PROCUREMENT GUIDELINES

2026



Government of Northwest Territories
Gouvernement des Territoires du Nord-Ouest

Revisions

This version represents a full update of the GNWT Procurement Guidelines as of October 2026. Any subsequent changes or refinements will be recorded in the revision table below to clearly identify future updates.

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EXECUTIVE SUMMARY

These Procurement Guidelines provide practical directions for planning, administering, awarding, and managing the Government of the Northwest Territories' procurement activities. They are intended to support procurement decisions that are fair, open, transparent, accountable, legally defensible, and aligned with applicable legislation, regulations, policies, trade obligations, and public sector best practices.

The Guidelines are primarily focused on procurements that are administered through Procurement Shared Services (PSS). They explain the procurement framework used by PSS, including procurement planning, competitive solicitation methods, tendering and proposal processes, sole source contracting, standing offer agreements, supply services arrangements, contract award, contract administration, contract management, vendor performance, and disposals. They also describe key legal, ethical, financial, and administrative considerations that support consistent procurement practice across government.

Although many of the procedures described in these Guidelines reflect PSS-administered procurements, the underlying principles, best practices, and procedural considerations are broadly applicable across public agencies. In particular, the Guidelines emphasize the importance of sound planning, clear requirements, appropriate procurement method selection, impartial evaluation, proper documentation, transparent communications, prudent risk management, and consistent treatment of vendors throughout the procurement lifecycle.

The Guidelines also reinforce the GNWT's procurement principles, including honouring treaty commitments, supporting equitable access to procurement opportunities, generating benefits for Northwest Territories residents and businesses, making it easier to do business with government, and balancing procurement risks appropriately. These principles should inform procurement decisions even where a specific process, template, or administrative step may vary depending on the public agency responsible for the procurement.

Readers from public agencies should consider these Guidelines in the context of their own governing legislation, internal policies, delegated authorities, approval processes, operational requirements, and accountability structures. Where an agency has specific procurement policies, procedures, templates, or approval requirements, those requirements should be reviewed and applied together with the general guidance set out in this document.

Additionally, certain administrative processes described in these Guidelines are based on the GNWT's enterprise resource planning system, known as SAM. Public agencies that use their own enterprise resource planning systems, financial systems, or internal approval workflows may have different procedural requirements. For example, requisition creation, approval routing, purchase order generation, receiving, invoicing, and payment processes may differ depending on the system and internal controls used by the public agency. In those cases, the general procurement principles and best practices set out in these Guidelines should be applied together with the agency's own system requirements, delegated authorities, and internal procedures.

Overall, these Guidelines are intended to promote consistent, professional, and defensible procurement practices while supporting value for money, public confidence, and effective delivery of government programs and services.

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

These guidelines aim to build confidence in GNWT procurement by ensuring the process is open, consistent, efficient, and competitive.

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 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.

Additional details regarding the Procurement Procedures Committee can be found in the Financial Administration Manual.

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.

Contract A – The "Bid Contract"

Contract A is created between the purchasing organization and each bidder when a compliant bid is submitted. Under Contract A:

- Each bidder must honour the price in their bid until it expires.
- The Purchaser must give every compliant bid fair and consistent consideration.

Contract B – The "Work Contract"

Contract B is the actual agreement for the work. It is formed only with the successful bidder once the tender is awarded. Contract B sets out the terms for delivering the goods or services and is typically issued as a formal contract or purchase order.

When a tender includes a firm closing date and time and requires bids to remain irrevocable for a set period, these legal obligations become applicable.

1.2.2.2. Responsive and Responsible

The *Government Contract Regulations* carry the force of law and provide primary direction to contract authorities when conducting competitive procurement processes. The concepts of "responsive" and "responsible" must be applied in a manner that reflects the procurement method being used. In a tendering process, responsiveness is assessed by determining whether a bid conforms in all material respects to the invitation to tender. In an RFP process, proposals are not evaluated in the same manner as bids; instead, proponents are assessed against the mandatory requirements, evaluation criteria, submission requirements, and other rules set out in the RFP. A proposal that fails to meet a mandatory requirement or materially departs from the RFP may be rejected or found non-compliant in accordance with the RFP documents.

The *Government Contract Regulations* define these terms as follows:

- "*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; and
- "*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 Tenders and Compliant Proposals

In a tendering process, a bid is responsive when it conforms in all material respects to the invitation to tender. A bid that fails to comply with a material requirement, changes the tender documents, qualifies the bid, omits required bid security, or otherwise departs from a mandatory requirement is non-responsive and must generally be disqualified. The GNWT cannot evaluate or accept a materially non-responsive bid, as doing so may be inconsistent with the tender documents, undermine the integrity of the competition, and create an unfair advantage for the bidder.

For example, if a tender requires "supply and install 16 metal windows" and the bidder changes the requirement to "supply and install 16 wood windows," the bid is non-responsive because it changes a material requirement. Similarly, if a required price, form, certification, or security is omitted and the omission affects price, scope, risk, compliance, or fairness, the bid should not be considered. In contrast, an immaterial irregularity may be considered only where it does not affect price, scope, risk, ranking, or fairness and does not provide the bidder with an opportunity to repair or improve its bid after closing. Any decision to treat an irregularity as immaterial should be approached cautiously, documented, and applied consistently to all bidders in comparable circumstances.

In an RFP process, the term "responsive" should be used with caution because RFPs are generally not evaluated as tenders. An RFP is normally used where the GNWT is seeking the best overall solution based on disclosed evaluation criteria, which may include technical merit, methodology, experience, schedule, risk, price, Indigenous and northern benefits, or other project-specific considerations. Proposals should be assessed for compliance with the mandatory requirements and submission rules stated in the RFP, and then evaluated and ranked in accordance with the disclosed criteria. A proposal that fails to comply with a mandatory requirement will be rejected and must not proceed further in the procurement process. Other material departures from the RFP should be addressed in accordance with the RFP documents.

Proponents must not be allowed to correct deficiencies in their proposal after the proposal submission deadline if doing so would improve, complete, or materially change their proposal and/or make a non-compliant proposal compliant, as doing so would provide the proponent with an unfair advantage. Only after the proposal evaluation process has been completed, and a highest ranked proponent identified, can the Purchaser discuss or negotiate deficiencies or ambiguity in the proposal (not including mandatory requirements), provided that doing so will not materially change the RFP requirements, scope of work, or otherwise compromise the fairness of the procurement process.

Responsible

In deciding whether a proponent or bidder is responsible, the GNWT may consider whether the proponent or bidder has the capability, integrity, reliability, resources, experience, and capacity to fully perform the contract requirements. This assessment is distinct from determining whether a tender is responsive or whether a proposal complies with the mandatory requirements of an RFP. Some factors to be considered include:

- 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 (BIP);
- record on previous projects with the GNWT; and
- references from previous owners.

To assist in this assessment, financial, technical, performance, reference, or other due diligence information may be obtained for the bidder or proponent under consideration. In a tendering process, this is usually the lowest responsive bidder. In an RFP process, this is usually the highest ranked proponent or the proponent being considered for award or negotiation, as applicable.

In assessing whether a bidder or 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 occasion 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 Business Incentive Policy (BIP);
    - 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; and/or
    - had a contract terminated, or had the work taken out of its hands.
- is it currently in an adversarial process, including but not limited to arbitration, mediation, human rights investigation or adjudication, or 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, management, integrity, reliability, or ability to fully perform the contract requirements. This may also include any circumstance, relationship, obligation, interest, commitment, involvement, or other matter that may conflict with, or reasonably be perceived to conflict with, the bidder's or proponent's obligations to the GNWT, its interests in the work, its ability to perform the work objectively and in the best interests of the GNWT, or that otherwise gives rise to an actual, potential, or perceived conflict of interest.

Any decision to consider or deem a contractor, bidder, or proponent not responsible must be supported by the procurement documents, applicable policy, and the procurement record. Where the decision is based on past performance or vendor conduct, it must be made in accordance with the GNWT Vendor Performance Management Policy and any applicable procedures.

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 offers contracting advisory services. Interested people can contact the Procurement Shared Services office for assistance.

1.2.3. Contract law

Effective public sector procurement requires the GNWT to balance legal obligations, public accountability, operational needs, value for money, and sound business judgment. Procurement processes must be fair, open, transparent, and defensible, while also allowing the GNWT to acquire the goods, services, and construction required to deliver government programs. When a procurement process is completed, the GNWT enters into an agreement with a supplier for the provision of goods, services, construction, or other deliverables in exchange for consideration. This final agreement is commonly referred to as the performance contract and is often issued as a service contract, purchase order, construction contract, or other approved form of agreement.

In Canadian tendering law, the concepts of "Contract A" and "Contract B" were established by the Supreme Court of Canada in ***R. (Ont.) v. Ron Engineering*, [1981] 1 S.C.R. 111** Contract A generally refers to the bid contract that is formed when a compliant bid is submitted in response to a formal call for tenders. Contract B refers to the performance contract that is formed when the Purchaser accepts the successful bid and awards the contract. Contract A creates legal obligations during the tendering process, including obligations to evaluate bids in accordance with the tender documents and to treat bidders fairly and consistently.

These concepts are most commonly associated with formal tender processes, such as Requests for Tenders, where bidders submit firm, irrevocable bids based on defined requirements and the contract is generally awarded to the lowest responsive and Responsible bidder. Contract A is generally not formed in the same way through a Request for Proposals process, particularly where the RFP is structured to preserve flexibility, allow negotiation, or evaluate proposals based on qualitative criteria and overall value rather than price alone. However, the absence of Contract A does not remove the GNWT's obligation to conduct the process fairly, transparently, consistently, and in accordance with the solicitation documents.

