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Asked by: John Main, MLA for Arviat North - Whale Cove

Asked of: Hon. David Akeeagok
Minister of Economic Development and Transportation

Number: 63-5 (2)

Date: March 12, 2020

Subject: Activities of the Nunavummi Nangminiaqqtunik Ikajuuti
Policy Review Committee

Question: With respect to the Nunavummi Nagminiaqqtunik Ikaluuti (NNI) Policy Review Committee established under Section 12.0 of the NNI Policy:

1a: Between April 1, 2017 and March 12, 2020 who were the members of the NNI Policy Review Committee?

Between April 01, 2017 and March 12, 2020 the following were the members of the NNI Review Committee:

- Ronald Dewar - representing the Government of Nunavut
- Brad Hicke – representing Nunavut Tunnagavik Inc.

The NNI Review Committee is allowed and has on occasion invited NTI and GN staff to participate as required based on the issues in the agenda.

1b: Between April 1, 2017 and March 12, 2020 how many NNI Review Committee meetings were held?

Three (3) NNI Review Committee meetings were held:

- June 2017
- November 2018
- July 2019

1c: What was the Agenda for each meeting?

1. Agenda for June 2017 meeting
 - Information Sharing Between NTI and the GN
 - Developing shared understanding of implementation practices, particularly where difficulties are experienced.
 - Clarification of the meaning of certain technical terms in the Regulations
 - Advising NTI they are short one member for the Tribunal
 - Clarification of NTI Inuit Firm classifications
 - Further discussion of amendments to the NNI Regulations as were being developed for the amendments proposed in Sept 2017
 - Training and employment of Inuit
2. Agenda for November 2018
 - To discuss a potential bid cap in major construction projects in situations where bids are from 100% Inuit owned firms where there is no apparent control or management of the Inuit Firms by Inuit.
 - To discuss practices within the Government of Nunavut to understand budgeting on major projects where NNI is a consideration
 - To discuss the issue of NNI qualifying businesses being required to hold inventory
3. Agenda for July 2019 meeting
 - To discuss the situation with 100% Inuit owned firms bidding on major GN contracts where no Inuit control or management is apparent. The GN continues to see a bid cap as an effective remedy.

1d: Where was each NNI Review Committee held?

- June 2017 – NTI Offices in Ottawa
- November 2018 – EDT conference room in Iqaluit
- July 2019 – EDT conference room Iqaluit

1e: How many periodic reviews of the NNI Policy have been taken to date?

The NNI Review Committee jointly determined through discussion that Periodic Reviews would be conducted only when the NNI Review Committee determined that a Periodic Review was required to address a set of special or unique issues, which to date has not occurred. Notwithstanding, the GN has proposed that NTI and the GN begin planning for a substantive and comprehensive periodic review to be conducted in 2022.

Although there has been discussion and correspondence regarding issues concerning the classification of Inuit Firms the GN is addressing the issue through the consultation process as outlined in Section six (6) of the NNI Regulations which allows for consultation and revisions to the NNI regulations.

1f: How many reports have resulted from periodic reviews?

The last substantive and comprehensive periodic review was finalized in 2013. The current NNI Regulations were in force in Sept 2017 and the regulations per section 12.7 direct the production of a comprehensive review in 2022.

1g: What were the contents of the report?

The NNI Review Committee engaged consultants to produce a substantive analysis of the NNI Policy and contains an overview of the scope of the review, analysis of data relating to the implementation of the NNI, analysis of issues and current practices followed by a summary of objectives and recommendations. The report in its entirety can be found here:

<https://nni.gov.nu.ca/sites/nni.gov.nu.ca/files/2012%20External%20Report%20to%20the%20NNI%20Policy%20Review%20Committee.pdf>

1h: What is the timeline for tabling the NNI Review Committee reports?

As soon as they are reviewed by the GN staff and NTI and are considered by both parties as final versions.

1i: What were the specific recommendations made to date by the NNI Review Committee?

The recommendations are attached as Appendix A.

Details of the specific recommendations to the NNI, amendments to legislation and regulatory structures and other arrangements are public and can be found here:

<https://nni.gov.nu.ca/sites/nni.gov.nu.ca/files/2012%20NNI%20Comprehensive%20Reivew.pdf>

The NNI Review Committee, desiring an expedient and practical alternate and companion to the Periodic Review, developed, with the assistance of NTI, a procedure to effect changes to the NNI Regulations, amend legislation or regulations and or regulatory structures. The procedure jointly agreed to by the GN and NTI is defined in section six (6) of the NNI Regulations as follows:

6.0 Consultation with Nunavut Tunngavik Incorporated and Revisions to the NNI

6.1 The Commissioner in Executive Council may make changes to the NNI in a manner consistent with the obligations of the Government of Nunavut under Article 24 of the Agreement, which requires consultation with Nunavut Tunngavik Incorporated in the development and maintenance of preferential procurement policies, procedures and approaches.

