Contracting Procedures. This manual is the 2nd Edition of the GN Contracts Manual.
- 16.5.5 The NNI Policy underwent an annual review pursuant to section 17 of the Policy in 2001. A comprehensive review was undertaken in 2003 in accordance with section 16 of the Policy. As a result of the recommendations arising from the First Comprehensive Review, revisions to the NNI Policy were approved by Cabinet on April 20, 2006.



16.6 Inuit Impact and Benefit Agreement (IIBA) Parks Contracting Policy

- 16.6.1 The IIBA Parks Contracting Policy was developed by the former Department of Sustainable Development (now department of Environment – Nunavut Parks Division) in consultation with NTI and approved by Cabinet on May 13, 2002.
- 16.6.2 The Parks Contracting Policy was annexed to the NNI Policy as a result of Cabinet's acceptance of Recommendation #32 of the First Comprehensive Review of the NNI Policy.
- 16.6.3 The parks-specific annex of the NNI Policy applies to all contracts issued or to be issued by the GN relating directly or indirectly to a Territorial Park or Parks, and includes, without limitation:
- i. contracts for the design, development, purchase, construction, installation, improvement, operation, maintenance, repair, or removal of park facilities or parks-related infrastructure, including, without limitation, roads and trails, to, from or related to a park;
 - ii. contracts for the development of parks-related information or promotional material; and
 - iii. contracts for the procurement of parks-related goods and services.
- 16.6.4 The bid adjustments for parks tenders are different from those set out in the NNI Policy.
- 16.6.5 The rules governing acceptance of tenders and proposals are different from those set out in the Contract Regulations: where there are sufficient bids from “responsive” and “responsible” Inuit Firms, bids from Nunavut businesses or other bidders are not considered.
- 16.6.6 Parks contracts requiring labour must carry a mandatory minimum requirement of 50% of payroll for Inuit employees.
- 16.6.7 “Parks” are defined in the IIBA Agreement available from the Department of Environment, Nunavut Parks Division.
- 16.6.8 Refer to Chapter 11 – About Contracting Forms and Templates – for more information about parks contracting.

16. ABOUT LEGISLATION & POLICY



16.7 GN Air Charter Policy and Procedures

- 16.7.1 In January 2001, the former GN department of Public Works & Services (now CGS) developed the GN's Air Charter Policy to provide guidance and assistance for administration of government air charter services. This policy is now reflected in Directive 815 of the GN's Financial Administration Manual (FAM).
- 16.7.2 All departments may contract for air charter services up to \$5,000 under established standing offer agreements, with a few exceptions. Charters in excess of \$5,000 must be requisitioned from the CGS Logistics Manager.
- 16.7.3 Refer to Chapter 13 – About Requesting Air Charters – and Chapter 17 – About FAM and the Contract Regulations – for more information on chartering aircraft services.

16.8 Green Procurement Policy

- 16.8.1 The GN is committed to procuring environmentally friendly goods and services and products that meet the highest possible level of energy efficiency. Further, the delivery of goods and services should be done in a manner that has the least impact on the environment, meeting the needs of the present without compromising the ability of future generations to meet their own needs.
- 16.8.2 By purchasing environmentally preferred goods and services, and the most energy efficient products, the GN is helping to reduce energy consumption and greenhouse gas emissions.
- 16.8.3 Green procurement is the procurement of products and services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. A green product is one that is less harmful than the next best alternative.
- 16.8.4 CGS Purchasing Division will give preference to environmentally preferred goods and services, and ENERGY STAR products, when purchasing goods and services for the GN. The Purchasing Division is responsible for reviewing specifications, quality, delivery date, and price of the good, material or service.

16. ABOUT LEGISLATION AND POLICY



17. ABOUT FAM AND THE GN CONTRACT REGULATIONS



17.1 Introduction to the Financial Administration Manual

- 17.1.1 The *Financial Administration Act* (FAA) and the Contract Regulations are the most important authorities when it comes to understanding the financial duties and responsibilities of GN contract authorities and public officers. The Financial Administration Manual (FAM) contains directives made by the Financial Management Board, pursuant to the FAA, which must be followed by all public officers.
- 17.1.2 The Contract Regulations are set out in FAM in Directive 9904 and are explained and referenced in a number of directives in the Chapter 800 series (Control of Expenditures). Accordingly, FAM should be relied upon in understanding the financial duties and responsibilities of GN contract authorities and public officers.
- 17.1.3 FAM is a manual primarily for use by public officers with financial signing responsibility in GN departments and public agencies. It includes a number of important directives which deal with the administration of the government's finances and the awarding of government contracts and contains legislation, regulations, and financial administration policy.
- 17.1.4 Detailed directions and delegations of particular powers and duties are set out in the directives. Some of these directives are briefly commented upon in the following sections.
- 17.1.5 FAM is available on the GN Intranet (<http://gnwebsite/finance/fam/>).

17.2 Control of Expenditures – Chapter 800

- 17.2.1 Chapter 800 includes a number of important directives which deal with contracting authority and the invitation, award and administration of government contracts. These directives are briefly commented upon in the following sections. Public officers must refer to FAM for proper direction and guidance.

17.3 Delegation of Powers and Duties – Directive 802

- 17.3.1 Directive 802 deals with the delegation of powers and duties. The FAA vests certain powers and duties with specific groups and positions of the government and provides for the delegation of those powers and duties. All delegations under the FAA must be exercised in accordance with this directive.

17. ABOUT FAM AND THE GN CONTRACT REGULATIONS



17.4 Signing Authorities – Directive 802-1

- 17.4.1 This directive talks about signing authorities and specimen signature records, who can delegate authorities, and what the authorities are for. Pursuant to section 13(2) of the FAA, a Minister and the Comptroller General may delegate any of their powers and duties to a public officer. Ministers and their delegates set limits and other conditions on the financial signing authorities of all public officers and service contractors attached to their departments.
- 17.4.2 A contract on behalf of the government is a form of expenditure. Therefore, in accordance with the FAA and the Contract Regulations, a contract on behalf of the GN must be approved by a contract authority and an expenditure officer. No person other than a contract authority or the Executive Council (Cabinet) may enter into a contract on behalf of the government.
- 17.4.3 The Contract Regulations state at section 6(2) that a contract signed by a public officer who does not have delegated authority shall not be binding on the GN. Note, however, that a court might find that such a contract is in fact binding on the GN. It is therefore very important to ensure that a public officer either be a contract authority, or have the necessary approval of a contract authority, before entering into a contract on behalf of the GN.
- 17.4.4 The Specimen Signature Record (SSR) is the instrument used to delegate levels of signing authority to public officers. The supervisor of a position with financial signing authority may also use the SSR to lower the monetary limit and impose restrictions, conditions and exceptions on a position.

17.5 Account Verification and Payment – Directives 803, 803-3 and 803-4

- 17.5.1 These directives explain the process for obtaining approval of public money expenditures and the controls placed on that process in order to ensure that it is efficient and free from conflict or fraud.
- 17.5.2 Directive 803-3 provides for a preferential 20-day payment term for vendors registered under the Inuit Firms Registry or the Nunavut Business Registry.
- 17.5.3 Directive 803-4 provides direction on the payment of interest on overdue accounts. Specifically, the GN will only pay interest when legally required to do so by contractual agreement, legislation or judicial requirement, or with written approval from the Comptroller General or his or her delegate.

17. ABOUT FAM AND THE GN CONTRACT REGULATIONS



17.6 Government Contracts – General – Directive 808

- 17.6.1 This important directive deals with the formation and administration of all types of government contracts including award methods, contract authorities and specific requirements for personal service contracts.
- 17.6.2 Standard contract clauses with respect to a contractor's insurance coverage, indemnity for the GN against a third party claim arising out of the contractor's performance of the contract, and the requirements of section 46 of the FAA are all set out in this directive.
- 17.6.3 This directive requires, at paragraph 3.4, that before entering into a non-standard contract valued greater than \$50,000, the contract authority shall submit the proposed contract to the Department of Justice for review. Note, however, that the Department of Justice recommends that all non-standard contracts, regardless of value, be reviewed by Justice. This legal review is coordinated by CGS Contract Support on behalf of the contracting department.

