



PROCUREMENT GUIDELINES

Revisions

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1. GENERAL INFORMATION

1.1. Introduction

This document has been designed to guide contract authorities in the use of the Government of the Northwest Territories (GNWT) procurement processes and tools, such that:

- the expectations of government procurement policy, trade agreements, and contract law are met as efficiently as possible;
- the risks to the GNWT from inappropriate procurement practices and decisions are minimized; and
- the right goods and services are acquired with the best value for money and made available at the right place in a timely manner.

1.1.1. Guideline Objectives

The objective of these guidelines are to establish a high level of confidence in the procurement process by ensuring that all public sector procurement is carried out in an open, consistent, efficient and competitive manner.

1.1.2. Key Principles

The GNWT procurement framework is built around the following six principles:

- Honour treaty commitments and support meaningful implementation of treaties;
- Provide for government procurement that balances the commitment to ensure open, fair and transparent procurement processes that are competitive, deliver value for money and provide direct benefits to NWT residents and NWT businesses, while adhering to treaty obligations and trade agreements;
- Enhance opportunities for all NWT Indigenous businesses, including ensuring equitable access to government procurement opportunities by all NWT Indigenous businesses through fair and transparent practices;
- Generate opportunities and maximize employment and capacity development to provide immediate and long-term benefits for NWT residents and NWT businesses;
- Make it easier to do business with the GNWT, by ensuring that procurement tools and policies are clearly articulated and easily accessible, and that business intelligence is shared in an appropriate and impartial manner; and
- Balance risks appropriately between all parties by allowing for open discussions and innovative approaches to responsibly address risk exposure for businesses and the GNWT.

1.2. Legal, Political and Administrative Considerations

1.2.1. Procurement Procedures Committee

The role of the Procurement Procedures Committee (PPC) is to provide oversight and guidance in the administration, development and maintenance of government-wide procurement procedures and to ensure consistency with corporate procurement regulations, policies, systems, standards and best practices.

1.2.1.1. Authority

The PPC is established by the Deputy Minister of the Department of Finance, in accordance with [FAM 705](#) – Procurement.

1.2.1.2. Mandate

The mandate of the PPC is to:

1. Oversee the ongoing development and maintenance of the GNWT Procurement Procedures Manual;
2. Approve appropriate action on any procurement issues, deficiencies or inconsistencies in Departmental/Agency procurement policies and procedures;
3. Communicate government-wide procurement policies and procedures to the GNWT Deputy Minister Steer Committee or other Deputy Minister Committee(s) as appropriate.

1.2.1.3. Composition

The PPC shall include the following:

- Members at the Director level, where possible;
- The Comptroller General, Department of Finance;
- One designate from Procurement Shared Services, Department of Finance;
- One designate from the Department of Infrastructure;
- One designate from the Northwest Territories Housing Corporation;
- One designate from the Department of Industry, Tourism and Investment;
- One designate from Department of Justice, Legal Division;
- Other ad hoc members as required (subject to approval of the PPC)

1.2.2. Legal Framework

Contracting in the public sector is based on the principle of competitive bidding. Competitive bidding requires that certain legal principles be followed. This legal framework originated in construction law, but it applies to all forms of tendering.

1.2.2.1. Principles of Law

In Canada, a primary principle of contract law related to tendering states that two contracts are formed during the tendering / contracting process.

The first contract - Contract A - the “Bid Contract” is formed between the purchasing organization and each bidder. This means that each bidder is bound to honour their price until, such time, as it is withdrawn, in accordance with the provisions of the tender. Similarly, the purchaser is bound to give each bid fair consideration.

Contract B, the “Work Contract” on the other hand, is the actual contract between the successful bidder and the purchasing organization. This contract may be in the form of a Purchase Order or Service Contract.

When your tender specifies a closing date and time, and specifies that the bids must be held irrevocable for a specified time, then this legal concept comes into play.

It is unlikely that this would be an issue on smaller value contracts; however, you should be aware that there are legal implications and responsibilities that must be considered in the contracting process.

1.2.2.2. Responsive and Responsible

The [*Government Contract Regulations*](#) carry the force of law and provide primary direction to contract authorities when tendering. When evaluating tenders only *responsive* tenders from *responsible* bidders will be considered according to the *Government Contract Regulations*.

“In these regulations:

- “*responsive*” means, in relation to a bidder, that the person has submitted a tender that conforms in all material respects to the invitation to tender
- “*responsible*” means, in relation to a proponent or a bidder, the capability in all respects to fully perform the contract requirements, and the integrity and reliability to assure performance of the contract obligations”

Responsive

If a requirement is not complied with (e.g. provision of bid security), the tender is non-responsive. If the bidder changes the tender documents or if the bid is qualified in some way, the bid is non-responsive.

For example, if the bidder changes the requirement “Supply and install 16 metal windows” to “Supply and install 16 wood windows”, the bid is non-responsive. If a tender is non-responsive, this may be grounds to disqualify the tender; however, this is not so in every case. For example, if a tender requests an optional price for wood windows

in place of metal windows and the contractor does not provide a price for the option, the tender is non-responsive but would not automatically be disqualified. A tender may be deemed non-responsive by the contracting authority.

Responsible

In deciding whether a proponent or bidder is responsible, some factors to be considered include, their:

- integrity;
- financial resources;
- creditworthiness;
- reliability;
- organization, plant and equipment;
- personnel – managerial and technical;
- experience with similar types of contracts;
- compliance with the Business Incentive Policy;
- record on previous projects with the GNWT; and
- references from previous owners.

To assist in this assessment, financial and technical reports could be obtained for the proponent/bidders under consideration (usually the low bidder or highest ranked proponent only).

In assessing whether or not a bidder/proponent is “responsible”, the GNWT’s decision may consider a number of factors including, but not limited to:

- has the bidder/proponent on more than one occasions in the course of previous or ongoing contracts with the GNWT or any of its public agencies:
 - failed to complete the work/services by the contract completion date;
 - failed to meet their obligations under the GNWT Business Incentive Policy;
 - failed to meet any obligations relating to Community Engagement;
 - had work rejected due to poor or incomplete workmanship or due to supply and/or use of unsatisfactory materials;
 - had a contract terminated, or had the work taken out of its hands; and/or
 - is in litigation brought by or against the GNWT or any of its Public Agencies, which in any way calls into

question its ownership, financial affairs, unpaid indebtedness or its management.

1.2.2.3. Void and Voidable Contracts

When contracts become unenforceable, they are said to be void or voidable. These two terms, while similar, reflect different degrees of imperfection in the agreement. If a contract is void, there are usually no legal effects on either party, since there is in law, no contract. Neither may sue the other party to the contract. However, this is not to say they have no right of action, since they may possibly sue in tort. Void contracts are usually contracts affected by mistake (mutual mistake of the parties) or illegality (contracts in breach of statute or regulations).

Voidable contracts occur mostly as a result of misrepresentation, or failure to observe statutory requirements with respect to form. When a contract is voidable, it will be valid until it is set aside by one of the parties.

1.2.2.4. Information Sources

The *Financial Administration Act* contains the primary rules governing contracting of all types with the GNWT. Flowing from this *Act* are the *Government Contract Regulations*, which have the force of law. For further information, refer to the [FAM 705](#) – Procurement.

The Department of Finance (FIN) offers contracting advisory services. Interested people can contact the Procurement Shared Services office for assistance.

1.2.3. Contract law

Effective procurement in the public sector is a balance between the principles of fair, open, and transparent procurement obligations imposed by law, and business considerations. A completed procurement cycle results in an agreement between government and a supplier for the provision of goods, services, or construction in exchange for some form of consideration. This agreement, which most often takes the form of a service contract or a purchase order, is referred to as the performance contract. The performance contract, which is sometimes referred to as a Contract B, is between the successful bidder or proponent and the government.

In Canada, the concept of “Contract A” and “Contract B” was introduced in 1981 by the Supreme Court of Canada, and was the result of the *R v Ron Engineering and Construction (Eastern) Ltd.* case. The Supreme Court of Canada’s decision in that case established that a call for tenders, and the subsequent acceptance of tenders, would constitute a binding contract. The concept can be summarized as follows:

- Contract A – is formed when a bidder, responding to a government solicitation for tenders, submits a valid (compliant) bid.
- Contract B – is formed when the government awards a contract to the successful bidder.

When a competitive process is used to select the best supplier for the performance contract, another type of contract is created: a bid contract. In the NWT, Request for Tenders (*RFT*), and a Request for Proposals (*RFP*) are all types of solicitation documents used to invite submissions from which a successful bidder or proponent is selected. The *RFT* process, in particular, results in the establishment of “Contract A”, the bid contract, between the government and all compliant bidders.

Common law with respect contracts applies to both the final form of the agreement and to the competitive process that led up to the agreement. An important distinction for government employees to understand is that both contracts that result from a competitive process – Contract A and Contract B – create legal obligations to government. These guidelines support a procurement process that is both efficient and consistent with common law.

Finally, contract law applies to any contract, regardless of whether it is a written or verbal contract, for the supply of goods or services. A contract results when there is a combination of an offer and acceptance of that offer. If departmental staff do or say anything to create a verbal offer, acceptance of such an offer by a vendor can create a verbal contract on behalf of the government, without the protective language found in standard contract templates.

A contract is a legally enforceable agreement between two or more parties. This chapter presents a discussion of the elements of this statement in order to provide a general appreciation of the legal significance of entering into and administering a contract. The following is only intended as an overview and should not be considered definitive, legal counsel should be consulted as required.

1.2.3.1. The Nature of a Contract

1.2.3.1.1.

Introduction

To be legally enforceable, an agreement must contain all of the following criteria:

- an offer and acceptance;
- certainty of terms;
- consideration;
- an intention to create legal relations;
- capacity of the parties; and
- legality of purpose.

1.2.3.1.2.

Offer and Acceptance

A contract cannot come into existence until an offer has been made by one party and accepted by another party. An offer is a tentative promise made by one party, the offeror, subject to a condition or containing request to the other party, the offeree. When the offeree accepts the offer by agreeing to the condition or request, the offer is replaced by a contract. The promise is no longer tentative: the offeror is bound to carry out his or her promise while the offeree is bound to carry out the condition or request.

1.2.3.1.3.

Acceptance must be made in some positive form. Generally, an offeree must communicate acceptance to the offeror.

The moment that a contract is formed by offer and acceptance, each party is bound to its terms.

Certainty of Terms

The formation of a contract depends on a meeting of the minds or consensus as to the terms of the proposed contract. Both parties must have a clear understanding of their rights and duties in the transaction for there to be consensus. Consensus requires that the terms of the proposed contract be reasonably specific or, alternatively, be reasonably ascertainable by means of an agreed formula or principle of determination. An agreement to agree on certain terms later on is not a contract.

1.2.3.1.4.

Certainty of terms is the essence of a contractual agreement.

Consideration

At the root of the idea of a contract is the concept of a bargain, that one party must pay a price – that is, make some, contribution (consideration) – for the promise they obtain from the other party. For the most part, consideration is essential to make a contract binding in law.

1.2.3.1.5.

An Intent to Create Legal Relations

1.2.3.1.6.

An Agreement must be deliberate, or seriously intended, to be enforceable, so that it is understood that in the event of a breach of obligation, the parties could enforce the contract through the courts. In business transactions it is presumed that the parties do intend the agreement to have legal consequences. In the government context, however, many documents are signed which are not intended to create legal relationships such a Memoranda of Understanding. These understandings are typically between various elements of the executive, such as two departments.

Capacity of Parties

An otherwise valid contract may be defeated by the lack of contractual capacity of one of the contracting parties. The law presumes that each party to the contract has the legal capacity to enter into it.

1.2.3.1.7.

The GNWT is a legal entity and contracts through its employees, each of whose authority or capacity to bind the GNWT may be limited in some fashion. The legal capacity of the GNWT, in the sense of its powers under a contract, arises by reason of statutory law.

Legality of Purpose

The object of the contract must be “legal”. Business transactions must neither offend the public good nor violate the law. If they do, the contract will be deemed to be “void”, which means that in law it was never formed.

1.2.3.2. Laws of Tender

The Laws of Tenders in Canada stipulates that an invitation of tenders, the submission of tenders and the receipt of bids creates a binding “contract A” between the tender originator and every bidder so long as the bid is not withdrawn prior to tender closing. The contract ultimately entered into between the tender originator and the successful bidder is referred to as “contract B”. The owner selects the terms of its Contract A in its call for tenders.

1.2.3.3. Duty of Fairness

Vendor relationship management is an integral part of all phases in any procurement process. Therefore, fair treatment of vendors is an important consideration for departments from the planning stage of procurement through to the post-contract evaluation. The following points are issues that departmental staff should keep in mind to ensure that all potential suppliers to government are treated in a fair and unbiased manner.

- In any procurement process, only one individual should be the contact person. This person will answer, or arrange to answer, all questions from vendors and may distribute the answers to all vendors who have expressed interest in the process. In this way, all parties will receive identical information. Only questions in writing should be accepted and answers should be given in writing to maintain an accurate historical record. If verbal questions are received by the contact person, the answer(s) provided should be recorded in writing.
- If one of the potential suppliers has previously done the required work for the department, the department should ensure that all other potential bidders or proponents have access to the same information that the incumbent supplier may have had access to. Also, all potential suppliers should receive the same information that the incumbent supplier has received. Fair and consistent disclosure of department information related to the procurement process ensures a leveling of the playing field for all potential suppliers.
- The requirements in the solicitation document should not be written in such a way, or be so specific, that only one bidder or proponent would be able to qualify.

Departments are responsible for establishing and managing an accessible and fair process for responding to vendor complaints.

1.2.4. Mechanics Lien Act

The purpose of a *Mechanics Lien Act* is to protect suppliers or materials and services to a construction project, in the event of default in payment.

The *Mechanics Lien Act* does not apply to GNWT contracts. However, it does apply to all non-Government construction projects, and therefore a basic understanding of the *Act* is necessary.

1.2.4.1. General Principles

To better understand the *Act*, it should be considered as creating two separate and independent types of remedies, one being the contractor's lien and the second the subcontractor's lien.

The *Act* may be viewed through the following link:

<https://www.justice.gov.nt.ca/en/files/legislation/mechanics-lien/mechanics-lien.a.pdf?t1485188485906>

Contractor's Lien

1.2.4.1.1.

The concept of the contractor's lien is completely independent of the concept of the holdback. The holdback notion is only relevant with respect to claims of the unpaid subcontractors. From the time the work commences, the general contractor has a lien for the value of all improvements done on the property. This lien arises as soon as the work commences on the contract and the general contractor does not have to take any steps to obtain this lien.

1.2.4.1.2.

Subcontractor's Lien and the Holdback

The subcontractor is in a different position than the contractor there is no contract between the subcontractor and the owner. Without the *Mechanic's Lien Act*, subcontractors would have no right or security against the owner since there are no direct dealings between them.

The *Act* imposes on the owner an obligation to retain 10% of the price to be paid to the contractor. The amount retained is called a holdback and must be made on every payment to the contractor.

This 10% is to be used to pay subcontractors who have not received payment from the contractor.

1.2.4.2. Mechanics Lien Act in the Northwest Territories

Does not apply to the GNWT

According to the *Northwest Territories Interpretation Act*, no *Act* is binding on the Crown unless it contains specific provisions to that effect. Since the *Mechanic's Lien Act* does not contain a provision for binding the GNWT or its Public Agencies, such as the NWT Housing Corporation, the GNWT is not bound by the legislation.

Boards and Agencies

Although the *Mechanic's Lien Act* does not apply to the GNWT, it may in fact apply to some projects where the Department of Infrastructure is building / contracting on behalf of boards or agencies. When a board or agency is the "owner", the *Act* may or may not apply.

1.2.4.3. When GNWT is the Contract Manager

When the GNWT is in a contract management situation, for example, when it is building on behalf of a party who is subject to the *Mechanic's Lien Act*, holdbacks must be retained in accordance with the *Act*. This holdback must be 10% of every payment made to the contractor. When a holdback is retained under the *Act*, it is important to identify the specific dates by which the owner may release the holdback amount. If the holdback money is released too soon, the owner will be liable for the losses of the unpaid supplier.

The date for the release of holdbacks depends on the type of lien. Five types of liens exist under the *Act*:

1. The contractor's lien
2. The subcontractor's lien
3. Lien for materials
4. Lien for the supplying of machinery
5. Lien for wages

Under the *Act*, a lien claimant has a period of 45 days to register the lien in the Land Titles Office in which the land described in the lien is located. If the lien is not registered in this period, the owner may release the holdback and be released of all liability. The commencement period of the 45 days depends on the type of lien.

A contractor's lien must be registered:

- before or during the progress of the work
- within 45 days after the date the subcontract is completed, terminated or abandoned

A subcontractor's lien must be registered:

- before or during the progress of the work done under the subcontract
- within 45 days after the day the subcontract is completed, terminated or abandoned

A lien for materials must be registered:

- before or during the furnishing of the material
- within 45 days after the day the last materials furnished
- within 45 days the contract to furnish the materials is terminated or abandoned

A lien for the supply of machinery must be registered:

- before or during the supplying of the machinery
- within 45 days the last of the machinery is supplied or placed
- within 45 days the contract to supply or place the machinery is terminated or abandoned

A lien for wages must be registered:

- within 45 days after the last day of labour for which the wages are payable

At the end of this period, the owner must verify with the appropriate Land Titles Office that no liens have been registered on title. If none are registered, the holdback amount may be released. If a lien is registered, the holdback cannot be released and must be kept for the unpaid lien claimants.

1.2.5. Trade

The [*Financial Administration Act*](#) provides legal authority for GNWT departments to enter into contracts for the provision of goods and services. In addition, department-specific establishment of policies provide the authority for departments to contract for the provision of goods and services in support of their programs. Regardless of who has the authority to procure, the process of contracting for goods and services must comply with the [*Government Contract Regulations*](#), the *Canadian Free Trade Agreement (CFTA)* and contract law.

1.2.5.1. Canadian Free Trade Agreement

The GNWT is a party to the CFTA, which regulates trade between the provinces and territories to ensure equal access to government procurement for all Canadian suppliers. Previously it was known as the Agreement on Internal Trade which came into effect in July of 1995. Under the new terms of the CFTA, all procurement opportunities meeting or exceeding the following thresholds must be accessible to all Canadian suppliers, through the use of electronic tendering systems, advertisement in daily papers, or use of other source lists:

Under the new terms of the CFTA, all procurement opportunities meeting or exceeding the following thresholds must be accessible to all Canadian suppliers, through the use of electronic tendering systems, advertisement in daily papers, or use of other source lists.

For the period of January 1, 2024 to December 31, 2025, in accordance with Annex 519.1: Party-Specific Exceptions, the procurement thresholds for the GNWT under the CFTA are:

- a) for departments, ministries, agencies, boards, councils, committees, commissions, and similar agencies of a Party:
 - (i) \$200,600 or greater for goods or services, if the largest portion of the procurement is for goods or services; or
 - (ii) \$668,500 or greater for construction
- b) for regional, local, district, and other forms of municipal government, municipal organizations, school boards, and publicly-funded academic, health, and social service entities as well as any corporation or entity owned or controlled by one or more of the preceding entities:

- i. \$401,100 or greater for goods or services, excluding construction; or
- ii. \$10,027,600 or greater for construction.

c) for Crown corporations, government enterprises, and other entities that are owned or controlled by a Party through ownership interest:

- i. \$668,500 or greater for goods or services, excluding construction; or
- ii. \$10,027,600 or greater for construction.

It is important to note that the above referenced thresholds are the requirements for the GNWT under the Canadian Free Trade Agreement, and are significantly higher than the [Dollar Value Thresholds](#) established by the Department of Finance.

1.2.5.2. Comprehensive European Free Trade Agreement

The GNWT is also a party to the Comprehensive European Free Trade Agreement (CETA) which covers most sectors and aspects of trade between the European Union (EU) and Canada. CETA has effectively eliminated most tariffs between the EU and Canada, aims to reduce other non-tariff barriers, and ensures that EU and Canadian companies are treated equally and have the ability to bid on government procurements in each country/member state.

Additional detailed information concerning CETA can be found through the following link:

<http://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/index.aspx?lang=eng>

1.2.5.3.1. 1.2.5.3. Business Incentive Policy

Introduction

The Business Incentive Policy is an economic policy of the GNWT that applies to any in-scope procurement contract entered into directly by the government, with the exception of employment contracts. The policy is designed to encourage and support the development of a healthy private sector and, particularly in the smaller communities, to ensure that Northwest Territories businesses can be competitive with their southern counterparts.

The [BIP](#) requires GNWT contract authorities to apply the [BIP](#) adjustments to bids and proposals from, or utilizing the goods/services of, approved NWT businesses during the procurement evaluation process. Pursuant to the [BIP](#), a Registry of approved NWT businesses is maintained by the Department of Industry, Tourism and Investment.

For more detailed information regarding the application of the [BIP](#):

- Northern Business owners, the public, and contract authorities may access detailed information about the policy through the ITI website:

<http://www.iti.gov.nt.ca/en/services/business-incentive-policy>

- Call the *BIP* Monitoring Office, at (867) 875-2590
- Call Procurement Shared Services, at (867) 767-9044

Eligibility

1.2.5.3.2.

When contracting for goods, services, or construction the supplier in order to receive the bid adjustment, must be a *BIP* Business; that is a business entered into the *BIP* Registry in accordance with the Policy. The Registry of Approved Northern Businesses found on the ITI Business Incentive Policy Monitoring Office web site at:

<http://www.iti.gov.nt.ca/en/services/business-incentive-program-bip/search-bip-registry>

BIP Registered Goods Supplier

1.2.5.3.3.

BIP registered suppliers of goods are approved on a commodity/category basis, meaning that they are approved only for specific categories of goods. When using the *BIP* Registry (www.bipregistry.nt.ca) the approved categories will be listed below the business name. It is important that buyers take note of the specific category each vendor is approved to supply before placing an order. The *BIP* Registry will also allow users to search by category type and community to determine which suppliers are approved to supply the required goods.

1.2.5.3.4.

BIP Registered Services Provider

1.2.5.3.5.

BIP registered businesses that provide services will also be listed on the *BIP* Registry, but for reference only. Unlike goods, it is not necessary for businesses to be approved for specific services.

BIP Exemptions

The BIP does not apply to the following:

- leases entered into under the Leasing of Improved Real Property Policy;
- the procurement of petroleum products that are intended for resale in any NWT communities, or in any situation where the price paid for the petroleum products has a direct impact on the prices paid by NWT residents or businesses for goods, services or utilities; or
- any procurement process where the Executive Council exercise their prerogative power to make any decision or take any action respecting business incentive outside the provisions of the BIP.

NWT Manufactured Products Policy

The Government of the Northwest Territories is committed to building a diversified, sustainable territorial economy by providing support for business and economic development throughout the NWT.

1.2.5.3.6.

The Northwest Territories Manufactured Products Policy gives incentive to local production and manufacturing of goods for the use of the GNWT under the [BIP](#). BIP-registered businesses may apply to have their NWT-made goods registered as an approved NWT Manufactured Product.

What makes a product eligible for consideration?

Manufacturing is defined as the transformation of materials or substances into new products. Assembly is considered manufacturing, when one or more of the major component parts are manufactured in the manufacturer's Northwest Territories (NWT) facility. The manufactured product must be product specific and is an item that is regularly stocked or part of a catalog of items. The manufactured product must be produced in their NWT facility.

What is the purpose?

Through its policy, the GNWT encourages local manufacturing as a means to diversify the NWT economy and foster and grow jobs and income from the production of manufactured NWT goods.

How does this policy work?

- In order to benefit from the NWT Manufactured Products Policy, a product must be recognized as an approved NWT manufactured product.
- If there is only one manufacturer, preference will be given to the recognized NWT manufactured product.
- If there is more than one approved NWT manufacturer for an approved manufactured product, all approved manufacturers will be invited to submit a bid.

Eligibility

In order to become an approved manufacturer:

- the company (applicant) must be registered under the GNWT's Business Incentive Program
- the product must have at least 25% of its value is added in the NWT
- the product must be priced within 20% of a similar product when picked up from the manufacturing site, or within 25% when delivered to the final delivery location

1.2.5.4. Settlement Legislation

In recent years a number of land claim and self-government agreement have been approved in the NWT. These agreements may have an impact on your contract and tendering procedures. Detailed information on each agreement can be found with the Department of Executive and Indigenous Affairs, and is available through the following link:

<https://www.eia.gov.nt.ca/en/priorities/concluding-and-implementing-land-claim-and-self-government-agreements/existing-agreements>

1.2.6. Negotiated Contracts Policy

1.2.6.1. Introduction

Departments are authorized to enter into contracts only through a competitive process. Cabinet may, for a variety of reasons, waive the requirement for a competitive process and allow the direct negotiation of a contract with a specified party.

1.2.6.2. What is a Negotiated Contract?

The GNWT may negotiate contracts (with Cabinet's authorization) outside the competitive contracting process when negotiations can reasonably be expected to:

- lead to benefit for businesses or residents which could not reasonably be expected to be achieved through competitive contracting; or
- contribute to the creation, growth and competitive capacity of the NWT-based businesses in manner that complies with the Agreement on Internal Trade

The *Government Contract Regulations* pursuant to the *Financial Administration Act* provide that only Cabinet may enter into or direct a *Contract Authority* to enter into a contract outside of competitive or sole source contracting processes.

Effective September 2007 Cabinet approved both the Negotiated Contracts Policy and Submission Guidelines for negotiated contracts.

Normally the process is initiated by an eligible contractor requesting a negotiated contract to undertake the work arguing that a negotiated contract would provide opportunities to improve the skills and experience of residents and northern businesses or realize economic benefits for residents, the community or region that would not be provided or realized through a competitive contract process.

Note: This differs from a sole source situation, which occurs when:

- only one firm is available and capable of performing the contracts; or
- the urgency of the situation dictates that the competitive process cannot be used.

1.2.6.3. Authority to Negotiate

The ultimate authority for approval of a negotiated contract rests with the Cabinet. Further, the Cabinet shall prescribe the terms and conditions for a negotiated contract.

1.2.6.4. Submission Guidelines

Details concerning eligibility and submission guidelines can be found in the Negotiated Contracts Policy, which is accessible through the following link:

<https://www.eia.gov.nt.ca/sites/eia/files/content/11.26-negotiated-contracts-policy.pdf>

1.2.7. Vendor Performance Management Policy

In October 2023, the GNWT introduced a Vendor Performance Management Policy to help monitor performance and ensure that vendors fulfill their contractual commitments. In March 2024, the accompanying Vendor Performance Management Guidelines were released to provide guidance on the application of the policy.

https://www.eia.gov.nt.ca/sites/eia/files/vendor_performance_management_policy_15.05.pdf

https://www.fin.gov.nt.ca/sites/fin/files/vendor_performance_management_guidelines_v.1.0_1.pdf

1.3. Ethical Considerations

1.3.1. Financial Administration Manual, 705

The Financial Administration Manual contains certain prohibitions and cautions that relate to using GNWT buying power for personal gain.

[FAM 705](#), purpose, states:

"To demonstrate prudence, probity, accessibility and management of public funds and resources in a consistent, fair, open, transparent and accountable manner that provides value to NWT residents in the procurement process"

1.3.2. GNWT Code of Conduct

The GNWT publishes the "Code of Conduct Respecting Conflict of Interest and Oath of Office and Secrecy for the Employees of the Government of the Northwest Territories"; the latest version was updated in October 2022.

The Code of Conduct Respecting Conflict of Interest and Oath of Office and Secrecy for the Employees of the Government of the Northwest Territories (the "Code") identifies standards of conduct for GNWT public service employees in the execution of their duties, and in specific areas once an employee terminates their employment. It also outlines what steps employees should take to ensure they do not place themselves in a situation that can be perceived as a conflict of interest.

In particular, the Code addresses a conflict of interest: "A conflict of interest exists where there is an actual or perceived incompatibility between an employee's duties and responsibilities of office and the private interests of the employee or an immediate family member which can include but is not limited to pecuniary interests including investments and business involvements; outside employment; service, whether voluntary or otherwise, on a board, council or committee or other organization; and personal relationships, including immediate family and spouse.

This Code of Conduct is readily available at the following web site:

https://my.hr.gov.nt.ca/sites/myhr/files/codeofconduct_1.pdf

All GNWT Contracting Authorities are encouraged to become familiar with this Code. The provisions relate directly to the contracting process.

Notwithstanding professional codes of ethics such as those of the Supply Chain Management Association of Canada (outlined below), all GNWT employees are bound by this Code of Conduct.

1.3.3. Code of Ethics, Supply Chain Management Association

The Supply Chain Management Association of Canada (SCMA) has enacted a Professional Code of Ethics for professionals in the field of Supply Chain Management. This document can be viewed through the following link:

<https://www.supplychaincanada.com/media/files/code-of-ethics.pdf>

1.4. Hierarchy of Procurement Documents

1.4.1. Overview

In understanding the process of public sector procurement, it is important to note that it takes place in a framework composed of legislative, regulation, policy and procedure-oriented documents. This hierarchy of procurement documents is listed below. It is this set of documents, which will govern a procurement process in the NWT. At the most general level there is the *Financial Administration Act*, legislation that assigns the responsibility for expenditure and disbursement to the Minister who oversees his or her department. At the most specific level are the various brochures which are created to describe step-by-step procedures which must be taken when performing a procurement-related activity such as purchasing a good, services or construction. In tracing the hierarchy from legislation to brochure, it should be understood that each of the different types of documents fills a specific role.

1.4.2. List of Documents

[Financial Administration Act](#)

This legislation establishes the statutory authority and responsibility for the financial management and administration of the Government. In effect, this document defines the powers of the Government.

[Financial Administration Manual](#)

This manual contains:

- a) directives of the Financial Management Board and Comptroller General, including:
 - i. general financial management and accounting principles;
 - ii. minimum Government financial administration system standards;
 - iii. description of financial powers and duties of public officers; and
 - iv. financial administration policy, including direction and guidelines.
- b) an unofficial copy of the *Financial Administration Act* and *Property Assessment and Taxation Act*, as amended from time to time.

Government Contract Regulations

This document establishes rules or orders having the force of law issued by the executive authority of the GNWT as it pertains to the procurement function. Regulations provide a more detailed outline of guiding principles and operational procedures, which must be followed in procurement.

The *Government Contract Regulations* can be viewed through the following link:

<https://www.justice.gov.nt.ca/en/files/legislation/financial-administration/financial-administration.r9.pdf>

Business Incentive Policy

This is an economic development policy designed to provide registered northern businesses with a level of incentive, which compensates for the higher cost of operating a business in the Northwest Territories.

Procurement Guidelines

This document provides a more comprehensive source of information for those doing procurement within governmental organizations. Subjects relating to policy, contract law, trade agreements and risk management are provided, as well as a detailed description of the procurement process and specific detailed information on the procurement of goods, services, and construction. This manual provides a more comprehensive source of information.

Department Brochures

These documents provide an overview of various topics related to government procurement. The purpose of the brochures is to, briefly, outline pertinent information, which can be used by staff of government departments and suppliers when participating in the procurement process.

1.5. Vendor Complaint Process

1.5.1. Overview

A Vendor Complaint Process ("VCP") is an integral part of a fair and open procurement policy. The GNWT VCP was developed as a method to handle vendor complaints and improve government procurement processes. The VCP allows the GNWT to handle vendor complaints in an organized, consistent manner, and to

carry out analysis and reporting requirements in order to improve business processes.

The VCP is intended to provide eligible vendors with access to a consistent, fair, and timely process to deal with vendor complaints concerning GNWT procurement processes, and to identify ways to improve processes.

The VCP is limited to issues of procurement policy and procedures for GNWT departments. It is not intended to limit access to other complaint review processes. The VCP is not an appeal process, and no compensation will be awarded to a complainant under the VCP.

The VCP applies to all procurement activities carried out by GNWT departments covered under the *Financial Administration Act*.

Vendor complaints can originate for a number of reasons, real or perceived. Reasons, which could negatively reflect on the integrity of the procurement process, include, but are not limited to:

- specifications that are seen as vague or incomplete;
- bid/proposal preparation time too short to properly prepare a response;
- specifications perceived as unfair, predetermined, or arbitrary;
- inconsistent application of procurement procedures; or
- violation of an applicable trade agreement.

The GNWT VCP can be viewed through the following link:

<https://www.fin.gov.nt.ca/en/resources/vendor-complaint-process>

1.5.2. Eligibility

In order for a complaint to be considered, it will be reviewed to ensure it complies with certain eligibility requirements. A complaint may be dismissed without further consideration, where, in the opinion of the GNWT:

- the complaint is frivolous or invalid;
- the complainant is not a participant in the competitive process (i.e. did not submit a bid or proposal);
- is in respect of a procurement by an entity that is not a government department;
- is made more than 10 business days after notice of a contract award; or
- is other inappropriate for consideration.

1.6. Sustainable Procurement

1.6.1. Sustainable Procurement Overview

In October 1996, the (then) Department of Public Works and Services (now the Department of Infrastructure) partnered with the (then) Department of

Resources, Wildlife and Economic Development to advance the concept of purchasing goods and services that are environmentally responsible.