6.2 Consultation with respect to any proposed revisions to the NNI or any policy of the Government of Nunavut aimed at implementing Article 24 of the Agreement requires, at a minimum, that the following procedure be followed:

- (a) the Government of Nunavut shall provide Nunavut Tunngavik Incorporated with notice of a matter to be decided in sufficient form and detail to allow Nunavut Tunngavik Incorporated to effectively address the matter and to prepare its views on the matter;
- (b) the Government of Nunavut shall provide Nunavut Tunngavik Incorporated with thirty (30) business days in which to prepare its views on the matter and to provide any such views to the Government of Nunavut. In exceptional circumstances NTI may request an extension of time to respond;
- (c) the Government of Nunavut shall give full and fair consideration to any such views provided by Nunavut Tunngavik Incorporated on the matter; and
- (d) the Government of Nunavut shall provide Nunavut Tunngavik Incorporated with written reasons for rejecting or varying any views provided by Nunavut Tunngavik Incorporated on the matter. The said written reasons shall be provided no later than thirty (30) business days following the decision of the Government of Nunavut on the matter.

6.3 It is recognized that assessment of what constitutes a reasonable period of time with respect to any aspect of the consultation process with Nunavut Tunngavik Incorporated shall take into account:

- (a) the complexity of the matter;
- (b) the economic significance of the matter;
- (c) special cultural or community sensitivities;
- (d) the need for Nunavut Tunngavik Incorporated to consult regional or other Inuit organizations;
- (e) the availability of leaders or key advisors; and

(f) other logistical factors.

APPENDIX A

Recommendations of the NNI Review Committee

The NNI Review Committee met in Iqaluit on April 17-18, 2013 to review and assess the Borden Ladner Gervais (BLG) External Report to the NNI Policy Review Committee and in particular to examine and reach conclusions on the issues and recommendations that start on page 99 of the document.

The Co-Chairs and other members of the Committee agreed that the intent was for the BLG Report to be made public as an accompanying document to the Review Committee's report.

The meeting was attended by staff from Nunavut Tunngavik Inc. and Government of Nunavut departments and agencies: Brad Hicke (NTI - Committee Co-Chair), Ronald Dewar (GN/NNI Secretariat - Committee Co-Chair), Mark McCulloch (GN/Community and Government Services), Bonnie Osborne (GN/Community and Government Services), Alastair Campbell (NTI), Travis Cooper (NTI), Christine Klazinga (Nunavut Housing Corp.), Don Hutton (Nunavut Housing Corp.) and Angus Oqallak (GN/NNI Secretariat - Observer).

The Committee considered and arrived at recommendations on 22 issues highlighted in the BLG report, as summarized below: Separation of the NLCA and Business Assistance Components of the NNI Policy BLG Recommendation 1. The GN should restructure the NNI Policy into 3 sections – one responding with the implementation of the Article 24 obligations, one responding to matters intended to assist Nunavut Businesses, and one responding to logistical matters that are common to the other two sections.

2. The GN should rename the NNI Policy to more accurately reflect its scope and intent. The new name could be the Nunavut Preferential Procurement Policy as translated into Inuktitut.

NNI Review Committee Conclusion

1. The Committee was in favor of this recommendation and considered it as an issue for implementation as soon as feasible. This would occur during the implementation phase and rewriting/organizing of the NNI Policy.

2. The Committee considered that re-naming the NNI Policy was not required. Bonuses and Penalties

BLG Recommendation

1. Bonuses and penalties should be eliminated in their entirety.

2. Bonuses and penalties should be replaced with: (i) A mandatory requirement in a tender or RFP for a minimum amount of Inuit content. Failure to meet the contractual obligation could, at the discretion of the contracting authority, be a ground for terminating the contract and, more importantly, a ground for preventing the contractor and its principals from receiving future GN contracts for a set period of time; and
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(ii) A rated requirement to evaluate contractors on past Inuit content achievement. 3. In the alternative to the elimination of bonuses and penalties, the GN should eliminate bonuses and adopt the following streamlined penalty system: (i) Penalties should be applied only in relation to Inuit content. They would be eliminated vis-à-vis project management and training. (ii) Section 12.1(d) of the NNI Policy should be eliminated, such that Inuit labour would be assessed as a whole, rather than assessed separately for Local Inuit labour and Nunavut Inuit labour. (iii) A tiered penalty system should be adopted with graduated penalty levels based on a contractor's number of historical failures to meet the contractual minimum Inuit content requirements. Penalties should escalate from minor (\$10,000) to debarment of the contractor and its principals from bidding on GN contracts for a set period of time. (iv) Contracting authorities should be vested with the discretion to not apply the tiered penalty system in prescribed circumstances. The prescribed circumstances should be set based in consultation with NTI, CGS, NHC and the business community.