17.7 Tenders and Proposals – Directive 808-1

- 17.7.1 This directive provides the criteria, requirements and guidelines for inviting tenders, requesting proposals and awarding government contracts in accordance with the Contract Regulations and explains the difference between tenders and proposals.
- 17.7.2 Except as permitted in the Contract Regulations, a contract must be awarded as a result of a formally invited competitive request for tenders. These requirements are dealt with more specifically in other chapters of this manual.
- 17.7.3 The Contract Regulations allow a contract authority to request proposals where it would be more appropriate than requesting a tender, or to award a contract without competition under certain specific criteria. Procedures for requesting proposals are discussed in Chapter 5 – About Requesting Proposals – and procedures for contracting without competition are discussed in Chapter 6 – About Sole Sourcing and Negotiating Contracts.
- 17.7.4 Departments should obtain advice and assistance on preparing an RFP from CGS Purchasing, Logistics & Contract Support. In most cases, Purchasing can issue and manage the RFP process on your behalf. Refer to Chapter 5 – About Requesting Proposals – for more information on the RFP process. Appendices A and B to FAM Directive 808-1 also contain specific RFP requirements.

17. ABOUT FAM AND THE GN CONTRACT REGULATIONS



17.8 Delegation of Purchasing Authority (for subscriptions and periodicals and petty cash purchases – Directive 808-2)

- 17.8.1 The Minister of CGS may, in accordance with section 3(1) of the Contract Regulations, delegate purchasing authority, either on a government wide basis or for specific program use.
- 17.8.2 Directive 808-2 has to do with the delegation by the Minister of purchasing authority for subscriptions and periodicals and petty cash purchases to all other departments or their delegates.

17.9 Local Contract Authority (LCA) – Directive 808-3

- 17.9.1 This is a very important directive which deals with the use of the GN's LCA contracting form.
- 17.9.2 LCA allows individual departments to purchase or contract for goods and services up to a maximum value of \$5,000 from Nunavut-based local businesses. LCA purchases must be made on the LCA form and must not be used outside of Nunavut.
- 17.9.3 Directive 808-3 sets out the terms and conditions for use with LCA contracts.
- 17.9.4 Detailed procedures for LCA purchasing are provided in Chapter 11 – About Contracting Forms and Templates.

17.10 Standing Offer Agreements (SOAs) – Directive 808-4

- 17.10.1 This directive sets out the purpose and definition of standing offer agreements and allows contract authorities, where appropriate, to establish and maintain standing offer agreements specifically designed for common use goods and services pursuant to the Contract Regulations.
- 17.10.2 Contract Authorities who enter into SOAs for a particular department must advise the other departments that might be able to take advantage of the agreement.
- 17.10.3 SOAs are not contracts, therefore, the language used in the RFT/RFP call must be carefully written. It is highly recommended that departments wishing to establish SOAs contact CGS Purchasing for advice and assistance.
- 17.10.4 Detailed procedures for establishing SOAs are provided in Chapter 14 – About Standing Offer Agreements (SOAs).

17. ABOUT FAM AND THE GN CONTRACT REGULATIONS



17.11 Personal Service Contracts – Directive 808-5

- 17.11.1 GN staff should pay particular attention to this very important directive which deals with personal service contracts, especially when intending to sole source a consultant service contract. This section provides guidelines which assist in determining whether a consulting or personal services contract will be considered to be an employment contract or not.
- 17.11.2 This is extremely important because an employment contract exposes the GN to liability for source and other deductions such as income tax, worker's compensation, pension, payroll tax, employment insurance contributions and other related statutory liabilities, as well as employment benefits such as health care, disability insurance and leave entitlements.
- 17.11.3 Contract authorities must refer to the tests set out in Appendices A and B of Directive 808-5 in order to determine whether the type of contract under consideration is in fact an employment contract.
- 17.11.4 Due diligence must be performed in order to minimize the GN's exposure to risk for liability under personal services contracts. Contract authorities should complete the tests provided in Directive 808-5 before awarding a contract to ensure that an employer – employee relationship is not created.

17.12 Honoraria – Directive 810

- 17.12.1 This directive provides guidelines and rates of pay for honoraria and the reimbursement of certain expenses to individuals who provide a range of services to the GN and who have been authorized by Ministerial Executive Council or legislative authority to provide such service.

17.13 Aircraft Chartering – Directive 815

- 17.13.1 This directive deals with the authority and process for contracting for air charter services. GN departments may charter aircraft up to a value of \$5,000 under established SOAs; however, and with few exceptions, the authority for aircraft chartering services rests with CGS.
- 17.13.2 Refer to Chapter 13 – About Requesting Air Charters – where specific requirements are explained in greater detail.

17. ABOUT FAM AND THE GN CONTRACT REGULATIONS



17.14 Accountable Advances – Directive 817

- 17.14.1 In exceptional circumstances, a contract authority may recommend to the Comptroller General that an "up front payment" be made to a contractor. These payments can only be approved by the Comptroller General or its authorized delegate according to the provisions of FAM Directive 817. Up front payments to contractors, such as a request for 30% of the contract funds upon signing of the contract, should be strongly discouraged. Goods and services should only be paid for once they are supplied or rendered according to the contract. Refer to directive 817 for more information on accountable advances. Refer to section 9.7 of Chapter 9 – Managing Contracts – for more information on payments to contractors.

17.15 Government Contract Regulations – Directive 9904

- 17.15.1 Although included here as Directive 9904, the Contract Regulations are actually regulations made pursuant to the FAA. This is the most important document for employees who request tenders and proposals and award or administer contracts on behalf of the GN. All public officers who have been delegated contract or expenditure authority must read and adhere to these regulations.
- 17.15.2 The Government Contract Regulations may be referred to as "the Contract Regulations", "the Regulations", "the Contract Regs" or "9904", etc.
- 17.15.3 The Contract Regulations (as they are referred to throughout most of this manual) are organized into four main parts preceded by an interpretation section. Terms such as "contract authority", "formal invitation to tender", "request for proposal", "responsive", and "responsible" are defined in the interpretation section of these regulations.
- 17.15.4 Part 1 of the Contract Regulations set out their general application and specifically provides for the paramount authority of the Executive Council to enter into negotiated contracts.
- 17.15.5 Part 1 also sets out the limits of a contract authority when entering into contracts on behalf of the GN.
- 17.15.6 Part 2 sets out the requirements for competitive invitations to tender as well as the criteria for awarding contracts without competition, i.e., sole sourcing.
- 17.15.7 Part 2 calls for a tender-opening committee and a public opening for every tender submitted as a result of a formal invitation to tender. The specific requirements for information to be recorded are also set out in this part of the Contract Regulations, as well as the conditions for rejecting a tender.

17. ABOUT FAM AND THE GN CONTRACT REGULATIONS



- 17.15.8 Part 2 sets out the specific requirements for awarding a contract as a result of an invitation to tender and also allows a contract authority to refuse all tenders and not award a contract.
- 17.15.9 Part 3 allows a contract authority to request proposals if, in the opinion of the contract authority, a request for proposals would be more appropriate than a request for tenders.
- 17.15.10 Every request for proposals must promote the submission of competitive proposals and express the criteria to be used in evaluating the proposals. No criteria shall be used in evaluating proposals other than those expressed in the request or in the Regulations.
- 17.15.11 Part 3 further sets out the specific requirements of awarding a contract as a result of a request for proposals.
- 17.15.12 Part 4 sets out the standard types of GN contracts and which departments have the authority to award them. This Part does not apply to contracts for the Office of the Legislative Assembly or to contracts awarded by the Speaker of the Legislative Assembly.
- 17.15.13 There have been a number of amendments to the Contract Regulations over the years, the most important being the revisions to the definition for “Business Incentive Policy” and the increase in the sole source value limit from \$1,000 to \$5,000 in July of 2005. Amendments to the Contract Regulations can be found in the Nunavut Gazette.

17.16 Contribution Agreements

- 17.16.1 Contribution agreements are governed by FAM Directive 801 and do not fall under the Government Contract Regulations. Contribution agreements are not reported for the purposes of monitoring the GN’s contracting and procurement activities.
- 17.16.2 However, organizations receiving GN funding through a contribution agreement are required to apply the NNI Policy in any contracting activities they engage in with those funds¹⁸.
- 17.16.3 NNI applies to contracts to which GN or any of its agencies or boards is a party, or where the GN provides more than 51% of total contract funds or annual operating budget. Accordingly, contracts entered into by organizations which receive more than 51% of the total contract funds or annual operating funds from the GN are subject to the NNI Policy.

¹⁸ NNI Policy, section 5 – Application

18. ABOUT THE NNI POLICY



18.1 Scope

- 18.1.1 One of the priorities of the GN with respect to its contracting activities is to achieve its objectives under Article 24 of the Nunavut Land Claims Agreement (NLCA) while maximizing business and employment opportunities for Nunavut and Inuit businesses and residents of the territory.