Contract law applies both to the final agreement and, in many cases, to the competitive process that leads to that agreement. GNWT employees should understand that procurement communications, solicitation documents, evaluations, negotiations, award decisions, and contract administration

activities may create legal obligations or legal risk for the government. These guidelines are intended to support procurement processes that are efficient, consistent with applicable law and policy, and defensible if challenged.

Contract law also applies regardless of whether an agreement is written or verbal. A contract may be formed when there is an offer, acceptance of that offer, consideration, certainty of terms, and an intention to create legal relations. Departmental staff should therefore avoid making statements, commitments, or assurances that could be interpreted as a verbal offer, approval, amendment, or authorization to proceed. Acceptance of such statements by a vendor may create a verbal contract or other legal obligation on behalf of the GNWT without the protections contained in standard procurement and contract templates.

A contract is a legally enforceable agreement between two or more parties. This chapter provides a general overview of the legal significance of entering into and administering contracts in the procurement context. It is intended for guidance only and should not be treated as legal advice. Legal counsel should be consulted where there is uncertainty, elevated risk, a potential dispute, or a need to interpret legal obligations.

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 of that offer;
- 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 a 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.

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.

1.2.3.1.3. 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.

Certainty of terms is the essence of a contractual agreement.

1.2.3.1.4. 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

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 as Memoranda of Understanding. These understandings are typically between various elements of the executive, such as two departments.

1.2.3.1.6. 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.

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.

1.2.3.1.7. 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

Canadian tendering law recognizes that a formal call for tenders may create legal obligations before the final contract is awarded. In a traditional tender process, the submission of a compliant bid in response to the tender documents generally creates “Contract A” between the GNWT and each compliant bidder. Contract A governs the tendering process itself and requires the GNWT to assess bids in accordance with the terms of the solicitation, apply the stated requirements consistently, and treat bidders fairly. The final contract for the goods, services, or construction is commonly referred to as “Contract B” and is formed only when the GNWT accepts the successful bid and awards the contract. The terms of Contract A are determined primarily by the tender documents, including the instructions to bidders, mandatory requirements, evaluation process, irrevocability period, privilege clauses, and other terms governing the competition. Contract A is most commonly associated with formal tender processes, such as Requests for Tenders, and is generally not formed in the same way through a Request for Proposals process. However, RFP processes must still be conducted fairly, consistently, transparently, and in accordance with the solicitation documents.

1.2.3.3. Duty of Fairness

Under Canadian tendering law, the submission of a compliant tender in response to a call for tenders generally creates "Contract A" between the Purchaser and each compliant bidder. Contract A requires the GNWT to assess bids in accordance with the solicitation documents and to treat all bidders fairly and consistently. This duty of fairness exists to protect the integrity of the competitive procurement process and to ensure that suppliers are competing on the same information, rules, requirements, and evaluation methodology. In the public sector, fairness is not only a legal requirement but also a fundamental procurement best practice. Public funds must be spent through processes that are open, transparent, accountable, and defensible, and suppliers must have confidence that procurement decisions are made objectively and in accordance with the rules established before closing.

The duty of fairness requires Purchasers to administer the process as written, avoid undisclosed preferences or unstated criteria, provide bidders with equal access to material information, and ensure that comparable situations are treated in a comparable manner. It also requires the GNWT to avoid conduct that could provide, or appear to provide, an unfair advantage to any bidder, including informal communications, inconsistent clarifications, selective disclosure of information, or departures from the evaluation process set out in the tender documents.

Although Contract A is generally not formed in the same way through a Request for Proposals process, the underlying principles of fairness remain applicable. RFP processes must still be administered in accordance with the solicitation documents, applicable law and policy, and public sector procurement best practices. Proponents should be treated consistently, evaluation criteria should be applied as disclosed, and any clarifications or communications after closing must not allow a proponent to materially (in a way that affects the substance, scope, price, evaluation, ranking, compliance, or fairness of the proposal) change its proposal, add missing required information, or gain an unfair advantage over other proponents.

Failure to follow the duty of fairness can create significant legal and operational risks. An unsuccessful bidder may challenge the procurement process, allege that the GNWT failed to follow the solicitation documents, or claim that the evaluation was conducted unfairly. Depending on the circumstances, this may expose the GNWT to damages, delay the award or performance of the contract, require a process to be cancelled or re-issued, or undermine public and supplier confidence in GNWT procurement. For these reasons, all material procurement decisions should be documented, applied consistently, and supported by the solicitation documents and the procurement record.

1.2.4. *Builders' Lien Act*

The **Northwest Territories *Builders' Lien Act***, S.N.W.T. 2023, c. 24 (the "*Builders' Lien Act*" or "Act"), came into force on September 1, 2025, replacing the former *Mechanics Lien Act*. The Act provides statutory protections for contractors, subcontractors, workers and suppliers involved in construction and establishes requirements relating to liens, holdbacks, trusts, substantial performance and bonding.

The Act should be considered during the procurement and administration of construction contracts in the Northwest Territories. The current Act and Regulations should be consulted when establishing the requirements for a particular project.

1.2.4.1. Application of the *Builders' Lien Act*

The *Builders' Lien Act* does not apply uniformly to all public-sector construction projects.

The Act specifically provides that it does not bind the Government of the Northwest Territories. The statutory definition of "government" includes municipalities and local authorities but excludes the GNWT and public agencies as defined in subsection 1(1) of the *Financial Administration Act*.

Accordingly:

- GNWT-owned projects: The *Builders' Lien Act* does not bind the GNWT. However, the construction contract should still contain appropriate provisions concerning payment, holdbacks, bonding, subcontractor payment and claims.
- Municipalities and local authorities: Where the owner falls within the definition of "government," the Act applies, subject to its specific provisions.
- Public agencies: The application of the Act to public agencies should be reviewed on a case-by-case basis, having regard to the definitions and application provisions of the Act and the *Financial Administration Act*.
- GNWT contract management: Where GNWT staff administer a project on behalf of an entity that is subject to the Act, the project must be administered in accordance with the requirements applicable to the actual owner.

For procurement purposes, the project file should identify the legal owner and determine whether the *Builders' Lien Act* applies before the procurement documents are issued.

1.2.4.2. Liens and Holdbacks

The Act provides persons who supply services or materials to an improvement with statutory lien rights. A lien generally arises when services or materials are first supplied, but the claimant must take the steps required by the Act to preserve and perfect the lien.

Where the Act applies, the statutory holdback regime is an important protection for parties in the construction payment chain. The basic statutory holdback is generally 10% of the value of services or materials supplied.

The statutory holdback should be distinguished from contractual security requirements. A construction contract may also require performance bonds, labour and material payment bonds, or additional contractual holdbacks or retentions. These requirements serve different purposes and may be imposed in addition to the statutory requirements, subject to the contract and applicable law.

1.2.4.3. Preservation of Liens and Release of Holdback

The current *Builders' Lien Act* requires a lien to be preserved within 60 days after one of the triggering events set out in section 36. The former 45-day rule under the *Mechanics Lien Act* is not applicable for new projects entered into on or after September 1, 2025.

The Act distinguishes between the arising, preservation and perfection of a lien. A preserved lien must then be perfected in accordance with the Act. As the applicable procedures and timelines for perfection involve commencing legal proceedings and registering a Certificate of Pending Litigation (Lis Pendens), the Act and Regulations should be consulted and legal advice should be obtained where perfection of a lien is contemplated.

Before releasing a statutory holdback on a project subject to the Act, the contract administrator should confirm that the applicable statutory requirements and any contractual requirements for release have been satisfied. A disputed or registered lien should not be disregarded when determining whether a holdback can be released.

1.2.4.4. Substantial Performance

Substantial performance is important because it can affect the timing of lien expiry and the release of holdbacks. The Act and Regulations establish requirements for determining and documenting substantial performance.

Project managers and contract administrators should use the process established by the contract and the Act rather than treating substantial completion solely as an internal project-management milestone.

1.2.4.5. Public Contracts and Bonding

The *Builders' Lien Act* contains surety bond requirements for certain public contracts. The applicability of labour and material payment bonds and performance bonds should be confirmed by reference to the Act, regulations and legal advice.

The Purchaser should confirm the applicable statutory bonding requirements before issuing a tender or other procurement. Additional contractual security may also be required under GNWT procurement policy or the construction contract.

1.2.4.6. GNWT Projects and Northern Construction

Although the *Builders' Lien Act* does not bind the GNWT, GNWT construction contracts should continue to address payment, subcontractor obligations, bonding, contractual holdbacks, claims and evidence of payment.

Where the GNWT administers a project for another entity, the applicability of the Act must be determined based on the legal owner rather than the identity of the contract administrator.

Northern construction projects may also involve multiple sites, seasonal access, remote transportation, material staging and extended periods between delivery and installation. Procurement and contract documents should clearly establish the applicable payment, completion, certification and holdback procedures for these circumstances.

1.2.4.7. Transitional Provisions

The *Builders' Lien Act* contains transitional provisions for contracts entered into before September 1, 2025. The former *Mechanics Lien Act* may continue to apply to those contracts and related subcontracts.

For existing projects, the contract date and any subsequent amendments should therefore be confirmed before determining which legislation applies.

1.2.4.8. Procurement and Contract Administration

Before issuing a construction procurement, the project team / the Purchaser should confirm:

- the legal owner and whether the *Builders' Lien Act* applies;
- which lien legislation applies, including any transitional provisions;
- the applicable statutory and contractual holdbacks;

- applicable bonding and security requirements;
- the process for substantial performance and completion; and
- the process for responding to lien claims and releasing holdbacks.

Where there is uncertainty about the application of the Act, a lien, substantial performance, holdback release, bonding requirement or termination of a contract, a lawyer should be consulted.

The *Builders' Lien Act* and Regulations should be used as the authoritative source for current statutory requirements.