4. Contracting authorities should be vested with the express discretion to alter the minimum Inuit content of a particular contract after execution of the contract. Set criteria for the exercise of this discretion should be established in order to ensure consistency among and between contracting authorities when considering requests for alterations.

5. In the event that the GN decides to retain bonuses, the NNI Policy should be clarified to provide that in the event that the minimum Inuit content is adjusted mid-contract, a contractor will only be eligible to receive a bonus if the contractor exceeds the original Inuit content requirement.

6. Contracting authorities must put in place effective monitoring of Inuit content levels during the performance of the contract, which monitoring should include random site visits.

7. Monitoring and enforcement of the minimum Inuit content requirement should be the responsibility of the contracting authority and not the NNI Secretariat. 8. GC55 should be eliminated in its entirety.

NNI Review Committee Conclusion

1– 3. The Committee members stated that option #1 would be acceptable, with regard to the current award of bonuses and penalties however this would only work if effective alternative measures were instituted for failing to meet contractual requirements reflecting NNI Policy directives. It was stated that the contracting authorities do not have sufficient resources to effectively monitor contract compliance with regard to Inuit hiring,

amongst other collectable variables. Further discussion led to the idea that the penalties could be eliminated; however there could be a restructuring of the bonuses in order to maintain an incentive for the overarching goal of increased Inuit hiring. One option considered was that the bonus structure could be limited to contracts over a certain \$ threshold. The contract would need to clearly specify the accounting 21

records which would have to be provided by the contractor in order to qualify for an Inuit labour bonus. It would be considered critical that contract authorities would be required to sufficiently monitor projects to ensure compliance.

4. The Committee felt that the contracting authorities should have the authority to alter minimum Inuit labour levels during the execution of a contract, if the contractor requested a change based on the proven insufficient availability of Inuit labour. Guidelines for this would need to be developed.

5. In the event that bonuses are maintained and minimum Inuit labour levels are reduced after a contract has been signed, no bonus should be payable unless the contractor exceeded the original minimum Inuit labour level in the contract.

6 and 7. Are accepted but are currently implemented only to the extent that the contracting authority has the resources to do so. Additional resources are required to effectively meet these goals.

8. The Committee agreed that GC 55 be eliminated, but that the intent underlying it still needed to be met.

The Committee considered that further work will be required to define processes and procedures to clarify implementation of changes in this area.

The Committee considered that non-compliant contractors would need to be penalized by being identified as non-compliant and losing the right to bid on GN contracts for a set period of time. The details of this would require further discussions and elaboration.

Minimum Inuit Content

BLG Recommendation

1. CGS, NHC, NTI and the business community should engage in an annual consultation to discuss current Inuit labour availability and skill set and the planned projects in the community and surrounding communities. The consultation will help to inform the percentages then set by the respective contracting authorities.

2. The GN should maintain a complete data set of actual Inuit labour achieved in comparison to the level of minimum Inuit labour required.

NNI Review Committee Conclusion

1. The Committee agreed that data collection and consultation is required through discussions on regional or community-based Inuit labour availability. This should be semi-annually or more frequently.

2 This recommendation speaks to what contractors actually achieved and although work is ongoing in this area there is more to do. NNI Contracting Appeals Board
BLG Recommendation

1. The name of the Contracting Appeals Board should be changed to the NNI Tribunal to more accurately reflect the scope of its mandate.

2. The process for dealing with complaints should be changed to the following:

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(i) If a bidder feels that it has been treated unfairly, the first step should be a debriefing with the relevant contracting authority. The bidder should be required to request a debriefing within five working days of receiving notification of the circumstances underlying the issues in question. (ii) The contracting authority should respond to the request for a debriefing in a timely manner and provide the debriefing within two weeks. (iii) If the bidder remains dissatisfied after the debriefing, the bidder may file a written complaint together with supporting materials to the NNI Tribunal within 7 working days of receiving the debriefing. (iv) The NNI Tribunal should then make a determination as to whether there is a reasonable indication that a breach of the NNI Policy took place. If the NNI Tribunal concludes that no such indication exists, it can reject the complaint at that stage. (v) If the NNI Tribunal concludes that a reasonable indication of a breach did occur, it would initiate an inquiry. (vi) The contracting authority should be provided with the complaint and supporting materials and be required to provide a response explaining what events transpired that are relevant to the complaint together with all supporting documents within 15 working days. (vii) Any commercially sensitive information not belonging to the complainant should be disclosed to only the representative of the complainant and not to the complainant. (viii) After the contracting authority's response has been provided, the complainant should be given a brief period of time to comment, such as seven working days. (ix) Once the record is then complete, the NNI Tribunal would analyze the issues and render a decision, in writing, within 15 days following the closure of the record. (x) Oral hearings should not be held unless it is impossible to adjudicate the complaint in the absence of an oral hearing, such as where there are significant issues of credibility or limitations on the ability of the complainant to present its case in writing.