As a result of this partnership a 'Guide for Procurement of Environmentally Responsible Products/Services' was created. The objective of the guide is to promote waste reduction and encourage resource conservation. Purchases are encouraged to incorporate the principles of this guide into their contracting activities.

1.6.2. Guide for the Procurement of Environmentally Responsible Products/Services

1.6.2.1. Objectives

This Guide for the Procurement of Environmentally Responsible Products/Services is designed to encourage GNWT departments to consider environmentally preferred products and services as part of their purchasing decisions. The objectives of this guide are:

- To provide an environmental role model for government procurement, by making it a priority to use environmentally preferred products and services, where feasible and cost effective.
- To increase demand for environmentally preferred products and services (which may ultimately enhance quality and cost competitiveness).
- To continue to increase government conservation of resources through the use of more reusable products, and products and services which require less energy and materials to produce or use.

1.6.2.2. Principles

Where feasible and cost effective, the GNWT will acquire products and services that are environmentally preferred. Environmentally preferred products are those that reduce waste, improve energy efficiency, limit toxic by-products, contain recycled content or are reusable. Environmentally preferred products are those that employ environmental responsibility in their management and administration and operations.

The substitution of environmentally sensitive products for more environmentally harmful products will increase as their usage becomes more prevalent and as they become more cost effective and of comparable quality to those products previously purchased.

1.6.2.3. Practices

Where feasible and cost effective and where the products are compatible with individual department requirements, preference should be given to purchase of environmentally sensitive products and services.

As part of prudent acquisition management, departments should consider use of environmentally sensitive products and services on a trial basis to ensure performance and technical requirements are met, prior to making longer-term purchasing commitments.

Evaluation criteria specified in the solicitation document should consider the environmental impact over the life cycle of each product compared to the alternatives, by taking into account economic and environmental impact, production processes used, energy, use maintenance and disposal requirements.

Evaluation criteria specified in a services solicitation document should consider a proponent's corporate environmental sustainability policy.

Where they are cost effective and meet performance and technical standards, products certified under a relevant environmental labeling program may be specified in the solicitation document. Specific environmental technical requirements may also be included in product specifications.

Examples of information sources or programs:

- EcoLogo – Environmental Choice Program
- Buy Green
- Green Building Materials Virtual Room Sample
- EnerGuide
- PowerSmart
- Energy Star
- Forest Stewardship Council (FSC) (www.fsc.org)
- Hotel Association of Canada, Green Key Eco-Rating Program (www.hacgreenhotels.com)

1.6.2.4. Definitions

In this Guide:

"Environmentally Preferable Products" means goods and materials that have a less adverse impact on human health and the environment when compared with competing goods and materials. This comparison shall include a life-cycle assessment of all products purchased, including raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, and waste management of the good or material.

"Environmentally Preferable Services" means services that have a more beneficial or less adverse impact on human health and the environment when compared with competing services.

1.6.2.5. Procurement Planning Checklist

In order to reduce the environmental impact of an acquisition, this checklist has been developed to help ask the right questions at the planning stage of an acquisition.

Acquisition

Have other options for meeting the needs been explored:

- Has internal surplus been checked to ensure no comparable product is available?
- Has the feasibility of short-term rental been investigated as an alternative to purchasing?
- Is the quantity requested appropriate and sure to be used? Will the product be used to the end of its useful life; if not, can it be easily reallocated?

Once it has been determined that a purchase should be made, there are a number of specific product characteristics that can help identify an environmentally responsible item. Users should be cautioned against products with unsubstantiated claims, and should look for statements such as percentage of recycle content.

Is the product:

- Certified by the Environmental Choice Program or other program?
- Designed to minimize waste?
- Energy efficient (e.g., office equipment with power saving sleep mode)?
- Less polluting during its use than competing products?
- Free from hazardous ingredients that would require special disposal?
- Free from resources that come from environmentally sensitive regions?
- Free from banned and/or restricted substances?
- Manufactured from recycled materials

Is the product packaging:

- Designed to minimize waste?
- Reusable by the end-user?
- Accepted by the supplier for reuse, recycle or recovery?
- Recyclable locally
- Made from recycled material

Operation, Utilization and Maintenance

Is the product:

- Durable with a long service life?
- Accompanied by clear and comprehensive operating instructions?
- Easy to maintain in good operating condition?
- Economical to repair?
- Easy to upgrade?
- Reusable or does it include reusable parts (e.g., reusable batteries)?

Disposal

Can the product or its parts:

- Be reused or reallocated?
- Be resold through the disposal process?
- Be returned to the supplier for reuse, recycling or recovery?
- Be contributed to a waste exchange program?
- Be recycled locally?

The relative importance of each of the above questions will vary from one product category to another. Be sure to advise your supplier that you will be evaluating products according to these factors.

When purchasing services, you should consider requiring the contractor to meet similar environmental standards.

Examples of Environmentally Preferable Product Categories

- Recycled paper and paper products
- Remanufactured laser printer toner cartridges
- Re-refined lubricating and hydraulic oils
- Recycled plastic outdoor-wood substitutes
- Re-crushed cement, concrete aggregate and asphalt
- Paint that is re-manufactured, recycled, low VOC, low toxicity, non-oil based
- Cleaning products with lowered toxicity
- Energy saving products
- Alternate fuel and fuel efficient vehicles

1.6.3. Ethical Procurement

The Government of the Northwest Territories is committed to following ethical procurement practices and will endeavor to ensure its suppliers, consultants and contractors adhere to the fundamental conventions of the International Labour Organization (as amended):

- 1) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87)
- 2) Right to Organise and Collective Bargaining Convention, 1949 (No.98)
- 3) Forced Labour Convention, 1930 (No.29)
- 4) Abolition of Forced Labour Convention, 1957 (No 105)
- 5) Minimum Age Convention, 1973 (No.138)
- 6) Worst Forms of Child Labour Convention, 1999 (No.182)
- 7) Equal Remuneration Convention, 1951 (No.100)
- 8) Discrimination (Employment and Occupation) Convention, 1958 (No.111)

For additional information please visit the International Labour Organization's website at: <https://www.ilo.org/global/lang--en/index.htm>

1.7. Procurement Processes and Tools

1.7.1. Methods of Procurement

There are different methods of procurement, which are utilized to acquire goods or services. There are many factors, which determine which method is best, but the most important of these would be the complexity of your need, the value of the procurement, your time horizon, the availability of potential suppliers, interest of potential suppliers in competing for this procurement, and the risk if something goes wrong during the process. All these factors will influence the procurement strategy and the selection of the best method of procurement in a given situation.

The procurement process can range from simply deciding to directly award a contract (sole source) to a multi-stage process that involves information gathering, pre-qualification and solicitation activities.

For reference, the following are the *Dollar Value Thresholds* relating to Government of the Northwest Territories procurement¹:

- **Goods**
 - Under \$25,000
 - Contract Authorities can procure the goods on their own or submit a requisition to Procurement Shared Services.
 - No sole source form required.
 - \$25,000 and Over
 - Requisition submitted to Procurement Shared Services.
 - Formal public competitive procurement is required (unless approved as sole source).

¹ References to Procurement Shared Services are only intended for GNWT Departments. Boards and agencies may utilize their own procurement services through separate offices.

- Sole source form is required if not publicly and competitively procured through Procurement Shared Services.
- **Services**
 - Under \$10,000
 - Contract Authorities can procure the services on their own or submit a requisition to Procurement Shared Services.
 - No sole source form required.
 - Between \$10,000 and \$25,000
 - Requisition submitted to Procurement Shared Services.
 - No formal public competitive procurement process is required but obtaining two (2) quotes is recommended.
 - No sole source form required.
 - \$25,000 and Over
 - Requisition submitted to Procurement Shared Services.
 - Formal public competitive procurement is required (unless approved as sole source).
 - Sole source form is required if not publicly and competitively procured through Procurement Shared Services.
- **Professional Services**
 - Must be a services provided by a person or persons holding a professional designation/certification under a legislated profession in the Northwest Territories (e.g. lawyer, accountant, etc.).
 - Under \$10,000
 - Contract Authorities can procure the goods on their own, or submit a requisition to Procurement Shared Services.
 - No sole source form required.
 - \$10,000 to \$50,000
 - No formal public competitive procurement process is required but obtaining two (2) quotes is recommended.
 - Sole source form required when valued at \$25,000 or more.
 - \$50,000 and Over
 - Requisition submitted to Procurement Shared Services.
 - Formal public competitive procurement is required (unless approved as sole source).

- Sole source form is required if not publicly and competitively procured through Procurement Shared Services.
- **Architectural and Engineering Services**
 - Under \$10,000
 - Contract Authorities can procure the goods on their own or submit a requisition to Procurement Shared Services.
 - No sole source form required.
 - \$10,000 to \$25,000
 - No formal public competitive procurement process is required, but obtaining two (2) quotes from *BIP* registered firms is recommended.
 - No sole source form required.
 - \$25,000 to \$100,000
 - No formal public competitive procurement process is required but obtaining two (2) quotes from NWT-based firms is recommended.
 - Sole source form required when valued at \$25,000 or more.
 - The following order of preference should be followed:
 - Under \$25,000 - request quotes from firms registered under the Business Incentive Policy.
 - \$25,000 to \$100,000 – request quotes from firms registered under the Business Incentive Policy, as well as firms that operate, and have a place of business in the Northwest Territories but are not approved under the Business Incentive Policy.
 - \$100,000 and Over
 - Requisition submitted to Procurement Shared Services.
 - Formal public competitive procurement process is required (unless approved as sole source)
 - Sole source is required if not publicly and competitively procured through Procurement Shared Services.
- **Northwest Territories Manufactured Products**
 - Procurement Shared Services is responsible for all procurements under the Northwest Territories Manufactured Products Policy (with the exception of certain public boards, agencies and corporations). Requisitions should be submitted to Procurement Shared Services to initiate a purchase under the Northwest Territories Manufactured Products Policy.

- Only businesses approved under the NWT Manufactured Products Policy (for the product being procured) may be contracted.
- In accordance with the Manufactured Products Policy, when there are two or more approved northern manufacturers the contract authority shall obtain quotations or proposals from each manufacturer.

1.7.1.1. Competitive

Government Contract Regulations, R-032-2006, requires the use of formal competitive procurement processes before entering into a contract unless the *Contract Authority* believes, on reasonable grounds, that the procurement meets the sole sourcing requirements set out below.

1.7.1.2. Sole Source

In order for the GNWT to maintain a balance between the need for open, competitive opportunity and the demands of urgent or specialized circumstances, the *Government Contract Regulations* allow for sole source purchasing. Sole source purchasing is permitted under certain circumstances which are set out in detail in Section 1.8.

1.7.1.3. Purchases Valued Under \$25,000

When making purchases that are valued under \$25,000, the following shall apply:

- Sole source authorization forms are not required.
- Services (including construction) contracts valued at \$10,000 or greater are publicly reported.
- Goods contracts valued at \$25,000 or greater are publicly reported.
- Departments can proceed on their own or ask PSS for assistance in obtaining quotes and issuing a purchase order for goods under \$25,000.
- Departments must go through PSS for assistance in obtaining quotes and issuing a contract for services \$10,000 and over. Under \$10,000, Departments can proceed on their own.
- Please refer to FAM Interpretation Bulletins 705.01 and 705.02 for further details.

The following is the order/hierarchy for making purchases under \$25,000:

1. BIP Registered Businesses
2. NWT Businesses
3. Canadian Businesses
4. Foreign Businesses

Although purchases valued less than \$25,000 are not directly subject to the Business Incentive Policy (BIP) bid adjustment, the BIP

registration status of a business should be considered in accordance with the above order of priority.

When purchasing goods, services, and construction valued under \$25,000, Contract Authorities should support local and regional BIP-registered businesses while also ensuring value for money.

Where quoted prices that are obtained in accordance with the order of priority exceed 20% of the pricing obtainable from a business at a lower level of priority, the Contract Authority may choose to procure the goods, services or construction from the business at the next level of priority.

It is the responsibility of the Contract Authority to:

- take reasonable steps to obtain the best value possible;
- operate within GNWT policies;
- comply with the Business Incentive Policy;
- comply with the NWT Manufactured Products Policy;
- comply with the Financial Administration Manual; and
- be able to demonstrate that reasonable steps were taken to obtain the best value possible while adhering to GNWT policies.

Best practices:

- Whenever possible obtain a minimum of two (2) written quotations from suitable businesses. Departments procuring goods and services under \$25,000 are responsible for ensuring that the best value is obtained for the GNWT.
- Requests for quotations should follow the above established hierarchy (priority) list.
- *BIP* adjustments to quotations should not apply when the goods or services are valued under \$25,000.
- If there is only one local *BIP* registered business, additional quotations are not necessary.

1.7.1.4. Negotiated

As explained in Section 1.2.6, with Cabinet's authorization the GNWT may negotiate contracts outside of the usual competitive or sole source process.

1.7.1.5. Local Contract Authority

A Local Contracting Authority Form is available to facilitate contracting for goods and services by authorized GNWT employees. However, with the approval of *FAM 730*, purchasers are encouraged to use the Corporate Credit Card whenever possible; LCA forms should only be used when the vendor does not accept credit cards.

Restrictions

The use of the Local Contract Authority Form is subject to the following restrictions:

- Must be completed within 30 days
- Restricted to northern registered (*BIP*) contractors located within the NWT
- Maximum contract value of \$10,000.00
- Employment contracts not permitted
- Procurement may not be split into separate transactions in order to circumvent any monetary limit

The use of the LCA is governed by [*FAM 705.13*](#), Local Contract Authority.

1.7.1.6. Corporate Credit Card

The Corporate Credit Card has been provided to facilitate contracting for goods and services by authorized GNWT employees.

The Corporate Credit Card may only be used for purchases made on behalf of the Government and may not be used for reimbursable expenses such as meals and incidentals while on approved duty travel.

Procurements must not be split into separate transactions in order to circumvent any monetary limits on the credit card.

The Corporate Credit Card replaces the Local Contract Authority (LCA) Form and should be used in preference over the LCA Form whenever possible and appropriate.

The use of Corporate Credit Cards is governed by [*FAM 730*](#).

1.7.2. Purchasing Activities

1.7.2.1. Request for Tenders

A Request for Tenders should be used when all of the following criteria apply:

- two or more sources are considered capable of supplying the requirement;
- the requirement is adequately defined to permit the evaluation of tenders against clearly stated criteria;
- market conditions are such that tenders can be submitted on a common pricing basis; and
- it is intended to accept the lowest-priced competent tender without negotiations.

Characteristics of *RFTs* include:

- it is a formal tender process;

- the tender opening is public;
- the legal concept of “Contract A” and “Contract B” applies;
- bids are irrevocable;
- is utilized for acquisitions valued over \$25,000, where price is most often the determining factor;
- must comply with the provisions set out in trade agreements; and
- is advertised on the Contract Events Opportunities website and/or newspaper.

Tenders are evaluated with the objective of accepting the lowest-priced *responsive* tender. Negotiations shall not be conducted with firms that submitted responsive tenders, except when:

- only one responsive tender is received; or
- two or more responsive tenders are received but the prices do not represent fair value to the GNWT and negotiations are opened with the objective of obtaining acceptable pricing and terms.

Before negotiating, the procurement officer must determine if it would not be more fair, open and effective to cancel the tender, revise the requirements/specifications and re-tender, or meet the requirement using other supply methods.

1.7.2.2. Request for Proposals

A Request for Proposals (RFP) should be used when one or more of the criteria for issuing a Request for Tenders cannot be met, such as:

- Owing to the nature of the requirement, suppliers are invited to propose a solution to a business problem, requirement or objective and the selection of the contractor is based on the effectiveness of the proposed solution and its overall value rather than on price alone; or
- It is expected that negotiations with one or more bidders may be required with respect to any aspect of the requirement;

Proposals shall be evaluated in accordance with specific, predefined criteria set out in the RFP.

The preparation of proposals is often costly to industry. To keep the total cost to industry down while ensuring freedom of access to potential suppliers, consideration may be given to soliciting proposals in two steps.

Such a process might be appropriate where many potential suppliers are known.

Other characteristics of RFPs:

- method most often used for the procurement of complex goods, services and major construction projects;
- used for the procurement of goods when criteria in addition to price will be utilized;
- *RFP* must comply with requirements of the trade agreements;
- proponent conferences/site visits are often held;
- formal proposal process;
- the legal concept of “Contract A” and “Contract B” does not normally apply;
- proposals are revocable after the submission deadline (i.e. a proponent may withdraw from the process);
- proposal opening is public; and
- is advertised on the GNWT [Contract Event Opportunities](#) website and/or newspaper.

In some situations it may be appropriate to short-list proponents for participation in a *RFP* process. To do this, the *RFQ* process described in the next Section would be used to establish a shortlist of proponents who have qualified to participate in an invitational *RFP* process.

1.7.3. Information Gathering Activities

1.7.3.1. Purpose

Information gathering activities are processes used to obtain information on the availability of goods or services, the availability of potential suppliers, and the level of interest in the procurement. These activities are not competitive processes, as they are not requesting quotes or proposals

1.7.3.2. Request for Expressions of Interest

A Request for Expressions of Interest (*RFEI*) process is used when you may have a requirement for a sophisticated, multi-skilled team or specialized knowledge and very few companies seem to possess the necessary skills or experience. This methodology is sometimes used to find other contractors with the “right stuff” and get them interested in the project.

This process is not generally used to disqualify potential contractors, or to create a short list for an invitational *RFP*.

Content – What to Include

The Expression of Interest Document should:

- clearly define the opportunity and the project;
- provide a solid plan with time lines;

- clearly state your priorities;
- include a general outline of the evaluation criteria for the subsequent *RFP* selection, or for any intervening stages; and
- address potential questions and invite those who are interested to respond.

Instructions to the potential respondents may also include submission length and required content, such as:

- team/corporate partners;
- key personnel;
- financial and surety information (if applicable);
- project experience, and
- approach to the project.

1.7.3.3. Request for Information

A Request for Information (“*RFI*”) is a procurement procedure where suppliers are provided with a general or preliminary description of a problem or need and are requested to provide information or advice about how to better define the problem or need, or alternative solutions. It may be used to assist in preparing a solicitation document. No contracts are awarded as a result of a *RFI*.

1.7.4. Pre-qualification Activities

1.7.4.1. Purpose

Pre-qualification activities use a Request for Qualifications (“*RFQ*”) process to pre-qualify vendors/suppliers who will then compete on a subsequent invitational procurement process (typically a *RFP* or *RFT*). An *RFQ* can also be used to short list a group of vendors under a Supply Services Arrangement. Please refer to Section 1.7.6 for additional information concerning Supply Services Arrangements.

1.7.4.2. Request for Qualifications

A Request for Qualifications is a process that will enable you to pre-qualify proponents for a particular requirement and avoid having to struggle with a large number bids and/or lengthy proposals.

This process is useful when you anticipate a great deal of interest, and need to screen many contractors so you can move quickly to a short list of qualified proponents for a full *RFP* or *RFT* process.

It also limits the number of potential bidders/proponents who will be required to go to the expense of preparing a detailed proposal.

Pricing information is typically not requested at the *RFQ* stage, as it should focus strictly on shortlisting suitable bidders/proponents based on their respective qualifications.

During the first step of this process, vendors are requested to provide expressions of interest and qualifications, from which a shortlist is developed. During the second step, suppliers on the shortlist are invited to submit detailed proposals, or their final bid price. Only those respondents that satisfy the necessary criteria for stage 1 are eligible for stage 2.

In certain situations, if only one response to a *RFQ* is received, the purchaser may be able to directly sole source a contract with that one respondent. As the *RFQ* is a prequalification process, there would be little purpose in shortlisting a single respondent. However, before proceeding with direct negotiations with the respondent the purchaser must consider if there were any factors that may have resulted in other businesses deciding not to participate in the *RFQ* process (e.g. prohibitive requirements in the *RFQ* short time frame for the preparation of responses, etc.).

What to Include

A Request for Qualifications document should:

- describe the project;
- provide a project plan with timelines;
- clearly present your priorities;
- suggest a submission length; and
- ask for the same basic contractor information as an Expression of Interest.

This process must also:

- identify the minimum requirements or pass/fail tests that each contractor must satisfy in order to be invited to participate in the RFP; and
- set out the criteria that would otherwise appear as "mandatory" in the *RFP*.

Benefits

There are several benefits in using this process:

- unqualified or inexperienced contractors are removed from the selection process;
- it is less costly to the proponents;
- you will likely receive better proposals from proponents who feel they have a good chance of winning; and
- fewer proposals will reduce the evaluation burden.

Important Note

Often Request for Expressions of Interest and Requests for Qualification are combined under the "Expressions" banner to pre-

qualify potential or interested suppliers. However, departments are encouraged to use the [RFQ](#) for the pre-qualification process as it more clearly communicates to potential bidders and proponents that the process is looking for qualifications and not just expressions of interest.

1.7.5. Standing Offer Agreements

1.7.5.1. Standing Offer Agreements

A Standing Offer Agreement (SOA) is an offer from a vendor to supply goods and/or services at pre-arranged prices and under the terms and conditions stated in the SOA.

The Department of Finance establishes Standing Offer Agreements for commonly used services and products for use by all departments and agencies of the GNWT. The following information is provided to guide the user in understanding the SOA process.

Standing Offer Agreements or SOA's are not contracts. They are pricing agreements 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, services and/or maintenance. There is no legal obligation incurred.

A new individual contract is made each time a new purchase is ordered or released under a Standing Offer Agreement.

In certain situations SOA's established by the Government of Canada may also be used. Procurement Shared Services can provide advice with respect to the use of federal SOA's.

1.7.5.2. Definition

Standing Offer Agreement: obligating a supplier to provide to the Government, on demand, specified goods or services under specified conditions during a set period at a predetermined price or discount structure.

1.7.5.3. Purpose

SOAs are intended to increase the level of cost-effectiveness and service to users, by:

- consolidating volumes and standardizing requirements
- reducing the time required to acquire standard goods or services;
- reducing the overall administrative costs of acquiring low cost, frequently required goods and services;
- maintaining competitive, best price expenditures.

With respect to goods contracting, Standing Offers provide the opportunity to establish, through a formal tender process, pricing agreements that will offer lower costs for frequently required goods,

through the consolidation of demand. This is also known as achieving "economies of scale".

With respect to services contracting, Standing Offers through the [RFT](#) or [RFP](#) process can provide pricing agreements for frequently required services.

Commitment of Funds

As Standing Offers do not contain legal obligations to contract for all or any of the goods or services, they are not considered contracts. Consequently, there is no requirement for the commitment of funds. When individual releases are made in the form of Purchase Orders or Service Contracts, then funds must be committed and reported.

1.7.5.4. Establishing Standing Offer Agreements

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 mutual understanding from the department or departments to use the agreement.

SOAs can be either Common Use or Limited Standing Offer Agreements. All SOAs will have transaction limits which users must adhere to. The transaction limit is the maximum value of a contract released under a SOA (e.g. if the transaction limit for a SOA is \$100,000, then all contracts issued pursuant to the SOA must not exceed \$100,000).

Common Use Standing Offers are utilized when it becomes evident that several departments require the same commodities on an ongoing basis. Common Use Standing Offers may be used by any department and individual contracts are placed directly with the supplier.

A competitive process must be used. You should incorporate an estimate of the amount of work or goods into the tender or [RFP](#) documents. The anticipated volume requirements will likely result in more favourable pricing being offered (leverage economies of scale).

In certain circumstances, it may be impractical to have a SOA for certain requirements exclusively with only one contractor. Non-exclusive SOAs occur when the amount of work available exceeds the capability of a single contractor to do the work or the goods/services are needed immediately and may not always be available from the one contractor. When going out for competition for non-exclusive SOAs, the [RFT/RFP](#) document should clearly indicate that the resulting SOA will be non-exclusive in accordance with the terms and conditions on the standard Tender and [RFP](#) documents found in Internal Services (see below).

In such cases, every effort should be made to contract first with the contractor offering the lowest price or in the case of an [RFP](#), the highest ranked proponent.

Contracting Methods, Ordering the Goods and/or Services

Some of the methods that may be used to issue contracts against Standing Offer Agreements include:

- Purchase Order
- Service Contract (under \$10,000 a formal contract is not required)
- Corporate Purchase Credit Card – only if under \$10,000
- Verbally – only if under \$25,000
- Work Order – issued by a department
- Local Contract Authority - currently in limited use

1.7.5.5. Listing of Standing Offer Agreements

The Department of Finance currently arranges a wide range of Standing Offers Agreements. Information regarding these agreements may be obtained from Procurement Shared Services.

1.7.5.6. Standing Offer Agreement Templates

Standard templates have been developed for the establishment of Standing Offer Agreements. Templates may be obtained by contacting Procurement Shared Services for assistance.

As mentioned later in this section, there are a number of templates that can be used to establish Standing Offer Agreements (SOAs). Basically there are three main SOA types: goods, services, and maintenance work. Once the appropriate type has been selected, users must determine if they wish to establish an exclusive SOA or non-exclusive SOAs.

- Exclusive SOA

An Exclusive SOA is a pricing agreement established with one vendor to provide a specific good(s) or service(s) on an “as required” basis over the term of the SOA.

- Non-Exclusive SOA

A Non-Exclusive SOA is a pricing agreement established with multiple vendors to provide the same goods and/or services on an “as required” basis over the term of the SOAs.

Once Non-Exclusive SOAs have been established, work/orders would be offered first to the *responsive* and *responsible* bidder/proponent with the lowest price or, in the case of a RFP, the highest ranked proponent.

1.7.6. Supply Services Arrangements

1.7.6.1. Supply Services Arrangements

A Supply Services Arrangement (SSA) is an offer from a vendor to supply services and under the terms and conditions stated in the SSA.

The Department of Finance establishes Supply Services Arrangements (for services) for use by all departments and agencies of the GNWT. The following information is provided to guide the user in understanding and utilizing the SSA process.

Supply Services Arrangements are not contracts. They are Arrangements that pre-qualify contractors to provide specific services on and as and when required basis over a defined period of time. They may be used in contracting for services only. There is no legal obligation to contract

A new individual contract is made each time a new purchase is ordered or released under a Supply Services Arrangement.

1.7.6.2. Definition

A Supply Services Arrangement means an Arrangement where a contractor has been pre-qualified to participate in an invitational competitive process for specific services, on an as and when required basis during a set period.

1.7.6.3. Purpose

Supply Services Arrangements are intended to increase the level of cost-effectiveness and service to users, by:

- Consolidating volumes and standardizing requirements
- Reducing the time required to acquire standard or specialized services;
- Reducing the overall administrative costs of acquiring frequently required or specialized services;
- Maintaining competitive, best price expenditures.

Commitment of Funds

Since Supply Services Arrangements do not contain legal obligations to contract for all or any services, they are not considered contracts. Consequently, there is no requirement for the commitment of funds. When individual releases are made in the form of a Service Contracts, then funds must be committed and reported for values of \$10,000 for services and \$25,000 and over for goods in accordance with [FAM 705](#).

1.7.6.4. Establishing Supply Services Arrangements

The establishment of Supply Services Arrangements should result from a clearly defined need and utilized by Procurement Shared Services and departments on an as and when required basis.

Supply Services Arrangements are established through a [RFQ](#) to prequalify contractors for frequently required or specialized services that are required on an as and when required basis.

In order to meet the GNWT requirements, it is the GNWT intention from time to time, throughout the Supply Arrangement period, to invite new suppliers to submit proposals to pre-qualify and be added to the list of suppliers pre-qualified to provide the services described in the Supply Arrangement through publication by the GNWT of a Supply Arrangement Refresh notice posted on the GNWT Contract Opportunities web page. This process will also permit pre-qualified suppliers to qualify for requirements for which they are not already qualified.

The frequency of subsequent Supply Arrangement refresh publications will be at the sole discretion of the GNWT, Procurement Shred Services section.

The GNWT may issue an unlimited number of supply arrangements and may continue to issue supply arrangements to pre-qualified suppliers throughout the Supply Arrangement period.

The use of Supply Service Arrangements is not mandatory, and the GNWT reserves the sole right to procure services on any SSA by any other means it deems appropriate.

Release against a Supply Services Arrangement

1.7.6.4.1.

The Supply Service Arrangement establishes a list of pre-approved contractors.

Releases against a Supply Service Arrangement will be subject to the following limits and authorities:

- for service contracts less than \$25,000.00, the GNWT may enter into a contract with any suitable vendor, giving preference to local or NWT-based vendors approved under the GNWT Business Incentive Policy;
- for contracts greater than \$25,000, professional consulting contracts greater than \$50,000, architectural and engineering contracts greater than \$100,000, but less than \$500,000 the GNWT may engage in an invitational competitive process with all contractors on the pre-approved SSA list for the specific service required;
- for contracts, greater than \$500,000, the GNWT may engage in a public competitive process and standard GNWT contracting regulations and guidelines will apply.
- all purchases estimated to be over \$25,000 for goods and \$10,000 for services, must be processed through Procurement Shared Services, unless other arrangements have been made with PSS.

The application of *BIP* is applied during the invitational competitive process with all contractors on the pre-approved SSA list for the specific service required.

Please note that the above referenced dollar value thresholds are recommendations, Procurement Shared Services shall have the sole discretion to revise these limits based on operational requirements.

1.7.6.5. Listing of Supply Services Arrangements

Procurement Shared Services is responsible for the development of all Supply Service Arrangements. Information regarding these arrangements may be obtained from your regional Procurement Shared Services office.

1.7.6.6. Supply Services Arrangement Templates

Standard templates have been developed for the establishment of Supply Services Arrangements. These templates can be obtained through Procurement Shared Services.

1.7.7. Procurement Templates

1.7.7.1. Introduction

The Department of Finance (FIN) has three areas that support procurement templates, SAM, DIIMS and Internal Services. These templates are used to generate standard contract documents for internal GNWT, NWTHC and Boards and Agencies.

GNWT users (including, NWTHC, Boards and Agencies situated within the GNWT network) have access to the electronic contract forms. For contracts valued under \$25,000.00 users must register online with INF Internal Services (a link to the system is provided on the INF website) in order to access the forms.

http://intranet.pws.gov.nt.ca/econtracts/Home_Page.asp

On the homepage, choose the quick link “Internal Service”. If you are a first-time user, you will have to click on the “Register Now” button and respond to the requisite list of questions. Previously registered users will be automatically transferred to the electronic contract forms page.

All templates over \$25,000.00 are either hosted directly in SAM, Internal Services, or through the Procurement Shared Services DIIMS library. If you have old paper copies of these documents, they should be destroyed as the terms and conditions may be superseded and there is the potential for duplicate numbering.

Templates are frequently updated, and it is important that users ensure that they have the latest version before proceeding.

1.7.7.2. Contracts and Procurement Documents

Representatives from Procurement Shared Services will be able to assist users choose the appropriate procurement template and contract template for their particular requirements.

Templates are available through Procurement Shared Services.

Current templates include:

Information Gathering Activities

- Request for Qualifications (use to shortlist vendors)
- Request for Expressions of Interest
- Request for Information

1.7.7.2.1. Standard Goods and Services Acquisitions

- Request for Proposals
 - Standard
 - Invitational
 - Standing Offer Agreement
 - Short-Form
- Request for Tenders
 - Goods
 - Services
 - Maintenance
 - Photocopier Lease
 - Air Charter
 - Standing Offer Agreements
 - Goods
 - Services
 - Maintenance
 - Over \$250,000 (used for larger purchases)
 - Fuel Supply, Transportation and Delivery
 - Operational Services
- Request for Quotations
 - RFQ – Used for purchases valued under \$25,000 for goods and \$10,000 for services
- Contracts
 - Purchase Order - Goods
 - Service Contract
 - Air Charter
 - Rotary-Wing Charter (helicopter)
 - Maintenance Contract
 - Information Technology
 - Physician Services

- Legal Services
- Fuel Services (Supply, Transportation and Delivery)
- Operational Services
- Lease Agreements
 - Photocopiers
 - Vehicles
 - Real Property (contact Accommodation Services)

Construction Specific Templates

- Construction Tender
- Construction Contract
- Design-Build Request for Proposals
- Design-Build Contract
- Architectural and Engineering Request for Proposals
- Consultant (A&E) Agreement
- Geotechnical Services

1.7.7.3. Contract Support

1.7.7.3.1.

Tender Addendum

This is a standard format for issuing addenda to tender documents.

1.7.7.3.2.

Contract Change Form

This is a standard format for issuing change orders to contracts.

1.7.7.4.1.

1.7.7.4. Construction

Risk Management Reporting Form

1.7.7.4.2.

This form is used by Infrastructure Project staff to notify Department of Finance, Risk Management group as to construction projects requiring underwriting services.

1.7.7.4.3.

Employment Report

This report is used to identify the level of northern and local involvement in GNWT construction projects and verify that levels identified in the contractor's bid/proposal are met.

1.7.7.4.4.

Application for Certificate of Substantial Completion

This is the contractor application form requesting GNWT confirmation that the work on the project is substantially complete.

Statutory Declaration

The Certificate of Completion, Statutory Declaration, is to be submitted by contractors with their requests for progress payments. The document certifies that the contractor has paid all applicable

assessments and levies relating to the project (e.g. insurance, WSCC, etc.) and that they have paid their subcontractors and suppliers (subject to any agreed upon holdbacks, etc.).