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 provides 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. The CFTA replaced the Agreement on Internal Trade, which came into effect in July 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:

For the period of January 1, 2026 to December 31, 2027, 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) $208,400 or greater for goods or services, if the largest portion of the procurement is for goods or services; or
   (ii) $694,400 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) $416,600 or greater for goods or services, excluding construction; or
   (ii) $10,416,000 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) $694,400 or greater for goods or services, excluding construction; or
   (ii) $10,416,000 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.

The current thresholds can be viewed on the following website:

https://www.cfta-alec.ca/procurement/covered-procurement-thresholds

1.2.5.2. Comprehensive Economic and Trade Agreement – European Union

Canada is a party to the Comprehensive Economic and Trade Agreement (CETA) which covers most sectors and aspects of trade between the European Union (EU) and Canada, and includes the GNWT. 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. Business Incentive Policy

1.2.5.3.1. Introduction

The Business Incentive Policy (BIP) is an economic policy of the GNWT. The BIP is intended to support the creation and growth of business in the NWT, while recognizing the higher cost of doing business in the NWT.

Those GNWT departments and public agencies subject to BIP will apply a BIP bid adjustment to each contract/proposal as a Good, Service or Construction.

The BIP Registry is maintained by the Department of Industry, Tourism and Investment.

For more detailed information regarding the application of the BIP can be found through the ITI website, calling the BIP Monitoring Office, or Procurement Shared Services:

- 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

1.2.5.3.2. Eligibility

For a business to receive the BIP bid adjustment, when bidding on goods, services, or construction, they must be an approved BIP Business and entered on the BIP Registry. The BIP Registry can be found at:

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

1.2.5.3.3. BIP Registered Goods Supplier

BIP businesses that are 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 the Purchaser 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

Once a business is approved as a BIP Business, they are approved for the Service category. Unlike goods, it is not necessary for a BIP business to be approved for a specific service category.

1.2.5.3.5. 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 exercises its prerogative power to make any decision or take any action respecting business incentive outside the provisions of the BIP.

1.2.5.3.6. Northwest Territories Manufactured Products Policy

The Government of the Northwest Territories is committed to encouraging local production as a foundation for the NWT's economy.

The Northwest Territories Manufactured Products Policy (NMPP) provides incentives for local production and manufacturing of goods for the use of the GNWT.

BIP-registered Businesses may apply to have their product(s) registered as an approved manufactured product, listed on the BIP Registry.

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 be an item that is regularly stocked or part of a catalog of items. The manufactured product must be produced in their NWT facility.

What are the objectives of this policy?

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

Eligibility for Registration

- The product must be manufactured in the NWT, by a BIP Business as defined in Business Incentive Policy;
- The product has at least 25 percent of its value added in the NWT, and

- The product is priced no more than 20% greater than a similar product at site of manufacturing or, 25% greater than a similar product at final destination.

How do the GNWT and Public Agencies procure NWT Manufactured Products?

- Where there is only one manufacturer of an approved product, the approved NWT Manufactured Product will be purchased from that manufacturer. The product must have at least 25% of its value added in the NWT.
- Where there are two or more manufacturers that supply the approved NWT Manufactured Product, only those manufacturers will be invited to bid on that contract.
- Where an approved NWT Manufactured Product would meet the requirements of the construction, maintenance or goods contract, the use of the approved NWT Manufactured Product must be made a term of the contract.

1.2.5.4. Settlement Legislation

In recent years a number of land claim and self-government agreements 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. Indigenous Businesses

1.2.6.1. Introduction

In 2026, the GNWT announced that it had established a definition of an NWT Indigenous business for contract reporting purposes. The definition did not change how contracts are awarded.

1.2.6.2. Definition

An Indigenous business:

- is registered under the GNWT Business Incentive Policy; and
- is registered on the Government of Canada's Indigenous Business Directory or a publicly available business registry maintained by an NWT Modern Treaty Partner.

1.2.7. Negotiated Contracts Policy

1.2.7.1. 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.

1.2.7.2. 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 benefits 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 a manner that complies with the Canadian Free Trade Agreement.

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 contract; or
- the urgency of the situation dictates that the competitive process cannot be used.

1.2.7.3. 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.

1.2.7.4. 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

1.2.8. 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

1.2.9. Contract Reporting

The GNWT is committed to transparent, accountable, and accessible reporting on all contracts awarded through its procurement processes. Regular contract reporting ensures transparency and accountability while providing meaningful insight into how government procurement contributes to economic development across the Northwest Territories.

The GNWT publishes information on contracts awarded by departments, boards, and agencies in accordance with applicable legislation, policies, and public disclosure requirements. Contract Authorities are responsible for ensuring the accuracy and timeliness of contract information.

The GNWT Contract Reporting Dashboard is the main application for sharing contract reporting information. Reporting includes an array of information about the contract including department, value awarded, change orders, and procurement method used. Additionally, information about the successful contractor includes the business name, location, and BIP registration status.

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 employees 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 Supply Chain Canada (outlined below), all GNWT employees are bound by this Code of Conduct.

1.3.3. Code of Ethics, Supply Chain Canada

Supply Chain Canada 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

1.3.4. Providing References for Vendors

Employees may provide factual references regarding vendors, contractors, consultants, or suppliers with whom they have worked in an official capacity. References should be limited to objective information that can be substantiated through records or direct knowledge of the contract, such as:

- the nature and scope of the work performed;
- contract dates, values, and deliverables;
- whether work was completed in accordance with contractual requirements; and
- other factual information relevant to the contract.

References should not include personal opinions, subjective endorsements, recommendations, or statements that could reasonably be interpreted as expressing a preference for a particular vendor. Employees must remain impartial and avoid creating the perception that the GNWT endorses or favours one vendor over another.

Information provided for a reference should be based on documented contract records and communicated in a fair, objective, and consistent manner.

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, regulatory, policy and procedure-oriented documents. This hierarchy of procurement documents is listed below. It is this set of documents that will govern a procurement process in the Northwest Territories. 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 their respective department. At the most specific level are the various documents which are created to describe step-by-step procedures which must be taken when performing a procurement-related activity such as purchasing goods, services or construction. In tracing the hierarchy from legislation, 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 (BIP)

This is an economic policy designed to provide BIP approved 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 Procedures

These documents provide an overview of various topics related to government procurement. The purpose of the procedures 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

The Vendor Complaint Process (VCP) is a critical element of a fair, transparent, and accountable procurement framework. The GNWT has established the VCP to ensure that concerns and complaints raised by vendors involved in competitive procurement activities are addressed in a timely, impartial, and non-discriminatory manner. In addition to providing a structured mechanism

for resolving vendor issues, the VCP also contributes to the continuous improvement of the GNWT's procurement practices.

A complaint refers to a formal written objection submitted by a vendor concerning a procurement solicitation process for goods, services, or construction. While legitimate complaints may arise from a variety of real or perceived issues, each instance has the potential to undermine confidence in the integrity and fairness of the GNWT's procurement practices. Reasons for a complaint may include:

- specifications that are seen as vague or incomplete;
- bid preparation time too short to properly reply;
- specifications perceived as unfair, predetermined, or arbitrary;
- inconsistent application of procurement procedures; or
- lack of transparency of evaluation criteria and methodology.

The VCP is intended to address concerns related to procurement policies, procedures, and the GNWT's obligations under applicable trade agreements. It does not preclude vendors from pursuing other available avenues for complaint resolution should they remain dissatisfied with the outcome of a review conducted under the VCP.

The GNWT VCP can be viewed through the following link:

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

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. Purchasers 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 suppliers 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 and services 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 required 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 several 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 recycled 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.

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

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

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, the 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 procurement[1]:

- **Goods**
  - Under $25,000
    - Contract Authorities can procure the goods on their own.
    - No sole source form is required.
  - $25,000 and Over
    - Requisition submitted to Procurement Shared Services.

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

        - 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.

- **Services**
    - Under $10,000
        - Contract Authorities can procure the services on their own.
        - No sole source form is required.
    - $10,000 to $25,000
        - Requisition submitted to Procurement Shared Services.
        - No formal competitive public procurement process is required but obtaining two (2) quotes from BIP registered businesses is recommended.
        - No sole source form is 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 service 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 services on their own.
        - No sole source form is required.
    - $10,000 to $50,000
        - No formal competitive public procurement process is required but obtaining two (2) quotes from BIP registered businesses is recommended.
        - Requisition submitted to Procurement Shared Services.
        - 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 services on their own.
    - No sole source form required.
  - $10,000 to $25,000
    - No formal competitive public procurement process is required but obtaining two (2) quotes from BIP registered businesses is recommended.
    - Requisition submitted to Procurement Shared Services.
    - No sole source form required.
  - $25,000 to $100,000
    - No formal competitive public 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.
    - Requisition submitted to Procurement Shared Services.
    - The following order of preference should be followed:
      - Under $25,000 - request quotes from firms registered under the Business Incentive Policy (BIP).
      - $25,000 to $100,000 – request quotes from firms registered under the BIP, as well as firms that operate, and have a place of business in the Northwest Territories but are not approved under the BIP.
  - $100,000 and Over
    - Requisition submitted to Procurement Shared Services.
    - A formal competitive public procurement process is required (unless approved as sole source).
    - A sole source authorization form 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 boards, public 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 NWT Manufactured Products Policy, when there are two or more approved NWT manufacturers the contract authority shall obtain quotations or proposals from each manufacturer.

1.7.1.1. Competitive

Government Contract Regulations, R-032-2006, require 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 are more than 20% higher than 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 Purchaser and Contract Authority to:

- take reasonable steps to obtain the best value possible;
- operate within GNWT policies;
- comply with the BIP;
- 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 under $25,000 and services under $10,000 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 1.2.7, 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 BIP registered businesses
- 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 responsive and responsible 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 goods acquisitions valued at $25,000 and over, and services valued $10,000 and over, where price is most often the determining factor;
- must comply with the provisions set out in trade agreements; and
- is advertised on the Contract Event Opportunities website and/or newspaper.