3. Where a complaint is filed, the contracting authority should refrain from awarding the contract, or if already awarded, no work should be performed, pending the determination of the complaint. For exceptional urgent contracts that cannot wait for a complaint to be disposed of, the GN should be allowed to proceed with the contract and work.

4. The GN should appoint three NNI Tribunal members. The members should have expertise in procurement and administrative law or have considerable experience in government contracting. Members should not need to be resident in Nunavut, although that would be ideal. If the required expertise is not available in Nunavut, the members selected should have significant familiarity with government contracting in Nunavut. Members should be truly independent and not chosen to represent the interests of any

group or interest in Nunavut. The appointment process should be changed to ensure that the members appointed owe no allegiance to any particular government, community or business interest. 23

5. Complaints should only be heard by one NNI Tribunal member except where the nature and significance of the complaint warrants a three person review panel.
6. The NNI Tribunal should have access to legal support and on-going training.
7. The NNI Policy should be amended to provide that the recommendations of the NNI Tribunal are binding on the GN, except where, for compelling public policy reasons, the recommendations cannot be implemented.
8. The GN should expand the jurisdiction of the Board include complaints related to registration and re-registration decisions made by both the NNI Secretariat and NTI.
9. The GN should not currently increase the jurisdiction of the Board to encompass all aspects of a GN procurement process, whether or not the complaint is rooted in NNI Policy issues alone. The GN should re-assess the value of such an expanded jurisdiction once a more viable procurement review process is successfully operating.

NNI Review Committee Conclusion

The Committee considers that the name could be changed to the NNI Appeal Tribunal

The Committee discussed the structure of the existing NNI Contracting Appeals Board. The makeup of the appeals body should be 2 or more individuals with appropriate local knowledge and experience and more specifically a lawyer knowledgeable in procurement law. The GN and NTI could each appoint an individual as a primary member and each appoint an alternate in the event the primary was not available.

The persons on the board or tribunal would be guided by, preferably, a lawyer with a background in procurement law.

The Committee did not agree with recommendations 5 and 8.

All other recommendations would require further consideration and discussion through an implementation phase of re-structuring the NNI Policy.

CGS advised that it will not sign finalized contracts where an appeal has been filed, prior to the hearing of the challenge.

The Committee considers that the process described for the Appeals Board is to be reviewed during the Implementation phase of the response to the BLG recommendations.

BLG recommendations 5, 6, 7, 8 and 9 are to be reviewed during the implementation review. Bid Adjustments

BLG Recommendation

1. The current bid adjustments (7% for Inuit Firms, 7% for Nunavut Businesses and 7% for Local Businesses) should be recalibrated to 5% each. 2. A fourth bid adjustment should be added for Enhanced Inuit Firms with an available adjustment of up to an additional 6%. An Enhanced Inuit Firm is an Inuit Firm that is owned, managed and controlled by Inuit, and that has profits that flow directly to the Inuit owners.

3. Enhanced Inuit Firms would be eligible for an additional 6% bid adjustment, with the percentage available depending on the level of Inuit ownership, management and control. At 51%, an Inuit Firm would receive 5%. At 52% to 59%, an Enhanced Inuit Firm would receive a 6% adjustment. At 60% to 69%, an Enhanced Inuit Firm would receive a 7% adjustment. At 70% to 79%, an Enhanced Inuit Firm would receive an 8% adjustment. At 80% to 89%, an Enhanced Inuit Firm would receive a 9% adjustment. At 90% to 99%, an Enhanced Inuit Firm would receive a 10% adjustment. At 100%, an Enhanced Inuit Firm would receive an 11% adjustment.

4. The Enhanced Inuit Firms Registry should be maintained by NTI in the same manner in which it manages the Inuit Firms Registry, with the addition that the percentage ownership, management and control would be listed on the registry. 5. Registrants seeking Enhanced Inuit Firm status should be required to produce a set list of documentation to demonstrate Inuit ownership, management and control.

6. NTI and the NNI Secretariat should require all applicants for registration on the NTI Inuit Firms Registry, NTI Enhanced Inuit Firms Registry and the NNI Nunavut Business Directory to certify to the truthfulness of all information provided in their application and supporting documentation and to certify that there is no additional documentation or information relevant to the assessment of their application that has not been provided.

7. The NNI Policy should be amended to include provisions to address the consequences of deliberately providing untrue or misleading information in violation of the certification given, including striking the business from the registry and debarring the business and its principals from applying for registration of any other business for a minimum period of time.