18.2 Objectives

- 18.2.1 The NNI Policy has the following objectives:
- i. Good Value and Fair Competition: To secure goods and services for the GN at the best value, recognizing the higher cost of doing business in Nunavut, and using a contracting process that is clear, fair and equitable.
 - ii. Strengthening the Nunavut Economy: To build the economy of Nunavut and its communities by strengthening business sector capacity and increasing employment.
 - iii. Inuit Participation: To bring about a level of Inuit participation in the provision of goods and services to the GN that reflects the Inuit proportion of the Nunavut population.
 - iv. Nunavut Education and Training: To increase the number of trained and skilled Nunavut residents in all parts of the workforce and business community to levels that reflect the Inuit proportion of the Nunavut population.

18.3 Relationship to the NLCA

- 18.3.1 This policy is aimed at implementing the GN's obligations under the NLCA, particularly Article 24, and should be interpreted in such a way as to respect both the letter and the intent of that Agreement.
- 18.3.2 The NNI Policy applies to the design, award, administration and interpretation of any contract:
- i. to which the GN or any of its public boards or agencies, as described in the *Financial Administration Act*, is a party; or
 - ii. where the GN provides, directly or indirectly, more than 51% of the total contract funds; or
 - iii. where the GN provides, directly or indirectly, more than 51% of the annual operating funds for one of the parties to the contract.

18. ABOUT THE NNI POLICY



18.3.3 The NNI Policy does not apply to contracts that are entered into as a result of an emergency where a delay caused by a competitive RFT or RFP process would cause public harm or injury.

18.3.4 The NNI also does not apply to contracts of employment or insurance against liability.

18.4 Relationship to Requesting Tenders and Proposals

18.4.1 Tenders and proposals for contracts that will not exceed \$25,000 in value may be exclusively invited from Nunavut-based businesses where there is sufficient competition (at least three interested and capable of performing the work).

18.4.2 All contracts with a labour component over \$300,000 must include a detailed training plan for Inuit workers.

18.4.3 All RFT and RFP documents must specify the subject community or communities where the goods or services are to be provided for the purposes of giving the Local bid adjustment. The subject community is the community or communities benefiting from the contract. Where the contract is for the benefit of all of Nunavut and not for a specific community, the Local adjustment is not given.

18.4.4 All requests for tenders must include a provision that requires a general contractor to invite Nunavut, Inuit or Local companies to bid on any sub-contracts that will be required as part of carrying out the work.

18.4.5 In the case of maintenance contracts, a detailed training plan must be included where the contract cost is expected to exceed \$250,000.

18.4.6 For RFPs, "Inuit content" must be included as part of the evaluation criteria established for each RFP. The Inuit content values shall be, at a minimum, as follows: i) 10% for Inuit employment; and ii) 5% for Inuit ownership.

18.4.7 Inuit content is defined in the NNI Policy as the dollar value of the goods and services for the contract that is supplied by any Inuit Firm or Inuit Sole Proprietorship and Inuit labour. This may include:

- i. goods and services supplied by an Inuit Firm or Inuit Supplier acting as the general contractor (these are referred to as "Own Forces");
- ii. goods and services supplied by an Inuit Firm or Inuit Supplier so long as these goods and services are required for the completion of the contract and are paid for by the contract; and
- iii. Inuit labour supplied by any Inuit or a non-Inuit Firm.

18. ABOUT THE NNI POLICY



18.5 Criteria for Determining Inuit Content in Requests for Tenders

18.5.1 The GN prescribes mandatory Inuit labour requirements in its RFTs for construction and maintenance contracts.

18.5.2 For the minor works template (RFT Construction or Services), failure by the bidder to comply with the minimum requirement for Inuit labour is a material non-compliance and will result in the disqualification of the bid.

18.5.3 For contracts over \$100,000, the major works (construction RFT and contract) template applies. Failure by a tenderer to comply with the minimum requirement for Inuit labour is not considered sufficient to warrant disqualifying the lowest bid. However, the bidder must remove this qualification before the bid can be further considered. Accordingly, the bidder must agree to meet the minimum requirement for Inuit labour. An allowance for making this correction is included in clause 4 of the major works instructions to tenderers. Generally, the qualification should only be by a few percentage points.

18.5.4 Nothing in the NNI Policy or FAM or this manual prevents a contract authority from setting a mandatory Inuit labour requirement on any type of GN contract. Forms and templates are available to contract authorities to implement NNI Policy Inuit labour bonuses and penalties in their contracts. Contact CGS Contract Support for advice and assistance.

18.5.5 CGS has developed the following guidelines for establishing the level of Inuit content and Inuit labour in RFTs and RFPs.

18.5.6 Who determines the Level of Inuit Content?

18.5.6.1 Contract managers or project officers and the RFT/RFP team are the ones who best know what the contract requirements are and what is available within the contract community or region. Each minimum mandatory percentage must be determined on a contract-specific basis according to the specific job conditions and the availability of Inuit workers with relevant skills in the project community or vicinity thereof.

18.5.7 How much Inuit Content is Appropriate?

18.5.7.1 There is no magic figure or recommended amount, and it will not be easy to set an amount that will satisfy all parties. The overriding principle is that potential Inuit participation will be maximized to the degree reasonably possible.

18. ABOUT THE NNI POLICY



18.5.7.2 This means that the amount of Inuit content required should be reasonable and consistent with the principles of competitive bidding. That is, it should not be set so high as to enable only one or two companies to be able to submit compliant bids or proposals, or so low that capable Inuit Firms are not realizing the benefits of the NNI Policy. It is important to maintain a competitive marketplace, while also promoting increased Inuit participation.

18.5.7.3 In setting this mandatory minimum level of Inuit content, consider carefully what is possible and realistic in each case. Determine, according to the specific job conditions and the availability of Inuit workers with the relevant skills, what is realistically achievable.

For Example:

- i. An 85% level of Inuit employment might be appropriate in Clyde River for a local cartage contract. On the other hand, a much lower level might be appropriate for an electrical repair contract requiring a journeyman electrician in Pond Inlet, or for aircraft charters in Cambridge Bay. If the work must be performed by a certified tradesperson, and there are no certified Inuit trades people available, then approval of the originating department's Deputy Minister should be obtained to minimize or waive the Inuit labour requirement for that particular contract.
- ii. Employment skills that are not necessary to the fulfillment of the contract should be avoided.
- iii. Contract authorities should look for ways to incorporate training or other support opportunities for non-professional Inuit employees into its contracts. When evaluating proposals, higher points should be awarded to proponents who include professional Inuit employees on their project team.

18.5.7.4 To better arrive at a realistic level, contact the Regional Inuit Association (RIA), local hamlet and employment assistance offices to determine what is available within the community or region and match what is available with the contract requirements. Carefully consider what is possible and realistic in each case and the level of skill represented by the available workforce.

18.5.7.5 In all cases, Deputy Minister approval is required to waive the Inuit labour requirement on a GN contract.

18. ABOUT THE NNI POLICY



18.5.8 The proposed minimum Inuit labour requirement to be included for all construction projects must be included on a list published each year in anticipation of the upcoming construction season. It should be made clear that feedback from interested persons is encouraged on the proposed levels prior to the issuing of requests for tenders¹⁹.

18.6 Relationship to Tender/Proposal Evaluation Process

18.6.1 The most important aspect of the NNI Policy for many contractors is the NNI Bid Adjustment. Where prices are very close bid adjustments can have an impact on who will win the contract.

18.6.2 The NNI Policy provides for the following adjustments (or reductions in tender prices for the purposes of comparing bids)²⁰:

- | | | |
|------|------------------------|----|
| i. | for a Nunavut Business | 7% |
| ii. | for an Inuit Firm | 7% |
| iii. | for a Local Business | 7% |

18.6.3 All tenders and proposals received by the GN in response to a formal request are subject to an evaluation process before they can be awarded. They must first meet the minimum contract requirements specified in the request (responsive) and the contractor must be deemed capable of carrying out the work (responsible) prior to application of any NNI Policy bid adjustments²¹.

18.6.4 All tenders that meet the minimum requirements will then have their pricing adjusted based on the 'NNI status' of the company submitting the tender or proposal and any subcontractors, suppliers and workers that also qualify for an adjustment²².