Tenders are evaluated with the objective of accepting the lowest-priced responsive tender.

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 proponents 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 the requirements of applicable 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 openings are announced through the Contract Event Opportunities website; 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 an RFP process. To do this, the RFQ process described in Section 1.7.4. would be used to establish a shortlist of proponents who are 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 shortlist 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 timelines;
- 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 an RFP or RFT). An RFQ can also be used to shortlist 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 manage a large number of bids or proposals.

This process is useful when you anticipate a great deal of interest and need to screen contractors so you can move quickly to a shortlist 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 an RFQ is received, the Purchaser may be able to directly establish 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 Requests for Expressions of Interest and Requests for Qualifications (RFQ) 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 SOAs 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.

SOAs 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 made or released under an SOA.

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

1.7.5.2. Definition

Standing Offer Agreement: a supplier offers to provide to the GNWT, on demand, specified goods or services under specified conditions during a set period at a predetermined price or pricing 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, SOAs through the RFT or RFP process can provide pricing agreements for frequently required services.

Commitment of Funds

As SOAs 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 may be established as either Common Use or Limited arrangements. Each SOA will prescribe a transaction limit, which constitutes the expected maximum value of any individual contract issued pursuant to that SOA. For greater certainty, the transaction limit represents the upper monetary threshold for releases under the SOA. For example, where an SOA specifies a transaction limit of $100,000, no contract issued under that SOA should exceed $100,000.

In certain circumstances, a contract value may exceed the prescribed transaction limit; however, such exceedance shall only occur following a formal review by Procurement Shared Services to determine whether the proposed contract remains consistent with the intent, scope, and anticipated usage underlying the original SOA.

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

To establish an SOA 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
- Work Order – issued by a department

1.7.5.5. Listing of Standing Offer Agreements

The Department of Finance currently arranges a wide range of SOAs. 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 SOAs. Templates may be obtained by contacting Procurement Shared Services for assistance.

There are several templates that can be used to establish Standing Offer Agreements (SOAs). Essentially, 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 an 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 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 an if, 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

An SSA means an arrangement where a contractor has been pre-qualified to participate in an invitational competitive process for specific services, on an if, as and when required basis during a set period.

1.7.6.3. Purpose

SSAs 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 contract, then funds must be committed and reported for values of $10,000 or greater for services, 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 for services that will be used by departments on an if, as and when required basis.

SSAs are established through a RFQ to pre-qualify contractors for frequently required or specialized services that are required on an if, as and when required basis.

In order to meet the GNWT requirements, it is the GNWT intention from time to time, throughout the SSA 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 SSA through publication by the GNWT of a Supply Services Arrangement Refresh notice posted on the GNWT Contract Event Opportunities website. This process will also permit pre-qualified suppliers to qualify for requirements for which they are not already qualified.

The frequency of subsequent Supply Services Arrangement refresh publications will be at the sole discretion of the GNWT Procurement Shared 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 Services Arrangements is not mandatory, and the GNWT reserves the sole right to procure services on any SSA by any other means it deems appropriate.

1.7.6.4.1. Release against a Supply Services Arrangement

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

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

- for service contracts less than $25,000, the GNWT may enter into a contract with any suitable vendor, giving preference to local or NWT-based vendors approved under the Business Incentive Policy (BIP);
- 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 competitive public process and standard GNWT contracting regulations and guidelines will apply.

Regardless of the procurement approach, all service contracts valued at $10,000 or greater 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-mentioned dollar value thresholds are recommendations, Procurement Shared Services has 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 Services 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.

1.7.6.7. Limited Use and Application

Although Procurement Shared Services has established a process for creating and administering Supply Services Arrangements, this procurement approach should be used on a limited and selective basis. SSAs can be administratively time-consuming for both businesses and the GNWT. Businesses must first prepare and submit a detailed response to become pre-qualified and must then submit separate proposals for each specific contract opportunity issued under the arrangement. Similarly, while an SSA may reduce the number of suppliers invited to compete for a particular requirement, it does not eliminate the need for a formal competitive process. The GNWT must establish an evaluation committee to assess responses to the initial RFQ used to create the SSA, and separate evaluation committees must be established for each subsequent invitational process. As a result, SSAs may provide only limited time savings and should generally be reserved for unique or specialized services where there is sufficient market competition to justify the administrative effort and where pre-qualification is expected to create meaningful efficiency in evaluating proposals from qualified businesses.

1.7.7. Procurement Templates

1.7.7.1. Introduction

The Department of Finance has three areas that support procurement templates, SAM, DIIMS and Internal Services. These templates are used to generate standard contract documents for GNWT departments, Housing Northwest Territories (HNWT), and the various Boards and Agencies.

GNWT users (including HNWT, 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 Services”. 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 are either hosted directly in SAM, Internal Services, or through the Procurement Shared Services DIIMS library.

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 in choosing the appropriate procurement template and contract template for their particular requirements.

Templates are available through Procurement Shared Services.

Current templates include:

1.7.7.2.1. Information Gathering Activities

- Request for Expressions of Interest (non-binding, informal, does not shortlist)
- Request for Information (non-binding, informal, does not shortlist)

1.7.7.2.2. Standard Goods and Services Acquisitions

- Request for Qualifications (used to shortlist vendors for an invitational RFP or RFT process)
- 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
    - Fuel Supply, Transportation and Delivery
    - Operational Services
- Request for Quotations
    - 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
    - Other forms, as required
- Lease Agreements
    - Photocopiers
    - Vehicles
    - Real Property (contact Accommodation Services)

1.7.7.2.3. 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

1.7.7.3. Contract Support

1.7.7.3.1. Contract Change Form

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

1.7.7.4. Construction

1.7.7.4.1. Risk Management Reporting Form

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

1.7.7.4.2. BIP Content Substantiation (Invoice) Report

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

1.7.7.4.3. Application for Certificate of Substantial Completion

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

1.7.7.4.4. 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.).

1.7.7.4.5. Construction Tender

This template is intended for use in the procurement of major projects, typically those valued at more than $100,000; however, the appropriate contract format should ultimately be determined by the nature and complexity of the work. The template should also be applied to lower-value projects where the scope involves high-risk activities (e.g., asbestos abatement) or work of a highly technical or specialized nature.

1.7.7.4.6. Construction Contract

This contract is intended for use in the procurement of larger-scale projects, generally those valued at more than $100,000; however, the appropriate contract format should ultimately be determined by the nature and complexity of the work. This contract should be used in conjunction with the Construction Tender referenced above.

1.7.7.4.7. Consultant Agreement

A contract to provide building engineering and design services on GNWT building projects. There are two templates available: (1) standard architectural and engineering services, and (2) owner's engineering services (to be used only when the GNWT or HNWT is engaging a consultant to act on its behalf as the owner's representative on a construction project).

1.7.7.4.8. Design-Build Contract

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.

Real property leases should be obtained through Infrastructure Accommodation Services.

1.7.7.6. Negotiated Contracts

1.7.7.6.1. Sample Response Letter

This standard letter template may be forwarded to advise eligible contractors on the process to follow to formally apply for a negotiated contract.

1.7.7.6.2. Sample Evaluation

This is the format used to evaluate the merit of a proposed Negotiated Contract application.

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

1.7.7.7.1. RFT – Goods

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 at $25,000 or greater. 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 $25,000 or greater.

1.7.7.8. Request for Proposals

1.7.7.8.1. RFP – General Services / Consulting

This RFP template is used for all services except design-build projects and architectural and engineering.

1.7.7.8.2. RFP – Architectural and Engineering Services

This template is used when procuring the services of an architect or engineer.

1.7.7.8.3. Short-Form RFP

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

1.7.7.8.4. RFP – Information Systems

An RFP document for information systems projects can be obtained through Procurement Shared Services.

1.7.7.8.5. 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

1.7.7.9.1. Requisition for Stock Items

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

1.7.7.9.2. Requisition for Supplies and Services

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).

1.7.7.10. 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

There is a form used to declare goods surplus to a department, and through this report, those goods are turned over to the Department of Infrastructure for final disposition.

1.7.7.11.2. Transfer Agreement

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.

1.7.7.11.3. Motor Vehicle Bill of Sale

A form used by the GNWT to register a change of ownership of a vehicle.

1.8. Sole Source Contracting

1.8.1. Overview

The *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.

d) It is an approved NWT manufactured product and only one manufacturer is approved for the supply.

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. This requirement includes exercising option years where the extension and corresponding value increase were not captured in the original sole source form.

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 will apply)?
- Have the criteria for sole source contracts as stated in the *Government Contract Regulations* been met?
- Document the 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 summarizes common business registration types and related considerations for vendors doing business in the Northwest Territories. Corporate Registries is responsible for

territorial incorporations, extra-territorial registrations, co-operative associations, societies, registered business names, partnerships, and limited partnerships. For procurement purposes, the Purchaser should confirm the legal name, registration status, and applicable operating name of a vendor before establishing a contract.