8. The requirements for Nunavut Business status should be modified to require that a significant portion of the business' operations be conducted in Nunavut.

9. The definition of a Nunavut Business should be amended to: (i) Clarify that the requirements in subsection (i) through (iv) apply not only in the case of partnerships, but also to limited companies, co-operatives and sole proprietorships; and (ii) Clarify the ownership requirements for a co-operative and align the language with that used for Inuit Firm co-operatives.

10. The definition of a Local Business should be amended to: 25

(i) Clarify in subsection (iv) that the business has received status as a Nunavut Business (not a Local Business); and (ii) Expand Local Business status to Inuit Firms and not only Nunavut Businesses.

11. The GN should review the utility of sections 11.1(f) and 11.1(g) of the NNI Policy, which extend the Local Business bid adjustment to businesses that do not qualify for Local Business status. 12. The GN should implement immediate standardized data tracking procedures to permit the effectiveness of the various bid adjustments to be fully assessed.

NNI Review Committee Conclusion

The Committee supports restructuring the bid adjustment percentages.

The Committee recommends that NNI bid adjustments be set as follows: Nunavut Business 5% Local Business 5% Inuit Firm (NLCA) 5% 75% Inuit Owned +3% 100% Inuit Owned +3%

The total possible bid adjustment would remain at 21%, as at present.

One view expressed in the Committee was that the local bid adjustment could be seen to disadvantage smaller companies from the communities, in competing against larger companies in regional centers, on contracts in regional centers.

As part of this discussion the Committee agrees that the requirement for maintaining an inventory to qualify as a Nunavut Business is no longer necessary. The inventory requirement should be removed.

The Committee believes that a Nunavut Business selling goods must operate a commercial retail operation able to provide goods to the public.

Recommendations #4 through #12 to be reviewed during the implementation review.

Training

BLG Recommendation

1. The training provisions of the NNI Policy should be fundamentally overhauled.
2. The GN should clarify whether the training obligations are aimed as Inuit only, or also Nunavummiut as currently provided in section 7.1(d) of the NNI Policy.
3. The current training provisions should be replaced with a training system that would require a mandatory training obligation on contractors to meet the specific training terms detailed in an RFP or tender.
4. The categories of contracts to which a training plan obligation would attach should be altered. The monetary threshold should be increased to capture larger projects where long-term training can have a more significant impact.

Alternatively, or in addition, the threshold should be based on project duration; with a view to requiring training plans only on those projects that are long enough in duration that training would not impede the timely completion of the work. 5. The training component of the NNI Policy should be focused on pre-existing; third-party accredited training programs only. Contractors should not be obligated to create training programs and contracting authorities should not be obligated to assess the adequacy of the training programs.

6. Contracting authorities should be required in each RFP or tender to detail the necessary training based on the type of contract at issue. The training would be limited to the hiring of a designated number of employees who are enrolled in: (i) An apprenticeship program administered by the Department of Education and provided by Nunavut Arctic College; (ii) A skilled trades program administered by the Department of Education and provided by Nunavut Arctic College; (iii) An accredited training on the job program administered by the Department of Education; or (iv) Any other third party accredited training program as designated by the contracting authority, such as training programs conducted by bodies in other provinces or territories.

7. The Department of Education should maintain a list of accredited programs available both in and outside of Nunavut from which contracting authorities could select appropriate programs.

8. On larger projects (such as the Iqaluit airport), contracting authorities should meet with potential contractors to discuss the projects and to identify training needs and opportunities prior to establishing the training requirements in the RFP or tender.

9. Critical to the functionality of this new training system is the creation of Liaison Officers, who should be responsible for maintaining the list of available accredited programs, maintaining the list of students enrolled in apprenticeship and skilled trades programs and most importantly, acting as a liaison between contracting authorities, contractors, educational institutions and students to ensure that training requirements imposed in contracts are feasible and that appropriate employees can be located for contractors.

10. The Liaison Officer should play an important role in the enforcement of training obligations by acting as a neutral third party who will be able to confirm to contracting authorities what efforts have been made by a contractor to comply with the training requirements if they are not met and whether the failure to meet the requirements is justifiable in the circumstances.

11. The Liaison Officer should work with the contracting authorities, Nunavut Arctic College and contractors to determine whether additional accredited programs should be offered and added to the list of accredited programs for the purpose of NNI Policy training obligations. 27

12. Contracting authorities must engage in proper monitoring and enforcement throughout the completion of the contract to ensure that training obligations are being met.

13. Any unjustified failure to meet the training obligations (as determined in consultation with the Liaison Officer) should have a consequence, which consequences should include a lower score on NNI Policy compliance in future contracts, debarment from bidding on future contracts and/or a financial penalty.