18.6.5 The labour/payroll component is adjusted according to the contractor's and subcontractor's estimates of payroll expenditures for Nunavut, Inuit, and local payroll expenditures that form part of the bid. Accordingly, it is best to provide a pricing and payroll breakdown table in the RFT/RFP document.

18.6.6 The bid adjustment for Inuit labour is limited to the minimum percentage of Inuit labour required in comparison to the total payroll as set out in the RFT document²³.

¹⁹ NNI Policy 1st Comprehensive Review, 2003 – Recommendation #13

²⁰ NNI Policy s. 11.1(e)

²¹ NNI Policy s. 11.1(a)

²² NNI Policy s. 11.1(d)

²³ NNI Policy s. 11.1(d)(i)

18. ABOUT THE NNI POLICY



- 18.6.6.1 For Example: On a total payroll estimate of \$350,000 where the Inuit payroll estimate is \$200,000 and the minimum Inuit payroll requirement is 45%, the bidder shall only receive bid adjustments on the first \$157,500 of Inuit payroll (45%), even though the estimated Inuit payroll is approximately 67%.
- 18.6.7 For goods tenders, the company must be a Nunavut Business approved by the NNI Secretariat to supply the particular commodity it is bidding on in order to receive the 7% Nunavut Business status adjustment²⁴. The bid adjustment applies only to the first \$100,000 of the bid price²⁵.
- 18.6.8 For combined general goods and services tenders and proposals (mixed goods and services) where there is a clear cost criterion, bid adjustments are applied to the total proposed price.
- 18.6.9 **Checking Nunavut Business and Inuit Firm Status**
- 18.6.9.1 Prior to awarding any adjustments, the company's status must be verified by confirming its inclusion on the GN and NTI lists. If the company is not included on the list, it does not get the adjustment.
- 18.6.9.2 The verification of a business/firm's Nunavut Business status must be checked using the website www.nni.gov.nu.ca/search.
- 18.6.9.3 The verification of a business/firm's Inuit Firm status must be checked using the NTI Inuit firm listing at www.inuitfirm.com.
- 18.6.9.4 The NNI review will only be necessary to the extent of determining whether Inuit, Nunavut and Local bid adjustments will impact the outcome of the tender or proposal evaluation and who will win the contract. Accordingly, bid adjustments are not necessary when the price difference between the two lowest bidders exceeds 21% (the maximum amount of bid adjustments that can be applied to both bidders); however, it is necessary to calculate the dollar values for Inuit, Nunavut and Local content.
- 18.6.9.5 Detailed examples of applying NNI bid adjustments in evaluating tenders and proposals are given at the end of this chapter.

²⁴ NNI Policy s. 11(1)(d)(ii)

²⁵ NNI Policy s. 11(1)(d)(iii)

18. ABOUT THE NNI POLICY



18.7 Relationship to Government Contract Regulations

- 18.7.1 For tenders, the lowest responsive and responsible bidder, after application of the NNI bid adjustments, will be awarded the contract.
- 18.7.2 For proposals, the highest ranked responsible proponent, after application of NNI bid adjustments, will be awarded the contract.

18.7.3 Relationship to NNI Award Challenge and Appeal Process

- 18.7.4 Within five (5) days of an award announcement, an unsuccessful bidder or proponent can challenge the outcome of the RFT/RFP evaluation process with respect to application of the NNI adjustments. The contract authority has five (5) days to respond in writing.²⁶ A debriefing session can be arranged.
- 18.7.5 If the complainant is not satisfied with the response given, it can, within five (5) days of receiving the response, appeal the award to the NNI Appeals Board with respect to the application of the NNI adjustments.
- 18.7.6 Refer to Chapter 7 – About Award Challenges and NNI Appeals – for more information on this topic.
- 18.7.7 The GN has developed standardized debriefing and regret letter templates for contract authorities to use for consistent and constructive feedback to unsuccessful bidders/proponents. Refer to Chapter 5 – About Requesting Proposals – for more information on debriefing unsuccessful proponents, and Chapter 11 – About Contracting Forms and Templates – for information on the templates.

18.8 Relationship to Contract Administration

- 18.8.1 Contract authorities are responsible for enforcing and monitoring the application of the NNI Policy in the contracts they award. Refer to section 15 of the NNI Policy for more information. Accordingly, CGS and the NNI Secretariat have developed a number of NNI application and monitoring tools for use in government contracting activities.
- 18.8.2 Refer to the NNI Forms & Templates section of Chapter 11 – About Contracting Forms and Templates. Also refer to Chapter 10 – About Contract Reporting.

²⁶ NNI Policy, s. 18.11(b)

18. ABOUT THE NNI POLICY



18.9 Relationship to Inuit Employment (NNI Bonuses and Penalties)

- 18.9.1 When developing request for tenders and proposals documents, Contract authorities must consider NNI Policy expectations regarding the employment of Inuit in government contracts. The NNI Policy provides for a monetary bonus to contractors for exceeding the minimum Inuit labour requirement set out in the contract, or a penalty for failing to achieve it.
- 18.9.2 The NNI Policy states that where applicable, in the area of employment, a bonus or penalty shall be calculated as follows:
- (a) a bonus shall be calculated as 1% of the total labour content of the contract for each 1% of the amount by which employment exceeds the mandatory requirement; or
 - (b) a penalty shall be calculated as 2% of the total labour content of the contract for each 1% of the amount by which employment does not meet the mandatory requirement.
- 18.9.3 Contracts that include a labour component must contain a mandatory minimum percent or the total labour component of the work, by dollar value, for the use of Inuit labour. Again, this level of Inuit labour or employment is set at a percentage of the total labour to be performed in the contract, NOT the total contract value.
- 18.9.4 For example, if for a \$10,000 contract, the total labour component is expected to be \$5,000, then a percentage of this \$5,000 should be prescribed as mandatory for Inuit workers.
- 18.9.5 This mandatory minimum percentage of Inuit labour becomes a condition of the contract and must be met by the successful contractor, whether or not that contractor is an Inuit Firm.
- 18.9.6 This means that the total of all labour inputs by any Inuit professional or administrative staff, skilled trades persons, unskilled laborers, etc., is compared to the total labour component of the contract. If the resulting percentage is equal to or greater than the minimum prescribed, the contractual conditions have been met.
- 18.9.7 Bonuses and/or penalties apply to Inuit participation in the areas of employment, project management and training.
- 18.9.8 In the areas of Inuit employment and management, a bonus or penalty will be calculated as the percentage of the amount by which Inuit employment either exceeds or does not meet the mandatory Inuit employment requirement.

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- 18.9.9 On final completion of the contract, a bonus or penalty for every payroll dollar above or below the minimum requirement will be paid to, or assessed from, the contractor depending on whether or not the contractor exceeded the minimum threshold percentage requirement for Inuit employment, as set by the contracting authority and specified in the request for tenders.
- 18.9.10 The contractor will receive neither a bonus nor a penalty for achieving the exact amount.
- 18.9.11 In the area of Inuit project management, bonuses or penalty may be applied as follows:
- i. A bonus of 2% of the total labour content value can be earned if an Inuk is employed as a project manager²⁷;
 - ii. A larger bonus, but not a larger penalty, or an additional 1% shall be determined for a locally employed Inuk project manager;
 - iii. In cases where the contractor has committed to providing an Inuk project manager and fails to do so, a penalty of 2% of the total labour content value shall be applied.
- 18.9.12 A bonus can be earned where training is provided to Inuit in the following areas:
- i. entry level positions - these are positions where an individual is provided with a job doing basic tasks, and
 - ii. apprenticeship positions - these are positions where an individual is provided with on-the-job training and classroom instruction to ultimately achieve professional accreditation. The individual is provided with on-going evaluation of their progress.
- 18.9.13 Bonuses can be earned for the provision of training to non-local and local Inuit.
- 18.9.14 In no event shall the total amount of bonuses earned for employment, management, and training for a single contract exceed 25% of the total labour expenditures on the contract.