- Territorial Corporations
    - A corporation incorporated in the Northwest Territories is a separate legal entity from its shareholders. Incorporation may limit potential losses to the amount invested in the corporation and may provide other business or tax advantages, but it also creates additional filing and regulatory obligations. Corporations are registered with Corporate Registries under the *Business Corporations Act* and are generally required to maintain their registration and file annual returns. A corporation will typically include a legal element such as “Limited”, “Limitée”, “Incorporated”, “Incorporée”, “Corporation”, “Société”, or an approved abbreviation such as “Ltd.”, “Ltée”, “Inc.” or “Corp.” as part of its legal name.
- Registered Business Names and Sole Proprietorships
    - A sole proprietorship is a business operated by an individual. If the business is operated in the Northwest Territories under a name other than the proprietor’s own legal name, the business name must be registered with Corporate Registries. Registration of a business name identifies the name under which the business is operating and assists in determining who may make decisions for the business and who is liable for obligations or damages arising from the business. Registration of a business name does not, by itself, incorporate the business or create a corporation.
    - When entering into a contract with a sole proprietor using a registered business name, the contract should generally identify the individual proprietor’s full legal name and the registered business name under which the individual operates, for example: “[Proprietor’s Full Legal Name], operating as [Registered Business Name].”
- Partnerships and Limited Partnerships
    - Partnerships and limited partnerships operating in the Northwest Territories are registered with Corporate Registries under the applicable legislation. A partnership is not the same as a corporation and may involve shared responsibility among partners for the obligations of the business, subject to the specific form of partnership and applicable law. The Purchaser should confirm the registered partnership name and the person or persons authorized to bind the partnership before establishing a contract.
- Extra-territorial Corporations
    - A corporation incorporated outside the Northwest Territories that carries on business or operations in the Northwest Territories must generally be registered as an extra-territorial corporation with Corporate Registries, subject to any applicable statutory exceptions. This requirement applies to corporations incorporated in another province, territory, or jurisdiction that meet the statutory test for carrying on business in the Northwest Territories.
    - For procurement purposes, the Purchaser should confirm whether an out-of-territory corporation is required to be extra-territorially registered before entering into a

contract where the corporation will carry on business or operations in the Northwest Territories.

"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 it 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) that 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 criteria 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 Section 1.9.2 to determine applicable Corporate Registries requirements.

- Municipal or territorial business license
    - A vendor requires a business license from the municipality in which it operates, or from the Department of Municipal and Community Affairs if the municipality does not issue business licenses.

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 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 provides 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 ($10,000 and over for service and $25,000 and over for goods) procurement function of the following departments:

- Education, Culture and Employment
- Environment and Climate Change
- Executive and Indigenous Affairs
- Finance
- Health and Social Services
- Housing Northwest Territories
- 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 is usually used for construction processes, however, including security requirements can benefit many different types of procurement.

In this Section we will discuss the forms of security used, and considered acceptable to the GNWT. To begin with, 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 5% 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 generally not a requirement in an 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 bid
- a bid bond equal to at least 10% of the bid

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 bid security deposit should be equal to at least 5% of the bid value. 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 contract, 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
  - Contract 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
    - Contract 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 Documents Committee and issued in favour of the GNWT by a surety approved by the GNWT.

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

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, 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, Contract Authorities 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 include 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.

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 Purchaser 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 an organizational function that ensures the timely and efficient acquisition of all required materials, goods, services, and construction necessary to support operational and strategic objectives.

General stages of the Procurement Process include:

1. Needs assessment and 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 and Contracts Advisors (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 instead of purchasing a service, for example:

- 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 Section 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 (TCA)

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.

2.3. 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. Consider including performance characteristics instead.
- **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;
    - 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); and/or
    - Security clearances and screenings.
- **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:** Ensure that all prices submitted in response to GNWT Requests for Tenders include any applicable Northwest Territories environmental handling fees for electronics designated under the applicable regulations.

- **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 importance, 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.
- **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 an 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 an RFT and an 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:

- 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, 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 an RFP process.

2.3.3.4. Does an 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.

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

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

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

CanadaBuys – Single Point of Access

CanadaBuys is the Government of Canada's centralized online procurement portal. Procurement opportunities from the GNWT that are expected to meet or exceed the Northwest Territories' Canadian Free Trade Agreement (CFTA) thresholds must be posted on both the GNWT Contract Event Opportunities website and CanadaBuys.ca.

Procurements estimated at $200,000 or more for goods and services, and $500,000 or more for construction, should be posted on CanadaBuys. If the final value is uncertain but may exceed these thresholds, the procurement should be flagged for posting on CanadaBuys.

Advertising Periods, Best Practices

- It is essential that the minimum tender period provides vendors with 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 $250,000 - 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.

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.

GNWT Contract Event Opportunities Website

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

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

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 $25,000 and greater 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)

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.

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.

[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.

Record of the Meeting

Information presented at the meeting should be kept and sent distributed through a formal addendum.

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. Ensure that you explain that anything discussed in the meeting is considered informal until the information or response is addressed through formal addenda.

Answering Questions

Straight forward questions can be answered at a meeting; however, complex questions should be recorded deferred to a 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.

In some cases, it may be necessary to offer multiple site visits when the number of participants should be limited (e.g. touring a small building) or to provide bidders/proponents with additional scheduling flexibility, recognizing that many may have to travel to attend the site visit.

2.3.6. Independent Fairness Monitors

2.3.6.1. Introduction

Independent Fairness Monitors, also known as Fairness Commissioners or Fairness Advisors, 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 providing 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 several 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

For most procurements, representatives from Procurement Shared Services (PSS) will support the evaluation process to help ensure that applicable legislation, policies, procedures, and procurement best practices are followed. PSS representatives do not evaluate or score proposals. Instead, they provide process guidance and procedural oversight, support the evaluation committee, and monitor the evaluation to confirm that it is conducted fairly and in line with the solicitation documents.

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 use the Requisition Checklist for the Procurement of Goods form that is attached as **Appendix 1** 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.

2.4.2. Services

Departments can use the Requisition Checklist for the Procurement of Services form that is attached as **Appendix 2** 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.

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.

Department can use the Requisition Checklist for the Procurement of Air Charters form that is attached as **Appendix 3** as a reference guide for the information that will be needed with the requisition.

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. 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 generates a Tender/Proposal Register for each event after the closing time has passed.

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. Addenda

An addendum is a formal change or clarification issued to the tender documents between the time the tender is released and the closing date. Addenda ensure that all bidders are working from the same information by providing consistent, written notification of any revisions or clarifications made during the tender period.

Unless deemed commercially confidential, it is essential that any information provided to one bidder, whether a clarification, correction, or change, be provided to all bidders through an addendum so that all parties are competing on an equal and fully informed basis. The procurement documents will include the parameters and rules for responding to commercially confidential questions from bidders.

Addenda should be reserved for changes or clarifications that have a significant impact on the work. Minor matters that do not materially affect price, scope, or schedule should generally be handled after award through change orders.

2.5.3. Bid Evaluation

2.5.3.1. 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.

2.5.3.2. 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 an RFP is that it requires a solution to a problem, not meeting specific specifications. If a proposal does not meet mandatory conditions, then the proposal will likely be rejected for that reason.

2.5.3.3. Disqualification of Non-responsive Bids

Under Canadian tendering law, including the Contract A framework established by the Supreme Court of Canada in R. v. Ron Engineering & Construction (Eastern) Ltd. and developed in subsequent case law, a compliant tender submitted in response to a formal call for tenders generally creates a bid contract between the Purchaser and each compliant bidder. Contract A requires the GNWT to evaluate bids in accordance with the tender documents, apply the stated requirements consistently, and treat all bidders fairly. A central principle of this framework is strict compliance: a bid must comply with the material requirements of the tender documents in order to be responsive. The GNWT cannot consider a non-responsive bid for award and has a duty to disqualify any bid that does not comply in all material respects with the requirements of the tender documents.

Clarifications may be sought only where they explain, confirm, or resolve an ambiguity in information already contained in the bid. Clarifications must not amount to bid repair. A bidder must not be permitted, after closing, to make a non-responsive bid responsive, add missing required information, remove or change a qualification, alter its price, change its scope, or otherwise improve its competitive position. Any clarification process must be applied fairly and consistently to all bidders in comparable circumstances and should be carefully documented.

Only in exceptional circumstances should the GNWT consider whether a bid that appears non-responsive may nevertheless be accepted. Such circumstances must be approached cautiously and should be reviewed with Procurement Shared Services and legal counsel where appropriate. Examples may include where the defect is clearly immaterial and does not affect price, scope, risk, or fairness; where only one bid was received and the issue does not compromise the integrity of the process; or where all bidders made the same qualification or departure such that no bidder received a competitive advantage. Even in these circumstances, the GNWT must consider whether accepting the bid would be consistent with Contract A obligations, the tender documents, the *Government Contract Regulations*, and the duty to conduct a fair, transparent, and defensible procurement process.

When dealing with tenders, whether at the opening or review stage, all actions must be, and must appear to be, beyond reproach. When there is doubt as to whether a bid is responsive, purchasers should seek assistance from Procurement Shared Services and, where appropriate, legal counsel before proceeding.

2.5.3.4. Incomplete Bid

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

2.5.3.5. Incomplete Unit Price Table

In a unit price tender where the total contract value will depend on the quantities actually required, the bid is based on the unit prices submitted, rather than the extended or total tender price. Where a bidder omits a required unit price, the tender should generally be disqualified because allowing the bidder to provide the missing unit price after closing would give the bidder an unfair opportunity to complete or improve its bid.

The only exception is where the missing unit price can be determined with certainty from the bid as submitted. For example, if the extensions and total tender amount demonstrate, beyond doubt, that the value of the missing unit price was included in the total bid amount, the tender may be considered. In that circumstance, the missing unit price should be confirmed with the bidder for payment and contract administration purposes only, and the confirmation must not permit the bidder to change its bid or affect its competitive position.

2.5.3.6. Bid is Qualified

A qualified or conditional bid is one in which the bidder adds conditions, limitations, alternative pricing, or other terms that alter or depart from the requirements of the call for tenders. Where a qualification is material (i.e., it affects price, scope, risk, or the terms on which the bidder is prepared to contract), the bid is non-compliant and cannot be accepted.

In *M.J.B. Enterprises Ltd. v. Defence Construction (1951) Ltd.*, [1999] 1 S.C.R. 619, the Supreme Court of Canada held that Contract A includes an implied obligation on the owner to accept only compliant bids, and that a privilege clause (e.g., "the lowest or any tender will not necessarily be

accepted") does not permit the acceptance of a non-compliant bid. A privilege clause allows the owner to decline the lowest compliant bid; it does not allow the owner to accept a bid that fails to meet the requirements of the tender.