14. The NNI Policy should be amended to include a provision that obligated contracting authorities to include enhanced training requirements for large projects, such as the Iqaluit airport. For such projects, a committee should be created with representatives from the contracting authority, the Liaison Office, Nunavut Arctic College and the contractor community to develop an appropriate training program that will maximize Inuit training and participation on the project.

15. Once the revision training system is successfully implemented, the GN should consider expanding the training obligations beyond primarily construction and large service contracts, keeping in mind that third party accredited programs would have to be available to satisfy the training obligation.

NNI Review Committee Conclusion

The Committee considers that the current training process described in the NNI Policy is un-workable. This is in part due to the fact that the NNI Policy contains no description or definition of the intended process in scoring the training plans associated with proposals.

The Committee considers that a scaled approach based on the size of the contract would be a better approach.

Contracts in the \$300,000 - \$2 million range would require that the vendor describe the \$ value to be spent in the contract on training. For contracts over \$2 million the vendor would need to identify the % of the total contract value being spent on training. In this situation the training would have to be a recognizable form of training - for example apprenticeships related to skills required in the contract. Own Forces

BLG Recommendation

1. The term “own forces” should be removed from the NNI Policy altogether.

2. All entities, whether general contractors or sub-contractors, should be required to set out their intended Inuit labour percentages and be evaluated on those intended percentages for the purpose of being scored on Inuit Content.

NNI Review Committee Conclusion

The Committee agrees.

A more appropriate phrase would be “Inuit labour value”. The evaluation criteria will focus on the intended dollar value of Inuit labour payroll instead of the use of estimates of Inuit labour percentages. Sole-Source Contracts

BLG Recommendation

1. Section 10 of the Government Contract Regulations should be expanded to permit the awarding of sole-sourced contracts where the GN identifies a particular region or industry in Nunavut that warrants special consideration and support to build capacity within the Inuit businesses and among the local Inuit population.

NNI Review Committee Conclusion

The Committee believes that procurement officials within the government of Nunavut need to comply with existing directions and guidelines already in place. Sole sourcing could be a function accommodated by negotiated contracts with Inuit Firms.

A Set Aside policy could work for Inuit Firms and for Nunavut Businesses. Use of Set-Asides for Inuit Firms

BLG Recommendation

1. The GN should implement a set-aside program to restrict identified purchasing opportunities to only Inuit Firms.

2. The GN should create a committee with government officials, NTI and business sector representatives to develop the framework for this program. A number of factors should be considered, including: (i) Whether only Inuit Firms that are Inuit owned and controlled can bid; (ii) Whether the set-aside program should be restricted to Inuit Firms that also qualify as Nunavut Businesses; (iii) Whether the program should be targeted for certain types of government purchases; (iv) Whether the program should be limited to contracts of a certain value; and (v) Whether the program should be developed for Inuit Firms only or Nunavut Businesses as well.

3. If the GN believes that similar assistance is needed for Nunavut Businesses (whether or not Inuit Firms), a set-aside program should be developed to assist those business and/or the current section 11.3 of the NNI Policy should be maintained.

NNI Review Committee Conclusion

The Committee sees this as potentially viable and believes that further work on this topic should be part of the future implementation review.

Standing Offers and “As and When Required” Contracts

BLG Recommendation

1. The application of the NNI Policy to standing offers and “as and when required” contracts should only be done where practicable and consistent with sound procurement management and where appropriate to the particular contract.

2. If there are no clear cost criteria in procurement of this nature, bid adjustments should not be used.

3. Alternatively, rather than use a hypothetical price for the purpose of bid adjustments, the GN could develop a point rating system (as it uses for RFPs) and have a category of points awarded for Inuit Firms, Nunavut Businesses and Local Businesses.

4. Rather than establishing a hypothetical minimum Inuit labour content, bidders should be required to certify that in previous GN contracts they have honoured their commitments to employ the required minimum percentage of Inuit labour and commit to meeting any mandated level of Inuit labour that may be imposed in any call-ups under the standing offer agreement or as required in any “as and when required” contract.

NNI Review Committee Conclusion

The Committee considers this to be a complex issue and was advised that CGS is developing a set of standards for this type of contracting. This will then be brought forward to the Review Committee. Bid Repair

BLG Recommendation

1. Errors in procurement documentation submitted by bidders (in particular, errors in B2 forms) should be addressed by the GN in one of two ways: (i) The GN can evaluate the bid strictly on the basis of what is submitted. If a bidder fails to complete the bid forms correctly and as a result does not get the benefit of all adjustments they could have received; the bidder would have to accept the consequences of its own error; or (ii) The GN could provide assistance to bidders by verifying and correcting information in respect of the bid adjustments that would apply.

