

Government of Nunavut's Response to the Standing Committee's further Recommendations after the Tabling of Auditor General's Report on the Review of the 2012 Report of the Auditor General of Canada to the Legislative Assembly of Nunavut on Procurement of Goods and Services

Recommendation #1:

That the formal action plans of the Department of Community and Government Services, the Department of Economic Development and Transportation, the Nunavut Housing Corporation and the Qulliq Energy Corporation in response to the report and recommendations of the Auditor General be tabled in the Legislative Assembly no later than the first sitting day of its fall 2012 sitting.

Response:

The formal action plans for the following departments:

1. Community and Government Services
2. Economic Development and Transportation
3. Nunavut Housing Corporation
4. Qulliq Energy Corporation; and

will be tabled on the first sitting day of the fall 2012 sitting.

Recommendation #2:

That the Government of Nunavut's Public Agencies Council (PAC) and the responsible Minister provide clear direction to the Qulliq Energy Corporation, by means of such mechanisms as the corporation's annual *Letter of Expectation* and Ministerial directives, concerning the application of the NNI Policy to the corporation's contracting and procurement activities.

Response:

The Government is currently undertaking a comprehensive review of the application of the NNI Policy, which will include the applicability of the NNI Policy to the Qulliq Energy Corporation.

Recommendation #3:

That the Government of Nunavut, in its response to this report, clarify its position concerning the territory's participation in the Agreement on Internal Trade (AIT).

Response:

Nunavut has commenced discussions with the AIT's Internal Trade Representatives who have struck a Nunavut Accession Working Group (NAWG). The Department of Executive and Intergovernmental Affairs has been working with the NAWG and affected GN departments and Nunavut Tunngavik Inc. to conclude terms of GN accession to the AIT that will allow GN to accede to the AIT in a manner that allows it to continue to maintain the NNI Policy and that is consistent with GN obligations under the Nunavut Land Claims Agreement. The GN expects to have a clear position regarding the terms of Nunavut's future participation in the AIT by the end of the 2012-2013 fiscal year.

Recommendation #4:

That corrected versions of the 2009-2010 reports on contracting, procurement and leasing activities of the Nunavut Housing Corporation and the Qulliq Energy Corporation be tabled in the Legislative Assembly no later than the first sitting day of its fall 2012 sitting.

Response:

The Qulliq Energy Corporation (QEC) is unable to produce accurate reports for the years 2009-2010, 2010-2011, and 2011-2012 at this time. This is due to inconsistencies in contract files and documentation, as noted in the OAG report. QEC has dedicated staff to reviewing the reports and corresponding data to produce accurate reports for tabling in the winter 2013 sitting of the Legislative Assembly. It must be noted that these reports will not be produced at the same level of detail as those of the GN at this time. Moving forward, the Corporation will be in a position to produce such reports.

The Minister responsible for Nunavut Housing Corporation will table the corrected version of the 2009-2010 report on contracting, procurement and leasing activities of the Nunavut Housing Corporation during the Fall 2012 sitting of the legislative assembly.

Recommendation #5:

That the Government of Nunavut's comprehensive reviews of the NNI Policy and its public procurement practices specifically address the authority and mandate of the Contracting Appeals Board.

Response:

The Government of Nunavut's Comprehensive NNI review will address the role and mandate for the contracting appeals board.

Recommendation #6:

That the Government of Nunavut's comprehensive review of the NNI Policy specifically address the issue of bonuses and penalties as they apply to small, medium and large firms; the issue of monitoring contractors' compliance with Inuit labour and training

requirements and targets; and that the Government of Nunavut's annual departmental reports on contracting and procurement activities resume the practice of including detailed information concerning anticipated and actual bonus payments and penalties.

Response:

The Comprehensive review of the NNI Policy will address the issue of the bonuses and penalties, as well as the issue of monitoring contractors' compliance with Inuit labour and training requirement and targets.

The Bonus and Penalties information was not included in the 2010-2011 report due to errors in contract reporting from the input departments, the "anticipated Bonus and Penalty" information was not reliable and the department chose not include inaccurate information.

The information in the 2011/12 Contract Activity Report includes the actual Bonus and Penalties paid to contractors. (this information is also included in C&GS's formal action plan to be tabled on the first sitting day of the fall 2012 sitting)

The department will continue to provide information on the "Actual Bonus and Penalty" numbers annually.

Recommendation #7:

That the Government of Nunavut's comprehensive reviews of the NNI Policy and its public procurement practices specifically address the issue of the NNI Policy as it applies to municipal contracting and procurement.

Response:

The Government of Nunavut's comprehensive review will include the review of the applicability of the NNI Policy and its public procurement practices as it applies to municipal contracting and procurement.