²⁷ NNI s.12.1(g)



18.10 Relationship to Monitoring and Reviews

- 18.10.1 Reaching the objectives set out in the NNI Policy, including those pertaining to Inuit participation and training, will require persistent effort and commitment. The purpose of the NNI Policy is to bring about progress over time in regard to each of its four objectives. The mechanisms set out for periodic review and revisions of the Policy will provide an important means of measuring this progress.
- 18.10.2 At least once a year, the NNI Policy Review Committee shall review measurable contracting performance targets and establish performance targets for the next year. It shall also make such recommendations concerning GN procurement policies and implementing measures as are necessary to meet the objectives of this Policy.
- 18.10.3 CGS Purchasing, Logistics & Contract Support will supply the NNI Secretariat with the annual Contracting Activity Report by June 30th of each year. The NNI Secretariat will forward the report to the NNI Policy Review Committee.
- 18.10.4 The NNI Review Committee will complete its annual review of the NNI Policy by September 15th of each year following the fiscal year under review²⁸.
- 18.10.5 Section 16 of the NNI Policy sets out the following provisions for periodic review:
- i. It is recognized that achieving the objectives of the Policy will require consistent and persistent effort;
 - ii. It is further recognized that the achievement of objectives may be most realistically and reliably secured by measured progress over time;
 - iii. The substance and application of the Policy should therefore be reviewed and revised on a periodic basis to ensure that progress towards objectives is being made in a demonstrable and balanced way.

²⁸ *ibid.* footnote 18

18. ABOUT THE NNI POLICY



18.11 Review Procedures

- 18.11.1 A NNI Policy Review Committee consisting of representatives appointed by the GN and NTI will be established on an annual basis to review the implementation of the Policy.
- 18.11.2 The NNI Policy Review Committee's mandate is to collect public input, to consult with client groups and government departments, and to make recommendations, where needed, for adjustments to the Policy.
- 18.11.3 The NNI Policy Review Committee will conduct a comprehensive review every five (5) years. These reviews will be made available to the public.
- 18.11.4 The NNI Policy Review Committee will also develop and apply specific mechanisms for assessing the progress being made toward the achievement of the four objectives of the Policy.
- 18.11.5 The committee will submit its annual review and the comprehensive reviews referred to in 16.1.3 above to the GN and NTI.
- 18.11.6 Procedures specific to the periodic review of the NNI Policy will also be reviewed in consultation with all GN departments, boards and agencies and NTI.



18.12 Bid Adjustment Application Procedures and Examples

18.12.1 Applying the Nunavut Business Adjustment²⁹

18.12.1.1 **Services:** For a company to get the Nunavut Business status adjustment (7%) for services, it needs to have been approved and listed on the GN's Nunavut Business Registry at least two (2) weeks prior to the RFT closing date³⁰. For an adjustment for services, it does not matter what type of services the company is listed for, the adjustment is given if it is on the GN list.

18.12.1.2 **Goods:** This applies to goods tenders and to the part of the tender where material suppliers are listed. For a business to get the Nunavut Business status adjustment (7%) for goods/materials³¹, it needs to have been approved and listed on the GN's Nunavut Business Registry for supply of the applicable type of goods/materials at least two (2) weeks prior to the closing date. The listing type must state "good" rather than service, and the type of good must be the type they are bidding on, or are listed for in the tender.

18.12.2 Applying the Inuit Firm Adjustment³²

18.12.2.1 The NTI Inuit Firms listing is a separate listing from the NNI list (GN Nunavut Businesses Registry).

18.12.2.2 For a business to get the Inuit Firm adjustment (7%), they need to be included on NTI's Inuit Firms listing. For this adjustment, it does not matter what type of services or goods the company is listed for. There is no two week waiting period either.

18.12.3 Applying the Local Adjustment³³

18.12.3.1 The Local status adjustment is an extra 7% in addition to the Nunavut and Inuit status adjustments.

18.12.3.2 For a company to receive the Local status adjustment they need to be eligible to receive either the Nunavut Business status adjustment or the Inuit Firm status adjustment³⁴. The address for the company must be in the subject community where the goods are required or where the work is to be carried out.

²⁹ NNI Policy s. 11.1(e)(i)

³⁰ NNI Policy Definitions Appendix – Nunavut Business – bullet iv.

³¹ NNI Policy s. 11.1(d)(ii) & (iii)

³² NNI Policy s. 11(e)(ii)

³³ NNI Policy s. 11(1)(e)(iii)

³⁴ NNI Policy s. 11(1)(f)

18. ABOUT THE NNI POLICY



- 18.12.3.3 In a case where there are no local bidders and any of the other bidders qualify for the Nunavut Business or Inuit Firm bid adjustment, then those other qualifying bidders may also be given the Local status adjustment; however, the bidders must be located in Nunavut³⁵.

18.13 Basic NNI Evaluation Example: Goods Contracts

Example: A supplier which has Nunavut Business and Local status, but not Inuit Firm status, bids \$125,000 for the supply of a particular type of goods. There is a \$100,000 cap on NNI adjustments for goods contracts³⁶.

The analysis and adjustment is done as follows:

- 1) The GN NNI list is checked to confirm that the supplier is listed and is approved to supply the goods listed in the RFT document. The bidder qualifies for the 7% Nunavut adjustment.
- 2) Further, the bidder's offices are located in the community where the goods are to be delivered and therefore the bidder qualifies for the additional Local adjustment.
- 3) Since suppliers are only eligible to receive a bid adjustment on the first \$100,000 of a goods supply tender, the qualifying bid adjustment is applied up to the \$100,000 limit.

$$\begin{aligned} \$100,000 \times 14\% &= \$14,000 \\ \$125,000 - \$14,000 &= \$111,000 \end{aligned}$$

If the supplier was also an Inuit Firm included in the NTI Inuit Firms Registry, the additional 7% Inuit Firm status adjustment would also be applied, but only against the first \$100,000 of the bid price.

³⁵ NNI Policy s. 11.1(g)(i) & (ii)

³⁶ NNI Policy s. 11.1(d)(iii)

18. ABOUT THE NNI POLICY



18.14 NNI Evaluation Example: General Services with Payroll, a Sub-Contractor and a Supplier

Example: The total value of the bid is \$100,000. The bidder is a local NTI-registered Inuit Firm hiring half its workforce from Nunavut and the other half from southern Canada. The materials and supplies needed to complete the work are being purchased from a non-local GN-registered Nunavut supplier, and part of the work will be done by a non-registered subcontractor.

The bid is broken down as follows:

1. \$50,000 labour at 50% local Inuit (or \$25,000) and 50% non-Inuit/Nunavut (\$25,000)
2. \$30,000 supplies/materials from a non-local Nunavut supplier
3. \$10,000 subcontract to a non-Inuit, non-Nunavut company
4. \$10,000 administration and overhead

The analysis and adjustment is done as follows:

1. Apply adjustments to the labour portion of the bid (service):

The work being done by the employees who do not live in Nunavut does not qualify for a bid adjustment but the portion of payroll dollars for the work that will be done by Nunavut residents does qualify. If the Nunavut residents are also Inuit, they qualify for the additional Inuit adjustment. If the Inuit employees are not Nunavut residents, do not give the Nunavut bid adjustment.

$$\$25,000 \times 21\% = \$5,250$$

2. Apply adjustments to the supplies/materials portion of the bid (goods):

\$30,000 in materials and supplies for the completion of the contract are being provided by a GN-registered Nunavut business that is not located in the subject community, and not included on the NTI Inuit Firms Registry. However, the GN NNI Registry is checked to confirm that this supplier is listed and approved to supply the particular type of materials required for this contract and the 7% Nunavut business status adjustment is given:

$$\$30,000 \times 7\% = \$2,100$$

3. Apply the bid adjustments to the subcontracted portion of the bid (service):

Some of the work will be done by another contractor. This is referred to as a 'subcontract'. This contractor is not on the GN's NNI Registry or the NTI Inuit Firms Registry, so it does not qualify for any bid adjustment.

$$\$10,000 \times 0\% = \$0.00$$

18. ABOUT THE NNI POLICY



4. Apply the bid adjustments to the bidder's general expenses portion of the bid (this includes administration, overhead and profit, etc.):

The local Inuit bidder has estimated that \$10,000 will be set aside for contract administration, business operating and overhead expenses, and also for a small profit. After checking the GN and NTI registries, it is confirmed that it is not included on the GN's NNI Registry, but it is included on the NTI Inuit Firms Registry. Accordingly, this bidder will only be given the Inuit and Local status adjustments (14%).

$$\$10,000 \times 14\% = \$1,400$$

5. The total adjustments are subtracted from the total bid to determine the adjusted bid price:

1. labour adjustments:	(\$5,250)
2. supplies/materials adjustments:	(\$2,100)
3. subcontractor adjustments:	(\$ 0)
4. administration adjustments:	<u>(\$1,400)</u>
	(\$8,750)

Bid Price	\$100,000
<u>Subtract Total NNI Adjustments</u>	<u>(\$8,750)</u>
Equals NNI Adjusted Bid Price	\$91,250

If this company were the lowest responsive and responsible bidder after the application of NNI adjustments, then the contract would be awarded for \$100,000.