Construction Tender

This template document is used for the procurement of large dollar projects in excess of \$100,000. It should also be used for any projects of a lower value that include high risk activities (e.g. asbestos abatement) or particularly technical work.

1.7.7.4.5.

Construction Contract

This major works contract is used for larger scale project in excess of \$100,000. It should be used in conjunction with the Construction Tender noted above.

1.7.7.4.6.

Consultant Agreement

1.7.7.4.7.

A contract to provide building engineering and design services on GNWT building projects. Note, this template is suitable only when hiring a consultant to act on behalf of the GNWT as the Owner's Engineer.

Design-Build Contract

1.7.7.4.8.

Design Build Contracts combine the work normally included in the Architectural/Engineering Agreement with the work performed by a General Contractor into one package. The Contractor and the Designer form a team to design and build a facility in response to the GNWT's statement of need.

1.7.7.5. Lease Agreements

Procurement Shared Services maintains a Vehicle Lease Agreement and Photocopier Lease Agreement template, which should be used at all times.

1.7.7.6.1.

Real property leases should be obtained through Accommodation Services.

1.7.7.6. Negotiated Contracts

Sample Response Letter

1.7.7.6.2.

This standard form letter should be forwarded to advise eligible contractors the process to follow to formally apply for a negotiated contract.

1.7.7.6.3.

Sample Evaluation

Is the format to be used to evaluate the merit of a proposed Negotiated Contract application.

Sample Decision Paper

If the eligible contractor has met the Negotiated Contract requirements, the decision paper format should be utilized for recommending authorization to negotiate to Cabinet.

1.7.7.7. Request for Tenders

While there are number of Request for Tenders templates, the following addresses the two most common. Other templates can be obtained through Procurement Shared Services.

RFT – Goods

1.7.7.7.1.

The Request for Tenders – Goods template is used for the procurement of most goods, and will lead to a standard purchase order. This template would be used for items such as; electronics, safety equipment, raw goods, vehicles, office equipment, etc. It is usually used for the procurement of goods valued over \$25,000. The template looks similar to the [RFT](#) for services, but includes a number of clauses specific to the purchase of goods (e.g. delivery terms, warranty information, equivalents, etc.).

1.7.7.7.2.

RFT – Services

The Request for Tenders- Services template is used to establish service contracts for commonly required services. This template would typically be used for general consultants, researchers, facilitators, etc. and will lead to a standard service contract usually used to procure services valued over \$25,000.

1.7.7.8. Request for Proposals

1.7.7.8.1.

RFP – General Services / Consulting

1.7.7.8.2.

[RFP](#) templates for all services except design-build, and architectural and engineering.

1.7.7.8.3.

RFP – Architectural and Engineering Services

This template is used when procuring the services of an architect or engineer to prepare designs for a construction tender, and for the designer to act on behalf of the GNWT during the construction phase of a project.

1.7.7.8.4.

Short-Form RFP

The Short-Form [RFP](#) (SFRFP) process was developed to as a means to assist the GNWT procure simple or commonly required service expeditiously through a simplified [RFP](#) process. The SFRFP template is available through Procurement Shared Services.

1.7.7.8.5.

RFP – Information Systems

A [RFP](#) document for information systems projects can be obtained through Procurement Shared Services.

RFP – Standing Offer Agreement

The [RFP](#) – Standing Offer Agreement (SOA) template includes provisions specific to SOAs. Users will find that it looks substantially similar to other [RFP](#) templates, but should review it carefully to understand the sections that are unique to SOAs.

1.7.7.9. Requisitions

Requisition for Stock Items

Form used to order goods currently stocked at the GNWT warehouse.

Requisition for Supplies and Services

1.7.7.9.1. A requisition is an initiation document that is used for most goods and services purchases. The requisition initiates the procurement and creates a pre-encumbrance in the financial system (SAM).

1.7.7.9.2. Standing Offer Agreement

A bulletin board listing of all Standing Offer Agreements, an initiation document used for most goods and services purchases.

1.7.7.9.3. 1.7.7.10. Other Resources

The Project Implementation Methodology (PIM) is a GNWT standard for software application development, implementation and project management. The PIM includes a Systems Development Life Cycle (SDLC) methodology and a Project Management methodology. This document is posted on behalf of the Office of the Chief Information Officer and is a reference for systems development contractors.

1.7.7.11. Surplus Goods

1.7.7.11.1. Surplus Goods

Form used to declare goods surplus to a department and by this report, those goods are turned over to the Department of Infrastructure for final disposition.

1.7.7.11.2. Transfer Agreement

1.7.7.11.3. Internal form utilized by the Department of Infrastructure to transfer an asset from the Department of Infrastructure to an Accepting department with the accepting department acknowledging receipt of the good and assuming responsibility for the good.

Motor Vehicle Bill of Sale

Form utilized by the GNWT to register a change of ownership of a vehicle.

1.8. Sole Source Contracting

1.8.1. Overview

Government Contract Regulations require that all contracts be issued through a competitive process, unless they meet the strict regulatory requirements for sole source contracting.

The issue of sole source contracts is receiving increasing attention at the political level. Therefore, care should be exercised when issuing such contracts.

1.8.2. Criteria for Sole Source Contracts

- a) Performance of the contract is urgently required and delay would be injurious to the public interest;
- b) Only one party is available and capable of performing the contract. Typically this is due to one or more of the following:
 - the work is quite unusual (e.g. artwork);
 - a legal cooperative agreement exists with the vendor;
 - geographic limits on the availability of materials and supplies used;
 - to maintain security or to protect human, animal, or plant life or health;
 - it is a prototype, experiment or original development;
 - a statutory monopoly exists;
 - an absence of competition (only one vendor is available and capable); or
 - compatibility, copyright and patent rights, or to maintain a manufacturer's warranty.
- c) The value of the contract will be less than:
 - \$100,000, in the case of a contract for architectural or engineering services;
 - \$50,000, in the case of a contract for *Professional Services* other than architectural or engineering services; or
 - \$25,000, in the case of any other type of contract.

With respect to the above, it is important to note:

- An urgent requirement may be an actual or imminent life-threatening situation, a disaster that endangers life or has resulted in the loss of life, or something that could result in significant loss or damage to GNWT property/assets. The inability or failure to plan or organize ahead of time is insufficient justification for a sole sourced contract.
- An absence of competition (bullet 7, b) should only be used when it is known that there is only one possible vendor, and all efforts to identify other potential vendors have been fully exhausted. It is always recommended to use a competitive public procurement process if it is not known, with full certainty, that there are no other vendors in the Northwest Territories, Canada, or elsewhere, which have the capacity to perform the required work.

A contract that does not meet any of the above noted criteria for a sole source award must be competitively procured, or approved by Cabinet as a negotiated contract.

1.8.3. Sole Source Authorization Form

In accordance with FAM Interpretive Bulletin 705.03, prior to establishing a sole sourced contract, a Contract Authority must complete and submit a signed sole source authorization form for any contract valued at \$25,000 or greater.

Approval to sole source a contract valued at \$25,000 or greater, will be subject to a limitation of 30% for any contract value increases. Contract value increases greater than 30% will require a new sole source authorization form for the contract, with justification explaining the need for the increased contract value.

1.8.4. Examining the Requirement

Before entering into a sole source contract, the purchaser must sufficiently analyze the requirement to ensure that the best value is received.

Questions for the Purchaser

The purchaser should routinely ask the following questions when reviewing a request/requisition for a sole source purchase:

- Is there an alternative to the sole source procurement? For example, brand name specifications should not be used. Instead, performance specifications help to ensure that competitive bids are obtained.
- Is the sole source price expected to be reasonable?

Price Analysis Techniques

If sole source procurement is to be made, some price analysis techniques can be used to determine whether the price is reasonable. The purchaser should research and compare prices:

- Previously paid for the item or service
- Previously paid for functionally similar items
- Paid by other purchasers for the commodity
- Listed in commercial catalogues, published price lists, or internet web pages
- With the purchaser's internal prepared cost estimates

Checklist

The purchaser may use this checklist in sole source situations:

- Is the pricing reasonable?
- Should an alternative to the sole source procurement be pursued?
- Is the justification for sole source sufficient?
- Will the supplier provide supplies and instructions with the equipment?
- Will the supplier provide a warranty?
- What are the delivery terms (i.e. which Incoterms would apply)?
- Have the criteria for sole source contracts as stated in the [Government Contract Regulations](#) been met?
- Document your decision

1.9. Doing Business with the Government of the Northwest Territories

1.9.1. Introduction

The Government of the Northwest Territories encourages and supports a competitive, fair, and transparent procurement environment where vendors have the ability to participate in suitable procurement opportunities.

1.9.2. Types of Businesses in the Northwest Territories

The following is a listing of the types of businesses the Government of the Northwest Territories does business with, along with some of the factors government buyers must consider when establishing a contract.

- NWT Incorporations
 - A corporation is a legal entity owned by its shareholders, whose liability is limited to the amount they have invested in the corporation. A corporation has a share structure, and can raise capital by selling shares. Corporations are required to file an Annual Return with Corporate Registries. Corporations will have the word “Limited”, “Limitée”, “Incorporated”, “Incorporée”, “Corporation” or “Société” or the abbreviation “Ltd.”, “Ltée”, “Inc.” or “Corp” as the last word of the name of the corporation.
- Sole Proprietorships and Registered Business Names
 - Sole proprietorships that use a business name (i.e. a name other than that of the proprietor) must register their business name with Corporate Registries. Registering a business name defines the business as a legal entity; establishing who can make decisions and who is liability for damages caused by the business. Specifically, the *Partnership Act* requires registration of a business name when; (1) a business name other than the name of the sole proprietor is used, (2) the sole proprietor is engaged in trading, mining or manufacturing, or (3) a partnership is formed.
 - Although not necessary to enforce or establish liability under the contract, when entering into contracts with sole proprietorships using a registered business, the contract may list the proprietor's full name and then the business name as the operating name (e.g. 'Proprietor's Full Name', operating as 'Business Name').
- Extra-territorial Corporations
 - With the exception of licensed insurance companies, all extra-territorial corporations incorporated elsewhere but *carry on* business in the Northwest Territories as defined by the *Business Corporations Act* must register with NWT Corporate Registries.
 - Pursuant to s.279 of the *Business Corporations Act*, S.N.W.T. 1996, c.19:

“For the purposes of this Part, an extra-territorial corporation carries on business in the Northwest Territories if

- (a) its name, or any name under which it carries on business or operations, is listed in a telephone directory for any part of the Northwest Territories;
- (b) its name, or any name under which carries on business or operations, appears or is announced in any advertisement in which an address is given for the extra-territorial corporation;
- (c) it has a resident agent or representative or a warehouse, office or place of business or operations in the Northwest Territories;
- (d) it solicits business in the Northwest Territories;
- (e) it is the owner of any estate or interest in land in the Northwest Territories;
- (f) it is licensed or registered or required to be licensed or registered under any Act of the Northwest Territories entitling it to do business or carry on operations; or
- (g) it otherwise carries on business or operations in the Northwest Territories."

1.9.3. Eligibility to Participate in Government Procurement Opportunities

Prior to submitting a bid or a proposal in response to a government procurement opportunity, it is highly recommended that the potential bidder/proponent review the terms and conditions that will apply to any subsequent contract, to ensure they have the ability to comply. This may include:

- Insurance Coverage (see Section 3.3 for details)
 - Required for all types of businesses including sole proprietorships. Only in rare situations will the government waive liability insurance requirements under a contract.
- WSCC Registration in Good Standing
 - Required for all types of businesses that have one or more employees.
 - Out of Territory businesses that will be; (1) performing high risk activities in the Northwest Territories, or (2) have employees performing any work within the Northwest Territories for a period exceeding nine (9) calendar days. Businesses with one or more employees that do not meet the aforementioned two criterions will be required to provide evidence of good standing from their territory/province of normal operation.
- Valid Social Insurance Number
 - Required for all sole proprietorships

- Registration with Northwest Territories Corporate Registries
 - Please refer to the previous item to determine requirements.

1.10. Procurement Shared Services

1.10.1. Introduction

Procurement Shared Services (PSS) operates within the Department of Finance, and acts as the main procurement hub for most government acquisitions. PSS is the branch of the Government of the Northwest Territories (GNWT) that administers and manages larger government procurements.

The main goal of PSS is to maximize procurement efficiencies and best practices in a consistent and transparent way. Services PSS provide include: contract advice, contract management advice, vendor dispute resolution, and training and information sessions for staff and vendors.

By having departments and agencies work through PSS, the GNWT is standardizing procurement practices and processes, implementing best practices government-wide and improving service efficiency for both the public and the government.

While PSS provides support and advice to all government departments, boards, and agencies, it is solely responsible for the in-scope (usually over \$25,000) procurement function of the following departments:

- Education, Culture and Employment
- Environment and Climate Change
- Executive and Indigenous Affairs
- Finance
- Health and Social Services
- Industry, Tourism and Investment
- Infrastructure
- Justice
- Municipal and Community Affairs
- Northwest Territories Health and Social Services Authority

1.10.2. Staff and Vendor Workshops

As the division responsible for procurement related training, PSS offers a variety of procurement workshops for GNWT staff as well as vendors. GNWT staff may obtain details of available workshops through the Human Resources Training Calendar. Vendor workshops are available in most regional centres throughout the year and will be advertised on the PSS website.

<https://www.fin.gov.nt.ca/en/procurementtraining>

1.11. Bid / Contract Security

1.11.1. Introduction

There are a variety of forms of bid or contract security used in today's contracting environment. Bid or contract security are usually used for construction processes, however, including security requirements can benefit many different types of procurements.

In this Section we will discuss the forms of security used, and considered acceptable, to the GNWT. To begin, it is important to understand the types of security that may be used, and in what part of the procurement process they are required.

The forms of security commonly used by the GNWT include:

- Bid Security
 - Bid Bond; or
 - Bid Security Deposit
- Performance Security
 - Performance Bond
 - Security Deposit
- Labour and Material Bond

1.11.2. Bid Security

1.11.2.1. Introduction

Bid security is usually used in Construction Tenders to certify that the lowest acceptable bidder will execute the contract documents and provide any necessary performance security within the timeframe stated in the contract documents included with the tender.

Under normal circumstances bid security would not be a requirement if the bid value is less than \$100,000.

Bid security can be submitted as:

- an original Bid Bond (usually 10% of the bid value) in a form approved by the Treasury Board of Canada Federal Bid Bond or in the form of Canadian Construction Documents Committee (CCDC) 220-2002; or
- a bid security deposit (usually 10% of the bid value) in the form of a certified cheque, bank draft, or letter of irrevocable guarantee.

If a bidder provides bid security with their bid, and then refuses to enter into a contract, the full value of the bid security would be subject to forfeiture to the [Contract Authority](#). The value of bid security could then be used by the [Contract Authority](#) to make up the difference between the low bid (which the bidder refused to honour) and the next lowest bid.

Bid security is never a requirement in a [RFP](#) process since proposals can be withdrawn at any time (prior to the award of a contract).

1.11.2.2. Forms of Bid Security

The bid security can be either:

- a security deposit equal to at least 5% of the tender
- a bid bond equal to at least 10% of the tender

The form of bid security is typically subject to the following conditions (the specific terms and conditions will be provided in the tender documents and may differ from the following):

- Vertical Infrastructure (e.g. buildings)
 - For bids less than \$100,000, no bid security is required
 - For bids \$100,000 to \$2,000,000, the bidder shall enclose one of the following forms of bid security:
 - Bid Bond
 - Bid security deposit
 - For bids \$2,000,001 and greater the bidder shall include a bid bond
- Horizontal Infrastructure (e.g. highways, bridges)
 - For bids less than \$100,000, no bid security is required
 - For bids \$100,000 to \$5,000,000, the bidder shall enclose one of the following forms of bid security:
 - Bid Bond
 - Bid security deposit
 - For bids \$5,000,001 and greater the bidder shall include a bid bond

Security Deposit

A security deposit should be equal to at least 10% of the tender. The deposit shall be a certified cheque, bank draft, a letter of irrevocable guarantee, or such other security acceptable to the GNWT. The security deposit is to be payable to the Government of the Northwest Territories.

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

- refuses to enter into a contract
- refuses or is unable to provide the required contract security
- withdraws the tender during the tender acceptance period and prior to the acceptance by the GNWT

Bid Bond

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

Once a bid is accepted by the GNWT, the surety (bonding company) is liable under the bid bond. The surety will be liable if the bidder:

- refuses to enter into a contract
- refuses or is unable to provide the required contract security
- withdraws the bid during the tender acceptance period and prior to acceptance by the GNWT

The surety will be liable under the bid bond for damages suffered by the GNWT. These damages can be:

- the difference between the defaulting bidder's bid and the next lowest bid
- the inconvenience and expense of calling new tenders
- additional damages resulting from delays in the commencement of the work

The maximum damages payable under the bid bond, regardless of the actual loss, is the face value of the bond.

1.11.2.3. Return of Bid Security

The security deposits or bid bonds are returned at two different events:

- Successful bidder - upon receipt of contract security or bonding
- Unsuccessful bidder - upon award of the contract to the successful bidder.

1.11.3. Contract / Performance Security

1.11.3.1. Introduction

Contract security is also primarily used in Construction or Design-Build contracts; however, it can be equally beneficial in a variety of contract formats. Contract security is intended to provide a guarantee that a contractor will fulfill its obligations under the contract or, in the case of labour and material bonds, that the contractor will pay their subcontractors and suppliers.

1.11.3.2. Requirements

Contract security is normally required in construction contracts when the contract amount is \$100,000 or over. While used less frequently outside of construction, contract security can be a requirement in many different types of contracts where assurance of performance is important and the costs associated with a contractor defaulting are significant.

1.11.3.3. Forms of Contract Security

Subject to the terms and conditions of the tender and/or contact, for construction contracts where contract security is required, the contract security can be either:

- a security deposit equal to at least 10% of the amount payable under the contract; or
- a performance bond and a labour and material bond each in an amount equal to 50% of the amount payable under the contract

The form of contract security is typically subject to the following conditions (the specific terms and conditions will be provided in the contract documents and may differ from the following):

- Vertical Infrastructure (e.g. buildings)
 - For contracts less than \$100,000, no contract security is required
 - For contracts \$100,000 to \$2,000,000, the contractor shall submit one of the following forms of contract security:
 - Performance bond and labour and material bond, each in an amount equal to 50% of the contract amount
 - Bid security deposit in an amount equal to 10% of the contract amount
 - For contracts \$2,000,001 and greater, the contractor shall submit a performance bond and labour and material bond, each in an amount equal to 50% of the contract amount.
- Horizontal Infrastructure (e.g. highways, bridges)
 - For contracts less than \$100,000, no contract security is required
 - For contracts between \$100,000 and \$5,000,000, the contractor shall submit one of the following forms of contract security:
 - Performance bond and labour and material bond, each in an amount equal to 50% of the contract amount
 - Bid security deposit in an amount equal to 10% of the contract amount
 - For contracts \$5,000,001 and greater, the contractor shall submit a performance bond and labour and material bond, each in an amount equal to 50% of the contract amount.

A performance bond shall be in the standard construction form CCDC 221 of the Canadian Construction Document Committee and issued in favour of the GNWT by a surety approved by the GNWT.

A labour and material bond payment bond shall be in the standard construction document form CCDC 222 of the Canadian Construction Document Committee, issued in favour of the GNWT and from a company whose bonds are acceptable to the GNWT; or

1.11.3.4. Performance Bonds

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 GNWT 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.

When the contractor is declared by the GNWT to be in default under the contract, the GNWT has the option to take the work away from the contractor.

The bonding company's obligations under the performance bond are as follows:

- When the work is not taken away from the contractor, the bonding company must remedy the default of the contractor.
- When the work is taken away from the contractor and the GNWT 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 GNWT.
- When the work is taken away from the contractor and the GNWT, 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 GNWT for the cost of completion in excess of the money available to the GNWT under the contract.

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 GNWT may, however, pay this money to the surety, provided that they are not required for the purposes of the contract.

The limitation period for the GNWT to initiate a legal action against the surety for failing to fulfill its obligations under the performance bond must be no later than two years after final payment is due under the contract.

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 GNWT. The GNWT 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.

1.11.3.5. Labour and Material Bonds

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.

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.

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

Check the bond itself to determine what these limits are.

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 CCDC Bond in that it covers sub-subcontractors as well as subcontractors.

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:

- The creditor of a subcontractor (sub-subcontractor) of the contractor (claimant) must notify the contractor of its entry into a contract with the subcontractor.
- The notice must indicate the work, the nature of the contract and the name of the subcontractor.
- 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.

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.

A notice of claim for work performed or material supplied under the contract must be given within 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.

A notice of claim for a holdback must be given within 120 days after the claimant should have been paid in full under the contract.

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.

The surety is not entitled to claim any contract money. However, the GNWT 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.

If a claimant has not been paid, as provided for under the terms of the contract, within 90 days after the date on which the claimant performed the last of the work or supplied the last of the materials, the GNWT may sue on the payment bond.

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.

1.11.3.6. Supply Bonds

Supply bonds are used as a way to ensure that a supplier will deliver the supplies or materials specified in the contract.

In the event the supplier defaulted on their contractual obligations the bond will reimburse the purchaser.

Supply bonds are not usually used in GNWT construction contracts but could be required for any large goods acquisition.

1.11.3.7. Security Deposits

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.

When a security deposit is delivered, it must be, in the amount of 10% of the contract price for construction contracts and at least 10% for other contract types. The deposit must be either a certified cheque,

bank draft, a bank Letter of Irrevocable Guarantee or Standby Credit, or such other security considered acceptable by the GNWT. The security deposit will be payable to the Government of the Northwest Territories.

1.11.3.8. Return of Contract Security

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.

If the contract security is a security deposit, it will be generally returned with the interim certificate of completion payment. However, any portion of the security deposit which is required for the purposes of the contract (e.g., funds required for deficiencies, claims by subcontractors for non-payment, unfinished work.) may be retained.

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

1.11.3.9. Changes to the Contract Security

A performance bond refers to a specific contract. Therefore, any changes to the 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.

What constitutes a material change or a change that would materially or substantially affect the surety's risk is not clearly established. However, the following are guidelines for what is considered material and prejudicial to the risk of the surety:

- changes involving additional work (one large change or a series of small ones) where the contract price is substantially increased (15% of original contract price)
- changes in the terms of payment
- changes in the work that involve the contractor or one of the subcontractors doing work in which they are inexperienced
- substantial changes that shorten or lengthen the time for completion of the work
- stop work orders

The bonding company's consent must be obtained for any changes that materially or substantially affect 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.

2. THE PROCUREMENT PROCESS

2.1. Overview of the Procurement Process

Purchasing is a functional group, or activity, that supplies an organization with all necessary materials, goods, services, or construction.

General stages of the Procurement Process include:

1. Needs assessment, procurement planning
2. Requisition creation and approval
3. Contract administration during a competitive or non-competitive procurement process
4. Evaluation of bids/proposals and awarding the contract
5. Contract management and receiving the materials, goods, services or construction
6. Approval and payment of invoices
7. Updating files and records

All procurements shall observe the highest standards in matters of efficiency, effectiveness and economy. Procurements shall be conducted in a manner that encourages qualified suppliers to participate in the process.

2.2. Developing the Procurement Strategy

A strategy is an action plan designed to permit the achievement of selected goals and objectives.

The objective of this chapter is to assist Contract Authorities in the development of procurement strategies for the acquisition process on behalf of their departments. It is also intended to provide information for departments to help them understand the considerations that go into the development of a good procurement plan.

2.2.1. Needs Assessment / Operational Requirements

One of the key principles of contracting is that "contracting authorities must ensure that public funds are spent on requirements that support the approved program of a department or agency". In other words, needs must be linked to the ministerial mandate that is stipulated for each department

2.2.2. Defining Requirements

The requirement definition activity involves the expression of an identified need in terms suitable for the initiation of the contracting phase. The definition of requirements is mainly the responsibility of the department. By and large, the more technically complex, special, or unique the requirement, the more it will be the department's responsibility to define; conversely, the more common an item, the less need for department input except, for example to specify the quantity.

Procurement Specialists (with Procurement Shared Services) can provide assistance with this step.

2.2.3. Review of Options

The guiding principles for the acquisition of goods and services are to obtain best value, be open and fair, and to be fully accountable for procurement-related activity. To accomplish this, a range of procurement options must be considered. The role of the [Contract Authority](#) is to develop the procurement strategy and to consider a range of options available to them.

Goods

There are a number of possible options, which can be taken in place of purchasing a good, for instance:

- Reallocation of existing resources
- Partial replacement
- Repair/overhaul
- Leasing
- Rental

Services

There are a number of possible options, which can be taken in place of purchasing a service, for instance:

- Utilizing internal resources
- Arranging a secondment/assignment

2.2.4. Revenue Contracts

The Government may contract with a revenue agent to collect or receive revenue on its behalf, e.g., through the collection and receipt of fees for Government licenses, services or special events. [FAM 650](#) - Revenue Agency Contracts policy expresses the requirements of contract administration for the collection of revenue other than taxes and the handling of the money collected. Every contract with a revenue agent is subject to the standard requirements for Government contracts set out in [FAM](#) policies and the [Government Contract Regulations](#).

The following terms, conditions, and information must be included in every Government contract with a single, exclusive revenue agent in a specified geographical area:

- The requirement for compliance with the *Financial Administration Act*, the Provisions of [FAM 650](#), and other the financial administration policies of the Government.
- The names or positions of the contact persons representing the Government and the contractor.
- The precise time and duration of the contract.
- Provisions for contract extension, termination, and notice.

- Where applicable, the accommodation requirements for the performance of the contract. For example:
 - facility and parking plan;
 - visibility, access, and signs;
 - special equipment;
 - site security, etc.
- The applicable administrative requirements of the work and the circumstances of the contract, including, but not necessarily limited to:
 - the contractor's hours of operation;
 - computer hardware and software specifications;
 - the contractor's retention and submission of records as required by Section 42 and 97 of the *Financial Administration Act*;
 - Government access to the contractor's records for audit purposes;
 - frequency and content of revenue remittance and contract reporting;
 - audit requirements;
 - security of information and computer systems; and,
 - the frequency of submission, security, and return of accountable forms.
- The condition that the contractor is obligated to safeguard all money collected or received on behalf of the Government and is liable for loss of revenue due to theft, fraud, negligence or casualty such as storm, fire or accident.
- Notice of sections 137, 141 and 143 of the *Financial Administration Act*, under which the Government may recover lost public money from the person responsible for the loss and which provides for punishments of fines and imprisonment for offences under the Act.
- Payment terms in accordance with [FAM](#).
- The contract price, sale commission schedule, etc.
- The method of resolution of any conflict between the parties to the contract.

2.2.5. Leases

2.2.5.1. Background

Leasing is another form of acquiring goods. A lease is a contract for the use of equipment under which title does not pass to the government (lessee) but remains with the vendor (lessor). At the end of the lease period the goods are returned to the vendor or in some cases may be purchased through a buy-out option.

Departments are responsible for determining the most economical means of acquisition that will effectively support government operations.

An equipment lease may be entered into providing:

- it has been competitively bid in accordance with [*Government Contract Regulations*](#)
- it is in the best interest of the GNWT
- all conditions for renewal and costs of termination are set forth in the lease

2.2.5.2. Authorization to Lease

In accordance with Directive 615 of the Financial Administration Manual, where a GNWT or Public Agency is the lessor (owner) of public assets, all new or amended lease and rental agreements shall be submitted to the Comptroller General, or their delegate, for approval.

2.2.5.3. Capital Leases

Leased Tangible Capital Assets (TSA)

If the GNWT has a purchase option built into the lease this cost would factor into the total estimated cost of acquiring the asset if the GNWT expects that it will exercise the purchase option at the end of the lease. If the GNWT intends to purchase the asset at the end of the lease, the NPV (the minimum lease payments plus the purchase price at the end of the lease) would form the total cost of the asset to the GNWT. If that total cost is greater than \$50,000, it is a TCA.

2.2.5.4. Selecting the Equipment

Purchasers are required to competitively tender for equipment requirements in accordance with [*Government Contract Regulations*](#).

Tender specifications should be technical or performance related rather than brand-specific. Standard [*RFT*](#) or [*RFP*](#) documents may be used, depending on the requirements.

The tender or proposal documents must describe the payment-related issues involved with this internal financing arrangement.

2.2.5.5. Bank Lease Back Agreement

At one time the Department of Infrastructure (then the Department of Public Works and Services) established an arrangement with the Royal Bank of Canada where the bank would purchase the equipment and the GNWT would enter into a lease back arrangement with the bank. However, this practice has for the most part been discontinued

2.3. Procurement Plan

2.3.1. Introduction

A general review of the requirement utilizing the checklist provided in Section 2.4 will determine the degree of pre-procurement planning required. The purpose of procurement planning is threefold: first, to clarify and quantify (to the extent possible) the technical, cost, and schedule objectives of the procurement; second, to define the plan for accomplishing the objectives; and third, to determine a methodology for evaluating performance against defined objectives during the time that the contract is being carried out.

Whether or not a procurement plan is required will depend on the complexity of the requirement, the sensitivity of the requirement, and/or the estimated value of the requirement, e.g., capital projects.

2.3.2. Guidelines for Preparing a Procurement Plan

Begin by outlining the essential aspects of the project or requirement - technical, cost, deliveries - and the general work plan for the purchase. Within this framework consider, as appropriate, items listed below so that the plan can be clarified and relevant information included in the bid solicitation.

- **Statement of work:** Define the work to be done or the products to be acquired in clear and concise terms. If a requirement cannot be clearly defined, indicate the objectives and performance criteria to be met, and the evaluation criteria to be used.
- **Technical requirements:** Ensure that adequate technical/performance specifications (or purchase description) are included, and that mandatory requirements are clearly defined.
- **Trade references:** "Brand name or equal" type of purchase description should not be used, unless no other specification is available.
- **Appropriate action:** Determine whether a requirement can be fulfilled from an existing mechanism (i.e., standing offer). Ensure that the most efficient and effective procurement strategy is being followed.
- **Evaluation criteria:** Evaluation criteria, and their relative weighting/importance, must be clear, and the evaluation process and team, if applicable, defined. Indicate whether, and under what conditions, alternatives will be considered.
- **Contractor selection:** Determine the basis on which a contractor will be selected. If the intent is to award the contract on the basis of best value, the criteria and the methods that will be used to determine the best value should be stated.
- **Sourcing:** Ensure that the application of trade agreements has been verified, and that government sourcing procedures and departmental policies have been reviewed. If a limited source list is to be used, ensure that solid reasons support the source selection decision.
- **Security requirements (Personnel or Facility):** Ensure that security requirements have been adequately defined. This may include:
 - Criminal Record Checks for all contractor personnel; and/or

- Vulnerable Sector Checks which are required for all contractors and subcontractors that will be performing work with unsupervised access to vulnerable persons (i.e. children, senior citizens, or anyone more susceptible to harm).
- **Pricing factors:** Determine all factors that will affect price (i.e., duties, taxes, transportation, and installation costs). Identify potential currency issues.
- **Terms and conditions:** Include applicable terms and conditions.
- **Standard/special clauses:** Use, whenever possible, standard document formats and clauses for the GNWT. If a situation arises for which a standard clause does not exist or an existing clause requires changes, ensure that the GNWT's interests are protected. Consult Contract & Procurement Services or Legal Counsel for advice.
- **Intellectual property:** Ensure that ownership of intellectual property, where applicable, has been addressed.
- **Employer-employee relationship:** Ensure that potential employer-employee relationships, where applicable, have been addressed.
- **Basis of payment:** Determine the most appropriate basis of payment.
- **Funding level:** Consider, when issuing a request for proposal, whether or not to include an estimated or maximum funding level (i.e., when a requirement involves an investigation or a study, the depth of the investigation or study will often depend upon the funds available).
- **Financial security:** Specify, when applicable, the type, combination and amount of financial security required.
- **Delivery:** Define delivery requirements. Avoid statements such as "as soon as possible" which could cause unjust rejection of bids for unsatisfactory proposed delivery. If delivery is of major concern, it should be identified as such.
- **Delivery Term:** Specify the appropriate delivery term (Incoterms® rules) and location, as applicable.
- **Quality assurance:** Include the government quality assurance required, such as inspection, process control, acceptance criteria, etc.
- **Multi-item requirements:** When appropriate, emphasize the prerogative to award the contract on either an aggregate or partial basis.
- **Preparation instructions:** Determine the desired format and any special instructions for the presentation of bids. The evaluation process will be simplified if proposals are presented using the same format.
- **Bidding period:** Allow sufficient time for the preparation and return of bids, taking into account mandatory requirements under trade agreements, the complexity and urgency of the requirement, the necessity for suppliers to contact subcontractors, and the geographical location of suppliers.

- **Bid validity period:** Ensure that the proposed bid validity period allows sufficient time for the bid evaluation process and the contract approval process.
- **Bidders' conference or site visit:** The need for, and requirement for potential bidders to attend a bidders' conference or site visit must be established. Bidder conferences and site visits must be identified in advertising resources if held less than two weeks from document release.
- **Closing date and time:** Indicate the closing date and time clearly.
- **Form of bids:** Procurement officers must ensure that instructions for the submission of bids are not open to misinterpretation.
- **Receipt of bids:** All tenders and competitive proposals are to be directed to a designated bid receiving area.
- **Public opening:** All tenders are opened publicly. State the time, date and place where tenders will be opened.
- **Approvals:** Ensure that all required approvals have been obtained.