Recommendation #8:

That the Government of Nunavut, in its response to this report, provide a list of the specific issues identified for discussion by the Procurement Division of the Department of Community and Government Services, as noted in the formal opening statement to the Standing Committee of the department's lead witness, in relation to the government's comprehensive review of the NNI Policy.

Response:

The following list are issues where improvements are being made (this information is also included in C&GS's formal action plan to be tabled on the first sitting day of the fall 2012 sitting):

1. Simplify the application of the NNI Policy for Purchases of Services, application of bid adjustments needs to be made simpler, similar to goods purchases. The current application is too complicated, not understood by vendors and prevents the purchase from being open and transparent.
2. Application of labour requirements is complex.
3. \$300,000 limit for mandatory labour and training plans should be reconsidered. In many situations this is not practical. We are paying trades people to deliver training. This should be left to trained trainers.
4. We need to define what is a good training plan.
5. Why do we want to pay for tradesmen to provide training for labour? This should be done by trade schools.
6. As-and-When Contracts – How do we apply the NNI policy when we do not know the volume or value of contracts, Training should also not apply, we have no value for the contract and vendors are not promised any volume.
7. Standing Offer Agreements – SOA – How do we apply the NNI policy when the volume and value is not known? Most contracts are under the \$300,000 how do we apply training.
8. NNI Review Board
 - a. What is the role of the Board?
 - b. What should be the qualifications of board members?
 - c. Consider that the Board review process be more of an Audit process.
 - d. Role of senior managers of ED&T (DM and ADM's) in the Review process.

In Regards to Training:

1. Inuit Training Plan development should not be up to the contracting marketplace. That should be the responsibility of Education and NAC and MTO. Contractors do not typically "train" workers. Training is not their core business.
2. Construction contracts are not structured for "training" except for where trades apprenticeship program that feeds companies with apprentices to get their specified hours working under a journeyman that exist.
3. Or a Co-op program that provides students with the work experience part of their course work.
4. There is a distinct lack of data on the labour market in NU. There is also a lack of data on the competencies the labour market holds (levels of education, experience etc.) Without accurate data, numbers 'pulled out of the air' and are therefore encouraging greater costs for the risk of not meeting targets (bonus/penalty system) and making tracking difficult at best. The challenges of inspecting construction work to ensure compliance is problematic on its own without this nebulous monitoring.

5. On the other hand, if training is part of the contract work obligations (like the fuel distribution contracts) then there is both a training “plan” and a proper way to monitor (certification).
6. What training outcomes did the NNI Policy contemplate? This might be a more logical starting point.
7. What is the purpose of the Appeals Board? If we don’t know the purpose, it’s difficult to plan the practice.
8. The issue of training may be both a Policy flaw and an application flaw.

Recommendation #9:

That the Government of Nunavut, in its response to this report, provide a list of the specific forms and templates that have been developed and/or amended by the Department of Community and Government Services within the preceding twelve months utilizing input from the Department of Justice, as noted in the formal opening statement to the Standing Committee of the department’s lead witness, and that the list include a detailed rationale for specific changes to previously existing forms and templates.

Response:

The Department of Community & Government Services, Procurement & Logistics utilizes standard template forms as a part of issuing competitive proposal and tendering processes. These template forms contain language that ensures that the GN is covered legally and that Canadian Procurement Law is reflected in the forms and procedures. (this information is also included in C&GS’s formal action plan to be tabled on the first sitting day of the fall 2012 sitting)

The following is a list of template forms that have been updated within the last 15 months.

Form Number	Form Name	
1. 6215-25-RFP	Consultant Services – RFP Template	Updated
May 2012		
2. 6215-25-RFTPO	Request for Tender & Contract – Purchase Order	Updated
January 2012		
<ul style="list-style-type: none"> • RFP & RFT Instructions to Bidders were updated to clarify the tender/proposal submission process, bid evaluation process and contract awarding process. • Updates to reflect changes to the GN’s Contract Regulations: <ul style="list-style-type: none"> - Clarification that a bidder/proponent may be deemed not “Responsible” based on documented poor performance under previous contracts (in the last 6 to 36 months depending on the nature of the contract). 		

- Application of NNI in the evaluation of tenders/proposals was clarified (however, NNI instructions are subject to further revisions pending outcomes of NNI Comprehensive Review):
 - Additional information on NNI Policy application including providing website addresses for registries and phone numbers;
 - Clarification that bidders/proponents and evaluation committee members may rely on the accuracy of the NNI and NTI lists.
- GN's position on application of Canadian contracting law in RFPs including recent court decisions such as the Turcon case law:
 - "Contract A" (a contract between the GN and all proponents who have submitted compliant proposals) shall exist in the GN's standard RFP process;
 - A strict compliance standard shall apply for mandatory requirements in tenders and RFPs;
 - GN's position on limitations of liability on applying the Privilege Clause.
- For RFPs: Ability to move to the next best compliant bid in the event the successful tenderer/proponent fails to sign the contract – and the ability to apply sanctions against contractors who behave in this manner (albeit this is expected to be very rare).
- For RFPs: Included a Point Scoring Guideline to provide direction to evaluation committee members on how to evaluate and score proposal submissions.