18. ABOUT THE NNI POLICY



18.15 Inuit Labour Bonus & Penalty Examples for Construction Contracts:

Example 1: Where the total labour spent on the contract at final completion is \$350,000 and the minimum requirement for Inuit labour is 45%, and the contractor has actually spent \$234,500 (67%) of its payroll dollars on Inuit labour, the Inuit labour bonus is calculated as follows:

The first step is to find the percent difference between what was required, and what was achieved. This is the 'percent exceeded' value.

$$\begin{array}{rcl} & \text{Percent Achieved} & 67\% \\ - & \text{Percent Required} & - 45\% \\ \hline = & \text{Percent Exceeded} & = 22\% \end{array} \quad \text{or}$$

The next step is to calculate the NNI bonus with the following formula:

$$\begin{array}{rcl} & \text{Total Payroll} & \$350,000 \\ \times & \text{Percent Exceeded} & \times 22\% \\ \hline = & \text{NNI Bonus} & = \$77,000 \end{array} \quad \text{or}$$

Example 2: Where the total labour spent on the contract at final completion is \$350,000 and the minimum requirement for Inuit labour is 45%, and the contractor has actually spent \$129,500 (37%) of its payroll dollars on Inuit labour, the Inuit labour penalty is calculated as follows:

The first step is to find the shortfall or 'percent not met' by figuring out the difference between what was required, and what was achieved.

$$\begin{array}{rcl} & \text{Percent Required} & 45\% \\ - & \text{Percent Achieved} & - 37\% \\ \hline = & \text{Percent Not Met} & = 8\% \end{array} \quad \text{or}$$

The next step is to calculate the NNI penalty with the following formula:

(Total Payroll x Percent Not Met) x 2

$$\text{or } \$350,000 \times 8\% \times 2 = \$28,000 \times 2 = \$56,000$$

18.15.1 Inuit Labour Bonus for Local Inuk Site/Project Manager:

Example: The total labour value of the contract is \$100,000 and the manager is a local Inuk employee, the management bonus is calculated as follows:

$$\begin{array}{rcl} & (\$100,000 \times 2\%) & = (\$2,000) \text{ for Inuit management; plus} \\ + & (\$100,000 \times 1\%) & = (\$1,000) \text{ for a local Inuk manager} \\ \hline = & (\$3,000) & \text{Local Inuit project/site manager bonus} \end{array}$$

18. ABOUT THE NNI POLICY



18.16 Evaluating Inuit Content in Proposals

18.16.1 Inuit Firms (Ownership - Mandatory 5% Assigned Weight³⁷)

Unit points are awarded in direct ratio to the percentage of work, in terms of dollar value, being done by Inuit Firms.

Example: If the total fees proposed are \$35,000 and the value of the work being done by Inuit Firms is \$8,750, the rating points will be based on the following calculation:

Step 1: Determine the percent of work by Inuit Firms:

$$\$8,750 / \$35,000 = 25\%$$

Step 2: Determine the point ratio compared to maximum points (10 Points = 100%)

Maximum points allowable x percent of work by Inuit Firms
or $10 \times 25\% = 2.5$ Points

Thus, 2.5 out of 10 will be the maximum score that can be awarded for this criterion.

Step 3: Determine the score for the Inuit Firm rating criterion

Multiply the points awarded by weight assigned for the criterion
or $2.5 \times 5 = 12.25$ Points

If a Non-Inuit Firm proponent is subcontracting 50% of the contract work to an NTI registered Inuit Firm, then it will be entitled to 50% of the maximum points allowable, or 5 out of 10 unit points. If it subcontracts only 30% of the work to a firm included in the NTI Inuit Firms Registry, then it will only be entitled to 30% of the points. If it subcontracts 80% of the work to an NTI-registered Inuit Firm, then it will be entitled to 80% of the points, or a score of 8 out of 10.

Similarly, an NTI-registered Inuit Firm proponent would only be entitled to the percentage of points in direct ratio to the percentage of work it will perform on the contract. If it is subcontracting 80% of the work to non-registered, non-Inuit firms, then it will only be entitled to 20% of the points; this reflects its 20% of the work that it will actually be responsible for and contribute to the project.

³⁷ NNI Policy s.11.2(e)

18. ABOUT THE NNI POLICY



18.16.2 Inuit Employment (Labour - Mandatory 10% Assigned Weight³⁸)

Example: The proposed value of payroll for the services is \$12,000. \$9,000 of the payroll is attributed to work to be done by a proponent's non-Inuit employees and \$3,000 is attributed to work to be done by an Inuk employee. Following the same principles as outlined above:

Step 1: $\$3,000 \div \$12,000 = 25\%$ Inuit labour

Step 2: 10 (maximum points allowable) X 25% (% of Inuit labour)
= 2.5 (unit points awarded)

Step 3: 10 (weight for employment criteria) x 2.5 (unit points awarded)
= 25 total points (out of a maximum 100)

A proponent with a much higher payroll value attributed to Inuit employees would score higher points, i.e., \$9,000 to Inuit employment and \$3,000 non-Inuit employment (75%):

$10 \times 75\% = 7.5$ out of a maximum of 10 unit points would be awarded.

The same principles apply to the employees of Inuit Firms where only a small portion of the work is actually being done by Inuit employees because the people can only be considered Inuit if they are actually Inuit.

Example: An Inuit Firm proponent will do 100% of the work but it proposes only one Inuk employee who will play only a minimal role in the project. Out of a \$12,000 payroll, only \$3,000 is actually attributed to Inuit labour:

$\$3,000 \div \$12,000 = 25\%$ Inuit labour

$10 \times 25\% = 2.5$ points

$10 \times 2.5 = 25$ total points will be awarded.

Conversely, for an Inuit Firm proponent that proposed Inuit staff to perform all of the work under the contract (100%), the payroll would be rated as follows:

$\$12,000 \div \$12,000 = 100\%$ Inuit labour

$10 \times 100\% = 10$ unit points

$10 \times 10 = 100$ total points

A non-NTI-registered proponent could also score maximum points for Inuit labour if it proposed that 100% of the work would be carried out by Inuit staff – whether they are employees of the proponent ('own forces') or not.

All Inuit labour must be substantiated by detailed information provided in the proposals. The names, location of residency, beneficiary status, responsibility to the project and expected remuneration must be clearly identified in the proposal in order for the evaluation committee to justify awarding points.

³⁸ NNI Policy s.11.2(e)(ii)

19. ABOUT COMMUNITY CONSULTATION IN CAPITAL PLANNING



19.1 Scope

- 19.1.1 This chapter applies to contracts undertaken in Nunavut and particularly to those contracts that may not be awarded as a result of a competitive and/or public RFT/RFP process.
- 19.1.2 It is the responsibility of the program department or the contracting authority undertaking the work to have consulted the communities to get the local view of what work is required in order to meet community needs.
- 19.1.3 In planning for work in the communities, GN contracting authorities currently undertake community consultations. These consultations take place in order to identify special approaches that could be used in each community and which will provide additional benefits to the community through the performance of the contract.
- 19.1.4 In addition to the community consultation explained in this chapter, the Capital Planning Committee (CPC) meets regularly in order to review overall contracting plans in Nunavut.

19.2 The Community Consultation Process

- 19.2.1 The community consultation process applies to GN infrastructure projects, particularly to the construction of facilities. The following issues will be addressed:
- i. Inuit and local resident training programs that can be provided by the project;
 - ii. Inuit and local resident opportunities for employment;
 - iii. opportunities for Inuit and local resident businesses to undertake all or any part of the project.
- 19.2.2 The community consultation should be carried out at least once a year but may be required more often if unanticipated contracts are identified. The GN contract authority will advise the community, NTI and the Regional Inuit Associations (RIAs) of the dates and locations of these consultations at least fifteen (15) days prior to the meeting.
- 19.2.3 The consultation should take place after the announcement of future year capital projects.

19. ABOUT COMMUNITY CONSULTATION IN CAPITAL PLANNING



- 19.2.4 The following parties should be invited to attend the community consultation meetings:
- i. a representative from the GN program department that is funding the contract;
 - ii. a representative from the GN department or its agent who will be managing the actual contract, if different than (i);
 - iii. representatives from the applicable RIAs and the local governing body;
 - iv. representatives from Inuit or local businesses, other community groups such as the staff from the local adult education office or the local economic development office and any other local interest groups or individuals.