2. If the GN adopts the latter approach, clear language must be inserted into the solicitation documents indicating to all bidders that these corrections will be made.

3. If the GN adopts the latter approach, the contracting authority should show the adjustments made to the bidder and ask the bidder to confirm whether the correction is accurate.

4. The better way to deal with the volume of errors, however, should be to revise the bid forms and/or provide better training to bidders so that they can more accurately complete the forms.

NNI Review Committee Conclusion

The Committee was advised that CGS is working to ensure that current practices are compliant with procurement law. The work is underway at this time as a result of a legal opinion provided by BLG. BLG provided their opinion after reviewing the NNI Policy and the existing issues faced by CGS in implementing contracting within the context of the NNI Policy and Article 24.

The practice of bid repair reflects a lack of capacity in the business community in maintaining accounting records and filling out bid forms. Standardization of Procurement Documents and Processes

BLG Recommendation

1. The GN should implement one standardized B2 form for all contracting authorities, which should be accompanied by a standardized instruction sheet provided by all contracting authorities to bidders.

2. The GN should develop a standardized set of debrief letters (which include different letters depending on the type of contract at issue) that are sent to all losing bidders within a set number of days after the awarding of the contract. The debriefing letters should disclose the following information:

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(i) The names of all bidders; (ii) The name of the winning bidder, the winning bidder's price and the winning bidder's overall score; (iii) The bid adjustments received by the winning bidder; (iv) The losing bidder's B2 form as adjusted by the contracting authority; and (v) The losing bidder's total score, including the breakdown of the total score received.

3. Procurement processes and contract awards should be centralized in Iqaluit for both CGS and NHC.

4. The GN should implement a standardized data collection procedure as noted below.
NNI Review Committee Conclusion

The Committee was advised that CGS has standardized a B2 for use in all of their contracts. NHC advises they will work with CGS to ensure standardization of the forms between agencies.

CGS is currently developing a standardized debrief letter. Items (i) through (v) are being worked on.

It was noted and unanimously agreed that the inclusion of the winning score under (ii) will assist in establishing more transparency for the overall procurement process.

Item #3: Centralized procurement can only be done if sufficient PYs are provided. Without sufficient human resources this item cannot be implemented.

Item #4: CGS has implemented this however NHC has not as they do not have the resources to compile this type of data. NHC would require increased human resources to implement this. Data Availability and Collection

BLG Recommendation

1. The GN should implement mandatory data collection procedures for all contracting authorities on an immediate basis.

2. Data collection should be consistent across all contracts and across all contracting authorities through the use of a standardized data collection form.

3. The data to be collected should include, at a minimum, the data currently being collected by CGS, and in addition, should include the value of work completed by subcontractors and information regarding the subcontractors, the percentage of Inuit labour achieved on every contract, the cost of implementation of the NNI Policy, and the impact of each bid adjustment on the awarding of contracts.

4. The project officer charged with a particular GN contract should be responsible for data collection for that contract in order to ensure accurate data collection.

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5. The NNI Secretariat should be charged with responsibility for data collection and maintenance of a centralized electronic database.

NNI Review Committee Conclusion

1: CGS procurement manual contains directions to implement this however NHC does not have the resources in place to fulfill this recommendation.

2: The Committee agrees.

3: The Committee agrees fully with the increased data elements and believes that changes would be required to be done to the GN and CGS database data to implement this recommendation.

4: The Committee agrees with this recommendation.

5: The NNI Secretariat does not have the capacity to undertake this recommendation. Although the intent was agreed to, at this time the Committee also concurs that given the current status of data collection employed by Housing Corp., CGS and QEC that there is currently no capacity for government-wide standardized data collection. The Committee believes that implementing a centralized and standardized database would not be possible given the current situation with the contracting authorities. The NNI Secretariat would need to have access to any centralized database; currently the NNI Secretariat has access to the Contract Reporting Data Base. Application of the NNI Policy to Municipalities
BLG Recommendation

1. Currently, the NNI Policy only applies to municipal procurements in cases where more than 51% of a particular contract's funds are provided by the GN, as no municipalities are receiving more than 51% of their annual operating funds from the GN.

2. The GN needs to determine whether it wants all or a portion of local government (municipalities, towns, hamlets and villages) procurements to be conducted in accordance with the NNI Policy. If so, the GN should enact the necessary laws or policy changes to do so.

3. If the GN does require municipalities to adhere to the NNI Policy, the GN should set a minimum contract value threshold which if met or exceeded would require local governments to adhere to the NNI Policy obligations.

4. If the GN determines that it wants all or some municipal procurements to be covered by the NNI Policy, the GN should provide training and resources to assist local government purchasing staff to cope with the intricacies and complexities that the NNI Policy presents.