Form Number	Form Name	Form Date
3. 6215-25-CS	Consultant Services – Contract Template	Updated September 2011
	<ul style="list-style-type: none"> • Updated to incorporate better contract management practices such as: <ul style="list-style-type: none"> - changing the contract/scope of work; - changing workers or sub-contractors; - documenting and managing poor/non-performance; - dispute resolution measures; - updated insurance terms and conditions based on recent FAM revisions. 	

Form Number	Form Name	Form Date
4. 6215-25-AE	Architectural/Engineering – Full Design Services RFP	Updated June 2012
	<ul style="list-style-type: none"> • Updated Instructions to Proponents for consistency with general consultant services RFP instructions. 	

- Provide greater direction to CGS Project Officers on drafting a complete Terms of Reference and appropriate Evaluation Criteria.
- Included NNI Incentives Application Form and deleted Bonus Points system for application of NNI (for consistency with NNI in general consulting RFPs).
- Included a Point Scoring Guideline to provide direction to evaluation committee members on how to evaluate and score proposal submissions.

Form Number	Form Name	Form Date
5. 6215-25-AC	Air Charter – Request for Tenders & Contract	Updated April 2012

- Updated Instructions to Bidders for consistency with RFT Instructions for Goods tenders; however, tailor made for aircraft chartering.
- Updated contract terms to allow and provide for:
 - weather delays,
 - ability to cancel charter without penalty within 24 hours of award;
 - allowing for incidental passengers;
 - flexibility on pricing (per air mile or other unit pricing depending on departure and destination and other factors);
 - updated insurance provisions in consultation with industry specific legal advisor and GN Risk Management;
 - AC Contract terms and conditions also can be used for Air Charter Standing Offer Arrangements.

NOTE: All forms were last revised on October 3rd, 2012 to incorporate new language provided by the Department of Justice Legal & Constitutional Law Division for the purposes of clarifying application of NNI in tenders and proposals to the following extent:

- The GN (evaluation committees) are allowed to correct bidder errors solely for the purposes of applying bid adjustments permitted by the NNI Policy – specifically, to apply or deny adjustments based on whether the company listed in the bid is listed on the NNI or NTI list at the time of bid closing – regardless of whether the bidder has asked for the adjustment or if the company named does not qualify for an adjustment when the bidder has asked for one.

Recommendation #10:

That the Government of Nunavut, in its response to this report, provide detailed information concerning its contract awards for scheduled medical travel and government duty travel made pursuant to its 2011 *Request for Proposals for Medical Travel on*

Scheduled Airlines (RFP 2011-22). The information provided should address the following issues.

Response:

This information is also included in C&GS's formal action plan to be tabled on the first sitting day of the fall 2012 sitting.

Background:

- The GN issued an RFP for Medical and Duty Travel February 25, 2011. The close date of the RFP was April 15, 2011
- The GN received proposals from the following proponents:
 - Canadian North
 - Calm Air
 - Kivalliq Air
 - First Air, Sakku First Aviation Ltd., Qikiqtani First Aviation LTD.
 - Nunasi Corporation & Canadian North
- The Evaluation committee was composed of GN employees from the Departments of Health & Social Services, Economic Development & Transportation and Community & Government Services.
- The evaluation process was complete and all proponents received a portion of the market share. See below.
- The OAG audit found that: "The scheduled medical travel contracts we examined were awarded according to the rules".

Contract Term:

- The term of the Contract was determined by the Department of Health & Social Services.
- The contract term needs to meet the operational requirements of the GN and provide sufficient time for the airlines to receive adequate returns for the investment of new levels of service and routes.
- Under general procurement and business principals, larger or longer the potential contract, often result in greater discounts or improved levels of service.

The contract term was for an initial three years with the potential of three – one year extensions.

Improvement to Scheduled Airline Services:

- One of the goals of the RFP process was to "improve scheduled airline service throughout Nunavut". This improvement is measured in terms of increasing the frequency of flights available to service Nunavummiut and maintaining ticket pricing levels as low as possible. This goal is generally achieved through the competitive public procurement process.

- An independent consultant company, LPS Avia Ltd, experts in the airline industry, confirmed that the Medical Travel contracts have increased competition in all the regions and have contributed to savings to both the government and the public.
- Community services have also improved by:
 - 6 additional days of jet service to Cambridge Bay and Kugluktuk. (Previously only 1 day a week to Cambridge Bay).
 - Jet service from Calm Air for flights from Rankin to Winnipeg.
 - 18 additional flights per week in the Baffin communities and an additional Dash 8 plane.