19.3 Available Resources

- 19.3.1 The selected contracting approach is often a compromise that balances community goals, local resources, schedule and available finances. It is important that information used in selecting the approach is complete, current and accurate.
- 19.3.2 It is the responsibility of the contract authority to obtain Inuit and local information that may be used to determine appropriate contracting approaches. Much of this will result from past project experience and from information maintained by the RIA and the community. It is the responsibility of NTI and the RIA to maintain this data.

19.4 Community Plans for Development

- 19.4.1 In addition to the Inuit and local resources that presently exist, the consultation process must address the development plans for the community and the region. The contract authorities should encourage and assist the RIA and the community to plan and to set development goals and to keep the goals in sight while selecting contracting approaches.
- 19.4.2 The RIA or the community may choose to focus on development of management skills with the target of managing future projects, the training of Inuit or local tradesmen, the development of Inuit or local business, and/or the maximizing Inuit or local employment.

19. ABOUT COMMUNITY CONSULTATION IN CAPITAL PLANNING



19.5 Steps in the Consultation Process

19.5.1 Although the consultation process will change in order to adapt to specific regional, community and project specific initiatives, the following are the recommended standard steps in the process:

- i. identify GN objectives;
- ii. identify Inuit and community priorities;
- iii. determine the objectives that can be achieved through the scope of a specific project or contract;
- iv. select the appropriate approach to achieve the objectives³⁹.

³⁹ The CGS Technical Services Project Management Manual will contain more information on the capital planning and community consultation process.



20.1 Scope

- 20.1.1 This procedure applies to all training programs that deal with the GN's purchasing and contracting obligations and includes training sessions provided to Inuit firms, non-Inuit firms and departments, boards and agencies.

20.2 Training of Government Staff

- 20.2.1 CGS Purchasing, Logistics & Contract Support will organize GN specific and general contracting training opportunities and make them available to all GN departments, boards and agencies undertaking contracting activities in Nunavut
- 20.2.2 The NNI Secretariat, in consultation with NTI, will organize training to explain NLCA Article 24 obligations, and these seminars will be provided to all GN departments, boards and agencies contracting in Nunavut.

20.3 Training of Inuit Businesses

- 20.3.1 Purchasing will provide seminars on GN contracting policies and procedures at least once every year in communities in Nunavut.
- 20.3.2 Purchasing, in consultation with NTI, will continue to coordinate the simplification of documents and materials relating to its bidding and contracting procedures to make the documents and materials easier for all firms to use and understand.
- 20.3.3 Seminars regarding contracting for construction shall be provided well in advance of the construction season. The GN will provide NTI and RIAs with a schedule of workshops when it becomes available.
- 20.3.4 In providing these seminars, Purchasing will:
- i. provide NTI with seminar material prior to the workshop;
 - ii. together with NTI make all reasonable efforts to provide simultaneous interpretation during the seminars, translation of seminars and documentation
- 20.3.5 Purchasing, in consultation with NTI, will translate relevant documentation and seminar material into Inuktitut or Inuinnaqtun, or both, as appropriate. The GN and NTI shall mutually agree what documents should be translated. The GN will incur the costs of the simultaneous interpretation and of the translation of the documents and materials.

20. TRAINING AND ACCREDITATION



20.4 Identification of GN Contracts Advisors

- 20.4.1 Purchasing will identify qualified GN employees who speak Inuktitut and/or Inuinnaqtun, and will train those employees where necessary to understand GN bidding and contracting procedures. These individuals will provide generic advice and information to Inuit firms or any firm to assist those firms in understanding GN bidding and contracting procedures and provide general direction on how to fill out the required paperwork. However, they cannot assist any contractor to fill out specific project forms as part of a competitive RFT process as this would provide an unfair advantage.

20.5 Training Plans and Levels of Accreditation

- 20.5.1 Each fiscal year CGS Purchasing, Logistics & Contract Support will issue an Annual Training Plan for seminars and workshops to be delivered to GN employees and the business community alike.
- 20.5.2 Purchasing also arranges for contracting specific courses and seminars through the Purchasing Management Association of Canada (PMAC). Many of these courses have credit values to apply towards the former Certified Professional Purchaser (CPP) or new Supply Chain Management Professional (SCMP) designation.
- 20.5.3 CGS Purchasing recognizes and recommends the PMAC CPP designation as a standard level of accreditation in the field of procurement.

21. ETHICAL PROCUREMENT FRAMEWORK



- 21.1** This excerpt (modified slightly) is taken from the framework for ethical procurement presented at the Canadian Public Procurement Council Forum 2005. CGS Purchasing, Logistics & Contract Support staff adhere to the following frameworks as well as the PMAC Professional Code of Ethics.
- 21.2 PREAMBLE**
- 21.2.1 Government officials, including those involved in procurement, are working within an environment that is more complex and demanding than ever. Some may view a commitment to ethical procurement as another layer of complexity.
- 21.2.2 Commitment to ethical procurement, however, is fundamental to how governments must conduct their business. Best practices in ethical procurement create and instill greater confidence in governments and their institutions. Also, these practices can increase the self-worth and pride of the members of the public procurement community.
- 21.2.3 The objective of this paper is to aid government officials in incorporating the elements associated with ethical procurement in their jurisdictions.
- 21.2.4 For the purposes of this paper, the following definitions are provided to ensure a common understanding of the terms used.
- 21.2.4.1 **Ethical Procurement:** Values, principles, and behavior conforming to accepted standards of conduct.
- 21.2.4.2 **Procurement:** The entire process to acquire a government's goods, services, and construction from determining the need; to selecting the supplier; arriving at the appropriate price, terms and conditions; awarding the contract; following up to ensure delivery and payment, to reviewing and reporting.
- 21.2.4.3 **Value:** A measure of the qualities that determine merit, desirability or importance.

21. ETHICAL PROCUREMENT FRAMEWORK



21.3 A BROAD STATEMENT ON ETHICAL PROCUREMENT

21.3.1 Recognizing the importance that values play in organizational behavior and decision-making, this Statement on Ethical Procurement embodies the values of government procurement:

“As members of the Federal, Provincial and Territorial (FPT) procurement community, we serve the Canadian public by acquiring goods, services and construction to support the delivery of government programs and services. In performing these activities, we must adhere to the laws, regulations and policies of our various jurisdictions. We aspire to uphold all public service values and particularly procurement values. The values that we engage most frequently in our relationships with the Canadian public, political officials, suppliers, clients and each other include: due process, public interest, responsible government, integrity, accountability, discretion, impartiality, effectiveness, efficiency, collaboration, and excellence.”

21.4 PROCUREMENT VALUES

21.4.1 This section describes values central to the Federal, Provincial & Territorial (FPT) government procurement community in their daily work and their relationships with the Canadian public, political officials, suppliers, clients and each other. These are the values that support the Broad Statement on Ethical Procurement.

21.4.2 Procurement values stand on a foundation of responsible government concerned with serving the common good through loyalty, neutrality and non-partisanship while respecting all applicable laws. Procurement values also flow from a desire to perform duties in the best possible way while working to make improvements to procurement. This is based on a need to be worthy of public trust by respecting the common good. Government procurement also has an impact on the community. The values with application to procurement include, but are not limited to, due process, public interest, responsible government, integrity, accountability, discretion, impartiality, effectiveness, efficiency, collaboration, and excellence. These values are interwoven with all others in this framework. A description of these values follows.

21.4.2.1 **Due Process:** Seeking the common good and general interest while respecting applicable laws, government agreements, policies and contractual obligations. Members of the FPT procurement community demonstrate this value by abiding by the rule of law.