2.5.3.6.1. Examples of Qualified Tenders

Some examples of qualified or conditional tenders are when the:

- 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

2.5.3.6.2. Is the Qualification Material, or Not Material?

A bid that is qualified, conditional, or otherwise departs from a material requirement of the tender documents is generally non-responsive and must be disqualified. Under the Contract A framework established in Canadian tendering law, the GNWT must evaluate bids in accordance with the tender documents and treat all bidders fairly and consistently. This means the GNWT cannot accept a bid that changes the scope, price, risk allocation, required security, form of agreement, or any other material term of the solicitation. For example, a bid that proposes a heating system of substantially lower quality or performance than the specified requirement would be non-responsive and would not be considered for award.

Where a qualification or irregularity appears minor, the Purchaser should determine whether it is truly immaterial or whether accepting the bid would give the bidder an unfair advantage or allow the bidder to improve its position after closing. Clarifications may be requested only to explain or confirm information already contained in the bid. They must not amount to bid repair. A bidder must not be permitted, after closing, to remove a qualification, add missing required information, change its price, change its scope, or otherwise make a non-responsive bid responsive.

Only in exceptional circumstances should the GNWT consider whether an apparently non-responsive bid may nevertheless be accepted. Examples may include where the defect is clearly immaterial and does not affect price, scope, risk, or fairness; where only one bid was received and the issue does not compromise the integrity of the process; or where all bidders made the same qualification or departure such that no bidder received a competitive advantage. These situations should be approached cautiously, documented fully, and reviewed with Procurement Shared Services and legal counsel before proceeding.

If all bids contain qualifications or departures, the GNWT should consider whether the solicitation documents should be cancelled and reissued rather than negotiating with one bidder. Any negotiation must not undermine the fairness of the process or result in a contract award that is inconsistent with the original competition.

2.5.3.7. 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.

2.5.3.8. 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 with similar types of contracts
- Record on previous contracts 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).

The decision to deem a contractor not "responsible" must be done in accordance with the Vendor Performance Management Policy.

2.5.3.9. 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 may be made aware of the concerns and requested to review the tender. Consider the following:

- A submitted bid constitutes a legally binding commitment. Bidders are expected to honour their submitted price and bid. Withdrawal of a bid may be permitted only under exceptional circumstances and should not be assumed as a right. If a bidder acknowledges that their tendered price is unrealistic and requests to withdraw, the GNWT has the right to pursue damages, including the cost difference between the withdrawn bid and the next lowest compliant bid. If a bid bond was submitted, the GNWT may submit a claim against the bond due to the bidder's refusal to honour their bid. Such withdrawal may also negatively impact the bidder's performance record and future eligibility for GNWT procurement opportunities.
- 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 the GNWT agrees with the bidder's review of the price and the explanation of why the price is lower than the estimate, and if the GNWT considers the bidder to be responsible, the GNWT should request confirmation of the tender price in writing and award the contract accordingly.
    - If the GNWT does not accept the bidder's explanation for the low price and determines that the bidder is non-responsible, the bid should be disqualified. In such cases, the contract should be awarded to the next lowest bidder who is deemed both responsible and responsive. This decision shall be made in accordance with the Vendor Performance Management Policy.

- Under no circumstances may the bidder be permitted to increase the offer originally submitted, or otherwise fix their bid.

2.5.3.10. Inadequate Bids (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 manager responsible 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 requirements 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.
4. The fundamental intent of the original tender call remains the same. Tenders may be re-invited by reducing the scope of the work.

2.5.3.11. 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 email.

2.5.3.12. 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.

2.5.3.13. 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 (BIP), 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 or locate information in a bid.

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.

2.5.3.14. Sole Bid Received

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

- Potential bidders had enough time to prepare and send their bids
- The bid amount is reasonable and within the budget
- Delivery of the requirement can be made on time
- Local and NWT BIP 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.

2.5.3.15. 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 advertising 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 suitable contractors to understand why they did not submit a bid. This outreach can help identify issues such as missed notifications, technical difficulties during submission, or potentially restrictive specifications. However, when taking this approach, it is essential to ensure that no

information is shared that could provide a material advantage to any contractor, particularly if the procurement is 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 Request for Proposals (RFP) solicitation method is used when the GNWT is seeking a solution to a problem, project, operational need, or business process and the best approach cannot be fully defined in advance. Rather than prescribing a detailed project plan, the RFP describes the GNWT's objectives, background, anticipated requirements, constraints, and expected outcomes. Proponents are then invited to propose an approach, methodology, work plan, and team structure that they believe will best meet the GNWT's needs.

Proposals are evaluated to determine how well each proponent understands the GNWT's requirements and how effectively the proposed solution is expected to achieve the desired outcomes. Evaluation is based on the criteria set out in the RFP, which may include price as well as qualitative factors such as the strength of the proposed methodology, the quality and feasibility of the solution, relevant experience, project management approach, 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 the legality or fairness of an RFP process is challenged, the GNWT will generally rely on the terms, conditions, evaluation rules, and procedural protections contained in the approved RFP template to demonstrate that the process was conducted fairly, transparently, and in accordance with the solicitation documents. For that reason, departments should not revise

standard RFP template language unless the change has been reviewed and approved through the appropriate procurement channels. Removing or altering template wording may weaken provisions developed to protect the GNWT, create uncertainty in the procurement process, or increase the risk of a successful challenge by an unsuccessful proponent.

Departments must also avoid any action, communication, or decision during an RFP process that could provide, or appear to provide, an unfair advantage to any proponent. This includes inconsistent disclosure of information, informal communications outside the process set out in the RFP, or departures from the stated evaluation methodology. If a department believes that a template provision is not appropriate for a particular project, advice should be sought from Procurement Shared Services before any change is made.

Where the evaluation process, mandatory requirements, or stated criteria are not followed, the responsible department may be required to defend the integrity and defensibility of the process in response to a challenge from an unsuccessful proponent.

2.6.3.3. RFP – Standard

This template is intended for the procurement of general services, including, for example, services such as janitorial, actuarial, accounting, consulting, facilitation, mediation, information technology consulting, and similar service requirements.

Users should note that the standard service contract is included as the default pro-forma contract in the RFP template. However, other GNWT contract templates may be more appropriate depending on the nature, complexity, and risk profile of the services being procured. Where the standard service contract is not suitable, purchasers should consult Procurement Shared Services to determine the appropriate form of contract before issuing the RFP.

If goods are being procured through an RFP, purchasers should ensure that the RFP identifies the appropriate pro-forma contract and clearly describes the shipping, delivery, and transfer of ownership terms that will apply to any resulting contract. This includes identifying, where applicable, who will be responsible for shipping costs, insurance, customs, risk of loss, and delivery to the final destination. In most cases, these expectations should be specified using the applicable International Commercial Terms (Incoterms®).

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 architectural and engineering services.

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 an 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:

- Instructions 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. Frequently, some level of further negotiation will need to take place before the final terms of the contract are agreed upon.

Since any proponent may ultimately be unable or unwilling to enter into a contract under the terms that are eventually finalized, RFPs should not require bid security. Additionally, RFPs should not include a requirement for proposals to remain irrevocable for any fixed period.

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 NWT 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.

Consider the following:

- If the available budget is not disclosed, proponents will submit their best price and financial proposals will be scored accordingly. However, unless price is given significant weight in the evaluation, a high-priced proposal with strong scores in solution and capability could outscore a lower-priced proposal that offers an adequate solution and capability. This may result in awarding the contract to a more expensive proponent, even when a more cost-effective option is available.
- Including the available budget in the RFP helps encourage proponents to focus on delivering the best possible quality and value within the defined financial parameters.
- To ensure the BIP is appropriately considered, at least 20% of the total evaluation weighting must still be allocated to the financial component.

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

There may be criteria in the RFP that the proponent must comply with. These criteria may be mandatory requirements. If so, you must state this fact in the RFP. Further, you must state that, if the proponent is unable to meet these criteria, the proposal submission shall be disqualified.

Mandatory requirements must be established in the RFP if they are to be applied.

Because proposals must be disqualified if they fail to meet mandatory requirements, mandatory language should only be used where the requirement is truly intended to be mandatory. Avoid using words such as “must” or “shall” in evaluated or rated criteria, as this can create uncertainty about whether the criterion is a scored preference or a pass/fail requirement. Rated criteria should generally be framed using less mandatory language, such as “should,” to indicate that the response will be evaluated and scored rather than treated as a basis for disqualification.

Including minimum standards or mandatory wording in criteria that are not meant to be mandatory can lead to unintended disqualification and confusion during the evaluation process.

Minimum Scores

Applying a minimum or upset score threshold can be an effective way to ensure that a successful proponent demonstrates acceptable competency across all evaluated areas. This approach helps prevent awarding a contract to a proponent who performs well overall but is deficient in a critical area. It also serves as a practical alternative to relying heavily on mandatory requirements, while still maintaining a high standard of service quality.

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. It is also recommended that the RFP include language to permit the Purchaser to lower the threshold in the event the minimum score is not achieved by any proponent, or an insufficient number of proponents.

Presentations/Demonstration/Shortlists

Where an RFP includes presentations or demonstrations, including as part of a short-listing process, the evaluation process must be clearly described in the RFP. Proponents must be advised whether presentations or demonstrations will be required, who will be invited to participate, what information will be assessed, and how the results will be used in the overall evaluation. The process must be structured and administered in a manner that is fair, consistent, and designed to prevent bias or the perception of bias. The Purchaser must determine

- whether presentations or demonstrations will be scored, assessed on a pass/fail basis, or used only to validate information already provided in the proposal;
- if scored, whether the marks are additional or form part of the original evaluation weighting;
- if assessed on a pass/fail basis, the minimum requirements that must be met and the consequences of not meeting them;
- the criteria, process, and method that will be used to evaluate or assess the presentation or demonstration; and
- the controls that will be used to ensure proponents are treated consistently, such as using the same presentation format, time limits, evaluation questions, evaluation committee members, and scoring or assessment methodology.