Delay in Formal Contract Signing:

- The contradicting procedure for medical travel was complex. There was much back-and-forth between the GN and the Proponents. This included the negotiating of contract terms and insurance requirements.
- There was an agreement in principal between the GN and the contractors at the time of the contract initiation however; the final language details and signatures went beyond the start date.

MARKET SHARE AWARDS:

- Based on the results of the evaluation process, the market shares were awarded as follows: Graphs on the next page.

BAFFIN TO IQALUIT Route No. 1		Canadian North Market Share	First Air Market Share
ARCTIC BAY	IQALUIT		
CAPE DORSET	IQALUIT		
CLYDE RIVER	IQALUIT		
HALL BEACH	IQALUIT		
IGLOOLIK	IQALUIT		
PANGNIRTUNG	IQALUIT		
POND INLET	IQALUIT		
QIKIQTARJUAQ	IQALUIT		
RANKIN INLET	IQALUIT		
RESOLUTE BAY	IQALUIT		
KIMMIRUT	IQALUIT		
GRISE FIORD	IQALUIT		
		52%	48%

BAFFIN TO OTTAWA Route No. 2		Canadian North Market Share	First Air Market Share
ARCTIC BAY	OTTAWA		
CAPE DORSET	OTTAWA		
CLYDE RIVER	OTTAWA		
HALL BEACH	OTTAWA		
IGLOOLIK	OTTAWA		
IQALUIT	OTTAWA		
PANGNIRTUNG	OTTAWA		
POND INLET	OTTAWA		
QIKIQTARJUAQ	OTTAWA		
RANKIN INLET	OTTAWA		
RESOLUTE BAY	OTTAWA		
KIMMIRUT	OTTAWA		
GRISE FIORD	OTTAWA		
		53%	47%

KITIKMEOT TO YELLOWKNIFE Route No. 3		Canadian North Market Share	First Air Market Share
KUGLUKTUK	YELLOWKNIFE		
CAMBRIDGE BAY	YELLOWKNIFE		
GJOA HAVEN	YELLOWKNIFE		
KUGAARUK	YELLOWKNIFE		
TOLOYOAK	YELLOWKNIFE		
YELLOWKNIFE	YELLOWKNIFE		
		53%	47%

KITIKMEOT TO EDMONTON Route No. 4		Canadian North Market Share	First Air Market Share
KUGLUKTUK	EDMONTON		
CAMBRIDGE BAY	EDMONTON		
GJOA HAVEN	EDMONTON		
KUGAARUK	EDMONTON		
TOLOYOAK	EDMONTON		
YELLOWKNIFE	EDMONTON		
		54%	46%

KIVALLIQ TO RANKIN INLET Route No. 5		Canadian North Market Share	First Air Market Share
ARVIAT	RANKIN INLET		
BAKER LAKE	RANKIN INLET		
CHESTERFIELD	RANKIN INLET		
CORAL HARBOUR	RANKIN INLET		
WALE COVE	RANKIN INLET		
REPULSE BAY	RANKIN INLET		
RANKIN INLET	RANKIN INLET		
		52%	48%

KIVALLIQ TO CHURCHILL Route No. 6		Canadian North Market Share
ARVIAT	CHURCHILL	
BAKER LAKE	CHURCHILL	
CHESTERFIELD	CHURCHILL	
CORAL HARBOUR	CHURCHILL	
WALE COVE	CHURCHILL	
REPULSE BAY	CHURCHILL	
RANKIN INLET	CHURCHILL	
		100%

KIVALLIQ TO WINNIPEG Route No. 7		Canadian North Market Share	First Air Market Share
ARVIAT	WINNIPEG		
BAKER LAKE	WINNIPEG		
CHESTERFIELD	WINNIPEG		
CORAL HARBOUR	WINNIPEG		
WALE COVE	WINNIPEG		
REPULSE BAY	WINNIPEG		
RANKIN INLET	WINNIPEG		
		51%	49%

KIVALLIQ TO IQALUIT Route No. 8		Canadian North Market Share	First Air Market Share
ARVIAT	IQALUIT		
BAKER LAKE	IQALUIT		
CHESTERFIELD	IQALUIT		
CORAL HARBOUR	IQALUIT		
WALE COVE	IQALUIT		
REPULSE BAY	IQALUIT		
RANKIN INLET	IQALUIT		
		51%	49%

SANIKILUAQ TO WINNIPEG Route No. 9		Kivalliq Market Share
SANIKILUAQ TO WINNIPEG	WINNIPEG	100%