2.3.3. Selecting the Best Method of Procurement

2.3.3.1. Differences between Proposals and Tenders

When deciding whether to use a *RFP* or a *RFT*, it is important to consider that:

- an *RFP* is used when the purchaser is looking for the best value solution to resolve a problem or to deliver a good or service, but is not exactly sure how to achieve it; and
- a *RFT* is used when the purchaser knows exactly what good or service they want and is looking for the best price to deliver it.

The differences between a *RFT* and a *RFP* are well explained in the following NWT Court judgment:

“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.”²

2.3.3.2. When to use a Proposal or a Tender

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

Tender – Know What and How

Use a tender if you know what you want done and how it should be done:

² (1) Socanav Inc. and the GNWT *et al.*, SCNT, Vertes, Aug 5, 1993

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

Proposal – Know What, But Not How

Use an [RFP](#) if you know what you want done, but you do not know how it should be done, that is:

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

2.3.3.3. Does an RFP Create a Contractual Relationship?

No, the Contract A (bid contract) is not normally created between the GNWT and the proponent(s). However, it is important to note that this distinction does not diminish the duty of fairness owed to each proponent who participates in a [RFP](#) process.

2.3.3.4. Does a RFT Create a Contractual Relationship?

Yes, Contract A (bid contract) is created between the GNWT and any bidder who submits a compliant bid in response to a [RFT](#). At the end of the solicitation process, a Contract B (performance contract) is established between the GNWT and the successful bidder. Unlike an [RFP](#) process, bids submitted in response to a [RFT](#) are irrevocable for the period of time specified in the [RFT](#) document. In addition, many high dollar value [RFT](#) processes will include a requirement for bid security to be submitted with a bid (e.g. bid bond, security deposit) which binds the bidder to the bid submitted. The full value of the bid security would then be kept by the GNWT should the bidder fail to honour the bid submitted and execute the final contract (should they be deemed the lowest compliant bidder). The irrevocability period and potential requirement for bid security are key distinguishing factors in assessing whether Contract A has been formed.

2.3.4. Advertising Requirements

Advertising is one of the ways the GNWT fulfills its responsibility for transparency in the procurement process; to ensure vendors have fair access to information regarding procurement opportunities, processes, and results.

Contract Administrators are responsible for the following tasks, which enable PSS to meet its obligations/responsibilities:

- Administering the advertising for events including editing, approving and placing ads in newspapers.

- Event advertisements are sent by the procurement specialist to ECE's Translation Services for translation into French, which is then entered into the French Translation tab of the event by the procurement specialist. The Contracts Administrator is then notified the event is ready for review and posting.

Advertising Dollar Value Thresholds:

- The following dollar value thresholds apply for advertising:
- For contracts estimated to cost \$25,000 or more but less than \$250,000 posting on the GNWT Contract Event Opportunities website.
- Contracts estimated to cost \$5,000,000 or more, place advertisements twice in each selected northern newspaper and post on the [GNWT Contract Event Opportunities](#) website.
- A listing of NWT newspapers is provided at the end of this chapter.

Advertising Periods, Best Practices

- It is essential that the minimum tender period provides contractors sufficient time to prepare accurate bids.
- The suggested minimum tender periods for advertised tenders depend on the contract value and scope complexity. Recommendations are as follows:
 - Tender Under 250,000 - Two (2) working weeks (10 business days)
 - Tender Air Charter - Three (3) business days
 - Tender Over 250,000 – Four (4) working weeks (20 business days)
 - Standard [RFP](#) – Up to \$250,000 (3) working weeks (15 business days) Standard [RFP](#) Over 250,000 - Four (4) working weeks (20 business days)
 - Short Form [RFP](#) – Under \$150,000 - Usually two (2) weeks (10 business days), however that time frame can be reduced in certain situations
 - SSA Call Up Tender – Three (3) business days
 - SSA Call UP Short Form [RFP](#) – Five (5) business days

Translations for Advertisements

Pursuant to Section 11 of the *Official Languages Act*, R.S.N.W.T. 1988, c.O-1, public notices must be issued in both official languages (English and French). The advertising agency that prepares tender advertisements will arrange for the translation and placement, if requested.

All French advertisements must be in a French language newspaper. Presently the L'Aquilon publication is the only French Language newspaper in the NWT. Costs incurred to translate and place French language advertisements may be recovered from the Federal Government.

Public Notices of Advertised Tenders

In addition to newspaper advertising, where appropriate, post public notices of advertised tenders, in all regional tender opening locations and the band, hamlet or settlement office where the work will be done. Posting locally also needs to be done on invitational and web tenders to ensure small local contractors become aware of potential work in the community.

Posting of tender notices are not required for Yellowknife, Fort Smith, Hay River, Inuvik, and Dettah.

NWT Construction Association Plansroom

Distribution of construction related documents will be in electronic form. The NWT Construction Association (NWTCA) has been contracted to provide this service on behalf of the Department of Finance. Construction related procurement documents will be obtained by the NWTCA using the GNWT Contract Event Opportunities system.

Smaller construction projects or simple operations/maintenance projects that may not lend themselves to electronic distribution due to contractor specific requirements or regional logistics can be tendered using invitational or the web.

GNWT Contract Event Opportunities Website

The Department of Finance, maintains the GNWT Contract Event Opportunities website:

<https://contracts.fin.gov.nt.ca>

Information posted to the GNWT Contract Event Opportunities website meets the minimum requirements under the Canada Free Trade Agreement.

This is treated as a source of bidding information for the benefit of the business community. As such, it is important that all GNWT bidding opportunities valued in excess of \$25,000 and all subsequent contract awards be posted.

The following information is published on the website:

- Reference number
- Description of requirements
- The closing date of the procurement opportunity
- Location
- Contact information
- Contract type (i.e. goods, services, construction, etc.)
- Award type
- Bidders name and total bid amount (except proposals)³
- Award information (name and contract value)

Advertising Standing Offer Agreements

The Department of Finance maintains a standing offer agreement for advertisements, which contains ad templates to use when advertising tenders or proposals. Use of the SOA is advantageous for two reasons. Firstly, using a standard template will avoid the cost associated with a custom designed ad

³ In the case of Request for Proposals, the names of all proponents who have submitted a proposal will be displayed (no dollar value), and once a contract has been awarded the total value of the contract will be displayed.

placement and, secondly, all standard templates conform to the GNWT's Visual Identity Program.

NWT Newspapers by Region

- South Slave / Deh Cho
 - Enterprise News North, the Hub, L'Aquilon
 - Fort Liard News North, L'Aquilon
 - Fort Providence News North, L'Aquilon
 - Fort Resolution News North, L'Aquilon
 - Fort Simpson News North, L'Aquilon
 - Fort Smith News North, L'Aquilon, Slave River Journal
 - Hay River News North, L'Aquilon, the Hub
 - Jean Marie River News North, L'Aquilon
 - Kakisa News North, L'Aquilon, the Hub
 - Nahanni Butte News North, L'Aquilon
 - Lutselk'e News North, L'Aquilon, Slave River Journal
 - Sambaa K'e News North, L'Aquilon
 - Wrigley News North, L'Aquilon
- Beaufort Delta
 - All communities News North, Inuvik Drum, L'Aquilon
- North Slave
 - All communities News North, L'Aquilon
 - Yellowknife Yellowknifer

2.3.5. Proponent/Bidder Meetings and Site Tours

2.3.5.1. Pre-Tender/Proposal Meetings

A pre-tender/proposal meeting may be conducted, generally in complex situations, to brief prospective bidders/proponents after a solicitation has been issued but before tenders or proposals have been prepared. Such a meeting permits the explanation or clarification of complicated specifications and requirements to interested bidders or proponents.

Pre-tender/proposal meetings support the benefits of open and transparent competition by clarifying possible points of confusion on Government requirements so that all potential bidders/proponents may submit tenders/proposals on equal footing with an equal understanding of the requirements.

Remarks and explanations at the meeting will not qualify the terms of the tender or specifications. All attendees must be advised that unless the RFx (solicitation document) is amended in writing, it will remain unchanged, and that if an amendment or addendum is issued, normal procedures relating to the acknowledgement and receipt will apply.

Timing

It will usually be held a week or two after you have issued the RFx (solicitation document), and a few weeks before you close it. The date and time of the meeting should appear in the RFx document.

Location

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 bidders/proponents to participate in the meeting by teleconference.

Attendance: Mandatory or Optional?

A bidder/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 procurement documents.

Record of the Meeting

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

Introduction

If you open the meeting with a description of the requirement, keep it brief. Most of them will have read the procurement documents so you should not have to repeat what is there, just briefly describe, in plain English, what the intent is of the RFx or the project. 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.

Answering Questions

Straight forward questions can be answered at a meeting; however, complex questions should be recorded in the minutes and deferred to the written addenda, so you have time to prepare a response. In some situations it may be more appropriate to ask an attendee to submit lengthy or complex questions in writing to the designated contact person.

2.3.5.2. Site Visits

Site visits that allow prospective bidders or proponents to view the physical conditions of the work site are another form of pre-tender/proposal meeting.

Generally it is recommended that pre-tender/proposal site visits be optional for bidders/proponents (although encouraged). In unique situations it may be appropriate to include a mandatory pre-tender/proposal site visit, however, before making this decision you must consider:

- Does the RFx solicitation period (i.e. the period of time the procurement opportunity is advertised) allow enough time for bidders/proponents to learn about the contract opportunity? Since a mandatory pre-tender/proposal site visits will essentially eliminate any potential bidder or

proponent from participating in the procurement process if they miss the site visit date, the overall RFx solicitation period must be long enough to ensure all interested bidders/proponents have an opportunity to learn about the procurement opportunity and the mandatory site visit.

- Could information provided during the site visit be reasonably distributed through addenda following the site visit (i.e. through photographs, meeting minutes, etc.)?
- Does the site visit provide a potentially unfair geographical advantage to any particular bidders or proponents?
- If the work site is remote, how will logistics be coordinated?

Careful consideration should be given when calling mandatory pre-tender/proposal site meetings. They should only be called when it is essential that bidders/proponents are present to observe conditions of the work or project or where the information provided is significant. Bidders/proponents should be advised that non-attendance at a mandatory site meeting will result in their submission being considered non-*responsive* and rejected.

It must be explained to bidders/proponents that remarks and explanations at the site visit will not qualify the terms of the tender or specifications. All attendees must be advised that unless the RFx document is amended in writing (through addenda), it will remain unchanged.

Usually a meeting will be held before the site visit to review the parameters for the visit (i.e. point of contact, rules of the visit, how to raise questions, safety, etc.) and to establish a list of attendees.

During any site visit, whether mandatory or not, it is essential that attendees (bidders/proponents) receive the same information. One (GNWT) person should be identified as the main point of contact during the site visit. It should also be explained to GNWT personnel at the site that if approached by a bidder, they are to direct them to the main contact person for the site visit.

2.3.6. Independent Fairness Monitors

2.3.6.1. Introduction

Independent Fairness Monitors, also known as Fairness Commissioners, may be engaged through Procurement Shared Services for high-value or otherwise sensitive procurements. The role of an independent Fairness Monitor is to oversee, advise, and ensure fairness, impartiality, clarity, objectivity, and openness and transparency is maintained throughout the procurement process.

2.3.6.2. Scope of Services

The Scope of Services for a Fairness Monitor engaged by the GNWT or any of its Public Agencies will vary depending on the procurement opportunity, but will typically include:

- Reviewing procurement document and materials, providing advice and comments pertaining to the fairness of the process.
- Monitoring all communication with proponents/bidders to ensure it is fair and done in accordance with the process set out in the procurement documents and acceptable public procurement practices.
- Taking a proactive role in identifying and avoiding any perceived or actual fairness issues.
- Attending and monitoring all meetings, site tours, and discussions between the GNWT and proponents/bidders.
- Coordinating and participating in the orientation and training of any evaluation committees.
- Overseeing and monitoring confidentiality and conflict of interest measures for the procurement, and provide advice as necessary.
- Monitoring and attending (in-person) all evaluation processes relating to the procurement.
- Providing a written report detailing the fairness and transparency of the procurement process.

2.3.6.3. Benefits of an Independent Fairness Monitor

There are a number of important benefits that a public sector organization can gain by engaging an independent Fairness Monitor. Perhaps most importantly; the government receives assurance that the procurement process was conducted appropriately, following best practices for public sector procurement, and can withstand public scrutiny and proponent/bidder complaints. Also important is the development or refinement of general procurement practices to improve stewardship of public funds, and improved fairness and transparency of procurements.

2.3.6.4. Procurement Shared Services' Role as a Fairness Monitor

For most procurement's, representatives with Procurement Shared Services will act as the fairness monitor during evaluation processes. Those representatives will not evaluate proposals and will monitor the entire evaluation process to ensure that all proponents have been evaluated fairly and that all procedures and best practices have been followed.

2.4. Requisition Phase

The requisition is the initiating document in the procurement process.

In the development of the requisition's specifications or scope of work, Contract Authorities should ensure that goods or services are described as generically as possible. Specifications,

which are too tightly written as to a particular vendor, will be subject to complaints of unfairness by excluded vendors.

2.4.1. Goods

The method by which a department makes a purchase of a good or service is by means of a requisition. It is essential that requisitions be examined for clearly identified requirements, which include a well-defined description of the goods or services to be acquired, as well as proper funding and authorization. Without this information, it is difficult for a procurement to be initiated. Any omissions or errors in the content of the requisitions could cause either delays in acquiring the material or service or obtaining the incorrect material or service. Sole source requisitions should be carefully reviewed as this type of procurement does not support the central principle of competition. Contract Authorities can utilize Checklist A (in whole or in part) as a guide to ensure that the requisitions that they are creating contain sufficient information to initiate a contract for goods. Contract Authorities may also use the Procurement Planning Worksheet available through Procurement Shared Services.

Checklist A: Requisition Checklist for the Procurement of Goods

1	Is the commodity adequately defined?	
2	Is the requirement subject to a Trade Agreement?	
3	Is the good to be picked up or delivered?	
4	Are there transportation requirements?	
5	Are there multiple destinations for delivery?	
6	Are delivery lead times and/or schedules realistic?	
7	Is special action required to meet delivery objectives?	
8	Are the clauses included in the contract consistent with standard government clauses?	
9	Is a specific type of pricing basis needed?	
10	Is the Inspection, Technical, Project, Design, or Contracting Authority specified?	
11	Are the evaluation criteria specified?	
12	Are the weightings of the criteria specified?	
13	Have environmental factors been considered?	
14	Is packaging specified?	
15	Has the department stipulated who will have rights to the use of the intellectual property?	
16	Are trade-ins a consideration?	

2.4.2. Services

Departments can utilize Checklist B (in whole or in part) as a guide to ensure that the requisition contains sufficient information for a contract for services. Contract Authorities may also use the Procurement Planning Worksheet available through Procurement Shared Services.

Checklist B: Requisition Checklist for the Procurement of Services

1	Is the service adequately defined?	
2	Are specifications and/or standards utilized appropriately?	
3	Is the requirement subject to a trade or land claim Agreement?	
4	Are deliverable products, deadlines and other expectations specified?	
5	Are lead times and/or schedules realistic?	
6	Is special action required to meet delivery objectives?	
7	Are there negative consequences of a late delivery?	
8	Are the clauses included in the contract consistent with standard government clauses?	
9	Is a specific type of pricing basis needed?	
10	Is the Inspection, Technical, Project, Design, or Contracting Authority specified?	
11	Is some form of Bid or Performance assurance required?	
12	Are the evaluation criteria specified?	
13	Are the weightings of the criteria specified?	
14	Have environmental factors been considered?	
15	Has the Department stipulated who will have rights to the use of intellectual property?	

2.4.3. Aircraft Charters

Additional information is required when submitting a requisition for an air charter. This additional information will be entered through the Procurement Information tab when creating the requisition.

Checklist C: Requisition Checklist for the Procurement of Air Charters

1	Identify the number of passengers	
2	Identify the number of bags and/or total weight	
3	Provide Flight details (origin/destination)	
4	Dates of travel	
5	Hold/Pickup or Drop off	

6	Any special requirements (accessibility, engines, navigational equipment, etc.)	
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2.4.4. Construction

Requisitions for construction projects should be prepared in consultation with the Regional Office that will oversee the project.

2.5. Requesting Tenders

2.5.1. Preparing Tenders

2.5.1.1. Approval to Tender

Undertaking the tender process introduces legal obligations upon the Government. Once tendered, contracts are formed between the Government and bidders; therefore, certain approvals and documents must be used in the process. The tender process begins with the initiation requisition (see Section [2.4](#) for details).

2.5.1.2. Finance Tender Documentation

The procurement of goods or services should be governed by appropriate terms and conditions clauses. The conditions to be used will depend on the nature of the procurement. A specific procurement may only require standard terms and conditions or it may require a more detailed specification of individual terms or conditions (non-standard).

Standard Tenders/Contracts

The Department of Finance has developed a number of standard tender/contract documents that have been reviewed and approved by the Department of Justice and are available for general use by GNWT departments, boards and agencies.

A standardized tender/contract is a type of recurring tender/contract approved by the Legal Division, Department of Justice, where the terms and conditions remain unchanged, except for the particulars of the parties involved, the work or description of it and price.

Section [1.7.7](#) provides a listing of the available tender templates.

Purchasers should also consider if any form of bid security will be required (see Section [1.11.2](#)) or if a pre-tender meeting or site visit is necessary (see Section [2.3.5](#)).

2.5.1.3. Tender Opening Register

The Contract Event Opportunities (CEO) website can generate a Tender/Proposal Register for each event after the closing time has passed. The system generated Register will list the Names of contractors/vendors and the bid price that have been submitted online prior to the closing time of the event. Space is provided on the

printed form for the information of any bids or proposals that were submitted manually by fax or hand delivered. In the case of proposals, the proposed price will not be entered by the name of the proponent.

During the public opening, the information submitted online will be read aloud, and any faxed bids or proposals read aloud and recorded on the Register. Following the end of the Public Opening, the register will be signed by the Contracts Administrator and at least one witness.

2.5.2. Modifying Tender Information

2.5.2.1. Introduction

This Section deals with amending tenders or clarifying the information contained within tenders prior to the closing date and time. While the focus is construction tenders, the principles and methodology apply equally to all types of contracting.

2.5.2.2. Addendums

An addendum is any change or clarification to the tender documents issued during the time between issuing the tender and the closing date. For all contractors to bid on the same tender package, addenda must be used to ensure that all bidders receive written notification of changes or clarifications made during the tender call period.

It is critical to ensure that if one contractor is provided information on a change or clarification to the tender that all other contractors receive the same information and all are bidding on identical tenders.

The addendum should only deal with issues that have a major impact on the work. Minor items that will not have a significant impact on the cost or schedule may be dealt with by way of change orders. In the past, the use of excess addenda has been shown to decrease competition and increase costs.

2.5.3. Release of Tender

2.5.3.1. Confidential Information

Certain information is considered confidential and should not be released to potential bidders during the tender process, in the interests of fairness.

The following types of information should not be divulged before tender closing:

- budgetary estimate;
- project files;
- engineers/architects estimate; or
- any information concerning bids already received.

This information is considered confidential and is withheld to ensure a fair process.

Budgetary estimates are not always accurate and divulging such information could make the GNWT liable for the information provided.

Releasing project files could provide a contractor with a bidding advantage (unless all plan holders are granted file access) and result in an unfair bidding situation.

Engineers/architects estimate are not always accurate and divulging such information could make the GNWT liable for the information provided.

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 tender closing, the bidder has the opportunity to submit a high price and is likely to be successful.

This restriction on information does not include the release of the Plan Holder's Log as discussed in Section [2.10.2](#).

2.5.4. Bid Evaluation

2.5.4.1. Administrative Review

This Section describes the process for evaluating tender bids. The tender review determines the lowest *responsive* bid submitted by a *responsible* bidder. The review may disclose errors, anomalies and omissions in the bids. The review may also point out weaknesses in the bid or contract documents, or improper tendering practices by bidders.

2.5.4.2. Responsive and Non-responsive Bids

Responsive means, in relation to a bidder, that the person has submitted a bid that conforms in all material respects to the invitation to tender.

If a requirement is not complied with (e.g., provision of bid security), the bid is non-responsive. If the tender documents are changed by the bidder, including not using the bid forms, or if the bid is qualified in some way, the bid is to be considered non- responsive. For example, if the bidder changes the requirement "Supply and install 16 metal windows" to "Supply and install 16 wood windows", the bid is non-responsive.

Proposals, however, are treated differently. The nature of a *RFP* is that it requires a solution to a problem, not meeting specific specifications. If a proposal does not meet a mandatory condition, then the proposal will likely be rejected for that reason.

2.5.4.3. Disqualification of Non-responsive Bids

The decision to consider an improper or incomplete bid must be made only after due consideration has been given to all facts and conditions involved. Such a decision may require communication with the bidder

to rectify or clarify the particular bid. If not carried out with tact, this might suggest to the bidder that the purchaser is inclined to deal lightly with tenders, particularly if it is to the purchaser's advantage. Decisions to consider these bids further must result from exhaustive consideration of all the facts and conditions.

On the other hand, it may not be in the public interest to disqualify a bid because of an error that neither jeopardizes the integrity of the bidding process, nor is "material". For example, the bidder has signed the bid but has not provided a seal may not be sufficient grounds for automatic disqualification.

When dealing with tenders, whether at the opening or review stage, remember:

During the purchasing process, not only must all our actions always be beyond reproach, but they must also appear to be beyond reproach.

When in doubt as to whether a bid is responsive or not, you should seek assistance and clarification.

2.5.4.4. Incomplete Bid

A bid is incomplete and subject to disqualification if the bidder has neglected to include significant information as described below.

2.5.4.5. Incomplete Unit Price Table

In unit price tender where the total bid price is not available, but the resulting contract value will depend on the quantity, the bid is actually the unit price, not the extension or total tender price.

Unit prices as bid govern, and after tender closing, may neither be changed nor added to if missing. In a unit price tender, the price that has been quoted on a firm basis is the unit price itself, and not the total tender price as in a stipulated price (lump sum) contract. The total tender price is merely an extension based on the quantity estimated by the purchaser.

Where the bidder has omitted a unit price in a unit price tender, the tender should be disqualified, since permitting the bidder to provide the missing unit price at this point would give the bidder an unfair advantage over other bidders. The only possible exemption is if the missing unit price can be calculated based on the extensions.

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.

2.5.4.6. Tender is Qualified

Qualified tenders/bids are those that contain qualifications and cannot be accepted.

In April of 1999, the Supreme Court of Canada in its decision M.J.B. Enterprises Ltd. v. Defence Construction (1951) Ltd., ruled that the privilege clause (lowest or any tender not necessarily accepted) does not permit the acceptance of a non-compliant (not responsive) tender/bid.

The proper procedure for bidders to follow is to tender exactly as required and to provide their options on the specified form accompanying the tender. In this case, the tender is valid and the options can, if appropriate, be evaluated to see what benefits they may provide.

A tender is qualified or conditional when a bidder submits a bid that does not comply with the requirements of the call for tenders.

Examples of Qualified Tenders

Some examples of qualified or conditional tenders are when the:

2.5.4.6.1.

- Bidder does not accept the terms of payments
- Bidder proposes different insurance coverage
- Bidder proposes different guarantees than those specified
- Bidder is not prepared to provide a certain component as specified in the call for tender, but proposes something of different quality and performance

2.5.4.6.2.

Is the Qualification Material, or Not Material?

When a tender is qualified or conditional, it may be disqualified as being non-responsive. It is very easy to declare a bid as *non-responsive* when the qualification is significant or material, e.g., the low bidder is not prepared to provide a heating system to meet the specified requirements, but proposes something of substantially lower quality and performance.

When the qualification of the bid is not material, it is harder to disqualify the bid as being non-responsive.

If you think that the qualification is not material and the bid should be accepted, it is recommended that you seek advice before making such a decision. Recent changes in common law have reduced the amount of latitude in such decisions.

Other Factors

If all bids are qualified in one way or another, the situation is not as delicate. The GNWT may choose to negotiate with the lowest bidder, and the other bidders should not complain.

However, it is advisable to avoid having the negotiation result in a contract award at a price higher than the apparent second lowest bid. Again, seek legal advice before proceeding.

2.5.4.7. Identical Low Bids

According to the *Government 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:

- 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.
- Where time is an important factor, the bidder offering the best completion or delivery date may be given preference.
- Preference may be given to the local bidder, only if the tender 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.
- 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.
- Re-tendering may be the only choice available if:
 - No decision is possible
 - Time allows for re-tendering
 - A change of scope is possible

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

2.5.4.8. Is the Bidder Responsible?

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.

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

- Financial resources
- Organization, plant and equipment
- Personnel – managerial and technical
- Experience on similar types of contract
- Record on previous projects with the GNWT
- Reference from previous purchases / owners

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

A bidder that is invited to tender cannot normally be deemed not responsible. The act of inviting a firm to submit a bid presupposed that the firm is qualified to bid.

2.5.4.9. Inadequate Tenders (Price Too Low)

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 requested to review the tender. Following this review, the possible outcomes are as follows:

- 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.
- If the bidder insists that the tender is correct and is in strict accordance with the tender documents, the two courses of action are as follows:
 - If we agree with the bidder's review of the price and the explanation of why the price is lower than the estimate, and if we consider the bidder to be responsible, we should request confirmation of the tender price in writing and award the contract accordingly.
 - If we do not agree with the bidder's review of the price and the explanation of why the price is lower than the estimated, and if we consider the bidder to be non-responsible, we should disqualify the bid, and award the contract to the next lowest *responsible* and *responsive* bidder.

Under no circumstances may the bidder be permitted to increase the offer originally submitted.

2.5.4.10. Inadequate Tenders (Price Too High)

When the lowest tender is obviously excessive, and a review of the scope of work required by the contract confirms that the Government estimate appears to be correct, the lowest bidder should be requested to review the estimate on which the tender was based.

Provided the bidder is co-operative (remember that the offer is the lowest in the competition, so the bidder is not required to prove the offer), the review may be accomplished by having the bidder:

- submit the estimate/tender for review by departmental personnel, or
- meet with qualified, knowledgeable departmental personnel.

This review should result in:

- a revised departmental estimate

- a reduction of the offer by the bidder
- a combination of both
- no change in position

Following this 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 one of:

1. Acceptance of the original offer – This should only happen where we can fully justify increasing our estimate to a point where the original offer can be considered acceptable and the best price that can be obtained under the circumstances. The additional funding requirement must be reviewed and approved by the client department.
2. Acceptance of a reduced offer based on minor changes to the scope of work – this will result from negotiations with the low bidder to reduce the bid amount. Scope changes must be clearly defined in writing and agreed to by both parties.
3. Cancel the Tender and re-invite the three low bidders to submit bids – This occurs when the GNWT is unable to secure a satisfactory reduction in price from the low bidder in relation to the proposed minor changes in the scope of the work, or
4. The fundamental intent of the original tender call remains the same. Tenders may be re-invited by reducing the scope of the work.

2.5.4.11. Technical Inconsistencies in a Tender

The technical review may reveal that a tender/bid is not in strict accordance with all the requirements and specifications. That tender is then subject to disqualification.

The bidder may offer alternatives; however, the bidder must also provide a base bid that conforms to the tender specifications.

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

In all cases where a bid is officially disqualified as a result of the tender review (administrative or technical), the bidder should be notified by letter. The cover page or signature page of the tender should be clearly marked "Disqualified" and placed on the file with a copy of the letter.

2.5.4.12. Technical Review

Technical reviews should be conducted as required. This stage is particularly important when equivalents have been bid. Technical reviews will be conducted by the GNWT office that has the most expertise in their respective fields.

2.5.4.13. Seeking Clarification

From time to time it may be necessary to seek clarification from a bidder. Whether the clarification is needed to address a financial or technical uncertainty, or something relating to the Business Incentive Policy, the parameters for seeking clarification are the same. Purchasers must ensure that:

- the clarification does not:
 - add information to the bid,
 - provide one bidder an advantage over other bidders, or
 - alter the price or any substantive element of the bid, and
- the clarification is only used to address minor irregularities.

A clarification is only acceptable if it is an explanation of existing elements of the bid that will not amount to a substantive revision or modification of the bid.

2.5.4.14. Sole Bid Received

If only one bid is received, you must consider whether the:

- Potential bidder had enough time to prepare and send their bids
- Bid amount is reasonable and within the budget
- Delivery of the requirement can be made in time
- Local Northern content is maximized

If one or more of the above concerns have not been met through the tender process, the purchaser must decide if it is in the best interests of the Government to accept the sole bid, or reject it and issue a new tender.

If a decision is made to cancel the tender and reissue it, the reasons must be documented, and the Memo to File should also explain possible reasons why only one bid was received.

2.5.4.15. No Bids Received

On occasion, tenders will close with no bids submitted. When this situation occurs, two options are available.

- If the value of the tender is large enough and time permits, the purchaser may consider re-tendering the procurement. In this instance, the purchaser may expand the field of advertisement to attract bids or is aware of a change in the market, which would now attract bidders to the procurement.
- From time to time it may be appropriate to contact known suitable contractors to ask why they did not submit a bid. In some situations this may expose a technical issue (e.g. maybe they didn't receive notification, or ran into a technical issue

submitting their bid), or potentially (too) restrictive specifications. If taking this approach, it is important that any contractors that are contacted are not given any information that may provide them with a material advantage should the procurement be re-tendered.

- In some situations sole sourcing the procurement to a suitable contractor may be necessary. However, before proceeding with a sole source it is important to consider why no one submitted a bid in response to the Tender. If there are contractors willing to do the work through a sole sourced contract, why did they choose not to bid on the competitive opportunity?

2.6. Requesting Proposals

2.6.1. When to use an RFP

The [RFP](#) solicitation method is used when the GNWT wants to review and implement different and new solutions to a problem, project, or business process. The [RFP](#) document provides proponents with an overview of the perceived or expected requirements. It does not give a detailed project plan, as it is expected that this is what the proponent will develop in response to the [RFP](#).

The proposal will be evaluated to determine if the proponent has the necessary understanding of the GNWT's needs so as to deliver a completed project in accordance with such needs. The evaluation will be based on several criteria, including price. Other criteria will be used to evaluate additional aspects of the proposal, such as quality of the proposed solution and the qualifications of the proposed team.

2.6.2. Introduction to Proposals

This Section introduces the concept of using proposals to obtain prices. A well-prepared [RFP](#) can go a long way to creating effective programs with reliable contractors.

The purchaser should also review the [FAM 705.09](#), which provides directives and guidelines on the proposal process.

2.6.3. Request for Proposals – Available Templates

2.6.3.1. Why Use a Template?

The extent of information required by the current [RFP](#) templates is necessary to clearly define and limit obligations of the GNWT and define the obligations of any proponent.

Although [RFP](#) templates may appear long and technical, they are not difficult to complete. The challenge is to develop an [RFP](#) document that clearly defines the departmental requirements while ensuring that the effort to respond is not too costly in comparison to the value of the contracting opportunity.

2.6.3.2. What Can Go Wrong?

If a proponent challenges the legality of an [RFP](#) process, the government must rely on the terms and conditions built into the [RFP](#) template as part of the response the proponent. Therefore, changing the wording in these templates may remove some of the protective language developed by Legal Division, and create risks and potential liability to government. If departments believe that something in the templates is not applicable to their project, advice should be sought from Legal Division before changes are made.

In addition, departments should avoid taking any actions or making any decisions during an [RFP](#) process that could be construed as providing an unfair advantage to any proponent, as legal proceedings could result.

If the evaluation process is not followed, the department responsible may find itself being challenged by unsuccessful proponents.

2.6.3.3. RFP – Standard

Used for services that may include: janitorial, actuarial, accounting, general consulting, facilitation, mediation, IT consulting, etc.

Users should note that, in addition to the standard service contract which is included as the default pro-forma contract in the [RFP](#) template, a number of other contracts are available and may be more suitable for the specific services being procured. These contract templates include:

- Legal services contract (to be used whenever procuring professional legal services);
- Geotechnical services;
- Physician services; and
- Various leasing templates.

If procuring goods through the [RFP](#), purchasers should describe, in addition to the use of a different pro-forma contract, the shipping terms of any subsequent contract (i.e. who will be responsible for shipping costs, etc.). Generally it is recommended to specify the shipping, delivery, and transfer of ownership expectations using the rules established under the International Commercial Terms (Incoterms) (see Section [2.7.5](#)).

This template is commonly used for IT work which would involve the provision of both goods (i.e. hardware) and services (i.e. implementation, support, maintenance, etc.).

2.6.3.4. RFP – Standing Offer Agreement

The '[RFP](#) - Standing Offer Agreement' template is substantially similar to the standard [RFP](#) templates noted above, but includes detailed descriptions of the Standing Offer Agreement process. The difference between this template and one of the templates noted above is mainly noticeable in Section 1 of the [RFP](#) template.