Establishing the Evaluation Committee

The proposal evaluation committee should be established as early in the procurement process as possible and, ideally, before the RFP is released. Wherever possible, evaluators should be involved in developing the RFP document(s), particularly the evaluation criteria and the corresponding response guidelines for proponents, and should have an opportunity to review the RFP before it is released. This helps ensure that evaluators understand the requirements and criteria they will be applying, and allows any ambiguity or inconsistency to be addressed before proponents rely on the documents.

Evaluation committee meetings should also be tentatively scheduled before the RFP is released, and each evaluator should confirm that they can commit the time needed to conduct a fair and proper evaluation, including the individual review of proposals and participation in consensus

evaluation sessions. If the proposal submission deadline is extended, the tentative meeting dates should be adjusted accordingly and reconfirmed with all evaluators.

Committee Size

It is recommended that evaluation committees consist of a minimum of three (3) and a maximum of five (5) members. A minimum of three members is essential to a meaningful consensus evaluation. Consensus scoring relies on evaluators discussing their individual assessments and agreeing on a score through reasoned discussion. With only two members, a difference of opinion can result in an impasse, and the outcome may reflect the views of only one individual. Three or more members bring a broader range of perspectives and expertise, help ensure that no single evaluator unduly influences the outcome, and strengthen the objectivity and defensibility of the evaluation. At the same time, committees of no more than five members are easier to organize and schedule, allow evaluation sessions to proceed more efficiently, and make it more practical to reach consensus. Notwithstanding this recommendation, a larger committee may be appropriate for procurements with unique requirements, such as complex, high-value, or multi-disciplinary projects requiring specialized technical, financial, legal, or program expertise. In such cases, the rationale for a larger committee should be documented in the procurement file.

Committee Composition

Evaluators should ideally be personnel who are familiar with the required work and have an understanding of the relevant industry or field. Although exceptions may be made, it is recommended that the committee not include employees who have a direct reporting relationship with one another. Where senior management is expected to participate in an evaluation, the entire committee should be composed of senior managers.

Conflict of Interest

No person with an actual, potential, or perceived conflict of interest in relation to a proponent may serve on an evaluation committee. This includes, without limitation, a financial interest in a proponent or a bias arising from a current or past association with a proponent. Former employees of a proponent should serve on an evaluation committee only after discussion with their supervisor and Procurement Shared Services, and each situation will be assessed on a case-by-case basis to confirm that no conflict of interest exists.

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 stages:

- Review of Mandatory Requirements
- Evaluation of Rated Requirements
- Evaluation of the Financial Proposal

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:

- Experience and Qualifications of the Team
- Methodology / Approach
- Related experience of the company
- Community Engagement
    - The Community Engagement criterion is recommended for use in all RFP's where there is potential for on-site and/or engagement work within the NWT. It focuses on a proponent's 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 BIP 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.
- Financial (BIP adjusted price)

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).

2.6.4.7. 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.

2.6.4.8. Short-form RFP

In addition to the usual information required in an 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 is not 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 is responsible for reviewing and evaluating all proposals received in response to the RFP and for determining, in accordance with the stated evaluation process, which proposal offers the best overall value to the GNWT. Committee members must carry out this responsibility carefully, consistently, and objectively, recognizing that the integrity of the procurement process depends on a fair, transparent, and defensible evaluation.

The duty of fairness requires that all proponents be treated equitably and that each proposal be assessed only against the requirements, criteria, weighting, and process set out in the RFP. Evaluation committee members must not introduce undisclosed criteria, apply criteria inconsistently, rely on personal preferences, or take into account information that is not properly before the committee. All proponents must be given the same opportunity to compete, and no action should be taken that could provide, or appear to provide, an unfair advantage to any proponent.

Committee members are expected to review proposals independently and in good faith, exercise sound judgment, and base their scoring and comments on the content of the proposals and the published evaluation framework. Scores should be supported by clear, relevant, and professional rationale that demonstrates how the proposal met, exceeded, or failed to meet the stated requirements. Where consensus discussions occur, they should be used to confirm a common understanding of the proposals and the evaluation criteria, not to rewrite the RFP, adjust the process, or favour a particular outcome.

The Purchaser may choose to assign each evaluator a specific order of proposals for the independent evaluation (e.g. evaluator 1 starts with Proposal A, evaluator 2 starts with Proposal C, etc.). This approach helps to control positional bias by ensuring that not all evaluators are starting their evaluation with the same proposal.

Preliminary Steps

Prior to opening proposals, the committee should meet to confirm the evaluation process. Consensus scoring is the GNWT standard approach and should be used unless the RFP expressly establishes a different scoring method. Deviations from the consensus approach are rare and should only occur where there is a clear, documented rationale and the alternate process has been intentionally built into the evaluation process. Averaging individual evaluator scores may be used only in limited circumstances, generally relating to highly technical information technology products and services, and should not be treated as a routine or default scoring method.

After opening, each committee member should review all proposals and complete an independent preliminary evaluation. The committee should then meet to discuss the proposals and arrive at consensus scores for each criterion. Consensus scoring is important in public sector proposal evaluations because it requires evaluators to apply the published criteria collectively using the specified scoring scale, test assumptions, resolve differences in interpretation, and ensure that the final score reflects a reasoned committee assessment rather than a simple mathematical calculation. This helps promote consistency, transparency, fairness among proponents, and a more defensible evaluation record.

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

The justification for each consensus score, and how it relates to the scoring scale, must be recorded in the consensus comments section of the evaluation worksheet. These comments should clearly explain why the committee assigned the score, with reference to the relevant strengths, weaknesses, omissions, or limitations in the proposal. Comments should be specific enough to demonstrate how the proposal met, exceeded, or did not meet the requirements of the criterion, while remaining professional, factual, and tied to the evaluation criteria.

Maintaining good notes is an important part of a fair and defensible public sector procurement process. The evaluation record should allow someone who was not present for the committee discussions to understand the basis for the scoring and the award recommendation. Good notes also support vendor debriefings, responses to questions or complaints, internal reviews, and any later scrutiny of the procurement process. For this reason, committee comments should address both strengths and weaknesses, avoid unsupported conclusions or subjective preferences, and provide a balanced explanation of the committee's assessment.

Application of the Business Incentive Policy

The BIP is applied to the RFP process in accordance with BIP Interpretive Bulletin #4, which requires the BIP adjusted price to be used for the financial evaluation.

Clarifications

In certain situations, it may be necessary to seek clarification from a proponent. Whether the clarification is needed to address a financial or technical uncertainty or something relating to the BIP, 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 and true ambiguities (e.g. two different references for the same topic).

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. Clarifications should generally be structured in a YES/NO format, or a request for a section or page number in the proposal.

Proponent Interviews

Additional information may also be obtained through an interview with proponents who meet the interview threshold established in the RFP. The RFP must clearly state whether interviews will be conducted, the criteria or minimum score required to proceed to an interview, and how interview results will be evaluated or incorporated into the final assessment. In the interview, both parties may explore concerns and questions related to the project and the proposed solution. The interview process must be applied consistently to all proponents who meet the stated threshold and must be fully described in the RFP documents.

Reference Checks

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

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. References may also be used to validate the accuracy of information in a proposal.

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 highest ranked or, in certain situations, with a shortlist of proponents. Such negotiations may be carried out to clarify points contained within the proposal, contract terms, or minor modifications to the scope of the work.

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. Such discussions amongst evaluation committee members must be limited to the consensus evaluation session;
- 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.

2.6.6.3. Conflicts of Interest

Where an evaluator becomes aware of a potential, perceived, or actual conflict of interest, or identifies any other issue that may affect the integrity, fairness, confidentiality, or objectivity of the procurement process, the evaluator must promptly disclose the matter and seek direction. If Procurement Shared Services is involved in the procurement, the evaluator should raise the issue with their Procurement Shared Services representative. Where Procurement Shared Services is not involved, the evaluator should immediately raise the matter with either the person overseeing the procurement process, or their supervisor. The evaluator should not continue participating in the evaluation, discussing the matter with other committee members, or taking any further action that could affect the procurement process until guidance has been provided.

This obligation is particularly important in public sector procurement because procurement decisions involve the expenditure of public funds and must be made in a manner that is fair, transparent, impartial, and defensible. Proponents must have confidence that proposals are evaluated on their merits and in accordance with the published evaluation criteria, and the public must have confidence that government purchasing decisions are not influenced by private interests, personal relationships, bias, undisclosed information, or improper considerations. Even the appearance of a conflict or unfair advantage can undermine confidence in the process and may expose the procurement to complaints, review, delay, cancellation, or legal risk.

Prompt disclosure allows the issue to be assessed and managed before it affects the evaluation. Depending on the circumstances, appropriate steps may include confirming that no conflict exists, restricting access to certain information, removing or replacing an evaluator, documenting mitigation measures, or obtaining further direction before the evaluation proceeds. Addressing these matters early helps protect the fairness of the competition, the independence of the evaluation committee, and the validity of any resulting contract award.

All disclosures, discussions, and decisions relating to a conflict or process-integrity concern must be handled confidentially and limited to individuals who have a legitimate and demonstrable need to know. This protects commercially sensitive proposal information, preserves the independence of the evaluation process, and reduces the risk that information could be shared in a way that compromises the competition. A clear record should be kept of the issue raised, the direction provided, and any steps taken to manage the matter, as this documentation may be important if the procurement decision is later questioned or reviewed.

2.6.7. Debriefing Proponents

2.6.7.1. Overview

The debriefing meeting 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

Debriefings may be held after a Notice of Intent to Award has been issued or, when a Notice of Intent to Award is not used, after the contract has been signed. Requests for debriefings should be acknowledged promptly, and the meeting should be scheduled and conducted as soon as reasonably practicable.