21. ETHICAL PROCUREMENT FRAMEWORK



- 21.4.2.2 **Public Interest/Open, Fair, Consistent and Transparent:** The common/public good is a balance between the interests of the individual and group. This balance enables governments to adopt open, fair, consistent and transparent procurement practices. Members of the FPT procurement community demonstrate this value by supporting their governments and clients in serving the public good by facilitating the delivery of goods, services, and construction.
- 21.4.2.3 **Responsible Government:** Accountability of public servants, transparency of the decision-making process, and consistency with global responsibilities are essential criteria for responsible government working for the common good and maintaining public trust. Members of the FPT procurement community demonstrate this value by maintaining the public trust in the performance of their daily activities and by taking economic, environmental, and social considerations into account where appropriate in their procurement activities.
- 21.4.2.4 **Integrity:** Demonstrating consistency between values and actions, doing what is “right and good” in all circumstances and acting with honesty and probity⁴⁰. Members of the FPT procurement community demonstrate this value by conducting their work in an open, fair, consistent and transparent manner.
- 21.4.2.5 **Accountability:** Answering (accounting) for ones actions to the authority under which one is subject through the mechanism that enables this. Members of the FPT procurement community demonstrate this value by being aware of the consequences of their actions as well as being accountable for their actions to the authority that they are subject to.
- 21.4.2.6 **Discretion/Confidentiality:** Demonstrating judgment, wisdom and skill with an aim to ensure government functions properly while respecting privacy and disclosure of information concerns. Members of the FPT procurement community demonstrate this value by respecting privacy and security requirements.
- 21.4.2.7 **Impartiality/Neutrality:** Acting objectively with equity, justice and fairness in mind to avoid potential conflicts of interest (real or perceived), making recommendations in an impartial manner, without favoritism, bias or prejudice. Members of the FPT procurement community demonstrate this value by acting objectively and keeping justice and fairness in mind.

⁴⁰ Probity: adherence to the highest principles and ideals.

21. ETHICAL PROCUREMENT FRAMEWORK



- 21.4.2.8 **Effectiveness**: Understanding the relationship between the quality of results achieved and the objectives sought. The closer the results match the objectives, the greater the effectiveness. Members of the FPT procurement community demonstrate this value by procuring goods, services and construction to satisfy their government's operational requirements.
- 21.4.2.9 **Efficiency**: Achieving results with an optimal balance of time, resources, effort and money. Members of the FPT procurement community demonstrate this value by seeking results in a timely and practical manner.
- 21.4.2.10 **Collaboration**: Promoting cooperative groups working with different skills united in a common objective. Members of the FPT procurement community demonstrate this value by working with others, both internal and external to government, to ensure the objectives of government programs are achieved.
- 21.4.2.11 **Excellence**: Striving for higher degrees of achievement through innovation and creativity. Members of the FPT procurement community demonstrate this value by undertaking practices that promote quality and innovation.

22. GLOSSARY OF TERMS



The Glossary defines certain special terms used in this manual. Its purpose is to standardize definitions of the special terms being used. If more detailed description of the major concepts being defined is required, refer to the appropriate section in the manual by using the Table of Contents and Index or by referring to the appropriate section in the GN Contract Procedures Manual.

Addendum – Any change or clarification to the request for tenders or request for proposals documents issued during the RFT/RFP call period. Should only deal with issues that have a major impact on the work.

Adjusted Bid Price - This is the price of the bid after application of the NNI Policy bid adjustments.

Amendment – A change to a bid or proposal after submission but prior to RFT/RFP closing. Bidders are not allowed to amend their bids after the closing date and.

Bid – An offer to perform a contract for work and labour on supplying materials or goods at a specified price. Both tenders and proposals can be referred to as bids.

Bid Adjustment – The amount by which the face value of a bid is reduced in accordance the NNI Policy. The bid adjustment is used for evaluation purposes only. The bid price minus the bid adjustment will be referred to as the adjusted bid price.

Bid Price – The total price or amount of the bid submitted by the bidder. Bid prices should be broken down for Inuit, Nunavut and Local content so the Evaluation Committee can apply the NNI bid adjustments.

Bid Security – Money in the form of a bid bond or certified cheque given by a bidder to guarantee that they will enter into the contract if they are the successful bidder.

Bidder – A company that submits a bid or tender or proposal.

Closing Date – This is the deadline by which bidders must submit their tender or proposal. The closing date usually has a time deadline as well. Bids that arrive after the stipulated date and time are late and must not be evaluated.

Consultant – A business or individual that provides professional advice and services.

Consulting Services – Any purchased service that involves the provision of professional advice.

Contractor – The company, consultant or vendor or person providing goods and services to the GN or owner.

Designated Inuit Organization (DIO) – Nunavut Tunngavik Incorporated (NTI) or such other Inuit organizations as NTI may, by notice to the GN, designate.

22. GLOSSARY OF TERMS



Expression of Interest – Publicly advertised notice intended to solicit interest from a targeted business community with the purpose of establishing a list of qualified contractors that may be privately invited to submit tenders or proposals for a particular purpose.

Formal Request for Tenders – Must be in writing and stipulate the format and the nature of the tender; a formal request is required for all contracts valued in excess of \$5,000.

General Contractor – A contractor who contracts to undertake an entire contract rather than a portion of the contract.

Informal Request for Tenders – May be oral or written, and can be used for contracts that do not exceed \$5,000.

Inuit Content – This is the dollar value or percentage of work to be contributed to the contract by a company registered with NTI on the Inuit Firms Registry. It also includes work on the contract to be done by Inuit persons.

Inuit Firm – Defined as those registered as Inuit firms under the NNI Policy. See the NNI Policy Appendix A for more definitions regarding Inuit firms and Inuit content in GN contracts.

Late Bid – A tender or proposal that has arrived after the stated closing date and time set out in the request. Late bids must not be evaluated. They must be returned to the bidder unopened.

Letter of Acceptance (Award Letter) – Used by the Department of Community and Government Services to notify successful contractors of contract awards for all service, construction and consulting contracts. It is a formal acceptance of an offer and it constitutes a legal agreement or contract between the GN and the contract party.

Letter of Intent – Merely indicates the intention to accept an offer at some point in the future and it does not constitute an agreement between the two parties.

Letter of Regret – Notification to unsuccessful bidders or proposers that a contract has been awarded to another party.

Local Firm – A company that is resident in the community where the work is to be carried out and that meets the requirements set out in the NNI Policy. See Appendix A of the Policy for more definitions regarding Local content in GN contracts.

Nunavut Business – Defined as those registered as Nunavut firms under the Nunavummi Nangminiqaqtunik Ikajuuti (NNI Policy). See Appendix A of the Policy for more definitions regarding Nunavut Content in GN contracts.

Nunavut Content – This is the dollar value or percentage of the contract work to be done by companies registered with the GN on the NNI list (Nunavut Business Registry). It also includes work to be done by persons residing in Nunavut.

22. GLOSSARY OF TERMS



Post-Bid Amendment – Response to a request by the GN or owner that all bidders amend their bids in response to a change or clarification in any part of the original request.

Procurement Officer – The procurement officer is the GN or owner representative buying the goods or services from the consultant, contractor or vendor.

Request for Proposal (RFP) – Used when the owner is not exactly sure what is wanted and is looking for ideas, suggestions and recommendations on a project. RFPs must include evaluation criteria and weights. Price and Inuit content must be two of the criteria. The weight for Inuit content must be 15% (5% for Inuit Firms and 10% for Inuit Labour).

Proposal – The submission received as a result of a request for proposals. The receipt of a proposal is not an acceptance and does not necessarily result in a contract.

Responsible – Means, in relation to a proposer or a tenderer, the capability in all respects to perform fully the contract requirements and the integrity and reliability to assure performance of the contract obligations.

Responsive – Means, in relation to a tenderer, that the person has submitted a tender that conforms in all material respects to the invitation to tender.

Standing Offer Agreement (SOA) – Price agreement between the Government and a supplier, wherein the supplier agrees to provide, on demand, specified goods or services under specified conditions during a set period at a defined price or discount structure.

Technical Review of Tenders – Determines whether the price submitted by the apparent low bidder is fair and reasonable, and whether the tenders are in strict accordance with the plans and specifications.

Request for Tenders (RFT) – Used when the owner knows exactly what it is looking for, and is seeking the best price to do that specific job.

Tender Evaluation – Determines the lowest responsive tender submitted by a responsible bidder and includes administrative, technical and NNI reviews.

Vendor – The vendor is the company or contractor selling goods and services to the procurement officer.

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24.1 Guidelines

24.1.1 CGS Purchasing, Logistics & Contract Support has developed and issued the following guidelines in support of this manual to assist contract authorities in carrying out the GN's contracting and procurement policies and procedures:

- i. Purchasing in Nunavut Client Department Guide
- ii. Guiding You – Benefiting Nunavummiut
- iii. How to Sealift
- iv. *How To* Guide – Doing Business with the Government of Nunavut

24.2 Directives

24.2.1 CGS Purchasing, Logistics & Contract Support, together with the NNI Secretariat and NTI, has issued the following:

- i. NNI Policy Application Directive 1 – August 13, 2008

24.3 Future Appendices and Directives

24.3.1 Future appendices and directives are incorporated into this manual by way of reference and will be listed in this chapter with future manual updates.