2.6.3.5. RFP – Architectural and Engineering Services

The ‘[RFP](#) – Architectural and Engineering Services’ template is to be used when procuring Owners Engineering services. The pro-forma Consultant Agreement included in the template is suitable only for a scenario where the user intends to procure the services of an Owners Engineer that will prepare designs for tender, participate in the review of bids and the award of the contract, and will oversee the construction phase of a project.

If this arrangement is not suitable for the user’s specific situation, it is recommended that they contact Procurement Shared Services to discuss modifications to the contract.

2.6.3.6. RFP – Design-Build

The ‘[RFP](#) – Design-Build’ template is to be used to establish design-build contracts. Design-build contracts combine the work normally included in the Consultant Agreement (Architectural and Engineering Services) with the work performed by a general contractor into one package. The contractor and the designer form a team to design and build a facility in response to the GNWT’s statement of needs, functional requirements, specifications, etc.

The design-build approach is suited for projects where the GNWT’s objectives are clear, yet there is enough latitude in the conditions, quality and scope that the operating methods and efficiencies of the contractor’s organization can be realized.

2.6.3.7. Invitational RFP Templates

Invitational [RFP](#) processes follow a pre-qualification process where proponents were shortlisted (typically through a [RFQ](#) process) for an opportunity to participate in a [RFP](#) process. An [RFP](#) that is issued under an existing Supply Services Arrangement is considered an invitational procurement.

2.6.3.8. Short-Form RFP Templates

The Short-Form [RFP](#) template was developed as a means to assist the GNWT procure simple or commonly required services expeditiously through a simplified [RFP](#) process. The Short-Form [RFP](#) template is ideally suited for lower value services acquisitions where the contract format is known (i.e. customization of the contract is not expected), the scope of work is less than a few pages in length and is easily described, and the services and subsequent contract would be of low exposure to the GNWT.

Under the Short-Form [RFP](#) process proponents would be asked to submit short proposals, typically in the range of 3-5 pages, excluding resumes, table of contents, etc.

2.6.4. Preparing a Request for Proposals

2.6.4.1. What to Include

The scope and detail included in an *RFP* should reflect the complexity, significance, and risk of the procurement opportunity. An *RFP* describes the program or requirements for which the department would like proposals and it lays out the criteria that will be applied to the submission and evaluation of proposals. An *RFP* will become more detailed and complex, and the level of detail required in responses will increase, as the opportunity increases in value and complexity.

RFP document contain, at a minimum, four distinct sections:

- Instruction to Proponents
- Terms of Reference
- Evaluation Criteria
- Response Guidelines

An *RFP* must be carefully drafted to ensure that it is, in fact, a proposal and cannot be interpreted as a tender. Simply calling a document a proposal does not automatically make it a proposal.

2.6.4.2. What not to Include

To clearly establish that a proposal is intended to be a proposal, not to be confused with a tender, the words “tender” or “bid” should not be used at all in the proposal documents.

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, Requests for Proposals should not include the requirement for bid security, nor shall they require proposals to be irrevocable for any period of time.

The *RFP* should be structured in the following manner: first the administrative ground rules are set out so that proponents have a clear understanding of the process. Following this, the project is described in detail, explaining what the contractor will be expected to do. Then the mandatory requirements are stated, and the desirable requirements itemized. Finally, proponents are told what they have to provide in order to be evaluated.

2.6.4.3. Instructions to Proponents

The Instructions to Proponents section of an *RFP* should include information and instructions on the administrative parameters of the proposal call.

These instructions will include:

- The proposal submission deadline;
- An explanation of the proposal submission methods.

- By default, the standard [RFP](#) templates request the submission of separated technical and financial submissions (commonly referred to as a “two envelope system”). The two envelope system is used to ensure that financial information contained in a proposal cannot influence the technical scoring of a proposal. When proposals are received, evaluation committees will be sent the technical proposal for evaluation. Only once the technical evaluation is complete can the evaluation committee view and score the financial submission.
- A definitions section.
- General information that establish the rules and parameters of the [RFP](#) process.
- Contact person for inquiries during the period between [RFP](#) release and closing.

2.6.4.4. Terms of Reference

It is highly recommended that careful thought be put into developing this section so that your requirements and goals are clearly described. [RFP](#)'s that do not have well-defined Terms of Reference will most likely result in large variations in the methodology and fees presented in the proposals received, and thus will be more difficult to analyze and compare.

Think about such things as:

- Did you quantify requirements whenever possible?
- Is the [RFP](#) precise, concise and easily understood?
- Are the requirements large enough to warrant a staged process calling for interim deliverables?
- In you anticipate that some proponents will be unable to meet the mandatory requirements, can you justify them from a business perspective?
- Are the anticipated results of a successful solution stated clearly in objective terms?

When describing the requirement, you should use the following terms:

- “must”, “shall”, “are required”, “at a minimum” for crucial qualifications or requirements; and
- “should” to describe an important requirement, but one not so important that its absence would mean automatic disqualification.

The Terms of Reference section should typically include the following areas:

Department Mandate/Responsibilities

A short description of the department and how the project will relate to the program may help the proponent with an understanding of the requirement.

Background

Under the heading “Background”, you could give proponents a brief history of the events leading up to the [RFP](#).

Requirement and Project Scope

A detailed description of the scope of the work should be included. This would adequately define and quantify the limits of the project. This may include, but is not limited to:

- a background statement describing the situation leading to the requirement
- the objective - a statement describing the general intent of what is to be achieved
- the scope - a detailed description of what is to be achieved
- details of any constraints, such as Government policies and standards, land settlement legislation, current and proposed related activities, security, sensitivity to other interests, protection of the environment, conservation of resources and other restrictions
- details of any special local and Northern approaches that are to be undertaken during the performance of the work
- financial limits of the budget and cash flow (this is discretionary and should not be included if it might mislead proponents, result in improper proposals or diminish the possibility of the GNWT receiving the best value)
- details of available client support or responsibilities.

Bulky reports or documents that may be useful background information or help to define the scope of work, but are not critical at the proposal stage, may be referenced as available for viewing during the proposal period.

Schedule

A schedule for the work, with as much detail as possible, should be included with the proposal call. Critical milestone dates that must be met should be explicitly described in the Terms of Reference (i.e., preliminary report dates, final report dates, etc.).

Progress and Final Reports, Submissions and Reviews

You should detail the requirements for progress and final reports or submissions in the proposal. This should consist of a list indicating the stages at which submissions will be required, the detail to be achieved at each stage of the work, and the number of submission copies

required. You should note approval and acceptance requirements relating to performance at each stage.

Budget

Related to this is whether or not to provide the project budget in the RFP. 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. In some cases, it may be to your advantage to include the project budget.

Some alternatives to consider:

- Not give the budget, 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 adequate solution and adequate capability would lose.
- Tell the proponents how much of a budget they have to work with and then either don't award points for price or assign a very low value for price.
- Not give the budget, and accept the lowest priced proposal that meets a minimum standard. You will need to set out minimum scores to be attained in order to be considered.
- Not give the budget, divide proponent's price by the number of points the proposal scores, and then accept the proposal that offers the lowest cost per point.

2.6.4.5. Evaluation

By law, the [RFP](#) must provide the criteria by which proposals will be evaluated. These desirable criteria should be carefully selected so that the evaluation will properly reflect the project requirements, and so that the best overall proposal will be selected.

The desirable criteria can usually be broken down into three key areas: solution, proponent capability, and price. The [RFP](#) must describe the criteria that will be used in the evaluation and provide the relative weightings.

Clearly describe the mandatory criteria. Any proposal that does not meet all of the mandatory criteria cannot be evaluated; it must be rejected. Because of the "pass or fail" nature, we recommend the mandatory criteria be kept to a minimum and identified separately, even if they are described elsewhere.

Mandatory Requirements / Minimum Standards

There may be criteria in the [RFP](#) that the proponent must comply with. These criteria may be mandatory requirements or minimum standards. If so, you must state this fact in the [RFP](#). Further, you must

state that, if the proponent is unable to meet this criteria, the proposal submission shall be disqualified.

Mandatory requirements or minimum standards must be established in the proposal call if they are to be used as evaluation criteria.

A mandatory requirement or minimum standard must be included in the proposal call, if it is to be used during evaluation.

Conversely, since a proposal is to be disqualified if it fails to meet mandatory requirements or minimum standards, the proposal must not include minimum standards if these minimum standards are not, in fact, intended to be mandatory.

Minimum Scores

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

You need to advise proponents, in the *RFP*, that not achieving a minimum score on a given criteria will result in the proposal not receiving further consideration during evaluation.

Please note, the highest acceptable minimum/upset score is 60%.

Presentations/Short Lists

If the intent is to create a short-list and invite those proponents making the list to make presentations to the evaluation committee, proponents must be made aware in the *RFP* whether:

- An additional set of marks is available for presentations;
- Marks for the presentation from part of the original 100%; or
- Presentations will be used to support the evaluation of the information contained in the proposal.

Establishing the Evaluation Committee

The proposal Evaluation Committee should be established as early in the process as possible. Ideally evaluators will be made up of personnel that are familiar with the necessary work and have an understanding of the industry/field. Evaluators should have had some involvement with the development of the *RFP* document(s) and, in particular, the selection of evaluation criteria and corresponding response guidelines for proponents.

Although exceptions can be made, it is recommended that the Evaluation Committee not include employees with direct reporting relationships to each other. When senior management is expected to

participate in an evaluation, the entire Evaluation Committee should be comprised of senior managers only.

No person who may have a conflict of interest; potential, perceived or actual, regarding a proponent, including without limitation; financial interests in a proponent or prejudice through current or past association with a proponent, should serve on an evaluation committee.

Former employees of a proponent should only sit on an evaluation committee after discussion with their supervisor and Procurement Shared Services. Each situation will be assessed on a case-by-case basis to ensure there is no conflict of interest.

Overall Evaluation Process

Prior to the Proposal Rating Schedule users should include a section in the [RFP](#) that explains the overall evaluation process. The standard [RFP](#) templates describe the following four stages (which generally would not change):

- Stage 1: Review of Mandatory Requirements
- Stage 2: Evaluation of Rated Requirements
- Stage 3: Evaluation of Fees
- Stage 4: Application of the Business Incentive Policy

It is recommended that the Evaluation Process section of the [RFP](#) provide a clear description of the specific evaluation process that will be used for financial/pricing information. By default, the [RFP](#) templates specify a lowest cost ratio approach where the proposal with the lowest cost will receive the maximum points available and each other proposal will receive a portion of the points based on their cost relation to the lowest.

Evaluation/Proposal Rating Form

The use of a rating form for use during the evaluation process is recommended. The Department of Finance [RFP](#) template provides an example as does the Financial Administration Manual.

The [FAM 705.09](#), Appendix B, example includes typical criteria related to consulting proposals. Other criteria could include:

- Related experience of the company
- Local and Northern Content
- Community Engagement
 - The Community Engagement criterion is recommended for use in all RFP's where there is potential for on-site work within the NWT. It focuses on a proponents approach for the recruitment of labour, utilization of NWT businesses, training opportunities for NWT residents, and communication and collaboration with local governments.

Community Engagement is separate from the Business Incentive Policy, and is available to all proponents whether *BIP* registered or not. A proponent's geographical location is not a barrier in maximizing credit available under this criterion.

- Fees and Expenses

As for the evaluation criteria, the weighting should also be specifically tailored to suit the purposes of each *RFP*.

2.6.4.6. Proposal Response Guidelines

The quality of the proposed solutions depends to a great extent on the amount of accurate, detailed information that you provide to the proponents.

The level of detail about the evaluation criteria influences proponent behaviour. You should guide the proponents to provide the information you want, in the manner consistent with how you are going to evaluate the proposals.

The Proposal Response Guidelines should correspond with the Proposal Rating Criteria set out in the *RFP*. Proponents should be able to review the Proposal Rating Schedule and then refer to the Proposal Response Guidelines to understand how best to address each of the evaluation criteria.

For example, if 'Team' is used as evaluation criterion, the Response Guidelines should clearly explain to proponents what information about their proposed team is required, and also establish any expectations for certain team members (i.e. the team lead must have a professional designation (specify preferred types) with 15 years' relevant experience).

If 'Methodology' is going to be evaluated, then the Response Guidelines should clearly explain how, and in what format, proponents should describe their proposed methodology for the work.

Pricing information is particularly important, and it is essential for users to provide sufficient information to ensure that all proponents will be pricing the same scenario (and that the pricing information can be evaluated in accordance with the evaluation process described in the *RFP*). The Response Guidelines should explicitly explain exactly what pricing information is needed and the format it should be presented in. Users should clearly explain how expenses would be handled (i.e. should proponents include all their expenses, or will the GNWT reimburse the successful contractor). Pro-forma Contract

Terms and conditions of the contract (ideally a sample of the contract document that will ultimately be entered into) should be appended to the *RFP*. This allows all proponents to become familiar with the terms and conditions of the contract before deciding whether or not to submit a proposal.

This prevents a proponent from introducing their own standard form contract, which will likely contain unfavorable terms for the GNWT, as part of the proposal.

2.6.4.7. Short-form RFP

In addition to the usual information required in a [RFP](#) process (as described above, albeit in shorter form) users of the Short-Form [RFP](#) must specify certain limitations for proposals with respect to the length of proposals that will be considered. The Short-Form [RFP](#) templates provide dropdown menus in all relevant fields to address this requirement.

2.6.5. Calling for Proposals

2.6.5.1. Public Advertising

Open competition through public advertising is the preferred option and will generally yield the best results. The methods used should mirror those outlined in Section [2.3.4](#), Advertising Requirements.

2.6.5.2. Safekeeping the Process

It is important to maintain the integrity of the bidding process. The following suggestions are provided for your consideration.

Identify one Contact Person

By identifying a contact person in the [RFP](#) to whom all communication between potential proponents and the government will flow, all proponents will receive the same information. It is recommended that the contact person not be involved in the evaluation. In the case of procurements administered through Procurement Shared Services, the Contract Administrators will act as the contact person.

Responding to Enquiries

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

Contact with Proponents

All contact with proponents should be formal, documented, and handled by the PSS Contract Administrators or, in the case of a board or agency, the person who will oversee all contract administration activities.

2.6.5.3. Proponent Meeting(s)

See Section [2.3.5](#) for details.

2.6.6. Evaluating Proposals

2.6.6.1. Selection Procedure

The evaluation committee (see Section [2.6.4.5](#) for further details) will evaluate the proposals to determine which proposal appears to offer

the best overall value to the GNWT, which also maximizes the opportunity for northern businesses and workers.

During evaluation, 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.

Preliminary Steps

Prior to opening proposals, the committee should meet and determine the evaluation process. That is, 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.

After opening, each member should review all proposals and do an independent preliminary evaluation. The committee should then formally meet and conclude the process.

Mandatory Requirements

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.

Scoring Methodology

Standard [RFP](#) templates provide an example of a rating methodology that has proven useful. This methodology suggests that each submission is rated subjectively according to the degrees of satisfaction on a criteria-by-criteria basis.

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

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

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.

Keeping Notes

One of the members of the evaluation committee should be assigned the responsibility for making a master record of the scores and keeping notes explaining each score. It is important to write supporting comments for both high scores and low scores. A benefit of documenting both high and low scores is that when it comes to debriefing the unsuccessful proponents, the experience is a more pleasant one for everyone if you are able to praise the proposal's strengths as well as point out its weaknesses.

Application of the Business Incentive Policy

The Government of the Northwest Territories may when purchasing goods, services or construction provide an incentive to Northwest Territories based businesses.

In June 2006, the *BIP* Senior Management Preference Committee issued Interpretive Bulletin #7, which stipulated:

When issuing RFPs and evaluating proposals received, the following evaluation criteria, based on dollar value, shall be applied.

- Allocate 15% of the total assigned weight to the provision of goods and services by Northern Businesses; and
- Allocate 5% of the total assigned weight to the provision of goods and services by Local

Clarifications

In certain situations, it may be necessary to clarification form a proponent. Whether the clarification is needed to address a financial or technical uncertainty or something relating to the Business Incentive Policy, the parameters for seeking clarification are the same. Purchasers must ensure that:

- the clarification does not:
 - add information to the proposal,
 - provide one proponent an advantage over other proponents, or
 - alter the price or any substantive element of the proposal, and
- the clarification is only used to address minor irregularities.

A clarification is only acceptable if it is an explanation of existing elements of the proposal that will not amount to a substantive revision or modification of the proposal.

Proponent Interviews

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

Reference Checks

Reference checks should only be used when the *RFP* specifically requests references.

RFP 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.

Negotiations

After the proposals have been evaluated, the purchaser 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.

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

2.6.6.2. Confidentiality

As they will be entrusted with or have access to information governed by the *Access to Information and Protection of Privacy Act*, committee members must be aware of the need for confidentiality. Evaluation committee members will be expected to:

- Keep the proposals, and any notes they might make relating to them, in a secure place where others will not have access to them;
- Not discuss the proposals or disclose their contents to anyone other than their fellow committee members;
- Keep all notes, discussions, and point rating confidential and not disclose their substance or details to anyone;
- Evaluate the proposals strictly in accordance with the evaluation criteria stated in the Request for Proposal;
- Evaluate proposals solely on information contained therein, not on the committee's previous knowledge of the proponents or its business; and
- Score proposal strictly in accordance with the established points rating.

2.6.7. Debriefing Proponents

2.6.7.1. Overview

The vendor debriefing for unsuccessful proponents should be offered as a last step in the *RFP* process. The purpose of the debriefing is to

provide constructive feedback to proponents on where they did well, where their proposal was weak, and how they could improve future proposals.

General Comments

It is common to schedule the debriefing meetings for some point after a contract has been signed with the successful proponent, although they may have to be scheduled prior to signing if negotiation is expected to take a considerable length of time.

The debriefing process is not an opportunity for unsuccessful proponents to provide additional information, request a second evaluation process, or find out how their proposals compared to others. It is not an appeal process.

2.6.7.2. Preparation

The debriefing process should take place as soon as possible after the [RFP](#) process has concluded.

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. Positive comments concerning the proposal should also be provided to the proponent so that they understand both the strengths and weaknesses of their proposal.

Debriefings should be conducted with one vendor at a time to ensure the privacy of their information and proposal.

Debriefing meetings are only offered to the main proponent and will not be offered to any subcontractors. However, a proponent may choose to bring one or more of their subcontractors to a debriefing meeting.

2.6.7.3. Who Should Attend?

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. A representative of Procurement Shared Services will attend most debriefing meetings to provide the proponent with assurance that the evaluation process was completed fairly, proposals were scored consistently, and that the evaluation criteria and response instructions were followed. Procurement Shared Services is also available to meet with the debriefing committee to go over general best practices and provide comments taken during the evaluation process before the debriefing meeting.

One member of the evaluation committee must be selected to chair the debriefing meeting (usually not Procurement Shared Services), while other members of the evaluation committee in attendance, will provide support for the chair.

2.6.7.4. Managing the Meeting

The chairperson should open the meeting by introducing the evaluation committee members present. They may also briefly set an agenda and timeframe. At the beginning of the debriefing, the purpose and limitations to the debriefing process should be explained to the proponent.

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 allayed during the debriefing once they see that the process was conducted as described in the RRP and points were allocated fairly and consistently.

During the debriefing, the proponent should be told why its proposal did not win and where it could have been better. Proponents' responses should be compared to the evaluation criteria, not to other proponents' responses. No details of the winner's or any other proposal should be discussed.

Information commonly released during the meeting, once the contract has been signed, includes:

- Proponent's total score
- Proponent's detailed score and comments
- Proponent's ranking
- Names of other proponents and total scores
- Name of winner

Information not released during the debriefing includes:

- Unit prices or hourly rates quoted by other proponents
- Details of the contract negotiation with the winner
- Information about which personnel the winner is going to assign to work on the project
- Detailed information and provided by other proponents and associated scoring information

Proponents shall be informed of the following restrictions prior to the meeting:

- Proponents are limited to a maximum of five (5) key individuals attending
- The debriefing meeting is limited to a maximum of two hours
- If a proponent would like to attend a debriefing meeting, they must respond with acceptance of the offer within 30 days of the day the proponent is offered the meeting opportunity. Debriefing meetings must also be held within 60 days of the day the proponent is offered the meeting opportunity, unless otherwise agreed to by both parties.

2.6.8. Changes to Proponent, Contractor and/or Consultant Teams

Proposals are usually evaluated based on the merits of the proposed team. As such, proponents are expected to utilize the same team members as those that were originally proposed. This is particularly important when proposals received credit under the GNWT Business Incentive Policy for local or NWT labour content.

It is also important to recognize that in certain situations team member changes may be unavoidable for a proponent (contractor/consultant) and should be considered by the *Contract Authority* on a case by case basis. In assessing a request to change a contractor/consultant team member, the *Contract Authority* should ensure that the change would not result in a weaker team than was originally evaluated and that the change would not have an impact on the amount of NWT/local labour content provided under the original proposal.

2.7. Purchasing Goods

2.7.1. Introduction to Purchasing Goods

This Section introduces the purchasing cycle for acquiring goods.

2.7.1.1. The Purchasing Cycle

The purchasing cycle is common for both government and business. The basic purchasing functions in any large organization are as follows:

- Requisitioning supplies and services – reference Section [2.4](#)
- Issuing tenders and contracts
- Expediting goods – reference Section [3.9](#)
- Receiving goods – reference Section [3.10](#)
- Paying invoices

2.7.2. Supplementary Purchasing Clauses

Generally, the Instructions to bidders in standard contract forms remain consistent, to ensure all bidders are following the same set of rules. Yet there has to be a way of giving potential bidders instructions that are specific to a tender call. This is done by way of appending Supplementary Instructions to the tender document.

Over the years, the Department of Finance has developed a number of task specific tender clauses. These additional clauses are available for use with procurement and contract documents. The clauses may change from time to time or new ones added. Please check with Procurement Shared Services for current Supplementary Clauses.

Listed below are detailed explanations of some of the frequently used additional clauses. The following examples may be useful to the purchaser for use in tenders for goods or services, where appropriate.

2.7.2.1. Fuel Delivery Contracts

Price Changes

The price per litre may be revised by the contractor during the term of the contract in accordance with market changes as reflected in Canadian Unbranded Rack Prices for Furnace Oil, Regular Unleaded Gasoline and Diesel Fuel at Edmonton, Alberta, as applicable, as published in the Oil Buyers Guide.

Such price changes shall be limited to the CHANGE in the Contractor's, or Contractor's suppliers', as applicable, published rack price for the product between the published date immediately prior to the tender closing date and the first published date of each month of the contract. Any revised price shall come into effect on the first day of each month and apply to deliveries made by the Contractor during that month.

For clarification, the following rack references shall apply:

Product	Rack Reference
Auto Gasoline	Regular Unleaded Gasoline
Heating Oil	Furnace Oil
Jet B Turbine Fuel	70% Regular Unleaded Gasoline / 30% Diesel Fuel
100LL Aviation Gasoline	Regular Unleaded Gasoline
Jet A Turbine Fuel	Diesel Fuel
Diesel Fuel	Diesel Fuel

Automatic Delivery

The supplier shall provide automatic delivery service where and when required and is responsible to maintain the delivery location tank at an adequate level of fuel at all times to ensure that the tank does not run out of fuel.

It is a condition of the contract that the supplier will assume liability for all costs associated with labour, materials and other directly related costs resulting from the following:

- the supply of inappropriate or incorrect fuels;
- property freeze-ups due to tanks running out of fuel unless caused by conditions outside of the control of the supplier;
- fuel spills resulting from the actions or negligence of the supplier;
- all call out charges, overtime costs, etc., which are directly related to the delivery, by the contractor, of products outside of normal working hours.

The supplier shall deliver the appropriate seasonal fuel type depending upon climatic conditions and location and configuration of

tankage. The unit price charged shall be in accordance with the contract and shall reflect the type of fuel delivered.

In the instance that a supplier markets only Type 0 fuel, the GNWT reserves the sole option of determining the best value based on the calculated cost per BTU provided by Type 0 fuel as compared to Type 2 fuel. Such cost evaluation will be upon an estimated distribution of product over the contract period as follows: 45% Type 2 / 55% Type 0.

As and When Required Delivery

The supplier is required to deliver fuel when specifically ordered by the GNWT on an “as and when required” basis. All such deliveries shall be made during regular working hours (08:00 - 17:00), Mondays through Fridays. Requests for delivery of fuel outside these hours shall be subject to call out charges by the supplier. The supplier will provide a schedule of such call out charges as part of the tender bid.

All requests for delivery of fuel shall be made within 3 hours of receipt of notification.

2.7.2.2. Mobile Equipment Clauses

Warranty

2.7.2.2.1.

Equipment or goods supplied by the Bidder shall be protected by a minimum twelve (12) month manufacturer's warranty and the GNWT shall be the direct beneficiary of such warranty.

Particulars of this warranty, together with particulars of any subsequent or additional warranties must be provided, in writing, as part of the tender bid. Failure to provide warranty details, including costs, information on service depot, field and remote location service capabilities may result in the tender bid being disqualified.

Service Support

In order for tenders to be considered, all bidders shall:

- employ a qualified Journeyman licensed Welder and Heavy Duty Mechanic able to undertake repairs on the bidder's premises;
- have a direct service phone line with qualified personnel to deal effectively with parts, service, sales, process warranty claims;
- maintain an inventory of consumable part supplies which include, belts, air cleaners/filters, thermostats, engine overhaul kits, antifreeze, brakes and brake parts;
- have or be able to supply one Field Service Vehicle with qualified Heavy Duty Mechanic for road repairs;
- have field service personnel for contract and warranty repairs in remote NWT communities; and
- be able to effectively manage all warranty claims with no incurred cost to the GNWT during the warranty period.

2.7.2.2.2.

The GNWT reserves the option of requesting complete details of the bidder's service capabilities. Failure to provide such information may result in the tender bid being deemed non-*responsive* and disqualified from further consideration.

If, subsequent to the award of any resultant contract, the bidder cannot provide the required services as bid, the bidder may be disqualified from future tenders involving similar equipment.

Specification Alteration

Each GNWT specification for mobile equipment has been written to describe the equipment required for a specific purpose. In developing such specifications, the GNWT 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 *Contract Authority* prior to vehicle inspection.

If it is known that such specification item is unavailable or not recommended at the tender stage, the bidder must provide such information as part of the tender.

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.

2.7.2.2.3.

Inspections

Interim and/or final inspections shall be carried out at the discretion of an authorized representative of the GNWT based on the information provided by the supplier except as follows:

- 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 GNWT at the Supplier's premises or FOB point at the sole option of the GNWT. Inspections carried out at any other location at the request of the Supplier, shall be at the expense of the Supplier.
- 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 GNWT, the Supplier shall pay all travel costs incurred by the GNWT and the Supplier shall reduce the unit cost of the vehicle accordingly.

2.7.3. Vehicle Purchasing

2.7.3.1. Introduction

Procurement Shared Services has been responsible for the procurement of vehicles for all GNWT departments as well as the Northwest Territories Housing Corporation since 2013.

2.7.3.2. Guidelines and Criteria for Purchasing Vehicles

This publication has been prepared to assist departments in the planning, acquisition, administration and maintenance of passenger vehicles and all types of trade vehicles.

2.7.3.3. Procurement Strategy

Early in the budgeting cycle, the purchaser should canvas program managers for a listing of all vehicle requirements by community, class and quantity. This enables tendering action to be initiated early enough so that the equipment will be available in time for marine transportation (when required).

In conjunction with the program manager, establish a schedule for procurement that considers the time periods necessary for tendering, manufacturing, shipping and delivery.

Ensure that the funding provided is sufficient to cover the purchasing, marshaling and transportation of the equipment.

Relevant supplementary tendering clauses, which provide contractual details for warranty, inspection, acceptance and shipping, are available through Procurement Shared Services.

Prior to delivery, the purchaser 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.

It is important to note that lead time for the delivery of a new, factor ordered vehicle may be three (3) to six (6) months or more.

2.7.4. Importing Foreign Goods

2.7.4.1. General Information

Does your department order anything directly from foreign suppliers? If so, Canada Border Service Agency (CBSA) procedures must be followed. **It is the law.**

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.

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 GNWT uses the services of Livingstone International. This broker has offices in all major Canadian cities. For information, contact the head office at:

LIVINGSTON INTERNATIONAL INC.
950 – 10060 Jasper Avenue
Edmonton, AB T5J 3R8
Telephone: 780-421-5351 ext. 2433
Toll free: 1-800-387-7582

Facsimile: 416-622-3890
E-mail: info@livingstonintl.com
Website: www.livingstonintl.com

2.7.4.2. Postal Program – Importing by Mail

As with all goods coming into Canada, a proper declaration must be made on any items being imported by mail to enable border services officers (BSOs) to correctly assess the incoming goods.

- When an item is mailed to Canada from abroad, the sender completes a customs declaration form giving the value, origin and a detailed description of the goods.
- Upon arrival in Canada, all international mail items are presented by Canada Post to the Canada Border Services Agency (CBSA) to process through the Agency's Postal Program.
- BSOs visually inspect each piece of mail to determine its admissibility and confirm whether it contains dutiable or taxable goods. If the BSO determines that a mail item is not prohibited from entering Canada and is not subject to duties or taxes, the item is released to Canada Post for immediate delivery.
- Otherwise, the BSO forwards the item for further inspection by the CBSA or by another government department or agency before the item can continue in the postal process.

2.7.4.3. Duties, Taxes and Handling Fees on Items Mailed to You

2.7.4.3.1.

Duty and Tax Exemptions

The CBSA can examine almost any item that comes to Canada by mail.

You may have to pay duty, the goods and services tax (GST) or the harmonized sales tax (HST) and the provincial sales tax (PST) on items mailed to you. 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.

The amount of duty or taxes you may owe on an item depends upon the following:

2.7.4.3.2.

- the item's value in Canadian dollars;
- whether or not the item is a gift; and
- any exemptions specified in related legislation.

An Items Value in Canadian Dollars

Under the provisions of the Postal Imports Remission Order, if someone mails you an item worth CAN\$20 or less, you don't have to pay duty or taxes on the item. If the item is worth more than CAN\$20, you must pay the applicable duty, the GST or HST, and any PST on the item's full value.

Items that do not qualify for the CAN\$20 exemption include the following:

- tobacco;
- books;
- periodicals;
- magazines;
- alcoholic beverages; and
- goods ordered through a Canadian post office box or a Canadian intermediary.

Handling Fees

2.7.4.3.3.

When items are imported into Canada by mail, Canada Post charges the recipient either a \$5 handling fee for collecting duty and taxes on behalf of the CBSA, or an \$8 handling fee if the item was sent by Priority Courier. If a mail item is duty free and tax exempt, neither fee is charged.

All amounts must be paid at the time of delivery (by cash, certified cheque, VISA, MasterCard or your Canada Post commercial account).

2.7.4.3.4.

Agreements and Disagreements

If you agree with the duty and taxes assessed, Canada Post will collect the amount indicated on Form E14 when it delivers your item.

If you disagree with the duty and taxes assessed, two options are available to you.

2.7.4.4. Disputing Duty and Taxes

If items being mailed to you are subject to duty and taxes, you will find Form E14, CBSA Postal Import Form, attached to your parcel. If you do not agree with the amount of duty and taxes shown on the form, two options are available to you:

- You can refuse the parcel and request a reassessment (a review of the amount charged before paying); or
- You can pay the duty and taxes and request an adjustment (a review of the amount charged after it is paid).

Requesting a Reassessment

To request a reassessment of the duty and taxes charged on a parcel sent to you, simply refuse delivery of the mail item and ask Canada Post to return it to the CBSA. The following will occur:

- Canada Post will write your telephone number on Form E14, CBSA Postal Import Form, give you a copy, and return the mail item to the CBSA.
- The CBSA will contact you to discuss the assessment once it receives your goods from Canada Post.

- If you don't have to pay duty and taxes after the reassessment, the CBSA will give the item to Canada Post to deliver to you.
- If you still have to pay duty and taxes after the reassessment, the CBSA will put a new Form E14 on your mail item.
- You will have to pay the amount indicated to Canada Post when it delivers the item to you.

Requesting an Adjustment

To request an adjustment of the duty and taxes being charged on a parcel sent to you, proceed as follows:

- Complete Form B2G, CBSA Informal Adjustment Request (PDF, 36 KB). (Form B2G is printed on the back of the top copy of Form E14).
- Send the completed form and any supporting documents — such as invoices that show the correct value of the products or other material that describes them — to the nearest Casual Refund Centre listed on the form.
- The CBSA will review your claim and process any applicable refund.
- Canada Post's CAN\$5 handling fee will be refunded if it is determined that the goods should have been duty free and tax exempt at the time of importation.

Note: The handling fee charged by Canada Post will not be refunded on Priority Courier items, and the CBSA will not refund any broker's fees or shipping and handling costs.

2.7.4.5. Contacting the Canada Border Services Agency

For further information, the Canada Border Service Agency can be contacted at:

- 1-800-461-9999 (0800 – 1600 EST); or
- www.cbsa.ca

2.7.5. International Commercial Terms (Incoterms)

2.7.5.1. Overview

The Incoterms® rules were developed by the International Chamber of Commerce to establish a series of pre-defined commercial terms to be used in procurement processes. The rules are intended to remove uncertainty regarding the obligations, costs and risks of each party.