NNI Review Committee Conclusion

The Committee believes that the municipalities may implement a basic version of the NNI policy on a voluntary basis to comply with the spirit and intent of Article 24 and the NNI Policy, to promote Inuit businesses and Inuit employment.

Some Committee members considered that most municipalities do not have the expertise or resources required to implement the NNI Policy.

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It is understood that there is no existing legislation or policy that requires municipalities to comply with the NNI Policy, and this is not a requirement of Article 24. Application of the NNI Policy to QEC

BLG Recommendation

1. The NNI Policy applies to the Qulliq Energy Corporation.

2. If there is any lingering doubt on this issue, the Minister or Executive Council should enact a specific policy or guideline stating that QEC is subject to the obligations of the NNI Policy.

NNI Review Committee Conclusion

The Committee strongly agrees that there is no reason for QEC not to comply with Article 24 and the NNI Policy. QEC is fully required to comply with Article 24 and the NNI Policy. The GN must take action to ensure that QEC complies with the Policy.

Monitoring and Enforcement

BLG Recommendation

1. The GN should immediately put into place the monitoring and enforcement measures required by the NNI Policy and as more fully detailed in the report in terms of meeting the minimum Inuit content obligations and training obligations.

2. The GN should amend the NNI Policy to empower the GN to debar a business and its principals from bidding on contracts for a set period of time in the event that the entity is found to have violated the spirit and intent of the NNI Policy. While similar debarment provisions should be contained in the NNI Policy related to specific breaches of NNI Policy obligations, this provision would act as a catchall for any observed inappropriate conduct.

NNI Review Committee Conclusion

Contracting Authorities require increased PYs in order to implement this recommendation. Currently the primary contracting authorities, NHC and CGS, do not have sufficient human resources to properly monitor projects. Changes to the NTI Inuit Firms Registry and NNI Nunavut Business Directory BLG Recommendation 1. The NNI Secretariat should not require applicants seeking re-registration to submit supporting documentation in the absence of a material change to their business. The NNI Secretariat should accordingly revise its renewal requirements and processes to align with those used by NTI.

2. The NNI Secretariat and NTI should extend the validity of their respective registrations to three years.

3. The NNI Secretariat and NTI should share relevant documents submitted by applicants in order to alleviate the burden on applicants and facilitate the greatest possible information sharing between the two organizations. This can be accomplished through a shared document database or restricted website housing the documents.

4. The NNI Secretariat and NTI should adopt a policy whereby any applicant found to have provided inaccurate information for the purpose of improperly obtaining registration is barred from registered the business at issue or any other business in which the applicant is a material stakeholder for a set period of time.

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5. The NNI Secretariat and NTI should assign registration numbers to all registrants. 6. The NNI Tribunal should be vested with the jurisdiction to make recommendations on the decisions of both the NNI Secretariat and NTI to deny registration or to deny a renewal application. Community Education on the NNI Policy and its Implementation
BLG Recommendation

1. The GN should provide better education within the community to enable businesses to better understand the meaning and operation of the NNI Policy in respect of procurement and contracting opportunities.

2. The GN should provide appropriate and on-going training to government officials about the application of the NNI Policy in the context of any procurement or contracting activity.

NNI Review Committee Conclusion

The NNI Secretariat is anticipating an increase in its human resources capacity and is planning to do a series of community workshops as a part of ongoing community education in Public Procurement and the NNI Policy. Translation of Procurement Documents

BLG Recommendation

1. The GN should make the Nunavut Tenders website available in all official languages.

2. If stakeholders want to have specific procurement documents provided in one of the official languages other than English, recourse should be made available to draw upon to translate the document in a timely manner and the deadline for the submission of bids and proposals should be extended by whatever time is necessary to complete the required translations.

NNI Review Committee Conclusion

Item # 1: The Committee considers that the GN currently does not have the capacity or technical resources to implement this recommendation.

Item #2: The Committee considers that all tenders and RFPs should have an opening statement that Inuktitut, Inuinnaqtun or French translated copies are available upon request. Other Clarifications to the NNI Policy Language

BLG Recommendation

As part of the amendments to the NNI Policy, the GN should conduct a wholesale review of the policy to correct a number of noted typographical errors, to ensure internal consistencies and to effect required clarifications.

NNI Review Committee Conclusion

The Committee agrees that once the recommendations are decided upon, the revisions of the type referred to will also be reflected in a revised NNI Policy.

Senior Level Government NNI Policy Leader

BLG Recommendation

1. The GN should appoint a senior government official with responsibility to ensure the NNI Policy's objectives are being met and who is accountable for the NNI Policy's performance, or lack thereof.

NNI Review Committee Conclusion

The Committee concluded that this responsibility should belong to the Deputy Minister and Minister responsible for the department in which the NNI Secretariat is situated.