2.7.5.2. Selection of Rule

The following is a listing of the 11 rules from the Incoterms® 2010 edition:

- Rules for Any Mode or Modes of Transportation:
 - EXW Ex Works
 - FCA Free Carrier
 - CPT Carriage Paid To
 - CIP Carriage and Insurance Paid To
 - DAT Delivered at Terminal
 - DAP Delivered at Place
 - DDP Delivered Duty Paid
- Rules for Sea and Inland Waterway Transport
 - FAS Free Alongside Ship
 - FOB Free On Board
 - CFR Cost and Freight
 - CIF Cost, Insurance and Freight

The GNWT will typically specify DDP for government procurements, however, users are encouraged to review and understand the other rules.

Additional information, including a detailed explanation of each of the above noted 11 rules, is available through the International Chamber of Commerce website: <https://iccwbo.org/resources-for-business/incoterms-rules/incoterms-rules-2010/>

2.7.5.3. Determining Costs/Benefits to the GNWT

In assessing the costs/benefits to the GNWT through the selection of the appropriate rule, users should consider:

- if the goods will be imported or if they are domestically available;
- the costs that a contractor would incur to complete the delivery;
- the liability of the contractor and the risk associated with that liability; and/or
- where is the most logical point to transfer ownership of the goods (i.e. if the goods are required at a remote site, it may make the most sense to transfer ownership from the vendor to the GNWT at a regional centre, and then allow the GNWT to complete the final delivery).

2.7.6. Northwest Territories Recycling Program

2.7.6.1. Program Overview

The Electronics Recycling Program (the Program) was launched on February 1, 2016. Under the Program, residents and businesses in the 10 largest NWT communities (population of more than 750) can bring their old electronics to local recycling depots. In all other communities, electronics are collected during one-day collection events. Electronics are processed at a registered electronics recycling facility in Alberta that meets environmental health and safety standards.

The majority of program costs are paid for by environmental handling fees collected on designated electronics sold and distributed in the NWT.

2.7.6.2. Regulations

The Government of the Northwest Territories (GNWT) has enacted the Electronics Recycling Regulations (the Regulations) under the *Waste Reduction and Recovery Act*. The Regulations designate specific electronic products that, when distributed in or into the NWT, are subject to an environmental handling fee. The Regulations require distributors selling designated electronics to register under the program, to collect, report and remit fees to the GNWT and to maintain accurate books and records to demonstrate they are in compliance with the Regulations.

The Regulations also outlines other aspects of the Program including general program administration and licensing of recycling depot and collection event operators.

2.7.6.3. Application

All prices bid on GNWT Request for Tenders must include any applicable NWT environmental handling fee for electronics designated under the Regulations. As noted in tender documents, the GNWT will not compensate any Bidder that fails to include the environmental handling fee(s) on eligible electronics in their bid price. Furthermore, all Contractors supplying eligible electronics to the GNWT must be registered as an electronics distributor with the Program must provide proof of this registration if requested by the GNWT. Failure to provide confirmation of registration within three (3) business days of a request will result in disqualification of the bid.

For more information about the Electronics Recycling Program and/or to register as an electronics distributor visit: www.rethinkitnwt.ca, email rethinkitnwt@gov.nt.ca, or call (toll free) 1-888-999-8762 (ask for the NWT distributor assistance team).

2.8. Contracting Services

2.8.1. Introduction to Contracting Services

2.8.1.1. Definition of Services

“Services” means the furnishing of labour, time or effort by a contractor not required to deliver a specific end-product, other than reports which are merely incidental to the required performance.

Some examples include:

- consulting services
- insurance, security and investigative services
- repair, custodial and other trade type work
- rental or lease of equipment

- translation and other types of intellectual work
- legal services
- accounting services
- architectural and engineering services

2.8.1.2. Suggested Reading

Purchasers are advised to become familiar with the Financial Administration Manual.

2.8.1.3. Establishing the Contract

Unless the contracts meet the requirements for sole source contracting as defined in [Government Contract Regulations](#), Service Contracts may result from the issuing of Requests for Tenders or Requests for Proposals.

Generally speaking, contracts involving the provision of intellectual work, such as consulting services, are best served by issuing a RFP. On the other hand, contract services involving the provision of work that can be clearly defined with clear qualifications should be tendered. This would also include contracts for rental or leasing of equipment.

2.8.1.4. Contract Forms

Service contracts may take several forms, ranging from pre-printed GNWT forms such as the Local Contract Authority form or Work Order, to the Electronic Contract form. Both forms are considered to be "standardized" contracts, where the Legal Division of the Department of Justice has approved the terms and conditions.

2.8.1.4.1.

Local Contract Authority (LCA)

The use of the standard GNWT LCA form is governed by Financial Administration Manual, Interpretive Bulletin 705.13. It is restricted to small value contracts not exceeding \$5,000, and cannot be used with contractors outside the Northwest Territories.

2.8.1.4.2.

Work Orders

2.8.1.4.3.

Work Orders are generated off the Maintenance Management System and are generally limited to small value contracts not exceeding \$10,000, the exception being a call placed against an existing Standing Offer Agreement where the transaction limit allows for purchases in excess of \$10,000. Work Orders cannot be used with contractors outside the Northwest Territories.

Service Contracts

The Department of Finance have developed an electronic forms system for common contracting forms.

This is a multipurpose form designed specifically for contracting for services. The e-form system allows several options in using the form:

- single form tender and acceptance

- service contract only
- importing of pre-defined text from a database structure included in the e-forms program
- multi-purpose General Terms covering construction, maintenance and general services.

2.8.1.5. Written Contracts

Written agreements may or may not be considered standard contracts. If the terms and conditions, except for the parties, price, description of property or matters of a like nature, remain unchanged, the resulting contract may be considered as standard and not require further legal review.

An example of a standard written agreement is the Pro-Forma Contract provided in Chapter 4.3. When using this document, changes will be necessary in the Payment and Services section and possibly the Termination Provisions. It is recommended that the Legal Division be consulted regarding other changes to this agreement.

Non-standard contracts valued in excess of \$50,000 must be reviewed and approved by the Legal Division, Department of Justice, in accordance with [FAM 705](#).

2.8.2. Unit Price Contracts

2.8.2.1. Introduction

This section explains unit price contracts. This type of contract is used when the requirements for services are clearly defined but the total demand for the services is not certain and a legal commitment for the services is required.

Unit price contracts may be used for routine contracted service requirements, where the total value of the contract can be calculated by multiplying identical units of work by a fixed unit price.

This type of contract can be confused with Standing Offer Agreements. While a Standing Offer can provide for unit pricing, it generally is structured as a pricing agreement that provides prices or a pricing formula for a range of goods or services. Standing Offers may be available for use by many departments and may be non-exclusive. Unit price contracts must always be awarded to the lowest [responsible](#) and [responsive](#) bidder.

2.8.2.2. Purpose

Generally, a unit price contract will not be used to cover a wide range of services of a similar nature, but may be appropriate when a specific service is required for a defined period of time. In such cases, the total amount of work may not be known.

They may also be appropriate for reoccurring requirements that are supplied on a routine, automatic basis, such as heating fuel deliveries.

Restrictions

It is important that the scope of the intended service requirements be clearly defined. The contractor should know exactly what the contract covers. For example, if a contract is established for routine servicing of vehicles, such as oil changes, etc., then the description of the requirements should explicitly describe the work, and indicate that other related work is not covered.

2.8.2.3. Contracting Methods

Establishing Unit Price Contracts

2.8.2.3.1.

The establishment of unit price contracts should be subsequent to the competitive bidding process unless the requirement meets the criteria for sole source contracts.

The following supplementary terms may be included, as appropriate, in tenders for unit price contracts:

- The amount or volume of work provided in the “Description of Work Required” is an estimate only and is made in good faith. However, the GNWT is not bound by such an estimate, and the actual work to be performed is limited solely to that specifically requested by the GNWT. Similar work not provided for in this contract will not form part of this contract.
- Any request for service made by the GNWT to the Contractor will be made in the manner set out in the “Description of Work Required”.
- The Contractor is required to respond to requests for service within 24 hours or sooner as requested by the *Contract Authority*. If the Contractor is unwilling or unable to respond to service requests in the manner required, the GNWT reserves the option of making any other arrangement that the GNWT deems appropriate to provide the service, and may consider the Contractor in default and terminate the contract.
- The contract pricing shall be inclusive of all wages, allowances, supervision, insurance, WSCC assessments, minor shop materials, tools, tackle, local transportation, overhead, profit, and any charges associated with providing the service after normal business hours.

2.8.2.3.2.

Commitment of Funds

When contemplating the establishment of a unit price contract, an estimate of the amount of work and associated materials is required. This estimate is incorporated into the Request for Tenders, and forms the basis of a financial commitment of funds.

Note: The estimate of work used in establishing a unit price contract is usually based on past history and the current condition of the assets being maintained. This figure is used simply to provide the bidders with a reasonably accurate estimate of the work and forms the basis

2.8.2.3.3.

of the financial commitment of funds to be used to pay the contractor's invoices. This is not the contract amount. The ultimate contract amount is the sum of all work undertaken during the term of the contract.

This financial commitment does not result in a legal obligation to contract for any estimated amount of work.

Obligations

If unit price contracts are established to provide for routine service requirements or emergencies, 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, unless the contractor is unavailable or unwilling to do the work.

Conditions where the contractor will not be used for the defined work must be clearly described in the contract.

2.8.3. Standing Offer Agreement – Services

2.8.3.1. Maintenance Services

A special purpose Standing Offer Agreement template has been developed for use in the establishment of "as and when" SOA's for maintenance services.

This template is available on the Department of Finance Internal Services website.

2.8.3.2. Printing / Design Services

The following supplementary conditions may be used to establish an SOA for printing and design services and incorporates several industry-specific conditions that should be in this type of contract:

- Work supplied will be subject to inspection and may be rejected if it does not meet specifications or are in any way unfit for the purpose or use intended, and shall be returned to the Contractor.
- Title to any report, drawing, photograph, plan, specification, model, prototype, pattern, sample, design, logo, technical information, invention, method or process, and all other property, work or materials which are produced by the Contractor in performing the contract or conceived, developed or first actually reduced to practice in performing the contract (herein called "the property") shall vest in the G.N.W.T. and the Contractor hereby absolutely assigns to the G.N.W.T. the copyright in the property for the whole of the term of the copyright. Upon request, the Contractor shall return such property to the G.N.W.T.

- Three (3) production samples of the work produced must be provided at no additional cost to the G.N.W.T. with each invoice.
- For printing services, the quantity of items printed shall be the quantity ordered subject to the following:

Quantity Ordered	Tolerance
1 – 5,000	-0% + 5%
5,001 – 50,000	-0% + 2.5%
50,001 – 100,000	-0% + 2%
over 100,000	-0% + 1%

2.8.3.3. Short-term Vehicle Rentals

This special purpose document has been developed.

The following terms have been developed in conjunction with Risk Management Section of the Department of Finance for casual vehicle rentals not exceeding 6 months:

- All vehicles provided by the Contractor must be properly licensed in the Northwest Territories. The Contractor must provide valid Motor Vehicle standard liability insurance covering all vehicles and/or craft owned or non-owned, operated and/or licensed by the Contractor and used by the Contractor in the performance of this agreement in an amount not less than one million dollars (\$1,000,000.00) per occurrence for bodily injury, death and damage to property.
- The GNWT maintains insurance coverage against physical damage, including glass breakage, to short-term rental vehicles similar to the Collision Damage Waiver provided by vehicle rental companies. The Contractor agrees that his standard CDW will not be purchased by the GNWT nor form part of any subsequent rental contract.
- The Contractor agrees that, in the event of an accident, to assist the GNWT in the completion of a GNWT Vehicle Accident Report.
- The GNWT will be responsible for all traffic fines during the period of any rental.
- All rental rates shall be inclusive of all charges for kilometres travelled during the rental period. The GNWT will not be liable for any additional charge based on distance travelled during the period of rental.
- Vehicles rented pursuant to the Standing Offer Agreement shall be available for use by all GNWT employees in

possession of a valid driver's license and 21 years of age or older.

- The Contractor shall provide all vehicles rented by the GNWT with a full tank of fuel. The GNWT shall return the vehicle at the end of the rental period with a full tank of fuel or pay to the Contractor an equivalent amount.
- The GNWT shall not be responsible for any charges related to vehicle rentals that are not explicitly identified on the OFFER hereto
- Generally, rentals exceeding 30 days are not recommended and other options should be explored. Contact Procurement Shared Services when there are longer term requirements.

2.8.4. Aircraft Chartering

2.8.4.1. Introduction

When chartering aircraft, the purchaser is required to follow GNWT contracting rules, while responding to demands of program staff, which frequently involves little advanced notice.

2.8.4.2. Authority

The Financial Administration Manual, Directive 3307 provides the primary GNWT rules governing aircraft chartering. This directive is available at the following web site:

<http://www.fin.gov.nt.ca/FAMWeb/>

The operational restrictions on aircraft operations are governed by Transport Canada licensing, the Aeronautics Act and Air Transport Regulations.

2.8.4.3.1.

2.8.4.3. Request for Tenders – Aircraft Charter

Fixed-wing Aircraft

This contracting form provides a standardized method for tendering and contracting for aircraft service, and thus simplifies this process.

The form has provisions for the aircraft operators to fill in the appropriate cost items normally associated with aircraft chartering and a total bid or estimated price. When the successful bidder has been chosen, a contract is formed by signing the acceptance area of the form. This eliminates the necessity to issue a separate contract for the services.

Also associated with this form are standard conditions and instructions to bidders that govern the tender process and the resulting contract.

When requesting tenders or informal quotations for a fixed-wing aircraft charter it is important to specify (where applicable):

- The number of passengers

- The estimated weight of baggage for passengers
- The estimated weight of any freight
- Departure time(s) and airport(s)
- Arrival time(s) (when a specific arrival time is necessary) and airport(s)
- Any specific aircraft requirements (floats, skis, etc.)
- If the charter is intended for a specialized purpose (e.g. wildlife surveys, site tours, mapping, etc.), those activities, including the estimated flight time, route, stopping points, etc., should be explained in detail.
- A note specifying if the aircraft is required to hold (stay at the airport to wait for the passengers) or if the airline is free to make that determination based on their own operational requirements.
- If two pilots (Captain and First Officer) are required for the flight(s). If this is not specified the airline will make that determination based on aircraft type, corporate practices and the rules and regulations specified by Transport Canada for commercial aircraft operations.
- If an IFR equipped aircraft and certified pilot are required (Instrument Flight Rules – which permit pilots to operate outside of VFR (Visual Flight Rules) and under marginal weather conditions). If this is not specified the airline will make the determination based on operational experience and flight requirements.
- If the Captain/First Officer require a certain level of flying experience (e.g. 3 years mountain flying experience). If not specified, normal rules and regulations will apply.
- If the aircraft requires a minimum flight range (either specified in miles or hours at cruise).
- If there are any special requirements for the aircraft (e.g. disabled accessibility, washroom facilities, in-flight service (meals, etc.), satellite phone, etc.).

2.8.4.3.2.

Rotary-wing Aircraft

Rotary-wing aircraft (helicopters) charters require a specialized contract that requires pricing information that is more suitable for the activities performed by this type of aircraft, and includes terms and conditions specific to rotary-wing operations. When requesting tenders or informal quotations, similar information as noted above (for fixed-wing aircraft) can be used, however, it is also important to specify (where applicable):

- Activities to be performed
 - Land use (e.g. inspections, pre and post project reconnaissance)
 - Oil and gas regulator activities (e.g. inspections and incident response)
 - Water use and waste water disposal activities
 - Scientific investigation and sampling

- External load operations including long lining and slinging fuel
- The type of flying (although usually indicative based on flight locations)
 - Mountain flying
 - High arctic
 - Water landings

Before requesting tenders or quotations for a rotary-wing charter it is important to read the standard terms and conditions in the template. The terms and conditions explain, amongst other topics, the standard approach for billing (e.g. minimum flight times, etc.) payment for fuel, expectations for aircraft crews (e.g. accommodations, meals, etc. when on a trip), and it is essential that contract authorities understand those conditions and plan accordingly.

2.9. Construction Contracting

2.9.1. Introduction to Construction Contracting

2.9.1.1. Overview

The GNWT usually uses two forms of construction contracting methods; the design-bid-build model (Construction Tender/Contract), and the design-build model (Design-Build RFP/Contract).

2.9.1.2. Suggested Reading

Users should review the GNWT Project Management Manual and the Good Building Practice for Northern Facilities documents prior to commencing with any construction processes.

2.9.1.3. Construction Forms

- Design-Bid-Build
 - Architectural & Engineering RFP
 - Consultant Agreement
 - Construction Tender
 - Construction Contract
- Design-Build
 - Design-Build RFP
 - Design-Build Contract
- Supplementary
 - Application for Substantial Completion
 - Application for Final Completion
 - Statutory Declaration
 - Employment Report

2.10. Contract Administration

2.10.1. Overview

The role of a Contracts Administrator within Procurement Shared Services (PSS) involves developing, implementing and administering the tendering and contracting processes of the Government of Northwest Territories (GNWT) PSS tender desk. They ensure accurate and timely contracting is adhered to in accordance with GNWT legislation, procurement policies, procedures and industry best practices to ensure accuracy and consistency of the tendering and contracting practices and information. The Contract Administrators act as the sole point of contact for bidders/proponents during most competitive procurement processes.

Boards and agencies that are responsible for their own contract administration activities should identify an individual who will oversee the above noted responsibilities during a procurement process.

2.10.2. Plan Holder's Log

The Plan Holder's Log is the record of all individuals/organizations that have expressed interest in a particular procurement opportunity. The Contract Event Opportunities system will generate a Plan Holder's Log.

Immediately prior to tender closing, caution should be exercised if no general contractors or only one general contractor has picked up documents. If an interested bidder knows this information, that bidder will be aware that there is no competition. In this case, the log should still remain public, but the contract coordinator should make a note of the circumstances. Following closure of the tender, a review should be conducted to determine whether the bid in fact represents competitive bidding.

The information contained in the Plan Holder's Log (bidder's name and address) may be provided over the telephone or by facsimile to the person requesting the information. 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.

Extreme care must be taken so that incorrect or misleading information is not provided during the tender process.

2.10.3. During the Competitive Solicitation Process

Contract Administrators are responsible for a number of activities during the period an event is open for viewing and competition within the public marketplace:

- Posting and distribution of event notices and documents on the GNWT Contract Event Opportunities (CEO) website.
- Responding to questions from bidders and proponents through direct emails of the posting of Addendums to the event.
- Assisting potential bidders and proponents on how to register online for and use the CEO website.

- Assisting potential bidders and proponents on how to express interest for, download documents, and bid online, for event opportunities.
- Handles all communications with potential bidders during the tender process. This will ensure the process is transparent, open and fair to all bidders.
- Directs questions from bidders/proponents to the Procurement Specialist or Project Officer for answers, and follows up to ensure answers are received and either communicated to the questioner, or included in any Addendums that are posted to the CEO website.
- Receiving bids or proposals online, by fax, or hard copy submission, prior to the closing time/date of the event and storing them in a secure location until the public opening time.
- 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.
- It is extremely important NOT to accept a bid, unless it is intended for you, OR you are able to take responsibility for its receipt and can ensure its timely delivery to the person for whom it is

2.10.4. Closing Competitive Procurements

Contract Administrators or their equivalent (in the case of certain boards and agencies) will oversee the closing of all procurement opportunities. Contractor Administrators will usually oversee and coordinate the following:

- Creating an Opening Tender Register form where electronic submissions are listed, and hard copy submissions are added
- The public are invited to the public opening, where the events are announced, tender bids are opened and the name of the bidder and amounts bid are recorded on the Tender Register. For other competitive processes, e.g. RFP, the name of the proponent only is recorded. The document is then signed by the Contract Administrator and the witness and copies can be made available to any public attending.
- In accordance with [*Government Contract Regulations*](#), all competitive bids for contracts valued over \$25,000 must be opened in public. The public opening is another opportunity for transparency for the procurement process. It is not a venue for evaluation or the answering of questions.

2.10.5. Receiving Tenders (Bids)

2.10.5.1. Introduction

The tender process must treat all potential bidders fairly and equally, so that the Purchaser 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.

2.10.5.2. Receiving Locations

Every Request for Tenders should establish a receiving location where tenders will be accepted. This should be defined by:

- name of department
- name of division
- floor location
- street address
- community name

Do not use a box number. Also, do not use a personal name, as that person may not be available to receive the incoming tender.

2.10.5.3. Official Clock

Prior to receipt of any bids the Purchaser must identify an official clock, the official clock establishes the official time for closing of the tender. Procurement Shared Services maintains official clocks in each of its closing locations for this purpose.

2.10.5.4. Receipt of Bids

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.

It is extremely important NOT to accept a bid, unless it is intended for you, OR 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 accepted by any representative of the GNWT.

2.10.5.5. Protection of Bids

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

Information pertaining to bids that have been received is strictly confidential. For example, the number of bids received and the names of bidders is confidential and must not, under any circumstances, be divulged to anyone before tenders are opened.

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, the bidder would then have the opportunity to submit a high price and be the successful bidder. This situation is unusual, but must be anticipated and avoided.

2.10.5.6. Sealed Bids

Every tender call will identify whether bids can be submitted through the Contract Event Opportunities website, in a sealed envelope, and if a facsimile submission is acceptable. If the tender must be submitted in a sealed envelope, then the bid must be submitted in the sealed envelope provided or any other envelope clearly marked as a 'Tender'. In order to identify the tender correctly the bidder should ensure the following information is displayed on the outside of the envelope:

- Tender reference name and number
- Closing date of the tender
- Name and address of the person or firm who submitted the tender

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 tender documents, and must not be changed by the purchaser except through a written addendum.

2.10.5.7. Facsimile Bids

In cases where fax bids have been allowed, the bids must receive the same degree of security and control as is afforded to sealed tender bids. Fax bids must be inserted into an envelope and sealed immediately upon receipt. The sealed envelope must be marked with the appropriate tender information details (listed above under Sealed Bids) and initialed by the person receiving the document.

The use of fax tender receipt procedures does not eliminate the regulatory requirements for a public opening by a tender-opening committee. The envelopes containing the facsimile tenders should be opened in the same manner as for sealed bids.

2.10.5.8. Late Tenders and Amendments

A late tender is one received after the official date and time set for the receipt of tenders. 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.

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 tender file.

If a tender is received late due to the negligence of the Purchaser, the bidder who submitted the tender may be able to claim damages from the purchaser. If this happens, you should seek advice immediately.

Bid Amendments after Closing

Amendments to bids, which have been received after the official time set for receipt of tenders, are treated in the same manner as a late tender, and cannot be accepted.

No Bids Received

If no bids are received by the closing time, the Tender Opening Committee should prepare a Register of Tenders and note 'No Bids Received'.

The Purchaser 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.

Illegible or Unmarked Bids

An illegible or unmarked envelope, which is received and appears to be a bid, may be opened prior to the tender closing to determine its contents. This should only be done in the presence of at least one witness.

If it is a tender, 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.

The bidder submitting the unmarked or illegible envelope should be advised of what happened, and advised that in future this may lead to a rejection of the bid. The receiving desk would not be responsible for lost or misplaced tenders resulting from insufficient or improper identification.

2.10.6. Opening Bids

2.10.6.1. Formal Tender Opening

Public, Prompt, Professional

In accordance with [*Government Contract Regulations*](#), all competitive bids for contracts valued \$25,000 and over must be opened in public.

Additionally, to be fair to all bidders, the process must be timely, and conducted in a professional manner. Bids must be opened as soon as practical after the closing time.

If this process is not followed, this may be seen as a failure to respect the integrity of the bidding process. A late opening will prompt bidders to ask why the opening was delayed, and whether late bids were accepted. An official clock should be designated as the clock to be used for tender closures.

2.10.6.2. Tender Opening Committee

A Tender Opening Committee presides over the tender opening. It should consist of at least two, but preferably three, members - a Chairperson, a Secretary and a Witness. In the latest version of the [*Government Contract Regulations*](#), Section 12.3 stipulates that neither the [*Contract Authority*](#) nor a bidder can act as a witness.

The committee opens all bids that have been received on time, and prepares and signs a Tender Register for each tender call.

Prior to opening bids, the Chairperson should announce that all bids 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. The Chairperson should then announce the official name of the project for which tenders are being opened.

2.10.6.3. Information to be announced at Tender Opening

Upon opening each tender envelope, the Chairperson must announce:

- The name of the person or company who submitted the tender
- The amount of the tender
- Any amendments to the total amounts of the tender the final tender price, which would be the tender price plus or minus any amendments

No other announcements are made, nor should any other information be provided.

2.10.6.4. Completing the Tender Register

The Secretary records on the Tender Register the information announced by the Chairperson:

- The correct name of each bidder (occasionally the name appearing on the envelop is inconsistent with the name appearing on the tender)
- The amount of each bid originally announced every change to the amount, and the revised bid amount. (When the amendment is expressed as a price reduction or increase, the revised amount is calculated; amendments not related to price are not recorded by the Secretary.)
- The final bid price

Each member of the committee signs or initials every bid and related amendment (letter or facsimile), as well as the Tender Register. Bids should be initialed on the page that indicates the total bid price.

2.10.6.5. Informal Tenders

In the case of informal tenders or quotations where the value of the contract is less than \$25,000, it is recommended that bid information be released to bidders upon request.

2.10.6.6. GNWT Contract Event Opportunities System

For Tender in excess of \$25,000 information manually recorded on the Tender Registry needs to be transferred to the GNWT Contract Opportunity website.

2.10.7. Receiving and Opening Proposals

2.10.7.1. Introduction

Formal openings should be held for [RFP](#) processes. Sections [2.5](#) and [2.6](#) provide additional information on receiving and opening bids.

2.10.7.2. Timeliness

For all RFP's the proposal closing date and time stipulated in the solicitation are firm. The onus is on the proponent to ensure that the proposal is delivered on time to the location designated in the solicitation. Proposals should be date and time stamped upon receipt.

Late proposals are not to be considered and will be returned unopened to the proponent; however, details may be recorded for tracking purposes for future opportunities.

2.10.7.3. Classification of Responses

Proposal responses are normally submitted in sealed envelopes with the tendering office address, proposal number, closing date and time and supplier name and address clearly shown on the envelope. The supplier is responsible for ensuring the response is delivered to the correct address and by the time specified in the proposal call.

A proposal submission, by facsimile, may be accepted as a valid response (if stipulated/permitted in the [RFP](#) document) provided it is received in its entirety at the proposal submission address by the closing date and local time shown on the [RFP](#) documents. Recent court rulings have decided, with newer fax machines and the ability to store incoming faxes, that faxes are deemed to have been received once accepted into the faxes memory. The onus is on the supplier to ensure the response is properly transmitted. A written confirmation of a facsimile bid is not required.

A facsimile proposal cannot be used where original documents are required (e.g. certified cheques, bonds, samples, etc.), or as may be otherwise stated in the [RFP](#) documents.

"No Proposal" or "Unable to Respond" classifications on proposals are made when the supplier responds in writing stating that the company is unable to quote on or supply the requested goods or services. These responses are recorded on the proposal register and are considered as valid responses for the purposes of supplier registration management.

2.10.7.4. Receiving Proposals

The conditions for the receipt of proposals, as spelled out in the proposal call, must be adhered to. This helps avoid the public perception, and legal requirements, that a proposal submission has been dealt with unfairly.

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.

2.10.7.5. Opening Proposals

In a formal public opening, only the name and address of the proponent is identified publicly and recorded in the register. Once proposals have been opened, formally or otherwise, only the name and address of each proponent, as recorded, should be released to the public.

The dollar value of a proposal should not be recorded nor publicly revealed. Since the dollar value is only one of the criteria on which an award is made, the low price may not be the successful price. Therefore, publicly revealing these numbers may be misleading particularly before the formal evaluation is performed. Additionally, the structure of the proposals may make identifying the total costs difficult.

2.10.7.6. Modification and Withdrawal of Proposals

Modification

2.10.7.6.1. After *RFP* closing, modifications initiated by a proponent are not permitted.

Electronic submissions amending a proposal price previously submitted must contain either a plus/minus variance to the original bid or a complete new tender indicating whether it is a revision of, or an alternate to, the original proposal must be received prior to the designated closing date and time.

2.10.7.6.2.

Withdrawal

Proponents can withdraw their proposals at any time prior to proposal submission deadline by issuing a written request to the Purchaser.

2.11. Awarding Contracts

2.11.1. Introduction

This Section described the process for awarding contracts and notifying bidders/proponents of the procurement process results.

Once the evaluation of bids/proposals has been completed, the purchaser should be in a position to award the contract, subject to the purchaser obtaining all necessary approval to proceed with the award.

As this Section will address the overall process for awarding contracts (regardless of the procurement method), it is important to consider a few notable differences between a Request for Tenders (*RFT*) process and a Request for Proposals (*RFP*) process.

Request for Tender

Request for Proposals

- Proposals are revocable at any time prior to contract award

- Bids are irrevocable for the period defined in the tender documents (usually 30 days)
- Bids may include a requirement for bid security (e.g. a bid bond) to be submitted with the bid (usually only with construction)
- Letters of Acceptance (in the form provided) can be used when bid security has been submitted by the bidder
- Letters of Intent (in the form provided) may be used when required
- Letters of Regret (in the form provided) should be sent to all bidders who provided a form of bid security
- Contract is awarded to the lowest, *responsive* and *responsible* bidder
- Negotiation of the contract is not recommended (certain circumstances may require minor negotiations however)
- Since proposals are revocable there are no requirements for bid security
- Letters of Acceptance should not be used since there is no bid security to ensure the contractor will execute the contract documents (the proposal is revocable)
- Letters of Intent (in the form provided) may be used when required
- Letters of Regret (in the form provided) should be sent to all unsuccessful proponents
- Contract is awarded to the highest ranked proponent
- Minor negotiation of the contract is permitted with the highest ranked proponent, providing the intent and scope of the original *RFP* is not significantly altered.

2.11.2. Acceptance Period

2.11.2.1. Tenders

Although an award may be made at any time after the tender 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 tender bids beyond the acceptance period. The procedure for extending the acceptance period depends on the type of tender/contract that is used.

2.11.2.2. Proposals

Proposals that have been submitted in response to a *RFP* are revocable at any time prior to the execution of an actual contract. This is why it is important that purchases do not authorize a proponent to commence with any work prior to having a signed contract.

In the end, it is up to the proponent to decide whether or not they will accept and execute a contract. If the highest ranked proponent was to

refuse to execute a suitable agreement, then the purchaser would move to the next proponent. There is no specific time frame to complete the award process, however, the purchaser should make all efforts to complete the process as early as possible, as this will allow all proponents (whether successful or not) to plan their work load.

2.11.3. Results Notification

A number of notification templates have been prepared by the Department of Finance for use by purchasers. The templates are available through Internal Services, DIIMS, and Procurement Shared Services.

- **Letter of Intent**

A Letter of Intent will usually only be used for an [RFP](#) process, where the proponent is simply informed that they are the highest ranked proponent, and express the GNWT's interest in meeting with that proponent to discuss entering into a contract. It does not commit the GNWT to anything and does not authorize the proponent to proceed with any work.

- **Award/Acceptance Letter**

Letters of Award/Acceptance may be used to notify successful bidders of contract award. A Letter of Acceptance is a formal acceptance of an offer; it constitutes a legal agreement or contract between the GNWT and the contract party.

The purpose of the Letter of Acceptance is to allow the contractor to commence the work before a formal contract is issued. It allows the contractor to pre-order material, assign resources or to obtain bonding or proof of insurance.

It is recommended that a Letter of Acceptance only be used if the bidder has provided bid security (e.g. bid bond, letter of irrevocable credit, or deposit). Bid security provides assurance that the bidder will indeed enter into the contract, and will not withdraw from the process. If they were to refuse to sign the contract, the bidder would have to forfeit their bid security.

- **Letter of Regret**

Letters of regret are used to notify unsuccessful bidders/proponents that a different bidder/proponent has been awarded the contract.

For [RFT](#) processes, letters of regret would usually only be used when the purchases needs to return a form of bid security (usually a cheque). However, it may be appropriate for certain high-value purchases.

Letters of regret should be used for all proposals/proponents to inform them of the results of the [RFP](#) process. The letter will inform the unsuccessful proponent that they are able to request a debriefing meeting to discuss the relative strength and weaknesses of their proposal with the [Contract Authority](#).

- **Letter of Regret (Pending Contract Execution)**

This letter should be used when a proponent or bidder (usually a proponent) has been selected for the contract, but the contract execution process is

expected to be delayed (this could be due to negotiations, approvals, etc.). The letter will inform the unsuccessful bidder or proponent that the evaluation process has been completed and they are not the highest ranked proponent (or low bidder as the case may be), and that the [Contract Authority](#) is working with the highest ranked proponent (or low bidder) to execute a contract. The letter will state that the unsuccessful proponent or bidder will be notified once a contract has been executed, at which point they can request a debriefing meeting (in the case of a RFP).

Usually this letter would be used when the highest ranked proponent has been sent a Letter of Intent.

Any award notice should be reviewed carefully to ensure the following details are accurate:

- the award is made to the approved bidder or proponent
- the bidder/proponent's name and address are identical with those indicated in the bid or proposal
- the description of the goods/service/project and the delivery location is identical to that quoted in the tender or proposal
- the contract price shown conforms with the bid or proposal, including any amendments (which should be noted)
- the offer being accepted is correctly identified - i.e., options or alternatives need to be identified if they are being accepted, etc.

Notification of contract award is normally sent through email. It is important to keep a record of any such communications.

2.11.4. Negotiating the Contract

2.11.4.1. Introduction

This Section describes the parameters for any negotiations with proponents or bidders following a [RFP](#) or [RFT](#) process.

2.11.4.2. Request for Proposals

If you have included a Pro-Forma Contract as part of the RFP, you have already established the essential contract terms that are considered as mandatory to the process.

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

Advise the proponent that, after initial evaluation, their proposal was rated the highest and could potentially provide the best value, but a final written contract still needs to be prepared (i.e. the Letter of Intent). Ensure that the proponent understands that until such contract is finalized, there is no contractual relationship.

Caution: Negotiations do not mean fundamentally changing the requirements or the proposal. 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.

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

2.11.4.3. Request for Tenders

Under most situations negotiations with a bidder, following a [RFT](#) process is not recommended. The intent of the [RFT](#) is to award a contract to the lowest, [responsive](#) and [responsible](#) bidder, based on the requirements set out in the tender.

Only in the event that one bid, or identical low bids are received should negotiations be considered. However, it is important that negotiations do not lead to a contract for work that is substantially different than what was considered in the tender document. A purchaser should never put the [Contract Authority](#) in a position where a contractor could complain that they would have bid on a procurement opportunity had they known the terms of the final contract.

2.11.5. Execution of Contract Documents

2.11.5.1. Introduction

The execution of a contract refers to the affixing of signatures and seals to the contract document. This requires appropriate signatures by both the GNWT and the Contractor.

2.11.5.2. Signature(s) of the Contractor

A contract will be an agreement between the GNWT and one of the following types of organizations:

- Corporations
- Partnerships
- Sole Proprietorships
- Incorporated Societies
- Bands and Community Development Corporation
- Municipalities

Information on the type and legal status of a Contractor can be obtained from the Legal Registries Division, Department of Justice.

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. It is essential that you ensure that the person signing for the contractor has the authority to enter into a contract for the Contractor.

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.

2.11.5.3. Corporate Structures

Corporations

2.11.5.3.1.

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:

- Own property
- Carry on business
- Enter into contracts
- Sue and be sued
- Possess rights
- Incur liabilities

A shareholder's liability in a corporation is limited. Their liability in connection with business or property owned by the corporation is limited to the value of shares they have in the corporation. The maximum amount a shareholder can lose is the amount paid for the shares.

2.11.5.3.2.

Under the Northwest Territories *Business Corporations Act*, a company (or 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 must be able to bind the corporation. If that person is under no authority to contract, the agreement will not be binding on the corporation.

Partnerships

A partnership is another common form of business enterprise which 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.

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.

Limited Partnership:

- the limited partner's liability is restricted to the amount of money or other property that partner contributes to the partnership. If a partner contributes \$5,000, then the maximum amount that partner can lose is \$5,000.

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.

Sole Proprietorship

2.11.5.3.3.

In a sole proprietorship, an individual carries on business on 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.

2.11.5.3.4.

Societies

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.

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 corporation.

2.11.5.3.5.

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.

Bands and Community Development Corporations

When contracting with a Band, agreements should be entered into with the properly named Band Council, as represented by the Chief and Band Councilors. The Chief and Band Councilors should sign the

agreement. In addition, a resolution authorizing the Band Council to enter into the particular contract should also be signed.

A community development corporation registered under the Northwest Territories Companies Act may contract in the same manner as a company. It should always be verified whether or not the corporation is registered as a company. If it is not, contracts by such an entity should be signed as if the corporation were a Band.

Municipalities

2.11.5.3.6.

Under the *Northwest Territories Cities, Towns and Villages Act*, a municipal corporation has the power to contract for all municipal purposes. This power may be authorized by the municipality's bylaws. It should be noted that a municipality may only contract in accordance with the scope of its statutory powers. In other words, if the bylaws do not authorize a contract, the contract may be void.

2.11.5.4. Corporate Registries

Corporate Registries is responsible for:

- the incorporation of businesses, societies and co-operative associations;
- registering companies incorporated in other jurisdictions but carrying on business in the Northwest Territories, and
- the registration of partnerships, sole proprietorships and certain business names.

Purchasers may use the Corporate Registries Online System to confirm whether or not a bidder/proponent is appropriately registered and in good standing.

2.11.5.5. Business Licenses

Contractors will need a business license from the municipality if they are operating within a community, or if your work does not take place within a specific municipality from:

Business Licensing
Consumer Affairs Division
Department of Municipal and Community Affairs

GNWT Online eServices Website:
<https://www.gov.nt.ca/en/participating-online-eservicesContract>
Authorities should ensure that the business is properly licensed or if not licensed agrees to do so, and provides proof of licensing, within 14 days of signing the contract.

2.11.5.6. Signatures by GNWT

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

If the contractor fails to return the contract documents, or fails to provide any required documents, such as contract security, proof of insurance, etc., you may be faced with re-considering the award.

Options may include:

- allowing the contractor additional time to deliver the documents;
- taking the work out of the contractor's hands;
- using the bid security to offset the costs of entering into a contract with the next low bidder, or re-tendering the work.

3. CONTRACT MANAGEMENT

3.1. General Information

3.1.1. Introduction

GNWT Departments utilizing the services of Procurement Shared Services (PSS) will be provided with an electronic contract file. While PSS is available to assist all departments, boards and agencies over the term of any contract, its primary role stops once a contract has been awarded and the file passed back to the client. Clients bear overall responsibility for all contract management activities.

This process is a different for boards and agencies, however, the activities described in this Section apply equally to those organizations as it does to GNWT departments.

Financial Shared Services (FSS) also works with the client to ensure approval and payment of the invoices.

3.1.2. Contract Management Checklist

In addition to the topics provided in this Section, a Contract Management Checklist is provided below to assist Contract Authorities with this process.

Overall Framework

- Establish and maintain a good relationship with the contractor;
- Be a sophisticated consumer of the service being provided under the contract, i.e. know the market and know what constitutes standard business practice in that market;
- Treat the contractor as an equal not as a servant;
- Keep adequate, written records of all dealings with the contractor and administration of the contract. This means file notes of telephone conversations, records of meetings, documented invoice processing, etc.

Understanding the Requirement

Understand the contract and manage the contract in accordance with its terms, i.e. ensure that the outcomes required under the contract are met within the confines of the contract:

- Understand the link between specific outcomes and contract price;
- Be aware of potential risks and strategies for managing those risks;
- Be aware of the clients responsibility for managing contractor safety, as required;
- Understand the respective contractual obligations and the performance indicators against which performance will be monitored and measured.

Monitoring Performance

- Monitor the performance of the supplier against the agreed performance indicators;
- Give feedback regarding performance;
- Agree on mechanisms for resolving problems as they arise;
- Address any emerging issues and seek assistance on problems which cannot be resolved quickly;
- Make any contractual amendments if required;
- Seek specialist advice whenever unsure of the rights of either party or the correct application of the contract.

Contract Management Activity

- Accept delivery of the services and any associated goods;
- Process claims for payment in accordance with the contract and the requirements of the *Financial Administration Act*;
- Monitor contract price and payments against budget;
- Administer warranty arrangements.
- Monitor contractor safety management systems, as required, for services;
- Fulfill obligations required for:
 - Risk Management – maintaining insurance requirements during the length of the contract, as required, for services; and
 - Workers' Safety and Compensation Commission (WSCC) – maintaining requirements under the *Safety Act* (i.e. Letter of Good Standing and the Final Clearance Certificate).

Contract Management Checklist

As per the accompanying Checklist, the documents referred to and the contents of the Contract Management File should originate from two sources:

1. Documents provided by PSS: These documents have been used during the competitive or contract creation process by PSS, and are tools to be used by the client to aid in managing the contract to completion.
 - Signed Contract
 - SOA Release – copy of original SOA if applicable
 - Sole Source Authorization – Signed (if applicable)
 - Approved SAM Requisition
 - Insurance Certificate
 - WSCC Letter of Good Standing
 - Contract Change Orders (CCO) (if applicable)

2. Documents the client will add to the file while managing the contract: These documents the client will create and keep in the Contract Management File to demonstrate fulfillment of the responsibilities in managing the contract.
 - Start-up Meeting Minutes
 - Safety Orientation Checklist
 - Contract Schedule
 - Correspondence with vendor/contractor
 - Safety Orientation/Tailgate Minutes
 - WSCC Final Clearance Certificate
 - Insurance Certificate Renewal
 - Documentation of the contract completed
 - Payment Spreadsheet
 - Performance Review/Evaluation
 - Safety Review/Evaluation

3.2. Retention of Contract Documents

3.2.1. Digital Integrated Information Management System (DIIMS)

Some GNWT departments, boards and agencies utilize their own document management systems, and while this Section is aimed at departmental users of the Digital Integrated Information Management System (DIIMS), much of the information can be applied to other systems.

DIIMS is a content lifecycle management system that provides organizations with the tools to manage and share corporate information through its lifecycle from a single repository accessible across the territory.

3.2.2. Retention Requirements

This Section deals with the minimum retention period for documents relating to the tender, award and performance of the contract.

As contracts are considered administrative records, they are to be retained in accordance with the GNWT's Administrative Records Classification Schedule (ARCS).

Other operational records are to be retained in accordance with the relevant Operational Records Classification Schedule (ORCS).

The following information is provided for guidance only. Contact your Records Coordinator or the Department of Finance Records Manager or your DIIMS contact.

How long Contract Documents must be retained:

The GNWT's ARCS primary 4280 – Contracts lists the following retention periods.

Original Contract Documents:

Master copies of individual contracts are to be kept on-site for two years after the contract has completed, superseded, terminated, etc.

Master copies of both successful and unsuccessful bids, proposals, Requests for Tenders, etc. are to be retained as noted above.

Copies of Contract Documents:

Copies of individual contracts should be retained on-site until the contract is concluded or cancelled and then forwarded to the Records Center for immediate destruction.

3.2.3. Impact of Legal Litigation on Record Retention

In the NWT, under the *Limitation of Actions Act*, the limitation period for the initiation of legal action arising out of a contractual dispute is seven 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.

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

3.2.4. Contract Management File

All Contract Authorities should maintain a Contract Management File, in either hard copy or electronic formats, for each contract they are responsible for. File contents would include as a minimum: the information detailed in the Contract Management Check List referred above and any correspondence or decisions related to the contract.

Why Maintain a Contract Management File:

- For auditor purposes;
- As a resource for the next person who will be taking responsibility for that contract or file;
- For dispute resolution purposes, it is best to have decisions and correspondence in writing; it is preferred by the courts, and is more defendable than second or third party opinions.

3.3. Indemnity and Insurance

3.3.1. Introduction

All contracts must contain terms and conditions that ensure adequate insurance coverage by contractors. ([FAM 705.09](#)) This directive describes the various insurance requirements contained within standard contracts. For non-standard contracts, or those involving special risks (such as environmental or cyber), contact Risk Management and Insurance for additional insurance coverage requirements.

3.3.2. Indemnification

All contracts must contain an indemnity clause in which the contractor indemnifies the Government against any third party claim arising out of the contractor's performance of the contract.

3.3.3. Types of Standard Insurance Coverage

3.3.3.1. Comprehensive General Liability

Contractors are required to carry Comprehensive General Liability insurance coverage in an amount not less than \$2,000,000.

Contact Risk Management and Insurance, Department of Finance, if you feel this limit should be reduced or increased on a contract because of the potential risk involved in the project.

3.3.3.2. Workers' Safety and Compensation Commission

It is a statutory requirement that all workers be covered under the Workers' Safety and Compensation Commission (WSCC) program. GNWT standard contracts provide that, if any contractor is assessed any extra levy, extra assessment, or super-assessment as a result of an accident causing injury or death to an employee of the contractor or subcontractor, or due to unsafe working conditions, these extra amounts will not be reimbursed by the GNWT.

In addition, Section 3.4 of this manual describes the requirement for ensuring that contractors are in good standing with the WSCC.

3.3.3.3. Motor Vehicle, Watercraft, Snowmobile Standard Liability

The contractor must maintain adequate motor vehicle liability insurance to ensure that they can satisfy their indemnity obligations. 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. The prescribed amounts are as follows:

- Generally, not less than \$1,000,000 per occurrence for injury, death, and damage to property.
- For buses, not less than \$2,000,000 for vehicle hazards, and not less than \$21,000,000 for bodily injury to or death of one or more passengers and loss of or damage to passenger property in one accident.
- For school buses, relevant endorsements with limits of not less than \$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.

3.3.3.4. Aircraft Liability

Any aircraft owned or non-owned, operated and/or licensed by the contractor and used in the performance of the work must be covered against bodily injury, death and property damage and passenger

hazard, the limit must be a minimum of \$5,000,000 inclusive. These limits may be set higher depending on the type of work performed.

3.3.3.5. Professional Liability

Contractors are required to maintain insurance covering claims arising out of failure to render any Professional (Architectural, engineering, legal, medical) service under the contract with limits of not less than \$1,000,000 per claim and \$2,000,000 annually. Contracts for semi-professional (Accountant, auditor, consultant, researcher, etc.) services may require Errors & Omissions Liability Insurance. Contact Risk Management & Insurance, Department of Finance.

3.3.3.6. Property (“All Risk” or “Course of Construction”)

Property or Course of Construction insurance is physical damage insurance for the project. This insurance insures against most risks of physical loss of or damage to the materials and work in progress. Under the GNWT’s existing general property policy the GNWT insures the Course of Construction for project values up to \$10,000,000 and the Contractor carries the liability insurance. For projects over \$10,000,000 Risk Management and Insurance requires project specific insurance and gets quotes for both Course of Construction and Wrap Up Liability Insurance.

The GNWT maintains this form of insurance to protect all those who directly participate in the construction project. Contractors are responsible for certain amounts as described below.

The coverage excludes the following:

- goods in transit to the site
- highways and ferries contracts
- water and sewage contracts with no buildings
- Single family and duplex residential projects (must be purchased separately)

Course of Construction insurance coverage is extended to hamlet or settlement buildings when the GNWT owns the materials during the management of construction. However, if full authority or block funding is provided to the hamlet and the municipality undertakes the project, the GNWT insurance will not cover the project.

3.3.3.7. Marine Cargo

Marine Cargo insurance is essential when high valued goods are being shipped to the site by marine transportation such as tug and barge operations. Marine carriers include basic coverage in the freight tariff but it is insufficient to cover most losses. Risk Management and Insurance should be contacted in advance to obtain cargo coverage.

3.3.3.8. Cyber Liability

Cyber Liability Insurance is intended to cover the possibility of cyber based liability lawsuits that could arise from information breaches. In consultation with Risk Management (Department of Finance) purchasers will consider the risks involved with the contract work and determine if it is necessary for the vendor to carry cyber liability coverage, and the limitations of any such policies.

Items to consider regarding Cyber Liability Insurance:

- Will the vendor have access to records containing personal information (i.e. health records, employment records, educational records, court records, etc.)?
- If the vendor is required to store data, where are the servers located?
- Will encryption be used?

It is necessary to information the Risk Management Division of any IT related contracts where the vendor will have access to any confidential or otherwise sensitive information. The Office of the Chief Information Officer (OCIO) (Department of Finance), must also be consulted.

The Risk Management Division will make the final decision regarding the requirement for Cyber Liability Insurance.

3.3.3.9. Environmental Liability

Environmental liability insurance is intended to cover the risks associated with losses that arise from environmental cleanup expenses, property damage, defense costs and/or bodily injury. Policy endorsements may include: pollution liability, environmental impairment liability, and/or pollution event liability. Consult with Risk Management and Insurance when these risks will be present in any contract activity.

3.3.4. Deductibles

With the exception of Course of Construction insurance, the contractor is responsible for any deductibles, exclusions and/or insufficiencies of coverage related to the policies.

In the case of Course of Construction insurance, the contractor is responsible for a portion of the deductible, as follows:

- 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.
- For contracts valued at less than \$100,000, an amount equal to 5% to a maximum of \$5,000 per occurrence.

3.3.5. Certificates

Standard contracts require contractors to 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 Risk Management and Insurance, Department of Finance. Ensure that the contract requirements have been met – each type of coverage required should be described on the Certificate, in the limits required. The GNWT must be listed as an additional insured on the Commercial General Liability Insurance Certificate.

3.3.6. Advising Risk Management

Certain information is required by the Department of Finance, Risk Management Division on construction and renovation contracts valued over \$100,000.

The Risk Management and Insurance Form is to be completed and forwarded to Risk Management no later than 60 days after contract award (but prior to the commencement of work) for projects up to \$10 million. Project above \$10 million Risk Management must be notified when the tender document is issued.

If the project is valued over \$1,000,000, include with the Risk Management and Insurance Form, the following documents: RFP/Tender, Geotechnical Report, Contract, IFC Drawings, and the Construction Schedule.

Project Officers / purchasers may obtain the following two forms through INF Internal Services, through the Department of Infrastructure and/or Department of Finance SharePoint site, or by contacting Procurement Shared Services:

- Risk Management Form – Construction and Renovation Projects
- Risk Management Form – Horizontal Infrastructure

3.4. Workers' Safety and Compensation Commission

3.4.1. Introduction

- The purpose of this Section is to provide guidance to contracting personnel with respect to obtaining information from the Workers' Safety and Compensation Commission (WSCC) relative to the payment of assessments by the Contractor and sub-contractors.

3.4.2. WSCC Clearance System

Section 80 of the *Workers' Compensation Act* sets out legal liabilities of a principal (GNWT) with respect to any outstanding Workers' Safety and Compensation Commission (WSCC) assessments relating to work performed on a contract. In order to protect the GNWT from such liabilities the WSCC has developed a clearance letter system for principal contractors to ensure that companies are registered and in good standing.

The WSCC system provides several letters relating to the standing of contractors and subcontractors:

- Letter of Good Standing
- Interim Letter
- Final Clearance Letter
- Do Not Release Letter

3.4.2.1. Letter of Good Standing

This may be obtained at the beginning of the contract and provides assurance the contractor has registered with the WSCC and is currently up to date in paying assessments.

3.4.2.2. Interim Letter

This is available prior to making progress payments and serves to assure that the contractor is in good standing at the time of payment. It also releases the principal of liability up to the date of the Interim letter.

3.4.2.3. Final Clearance Letter

This letter is provided prior to making Final payment on the contract and relieves the principal of all liability related to the contract.

3.4.2.4. Do Not Release Letter

This will be sent by the WSCC if the Contractor is not in good standing and may request that payment be held until further notice as provided by the WSCC.

3.4.3. Procedure

3.4.3.1. Application

As a rule, WSCC clearance should be obtained on construction and service contracts that are expected to have “boots on the ground” (i.e. vendor personnel on site, in the NWT) for 10 or more days.

At the time of contract award, complete the form(s) naming the contractor and all subcontractors which will be performing the work and send to the WSCC office.

The Contractor must be made aware that the award of the contract is conditional upon receiving a Good Standing Letter from the Workers' Safety and Compensation Commission of the NWT covering the Contractor and all subcontractors.

3.4.3.2. Sole Proprietor

In cases where the contractor is deemed a sole proprietor or “self-employed operators” they are not covered under the *Workers' Compensation Act*. While not required to have coverage the Department of Finance strongly recommends self-employed operators obtain WSCC optional coverage. If approved, they receive the protection and benefits of the *Workers' Compensation Act*.

3.4.3.3. How to Obtain Clearance

The Workers' Safety and Compensation Commission has made available a form for the purpose of obtaining the necessary clearance of contractors and subcontractors. This form can be found through WSCC Connect (registration will be required):

<https://connect.wscct.ca/>

3.4.3.4. Contract Award

In the case of construction and service contracts, the Contractor is to be advised that an Interim letter and/or Final Clearance Letter from the WSCC must accompany a request for interim (substantial) completion payment. This letter will certify that the contractor and all subcontractors are up to date in payment of WSCC assessments.

3.4.3.5. WSCC Do Not Release Letter

In a case where the WSCC advises that a contractor or subcontractor is not in good standing with the WSCC, do not proceed with the contract award or payment until the issue is resolved with the contractor.

3.5. Safety

3.5.1. Managing Safety

Under GNWT contracts, contractors are required to comply with all applicable safety legislation and regulations. However, it is still essential for the GNWT [Contract Authority](#) to set clear expectations with contractors concerning safety practices and promote a culture of safety whenever working with contractors.

3.5.2. Applicable Legislation

- *NWT Safety Act*
- General Safety Regulations
- Occupational Health and Safety Regulations
- *Workers' Compensation Act*

3.5.3. Certificate of Recognition (COR)

The GNWT supports best practices in safety in the workplace. The Safety Requirements of all GNWT contracts require that any prospective contractor or subcontractor must meet minimum standards under the Northwest Territories *Safety Act* and Regulations

Status

Currently the GNWT does not require mandatory registration of contractors in a registered safety programs such as COR/SECOR. However, the GNWT encourages all contractors to register and participate in recognized safety programs such as the Certificate of Recognition or equivalent.

3.5.4. Principal Contractor Designation

Under Construction Contracts and Design-Build Contracts, contractors are designated as the Principal Contractor for the purposes of the *Safety Act* RSNWT 1988 c. S-1, the General Safety Regulations RRNWT 1990 c.S-1, and the Occupational Health and Safety Regulations RNWT R-039-2015, all as amended.

As the Principal Contractor, the contractor must:

- Ensure the activities of employees, workers and other persons at the site of the Work relating to occupational health, occupational safety, and accident prevention are coordinated;
- Ensure that all necessary notifications are given as and when appropriate; and
- Do everything it is reasonably practicable to establish and maintain a system that will ensure compliance with the above referenced enactments and all other applicable workplace safety legislation and regulations that are or become applicable during the performance of the Work.

3.6. Financial

3.6.1. Payment Holdbacks

3.6.1.1. Introduction

A holdback is earned contract monies that are temporarily withheld from the contractor within the terms of the contract in order to protect the interests of the GNWT and subcontractors and/or suppliers to the general contractor.

If a contractor defaults in performing the work or in paying accounts, the GNWT may use the holdback monies to complete the work and/or pay the contractor's accounts.

3.6.1.2. Application of Holdbacks

The amount of the holdback depends on the type of contract, and type of contract security provided by the contractor.

Construction Contracts

If surety bonds are provided as the contract security, the holdback should be 5% of the total value of the contractor's progress claim.

If any form of contract security other than a surety bond is provided, or if no contract surety is provided, the holdback should be 10% of the total value of the contractor's progress claim.

Other Types of Contracts

Holdbacks are not usually required on contracts for general services, goods or consulting. Holdbacks on the supply of materials are generally limited to those involving a significant amount of installation labour.

3.6.1.3. Use of Holdbacks

In the event of a default by a contractor, the holdback may be used for:

- completing the work, including the correction of any defects, faults, or omissions
- Paying subcontractors' lawful accounts directly related to the contract (when contract security has not been provided)

- Paying statutory accounts (i.e. WSCC, Revenue Canada, Labour Standards, etc.) that are directly related to the contract

With respect to priority of payment, completing the work is always the first priority. The priority of the other payments is determined through consultation with Legal Services Division, Department of Justice.

3.6.1.4. Release of Holdbacks

When the Certificate of Substantial Completion is issued to the contractor, the holdback amount should be released as part of the payment made to the contractor, provided it is not required for the purposes of the contract.

In the case of contracts for goods, the holdback amount should be released upon final inspection of the work and acceptance of the goods as installed or delivered.

In the case of contracts for general services, any holdback amount should be released as part of the final payment made to the contractor after completion of inspection and acceptance of the work.

Unjustified withholding of any monies due to the contractor, including holdbacks, is a poor contracting practice and should be avoided.

3.6.2. Performance and Payment

3.6.2.1. Introduction

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.

This Section outlines the general considerations of measuring performance and making payments at the various stages of GNWT contracts.

Please refer to Section 1.11 for details concerning performance security.

3.6.2.2. Partial Performance

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 most service and construction contracts, the work is spread over several months or longer. In these cases, partial contract payments are usually made to the contractor. The terms of the contract should state the dates progress payments are due and/or milestone payments are due.

It is important to 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 GNWT contract payments follows the [FAM 720](#), and is dependent on the date of receipt

of substantiated invoices from the contractor. Invoices or requests for payment must be date stamped upon receipt.

Evaluating Payment Requests

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.

Progress payments must reflect the amount of work actually performed.

Materials / Goods on Site

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

Note: If further transportation of the goods will take place after they have been accepted and paid for, the contractor should be required to carry the appropriate transportation insurance on the goods.

Insurance requirements for these situations should be discussed with Risk Management and Insurance, Department of Finance, to ensure that the GNWT is fully covered against possible loss.

Initial Progress Payment

Before certifying the initial contract progress claim, the contract officer must verify that the contractor has submitted all the required documents as applicable:

- signed contract documents
- contract security
- insurance policies
- local/northern employment reports

Performance Holdbacks

Department of Finance 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 GNWT and those who performed work or supplied materials to the contractor.

Disputed Requests

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

- 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.

- If the claim cannot be substantiated, adjust the amount of the payment to reflect the correct value of the work performed.
- Forward a copy of the adjusted claim to the contractor, along with a letter explaining the rationale for the adjustment.

3.6.2.3. Substantial Completion

Substantial Completion applies primarily to the administration of construction contracts; it does not normally apply to general service, goods or consulting contracts.

Refer to the Department of Infrastructure Project Management Manual, Substantial and Final Completion, for detailed direction on substantial completion in the administration of construction contracts.

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.

Statutory Declarations

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 and liabilities 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.

Release of Security and Holdback Funds

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

- The contract security, if provided, must be returned to the contractor. A portion of the security should be retained, if it is considered as necessary leverage in having the contractor complete the remainder of the contract.
- The holdback money, other than that retained for identified deficiencies and uncompleted work, must be returned to the contractor.

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.

Start of Warranty Period

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 construction contracts, the contractor must rectify and make good any defect or fault that appears in the work within 12 months from the date of initial use or occupancy. In most cases, the date of occupancy coincides with date of substantial completion.

3.6.2.4. Final Completion / Performance

The term 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.

Statutory Declarations

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.

3.6.3. Prompt Payment for Construction Projects

3.6.3.1. Introduction

Prompt Payment is a concept that promotes transparency, shared responsibility, and the promptness of payments for subcontractors and suppliers in the construction industry. While the Northwest Territories does not have prompt payment legislation, the Government of the Northwest Territories supports the concept, and has implemented processes and contractual requirements that are aimed at ensuring subcontractors/suppliers are paid within suitable timeframes.

3.6.3.2. Background

Payment in the construction industry is essential for all contractors involved in a project, whether the general contractor or one of the many subcontractors/specialist trades. A common issue raised by construction firms in the Northwest Territories, and across Canada, is the delinquency of payments between subcontractors and general contractors, and the use of unfavorable payment terms in subcontractor contracts.

Delinquent payments and unfavorable payment terms have a cascading effect on the construction industry in the Northwest Territories and can lead to an increase in construction costs,

contractual disputes between general contractors and subcontractors, cash flow issues for smaller contractors, and even limitations/restrictions on hiring activities in the territory.

3.6.3.3. Prompt Payment and the Government of the Northwest Territories

The Government of the Northwest Territories has implemented a number of measures to address the above noted issues. These include:

- Publicizing the date and amount of each payment to a general contractor to ensure subcontractors and suppliers have the ability to confirm when the general contractor has been paid.
- Requiring the submission of a Statutory Declaration with each progress claim from a general contractor (GC) that requires the GC to confirm that all subcontractors, laborers and suppliers (who have entered into contracts with the GC) have been fully paid (with the exception of contractual holdbacks, and amounts under dispute).
- Implementing a contractual requirement in GNWT construction and design-build contracts requiring the general contractor to pay their subcontractors and suppliers (undisputed amounts) within thirty (30) days of the receipt of the invoice or the completion of the work/delivery of the goods, whichever is later.

3.6.4. Unpaid Accounts

3.6.4.1. Introduction

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.

3.6.4.2. Objectives

In dealing with unpaid account situations, the objectives, in order of priority, should be:

- Completion of the work.
- Payment of any statutory accounts or demand notices directly related to the contract (i.e. Revenue Canada, Workers' Compensation Board).
- Payment of workers', subcontractors', suppliers' or sub-subcontractors' lawful claims that are directly related to the contract.
- Payment of other garnishee summons.

3.6.4.3. Principles of Administering Unpaid Accounts

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

- Never pay a subcontractor/supplier directly, unless both the general contractor and the subcontractor/supplier agree in writing that they:
 - request the payment be made directly, and
 - agree on the amount of the payment, and
 - confirm that the payment represents full and complete satisfaction of the debt.

In certain situations the GNWT Assignment of Debt Regulations may apply. The Department of Finance, Accounting Services – Financial Reporting and Collections, should be informed of the situation, and they will advise if the Assignment of Debt Regulations must be followed to permit the payment.

If the GNWT were to otherwise make direct payment to a subcontractor/supplier, you could end up paying for the same work twice. By contract, you are legally bound to pay the general contractor for performance of the work, regardless of what other party the GNWT may have paid directly.

- Do not withhold money from a contractor unjustly, i.e. based on a frivolous claim made by a subcontractor/supplier who is acting improperly. Such an action could be considered to be in breach of our contract with the general contractor.
- The GNWT does not have a contract with the subcontractor or supplier and therefore has no legal obligation to do anything in response to the claim.

3.6.4.4. Administration of Unpaid Accounts

Unpaid accounts should be administered in consultation with the Regional Superintendent, HQ Asset Management Division and Legal Services Division. Each situation will present different parameters, which must be examined on an individual case basis to determine the appropriate approach.

Notifications of unpaid accounts must be received in writing.

Before Considering Claims

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.
- Upon receiving a written notification, hold back the amount of the claim from the contractor's future payments.

- 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.

After Written Notice is Received

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

- The matter has been successfully resolved; the outstanding debt has been paid by the general contractor and the subcontractor/supplier agrees that monies are no longer owing.
 - Action: release held funds to the general contractor.
- The matter has been successfully resolved by the parties and they agree on the claim. They also agree that the GNWT should pay the agreed amount to the subcontractor/supplier directly on behalf of the general contractor.
 - Action: make payment
- The general contractor and the subcontractor/supplier cannot resolve the matter amiably, but no legal action has been undertaken.
 - Action: continue to hold the monies. Write a second letter to both parties, requiring them to take action in the courts to resolve the dispute. 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.

3.6.5. Accountable Advances

3.6.5.1. Purpose

An accountable advance is money paid to a vendor before the vendor completes the work under contract. It is provided on condition that the vendor will account for the value of the work as it is completed in respect to the advance paid. If the value of the work completed is less than the advance paid, the vendor must refund the excess money to the GNWT. If the value of the work completed is more than the advance paid, the GNWT must pay the additional amount owing.

In some cases an accountable advance may span two (2) fiscal years so it is imperative that Finance staff and client departments be advised in those situations to they take appropriate steps to re-enter the portion of the Accountable Advance that will actually be spent in the new fiscal year as a prepaid expense. While accountable advances are rare they have been provided to certain organizations in the past.

3.6.5.2. Paying in Advance

Accountable Advances will only be considered when there is sufficient evidence of stewardship over the use of the funds and an established business need have been demonstrated.

Only the Comptroller General, a Deputy Head, or the Financial Management Board of the GNWT may issue an accountable advance.

If approved accountable advances will typically be repayable without interest, however, interest may be applied on multi-year advances.

3.7. Changing a Contract

3.7.1. Introduction

In standard GNWT contracts, various stipulations allow the GNWT to make changes to the original contract. Changes in the contract are used to formally delete, modify, or introduce new conditions to the original contract.

3.7.2. Principles

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

- Legal principles dictate that changes to a contract must be consistent with the general intent of the original contract.
- All GNWT contracts require that contract changes must be in writing and approved by the GNWT *Contract Authority*. Acceptance and signature by the contractor are preferable, but not legally required for most Finance contracts.
- Internal Finance policy dictates that changes should not be used to increase the scope of the original contract by more than 30%. Increases beyond this magnitude should be covered under a separate, competitively priced contract.

Changes should be documented and processed as soon as practical, and ideally before the work affected has started.

3.7.3. Reasons for Changes

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

- Change to the work site or the known conditions of the site
- Change to the delivery destination or the terms of delivery
- Ambiguous definition of the contract scope (specifications, plans, etc.)
- Change to the magnitude, design or scope of the work
- Change in regulatory requirements

- Late or defective owner-supplied material or equipment
- Interference or lateness of another GNWT contractor involved in the work
- Poor contract administration by the owner (late approvals, decisions, or inspections)

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

Time Extensions/Delays

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.

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

- poor planning and organizing
- inadequate resources (labour, equipment, etc.)
- insufficient weather protection

In situations where the contractor causes a delay, the GNWT may assess the contractor costs incurred because of the delay.

Time extensions may be granted when completion of the contract has been delayed due to circumstances beyond the contractor's control. For example:

- strike at the work site or manufacturer's plant
- change in the work that affects magnitude or delivery
- delay caused directly by the GNWT (work suspensions, late approvals or decisions)
- delay caused by other GNWT contractors
- extraordinary weather conditions

3.7.4. Format of Changes

Two formats are used to change GNWT contracts: the Change Order and the Amendment.

Change Order

A contract Change Order is used to modify all GNWT standard service, consulting and construction contracts. A change order is prepared on the standard Finance form (see Section 3.7).

The change order outlines the details of the modification to the contract scope, price, and completion date as appropriate. Change orders are normally signed for acceptance by the contractor, recommended by the consultant if applicable, and approved by the GNWT [Contract Authority](#).

Specific details on the administration of change orders in different contract applications may be found in the Infrastructure Project Management Manual.

Facsimile and Email Changes

Contract amendments and change orders may be issued by facsimile transmission or electronic mail. 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 electronic mail.

3.8. Changing a Purchase Order

3.8.1. Reasons for Changes

Changes to contracts, including Purchase Orders, should only be done by way of a written agreement.

Reasons for Changes

Countless reasons for changes may affect a Purchase Order. The reasons for changes will likely fall into three possible categories: scope, logistics, or error. Some of the more typical reasons may be a:

- change to the delivery destination or the terms of delivery
- change to the specifications
- change in regulatory requirements
- change in quantity

Internal Department of Finance policy dictates that changes should not be used to increase the scope of the original contract by more than 30%. Increases beyond this magnitude should be covered under a separate, competitively priced contract. In rare situations a change order in excess of 30% may be approved, however, it will be up to the program manager/[Contract Authority](#) to defend this decision, which may receive additional public scrutiny and be the subject of complaints from unsuccessful bidders/proponents that participated in the original competitive procurement process.

3.8.2. Format for Changes

It is recommended that changes to Purchase Orders be made via a standard GNWT Change Order form. The change order should clearly describe the change or modifications to the original contract including:

- the ordinal number of the change order;
- the subject purchase order number;
- the project name;
- the project location;
- the scope of the work;
- the delivery date; or
- the revised total contract price.

3.9. Expediting Goods

3.9.1. Expediting Explained

Expediting is the application of pressure on suppliers to get them to either meet the original delivery promise or to deliver ahead of schedule. It may be the threat of order cancellation or other penalty, if the supplier cannot meet the agreement.

Expediting should be necessary on only a small percentage of Purchase Orders issued. The purchaser should be in a position to know which suppliers are most likely to present delivery problems.

Additionally, the purchaser should determine which requirements are of a critical nature, where meeting the scheduled delivery dates is mandatory. An example would be goods ordered for delivery by marine barge.

3.9.2. Methods of Expediting

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

- Exception expediting
- Routine status check
- Advanced expediting

Exception Expediting

This is the most typical method used by purchasers. It entails calling a supplier to obtain a revised promise date, only after the original promise date has been missed.

Routing Status Check

This method is more time consuming. It involves contacting the suppliers 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.

Advance 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 purchaser to take corrective action to ensure timely delivery.

3.10. Receiving Goods

3.10.1. Introduction

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

3.10.2. Definitions

“Supplier’s Packing List” is a document that details the exact quantity of goods shipped, which usually matches the corresponding invoice. A packing slip should

accompany all shipments and should reference the purchase order number. Failure to do so may result in delayed payment processing.

“Carrier’s Waybill” is a document prepared by a transportation company at the point of origin of the shipment. It specifies where the goods are being delivered, and how they are being transported to the destination.

“Purchase Order” is a document used by the GNWT to execute a purchase transaction with a vendor. The order number should be shown on all bills of lading, packing slips, backorders, invoices, etc.

“New/Used” specified suppliers and equipment must be new and in first class condition unless the solicitation and contract award specify a used item.

“Packaging” - unless otherwise specified in the solicitation, new standards commercial packing and shipping containers should be used.

“Substitution” is defined as delivery of an item that does not conform to the specifications of the purchase order. Any item delivered not meeting specifications may be returned to the vendor at the vendor’s expense.

“Loss or Damage in Transit” - delivery by a vendor to a common carrier does not constitute delivery to the GNWT. Any claim for loss or damage incurred during delivery shall be between the vendor and the carrier. The GNWT accepts title only when goods are received at the point of delivery (typically established through the use of Incoterms® rules).

“Delivery” - delivery must be made by the date or period specified in the purchase order or the vendor is in default.

“Over Shipments” - the receiver should not accept goods in excess of those specified on the purchase order unless it is a recognized custom in the industry (e.g. cable, fabric) is so stated in the bid and accepted by the purchaser.

“Inspection” - all materials, equipment, supplies and services are subject to inspection and testing. Items or services that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the vendor of liability for latent or hidden defects subsequently revealed when goods are put to use or tested.

3.10.3. Procedures for Receiving

1. Check the carrier’s waybill for accuracy as to the number of pieces shipped and received.
2. Inspect the shipment for damage.
3. Note damages or discrepancies in the shipment on the carrier’s waybill, and ensure notations on the waybill are initialed by the carrier’s representatives.
4. Check the shipment against the packing slip.
5. Receivers should forward a signed copy of the Carrier Waybill and the Vendor Packing Slip to the purchaser; these allow the purchaser to process payment and close the file. A GNWT form (Shipping/Receiving Slip, NWT 10573), or a copy of the Purchase Order may be used for this purpose.
6. Record shortages or overages and advise the purchaser accordingly.

3.11. Transportation Claims

3.11.1. Introduction

The delivery of goods involves the risk of shipping damage and discrepancies. Purchasers 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.

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.

3.11.2. Procedures for Damages, Overages, and/or Shortages

Damage

For shipping damage, you can follow this procedure:

1. Inspect the shipment for damage.
2. When obvious damages have occurred (by looking at the shipment), note the carton number or describe the damaged goods on the carrier's waybill.
3. Have the carrier sign the waybill besides the damage notation.
4. If damage is found after opening the cartons, contact the transportation company immediately to have them send a representative to inspect the damaged goods.
5. Receivers should forward a signed copy of the Carrier Waybill and the Vendor Packing Slip to the purchaser, or the receiver can complete the GNWT form, Over, Short and Damage (OSD) Report (NWT 2746) and forward it to the purchaser so that arrangements with the supplier may be made to rectify the problem

Note: If the shipment was shipped DDP (Delivered Duty Paid, Incoterms®) to the point of delivery, the OSD Report should be forwarded to the purchaser so that a claim may be initiated with the supplier and payment withheld pending resolution.

Overage

For an overage, you can:

- During the quality check of the shipment, if you find an overage, write the discrepancy on the waybill. Have the carrier sign the waybill besides the overage notation.
- Receivers should forward a signed copy of the Carrier Waybill and the Vendor Packing Slip to the purchaser or the receiver can complete an OSD Report (NWT 2746) and forward it to the purchaser, so that arrangements with the supplier may be made to rectify the problem.

Shortage

For a shortage, you can follow these procedures:

- During the quality check of the shipment, indicate any discrepancies or missing pieces directly on the carrier's waybill. Have the carrier sign the waybill besides the shortage notation.
- Receivers should forward a signed copy of the Carrier Waybill and the Vendor Packing Slip to the purchaser, or the receiver can complete an OSD Report (NWT 2746) and forward it to the purchaser, so that arrangements with the supplier may be made to rectify the problem.

3.12. Dispute Resolution

3.12.1. Introduction

The number and complexity of contract disputes have increased dramatically in recent years. At the same time, the delays and costs associated with litigation have become more significant.

This Section provides an overview of dispute resolution methods commonly used.

3.12.2. Litigation

The increasing trend to alternative methods of resolving disputes suggests a considerable dissatisfaction with the traditional litigation process, at least in certain types of construction cases. However, it must be emphasized that litigation is sometimes, although not always, still the best solution to the parties' problems.

Advantages

Despite its drawbacks, litigation does have certain features that can be advantageous and that should not be overlooked. These include:

- mechanisms that make it easy to handle the large number of parties that are often involved in complex situations such as construction disputes
- well-established rules for the discovery of documents
- finality

Disadvantages

Litigation suffers from some enormous drawbacks, such as:

- high costs to the parties
- lengthy delay in reaching a final conclusion, particularly as a result of the process of examinations for discovery
- animosity created by the adversarial nature of litigation
- tendency to exaggerate claims and to emphasize the areas of disagreement, while underplaying those areas where the parties might be in substantial agreement
- tendency to postpone the identification of the real issue in dispute until the late stages
- lack of any real management of the dispute, except in extreme cases where the supervisory powers of the courts are invoked

This list of disadvantages has led the industry to explore alternatives for the resolution of construction disputes.

3.12.3. Alternative Dispute Resolution

The range of possibilities in alternative dispute resolution (ADR) has been described in terms of the depth of involvement required of a third party. The alternatives begin with a third party playing a primarily non-intrusive role in the dispute and end with the case of arbitration, where the third party is called upon to render a decision that is binding on the parties. This list is not exhaustive, but it focuses on the methods of ADR that have been found most useful in construction disputes in North America.

These include:

- parties settle dispute by themselves (no intervention)
- structured negotiation
- confidential listening
- conciliation
- mediation
- mini-trial
- mediation/arbitration
- arbitration (maximum intervention)

With the exception of the case in which the parties settle the disputes themselves, each of these possibilities will be briefly described.

Structured Negotiation

Although negotiation provides the familiar starting point for most contract claims, the chances for its success can be increased if it takes on a more structured form.

For example, a contractor made a formal claim for a price adjustment. The owner then analyzed the claim and returned it to the contractor with detailed comments, together with its own counter-claim. Each party had its own negotiation team, which included senior personnel who had not been involved in the original dispute. After the initial exchange of positions, each side was allotted one day for the presentation of its case in a formal setting, which permitted cross-examination.

This type of approach can be successful, although if it breaks down the parties will probably be forced into litigation. It seems to work particularly well in disputes involving large corporations, where it is possible to bring in senior management who were not involved in the situation that led to the ultimate dispute. This allows relatively objective minds to be brought to bear on the problem and removes obstacles that might have resulted from the egos or personalities of the personnel involved in the front line of claim negotiation.

Confidential Listening

In this approach, a neutral third party discovers from each of the parties the final position with which they would be prepared to live, the so-called "bottom line". Without disclosing any confidential information, or the details of either side's

position, the neutral informs each side if their “bottom lines” are close or overlapping. Experience suggests that at the outset of a dispute, the “bottom lines” can be quite close, so that the information provided by the neutral can lead to the swift negotiation of a settlement.

Conciliation

Conciliation is best known in the field of labour relations. Generally, a neutral party or conciliator performs a form of shuttle diplomacy between the parties. The role is more activist than that of the confidential listener: the conciliator is seeking to actively facilitate further productive negotiations between the parties.

Mediation

Mediation goes a step beyond conciliation. A mediator takes an active role in making the negotiation between the parties more effective. Although the degree of involvement varies, the mediator will frequently establish the order of discussion, help to identify common ground between the parties, get rid of irrelevant and unproductive discussions, and defuse animosities. The objectives of the mediator are to keep the parties focused on the real issues, help nudge the parties from fixed positions, encourage compromise, and assist the parties to develop creative solutions.

Mini-Trial

Sometimes, the parties can be assisted in resolving their dispute by engaging a neutral advisor who has the additional power to submit an advisory opinion evaluating each party’s case and predicting the likely outcome at trial. In Canada, the judiciary has begun to play an active role, particularly in British Columbia, in promoting mini-trials in an effort to induce settlement prior to litigation.

Mediation/Arbitration

Mediation is conducted as described previously, but if negotiations are unsuccessful, the mediator may render an award of judgment on the dispute in question. Depending on the agreement between the parties, the mediator’s award can be either advisory or legally binding. If the award is legally binding, the proceedings change at the last stage from mediation to genuine arbitration.

Arbitration

Arbitration is the most intrusive form of third party intervention. The arbitrator rarely attempts to facilitate settlement, but is usually retained to resolve the dispute once and for all. Arbitration can be as adversarial as litigation, but it has the advantages of being less costly, and it moves faster to a binding result.

3.13. Vendor Performance Management

3.13.1. Introduction

GNWT contracts are subject to the Vendor Performance Management Policy, 15.05.

All contractors, consultants and suppliers that have been contracted by the GNWT are expected to perform their obligations in accordance with the terms of the

contract and to a standard customary to their respective industry and GNWT expectations. All contractors, consultants and suppliers are subject to periodic reviews of their performance, reliability, quality of work, and efficiency by the GNWT.

Contractors, consultants and suppliers that have on one or more occasions failed to fully perform their obligations under a contract may, in accordance with the Vendor Performance Management Policy and Guidelines, be deemed not *responsible* with respect to future procurement/contract opportunities with the GNWT.

4. DISPOSALS

4.1. Introduction to Disposals

In accordance with the Disposal Policy 32.06, all material owned and declared surplus to the needs of the Government of the Northwest Territories (GNWT) are disposed of by the Department of Infrastructure in a manner that maximizes public benefit. This authority is subject to certain exclusions as defined in Disposal Policy 32.06.

Surplus material will be offered in transfer if required in support of a GNWT Department and /or the GNWT's programs or services, donated to a priority interest for nominal or no consideration, offered for sale to the public, or disposed by means of reduction to spare parts or dumping.

4.1.1. Methods of Disposals

Cash and Carry Sales: A means for the Department of Infrastructure to dispose of low value repetitive items on an ongoing basis. The sale is run on a specific date for a set time frame.

Destroy/Reduction to Spare Parts: If other means of disposal are not available surplus material may be destroyed or may be reduced to spare parts.

Donation: Submission of a written request for a specific item that will have some beneficial contribution to the requesting organization and/or community may be considered for donation at nominal or for considerations with less than fair market value.

Public Auction: Surplus material may be sold through the services of a contracted auctioneer when volumes warrant.

Public Tender: Surplus material that has some value or is considered an attractive or unique item may be publicly advertised for sale.

Regional Disposal Coordinator: Individual responsible for surplus material disposal as designated by the Department of Infrastructure Regional Superintendent.

Transfers: When material has been declared surplus by one department, it may be transferred through Infrastructure to another department

4.1.2. Delegation of Disposal Authority

The Deputy Minister of Infrastructure is responsible for disposal of all GNWT surplus material. Authority for the disposal of goods within the Department of Infrastructure has been delegated to the Regional Superintendents for each of the North Slave, Hay River, Deh Cho, Sahtu, and Inuvik regional offices.

4.1.3. Exclusions

The Disposal of Goods Policy does not apply to:

- Improved or unimproved land;

- Public Records under the *Archives Act*;
- Library and heritage goods under the Collections Disposal Policy;
- Goods disposed of under the *Privatization Act*;
- Goods transferred to community governments through community empowerment;
- Goods seized under the *Petroleum Products Tax Act* and the *Tobacco Tax Act*;
- Goods transferred pursuant to land claim, self- government or land treaty entitlement agreements;
- Goods repossessed from debtors by the Government of the NWT where the intent is to use the proceeds from the sale to offset the debt in question;
- Real property disposed under the Disposal of Real Property Policy;
- Government of the Northwest Territories boards and agencies that have authority, pursuant to legislation or regulations, to own goods and have been designated authority by the Financial Management Board to dispose of goods; and
- Hazardous waste that must be managed in accordance with appropriate environmental legislation.

Reference:

- [*Delegation of Authority Regulations*](#)
- [*Disposal of Public Property Regulations*](#)
- [*GNWT Disposal of Surplus Goods Guidelines*](#)

4.2. General Disposal Procedures

The Department of Infrastructure (INF) has been delegated the authority to dispose of all surplus material and equipment on behalf of the GNWT in accordance with the [*Disposal of Surplus Goods Guidelines*](#).

4.2.1. Definitions

Disposal: The sale, transfer, donation or destruction of surplus GNWT material.

Material: Public property, other than that excluded by the policy, which is used by an owner/department, Board or Agency to carry out programs and services. This includes such items as furnishings, office equipment, computers, mobile equipment, etc.

Surplus: Material owned by the GNWT that is not required in support of a GNWT department's and/or the GNWT's programs and services or is judged beyond cost effective repair.

4.2.2. Procedures

Note: Forms mentioned in this Section can be found on the Department of Infrastructure's website.

1. Establish a pricing formula or outline to ensure consistent pricing of items or categories is maintained between each region based on quality and other related factors (i.e. condition of items, local market conditions, availability, etc.).
2. Upon receipt of the Report of Surplus Goods from the owner department, ensure the following information has been detailed on the form:
 - department/division/section declaring the surplus
 - current location of the surplus item(s)
 - originator's name and telephone number
 - complete description of the surplus item(s)
 - controllable asset number from current numbering system
 - condition of items , poor , average or good under
 - Comments the reason for declaring the item(s) surplus should be indicated
 - all required signatures (approvals) from the owner department have been provided
3. When the owner department presents a Report of Surplus for mobile equipment, the Regional Disposal Coordinator must confirm the equipment's status has been updated within the Tangible Capital Asset System from "In Use" to "Partially Disposed". It is the owner department's responsibility to ensure that they have properly updated the disposal status of the surplus equipment within the Tangible Capital Asset System.
4. The Regional Disposal Coordinator creates a Delivery & Pickup Slip (NWT 2550) for the items listed on the Report of Surplus Goods and has the local cartage company pick up the item and deliver to the warehouse or designated storage site.
5. Log the following information about the items into the current Surplus Inventory System:
 - The Report of Surplus Material Number
 - Department received from
 - Description of each item received Inventory tag number, controllable asset number, capital asset number or establish a new number for purpose
 - If the asset is registered in the Tangible Capital Asset system, that number must be used.
6. Assess the reported condition of the material and/or equipment. Tag each item with the assigned number and record it beside the description of each item on

the Report of Surplus Goods. Record the condition of the item on the Report of Surplus Goods if your findings differ from that of the owner department.

7. Determine the most suitable method of disposal and refer to applicable Sections for the procedures to carry out the tasks.
8. The value of the items being surplused should be determined by the Regional Disposal Coordinator, the owner/client department might assist.
9. When mobile equipment is disposed of:
 - fill out the Motor Vehicle Bill of Sale (NWT 3415);
 - complete the form ensuring all information required has been documented;
 - Send a copy of the Motor Vehicle Bill of Sale to the owner department in order to have the asset removed from the Tangible Capital Asset System. As well, provide a copy to the purchaser, and place a copy on file.
 - One copy of the Motor Vehicle Bill of Sale should be forwarded to Risk Management & Insurance in order to adjust or remove insurance as required.
 - if the surplus equipment is transferred to another department, it is the receiving department's responsibility to enter their department's index code, against that piece of equipment, in the Tangible Capital Asset System.
10. Ensure GNWT identification has been removed prior to release of the asset and any light bars, beacons, sirens, or similar devices are removed from mobile equipment prior to offering for sale.

References:

- Disposal Policy 32.06
- *Financial Administration Act*

4.3. Transfers

4.3.1. Overview

When material has been declared surplus by one department, it may be transferred through the Department of Infrastructure.

There is no charge for the transfer of items. However, for deliveries outside the community, the receiving department is required to pay transportation charges.

4.3.2. Procedure

1. Ensure that a listing of serviceable items is made available to client departments on a regular basis through Email or the GNWT Bulletin.
2. If more than one department or region requests the surplus material, transfer the material on a first-come first-serve basis.

3. If a Request for Transfer or Donation is received, ensure that all pertinent boxes are completed.
4. Prepare items for shipping.
 - In-town shipments: Local Cartage Company delivers the items and the owner department signs the Delivery & Pickup Slip (NWT 2550).
 - Out-of-town shipments: Fill out a Shipping/Receiving Slip (NWT 10573) and ship the items freight collect.

4.3.3. Transfer of Mobile Equipment

Any request for transfer of mobile equipment should be referred to and must be approved by the Regional Superintendent.

Where applicable, a copy of the Motor Vehicle Bill of sale should be completed and attached with any request for transfer.

4.4. Donation/Negotiated Sale

4.4.1. Overview

The GNWT may provide a preference in the sale of surplus material to priority interest groups in the NWT at no cost or at a price within the organization's ability to pay.

In order for the goods to be considered for donation to a priority interest they must be required by the priority interest for the delivery of programs & services and a sponsoring department has recommended the donations.

A request must be received in writing and should include an explanation of its intended use, purpose or beneficial contribution to the organization or community. For non-profit organizations, the letter should have a statement verifying their non-profit status.

The interested party is advised that the surplus material donated cannot be resold.

4.4.2. Procedure

When Regional Supply Services receives a request for a donation, proceed as follows.

4.4.2.1. Donations

1. Review request, make the recommendation and forward to Regional Superintendent.
2. If a Request for Transfer or Donation is received, ensure that all pertinent information boxes are completed.
3. Regional Superintendent to advise warehouse personnel of decision.
4. Notify interested party in writing of acceptance or non-acceptance, the letter should indicate why the request has been refused.

5. If the item is not available, inform the interested party that the request will be kept on file and they will be notified as soon as it becomes available.
6. Ensure an inspection of the item is done prior to final acceptance.
7. Review terms of the donation with the interested party and ensure that they are agreed to.
8. Write up an Acceptance of Offer/Shipping Advice (NWT 2548).
9. Ensure the Acceptance of Offer/Shipping Advice is signed and dated by the interested party at the time of pickup.

4.4.2.2. Negotiated Sale

1. Goods declared surplus to the needs of the GNWT might be donated to priority interests for nominal or no consideration or consideration with less than fair market value.
2. Where the interested party may have the ability to pay some contribution towards acquiring the good, it will be necessary to ascertain the fair market value of the good.
3. Assess the value of the item. Consulting with the client department may be required in the assessment. Using the following criteria:
 - a) Age
 - b) Condition
 - c) Life expectancy
 - d) Best value for government
4. Base the negotiations on information collected in the assessment of the item. Suggest a fair price within an acceptable value range.
5. Entertain the interested party's price offer.
6. If there is no negotiated sale, the item can be written surplused using alternative disposal methods
7. If the negotiated sale is successful, fill out a Bill of Sale and an Interim Receipt (NWT 6532).
8. Ensure payment for the item is made prior to removal from the GNWT premises.
9. For mobile equipment sale, see the procedure outlined in Section [4.2 General Disposal Procedure](#).
10. File copies of all documentation accordingly for future reference

4.5. Public Tender

4.5.1. Overview

When surplus material is to be offered to the public, it can be done by a publicly advertised sale. Public sale by tender is typically used for the disposal of attractive or unique items.

Public tendering of surplus material may be restricted to a specific site in the interest of community development.

4.5.2. Procedure

1. Issue tender and evaluate in accordance with the Procurement Guidelines Manual.
2. Advertise the public tender. Depending on value of items for sale, you might want to consider advertising in the local newspaper.
3. Prepare an Offer to Purchase (NWT 2547) that includes:
 - contact person and reference number of the tender;
 - closing date, time, return address and location for bids to be received;
 - description of items being offered for sale; and
 - method of payment
4. Award of the sale will be to the highest *responsive* bidder.
5. Contact the successful bidder and set a date for pickup of the item(s) sold.
6. Write up an Interim Receipt (NWT 6532) for the acceptable bid.
7. Prepare and send a Shipping Notice – Bill of Sale and Acceptance of Offer/Shipping Advice (NWT 2548) or a Shipping/Receiving Slip (NWT 10573) to the successful bidder.
8. Payment for all items purchased is made by the successful bidder prior to removal from the GNWT premises.
9. Normal methods of payment would be cash, certified cheque, bank draft or credit card (where available).
10. Record the GST as a separate item on the General Receipt and FIS Transaction Sheet.
11. For mobile equipment sale, see the procedure outlined in Section 4.2, General Disposal Procedure.

4.6. Public Auctions

4.6.1. Overview

Sale of surplus material through public auction is conducted whenever volumes warrant.

A public auction is usually conducted through the services of a contracted auctioneer and the surplus material is consigned to the auctioneer for sale. The items being auctioned off can be viewed by the public prior to the actual auction.

4.6.2. Procedure

1. Establish and evaluate auctioneer's services as per the Procurement Guidelines Manual. Ensure that GNWT and contractor's responsibilities as well as auctioneer's terms of payment are outlined.
2. Two weeks prior to the auction date the Disposal Coordinator should distribute a list of goods for sale to departmental contacts and request any last minute transfers.
3. Prepare advertisement for upcoming public auction and ensure it appears in the local newspaper.
4. Compile a list of surplus material items that will be auctioned off.
5. Review the listed items with the auctioneer.
6. Release the items to the auctioneer by having the auctioneer sign the auction list.
7. Set up a Master Auction File and ensure that it includes:
 - a) the individual Report of Surplus Materials number;
 - b) copies of:
 - auctioneer's contract
 - signed auction list
 - reconciled auctioneer's Record of Sale
 - Interim Receipts
 - Auctioneer's general receipts
8. During the auction, monies can be collected by the auctioneer. A GNWT employee (usually warehouse personnel) must participate in the process.
Note: GST is collected and recorded separately for each item sold. Payment by cheque from an established company is acceptable.
9. Issue an Interim Receipt (NWT 6532) for each item sold at the end of the auction. The auctioneer should not be paid from the proceeds of the auction. Payment should be made from an invoice submitted by the auctioneer.
10. Reconcile the list of items released with the auctioneer's Record of Sales that must show:
 - item number
 - description of items sold
 - Interim Receipt number
 - balance paid
11. Reconcile the funds submitted by the auctioneer with the auctioneer's Record of Sales.

12. Issue an Interim Receipt to the auctioneer for the collected proceeds from the sale.
13. Turn over the monies collected to the Regional Office.
14. Once the auctioneer submits his invoice for services rendered, ensure that it is passed onto Finance and Administration for processing and payment.
15. File all documents accordingly for future reference.

Note: All unsold items must be returned by the auctioneer to the GNWT for alternate disposal action.

4.7. Cash and Carry

4.7.1. Overview

Cash and carry sales are a means for the Department of Infrastructure to dispose of low value items on an ongoing or scheduled basis. A sale is run on a specific date for a set time frame, on a first-come, first serve basis.

4.7.2. Procedure

A schedule for the sales should be worked out and advertised in the local newspaper on a semi-annual basis. Proceeds from the cash and carry sale can be used to pay for the advertisement or any other cost associated with preparing the equipment for sale.

1. Sort through surplus goods and identify items that are suitable for sale.
2. Remove the GNWT controllable asset number, if applicable, or any other GNWT identification.
3. Tag each item with the price, GST is added at the time of the sale.
4. Put items in a “CASH & CARRY” area. This is usually in a secure area.
5. Ensure clear instructions are posted on the sale process and are displayed during the sale and that prices posted include GST.
6. Write up an Interim Receipt (NWT 6532) for each item sold.
7. Record the details of the sale on the Master Sale Sheet for each item sold by filling in all the appropriate boxes.
8. Normal methods of payment would be cash, cheque or credit card (where available). Establish and maintain a float to provide change for cash sales. Cheques are acceptable only if they are from an established company.
9. Ensure the items sold are removed from the GNWT premises at the time of sale.
10. Receipts exceeding \$500 must be turned into the Regional Finance Section for deposit the same day and smaller amounts must be deposited on a weekly basis.
11. When receipts are issued by the Finance Division for the proceeds of the sale, file these receipts with the warehouse copy of the Master Sale Sheet.

4.8. Destroy or Reduce to Spare Parts

4.8.1. Overview

Before surplus material can be considered for destruction or reduction to spare parts, the surplus material must be approved for disposal. See Section [4.2](#), General Disposal Procedure.

Where it is not in the public interest to dispose of surplus material by any other methods (i.e. transfer, donation or sale to the public), it must be destroyed and discarded according to regulations under the *Environmental Protection Act* or any Territorial Regulation or Law.

As well, surplus items can be reduced to spare parts if it is deemed advantageous for use as an alternative source of supply.

4.8.2. Procedure

Preparation of the documentation for the destruction or reduction to spare parts of the surplus material and the proper approval process must be initiated by the client department.

1. Receive the Report of Surplus Material (NWT 2545).
2. Ensure that the client department indicates why the surplus material is to be destroyed.
3. Ensure that an Affidavit of Destruction is attached to the Report of Surplus Materials.
4. Complete the appropriate disposal recommendation and approval areas of the Report of Surplus Materials.
5. In some cases destruction of materials such as hard drives or cell phones is mandatory and must be done prior to final disposition, however, other non-critical items should simply be deposited in the local landfill for scavenging.

5. GLOSSARY

BIP: The Business Incentive Policy, 63.02, provides preference on government procurements to businesses that are owned and operated within the Northwest Territories. It is designed to promote economic growth and capacity within the territory.

CETA: Comprehensive European Trade Agreement.

CFTA: Canadian Free Trade Agreement.

Contract Authority: In accordance with the *Government Contract Regulations* a “*Contract Authority*” means, in respect of a contract, (a) the Minister responsible for the department in respect of which a contract is to be made, the (b) the Deputy Minister of the department in respect of which a contract is to be made, and (c) a public officer to whom the powers and duties of a *Contract Authority* has been designated.

Dollar Value Threshold: The Northwest Territories dollar value thresholds for contracts requiring a competitive, public procurement process are as follows: (1) \$25,000 for general goods and services, (2) \$50,000 for *professional services*, and (3) \$100,000 for architectural and engineering services.

FAM 650: Revenue Agency Contracts. Revenue collected or received by or on behalf of the Government is public money belonging to the Government and must be safeguarded, recorded and deposited promptly. Refer to s.46, s.47 and s.56 of the *Financial Administration Act* for further information.

FAM 705: Provides direction for government procurement, with the goal of demonstrating prudence, probity, accessibility and management of public funds and resources in a consistent, fair, open, transparent and accountable manner that provides value to NWT residents in the procurement process.

FAM 705.09: Sets out the requirements for competitive contracts (*RFTs* and *RFPs*), including evaluation criteria and mandatory contract terms.

FAM 705.13: The Local Contract Authority (LCA) was developed as a limited GNWT substitute method of payment that may be acceptable to some NWT vendors that do not accept corporate credit cards. Alternatively, the LCA may be used as a non-SAM generated purchase order explicitly

recognized as a “Not for Payment” when it is immediately necessary to provide the supplier with a purchase order that includes standard terms and conditions written into the contract for purchases up to \$10,000 only. LCAs are to be used only after every effort has been made to utilize the corporate credit card, as the preferred purchasing method.

FAM 720: Timing of Payments, which establishes the payment terms that are relied upon by vendors, members of the Legislative Assembly, public officers and the general public.

FAM 730: Corporate Credit Cards issued to public officers shall be the primary method of payment for authorized purchases of goods and services up to \$10,000 (greater amounts to be approved by Comptroller General or delegate), and the primary method of payment for all duty travel, excluding meals and incidentals.

Financial Administration Act or “FAA”: The *Financial Administration Act* contains the primary rules governing contracting of all types with the GNWT. Flowing from this Act are the *Government Contract Regulations*, which have the force of law, and the *Financial Administration Manual* which provides overall direction and interpretation of the FAA.

Financial Administration Manual or “FAM”: The *Financial Administration Manual* which is intended to provide policy direction regarding the purpose and scope of the mandatory provisions of the *Financial Administration Act*, related regulations, and areas requiring direction for effective financial administration.

Government Contract Regulations: Establishes rules or orders having the force of law issued by the executive authority of the GNWT as it pertains to procurement functions. Regulations provide a more detailed outline of guiding principles and operational procedures.

Local Contract Authority or “LCA”: Is a contract for the local procurement of goods or services valued less than \$5,000. It may only be used when corporate credit card payments are not accepted by the vendor.

Professional Services: Are defined as services provided by a person or persons holding a professional designation/certification under a legislated profession in the Northwest Territories.

Responsible: In relation to a proponent or a bidder, the capability in all respects to fully perform the

contract requirements, and the integrity and reliability to assure performance of the contract obligations.

Responsive: In relation to a bidder, that the person has submitted a tender that conforms in all material respects to the invitation to tender.

RFEI: Request for Expressions of Interest. A procurement process used when a sophisticated, multi-skilled team with specialized knowledge is required and very few companies will possess the necessary skills and experience. Information gathered through this activity is usually used to develop a formal competitive procurement document.

RFI: Request for Information. A procurement procedure where suppliers are provided with a general or preliminary description of a problem or need and are requested to provide information or advice about how to better define the problem or need, or alternative solutions. It may be used to assist in preparing a solicitation document. No contracts are awarded as a result of a *RFI*.

RFP: Request for Proposals. A procurement tool used when the government wants to review and implement different and new solutions to a problem, project, or business process. Proposals are evaluated based on qualitative merits in addition to price.

RFQ: Request for Qualifications. A procurement tool used by the government to prequalify respondents for participation in invitational procurement processes.

RFT: Request for Tenders. A procurement tool used when the government knows what it wants and how it should be done, and is looking solely for the best price.

SAM: System for Accountability and Management; the enterprise resource planning system used by the GNWT.

SSA: Supply Services Arrangements are arrangements where a contractor, consultant, or supplier are prequalified to participate in invitational competitive procurement processes for specific services, on an "as and when required" basis, during a set term.