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, the Purchaser should prepare a debrief script to support consistency across debriefings. The script should outline the purpose of the debrief, confirm that no recordings are permitted, identify what the debrief will and will not cover, and provide a brief overview of the RFP or procurement process. The debrief should then proceed through the proponent's consensus sheet, with either the Purchaser or a designated member of the evaluation committee reading directly from the documented score and supporting comments for each criterion. The Purchaser and evaluation committee should not adlib or create any new comments for the debrief; the discussion should be limited to the existing consensus notes and recorded evaluation results.

Debriefings should be conducted with one proponent 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, however, at least one evaluator must be present. The Purchaser, one or two members of the evaluation committee, and the independent Fairness Monitor (if engaged), 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. However, Procurement Shared Services would only attend the debriefing meeting if they oversaw the procurement process. In other cases, the Purchaser responsible for the procurement would coordinate and chair the debriefing meeting.

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 RFP and points were allocated fairly and consistently.

During the debriefing, chairperson should read directly from the consensus evaluation notes for the proponent's proposal. By hearing the score and supporting comments for each criterion, the proponent should gain an understanding of why its proposal was not selected and be able to identify areas where its proposal could be improved in future procurements. Proponents' responses should be discussed only in relation to the evaluation criteria and the documented consensus comments, not in comparison to other proponents' responses. No details of the successful proponent's proposal, 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 (if available)

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
    - These attendees should be verified before the meeting.
    - If the proponent includes their Legal Counsel, the Purchaser should discuss the matter with the Department of Justice, Legal Division, or contact Procurement Shared Services for assistance prior to the meeting.
- 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.
- Neither party shall record a debriefing meeting, this includes voice-to-text recordings for transcription purposes.

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 receive credit under the Business Incentive Policy (BIP) 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.

2.7.3. 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 Housing Northwest Territories 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 factory ordered vehicle may be 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. Please contact Procurement Shared Services for assistance selecting a broker.

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:

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

2.7.4.3.2. An Item’s 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
- goods ordered through a Canadian post office box or a Canadian intermediary.

2.7.4.3.3. Handling Fees

When items are imported into Canada by mail, Canada Post charges the recipient either a handling fee for collecting duty and taxes on behalf of the CBSA, or a 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, credit card, 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 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® 2020 edition:

- Rules for Any Mode of Transport
  - EXW – Ex Works (named place of delivery)
  - FCA – Free Carrier (named place of delivery)
  - CPT – Carriage Paid To (named place of destination)
  - CIP – Carriage and Insurance Paid To (named place of destination)
  - DAP – Delivered at Place (named place of destination)
  - DPU – Delivered at Place Unloaded (named place of destination)
  - DDP – Delivered Duty Paid (named place of destination)
- Rules for Sea and Inland Waterway Transport
  - FAS – Free Alongside Ship (named port of shipment)
  - FOB – Free On Board (named port of shipment)
  - CFR – Cost and Freight (named port of destination)
  - CIF – Cost, Insurance and Freight (named port of destination)

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

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 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

Ensure that all prices submitted in response to GNWT Requests for Tenders include any applicable Northwest Territories environmental handling fees for electronics designated under the applicable 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 an 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 $10,000 and cannot be used with contractors outside the Northwest Territories.

2.8.1.4.2. Work Orders

Work Orders 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.

2.8.1.4.3. Service Contracts

The Department of Finance maintains standard forms of service contracts.

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.

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

2.8.2.3.1. Establishing Unit Price Contracts

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 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.

2.8.2.3.3. 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 "if, as and when required" 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 incorporate 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 GNWT and the Contractor hereby absolutely assigns to the GNWT the copyright in the property for the whole of the term of the copyright. Upon request, the Contractor shall return such property to the GNWT
- Three (3) production samples of the work produced must be provided at no additional cost to the GNWT 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 two million dollars ($2,000,000.00) 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, Interpretive Bulletin 705.14 provides the primary GNWT rules governing aircraft chartering.

The operational restrictions on aircraft operations are governed by Transport Canada licensing, the *Aeronautics Act* and *Air Transport Regulations*.

2.8.4.3. Request for Tenders – Aircraft Charter

2.8.4.3.1. 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.

For lower value air charters (under $10,000), Contract Authorities may use the air charter templates available in Internal Services.

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 requires 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.

2.8.4.3.3. Financial Administration Manual IB 705.14 Aircraft Chartering

Aircraft chartering may be used where it represents the most economical and practical means of transportation, particularly in circumstances where commercial travel is unavailable, impractical, or in emergency situations. In all cases, departments are required to assess available transportation options and ensure that the selected approach supports cost-effectiveness and program delivery requirements.

Aircraft charters must be procured in accordance with GNWT procurement requirements, including the use of prescribed contract forms and adherence to insurance and contractual standards. Where feasible, departments are encouraged to share charters to optimize value. Participation by non-government parties is permitted under defined conditions, including appropriate approvals, cost recovery arrangements with the carrier, and consideration of any financial or taxable benefit implications. Where travel is determined to be for government business or in the public interest, written justification must be obtained and retained, and applicable financial and tax requirements must be addressed.

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 Procurement Shared Services involves developing, implementing and administering the tendering and contracting processes. 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. 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 and the posting of Addenda 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 Purchaser for answers and follows up to ensure answers are received and either communicated to the bidder/proponent or included in any addenda 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.
- If a Request for Tenders or Proposals permits hand or mail delivery of the bid or proposal:
    - As soon as these bids are received, the date and exact time of their receipt will be confirmed and noted on the face of the bid/proposal envelope. The person receiving the envelope will also initial or sign beside the date and time.
    - Bids and proposals may only be accepted at the specified proposal or bid submission address.

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.
- In accordance with *Government Contract Regulations*, on the opening of a bid, the name of the bidder and amount of the bid must be announced and recorded. Since most GNWT procurement activities are conducted through the Contract Event Opportunities website, the bid announcements are managed online through the system.

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 will establish a receiving location where bids will be accepted. Usually, this will be done through the Contract Event Opportunities website.

2.10.5.3. Official Clock

Prior to receiving any mail or hand delivered 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

Bids are generally submitted online through the Contract Event Opportunities website. The system automatically records the date and time of submission and closes the opportunity at the specified bid submission deadline, preventing the acceptance of late bids.

If physical bid submissions are permitted, the Contract Administration section is responsible for receiving and accepting bids delivered to the office. Upon receipt, the date and exact time will be recorded on the front of the tender envelope. The Contract Administrator who receives the bid will then initial or sign beside the recorded date and time.

Employees must not accept a bid unless they are identified as a proper bid submission address (generally, a Contract Administrator). In accordance with the Instructions to Bidders for each tender, bids will only be accepted at the designated drop-off locations identified in the tender documents.

2.10.5.5. Protection of Bids

All bids received must be stored in a private and secure manner. This includes either a locked physical filing cabinet or a secure electronic location within the GNWT's Digital Integrated Information Management System (DIIMS), as applicable.

Prior to the submission deadline, all information related to the bids received is strictly confidential. This includes, but is not limited to, the number of bids received and the identity of bidders. Under no circumstances may this information be disclosed to anyone prior to the official opening of tenders.

Disclosing bid information before the tender closing time could compromise the fairness of the procurement process. Such information may influence a bidder's pricing decisions or discourage participation altogether. For example, if a bidder becomes aware shortly before the closing deadline that no other bids have been received, they could submit an inflated price and gain an unfair advantage. Although this type of situation is rare, it must be anticipated and prevented.

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 bid must be submitted in a sealed envelope, then the bid must be submitted in a sealed envelope and in accordance with the instructions that have been provided to bidder. 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 bid

The bidder is responsible for ensuring that the sealed envelope is delivered to the appropriate bid submission address/location. The location(s) 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 facsimile bids have been allowed; the bids must receive the same degree of security and control as is afforded to sealed tender bids.

The use of fax tender receipt procedures does not eliminate the regulatory requirements for a public opening by a tender-opening committee. Facsimile tenders should be opened in the same manner as 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. Physical bids received by mail or hand after the bid submission deadline should be date and time-stamped, and returned unopened by registered mail, with a cover letter noting that the bid was received late.

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

The GNWT Contract Event Opportunities website does not allow for the submission of late bids electronically.

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 bid submission deadline, the Contract Administrator or Purchaser should prepare a tender register and note ‘No Bids Received’.

The Purchaser should try to identify the reasons why no bids were received and make appropriate changes to any future tender calls for the same requirements.

Illegible or Unmarked Physical Bids

If an envelope is received before the bid submission deadline and is illegible, unmarked, or otherwise appears to contain a bid but cannot be properly identified, it may be opened for the

limited purpose of determining its contents. This should only occur in the presence of at least one witness.

If the envelope contains a bid, it should be resealed immediately after it has been properly identified with the information required on the face of every bid, as described under Sealed Bids earlier in this section. The bid should then remain sealed and be opened with the other bids in the usual manner. A written note should be attached to, or clearly marked on, the envelope confirming that it was received unmarked or illegible, opened only to determine its contents, identified, and resealed. The note should be signed and dated by both the person who opened the envelope and the witness.

The bidder should be advised of the circumstances and reminded that future submissions that are not properly marked may be rejected. The receiving office is not responsible for lost, misplaced, or misdirected tenders resulting from insufficient, unclear, or improper identification.

2.10.6. Opening Bids

2.10.6.1. Formal Tender Opening

To ensure fairness for all bidders, the opening process must be timely and conducted in a professional manner. Bids must be opened as soon as practical after the bid submission deadline.

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.

2.10.6.2. Information to be announced at Tender Opening

Bids that have been submitted online using the Contract Event Opportunities website will be downloaded shortly after the bid submission deadline.

In the case of physical bid submissions, upon opening each bid envelope, the Contracts Administrator (or equivalent) will announce:

- The name of the person or company who submitted the bid
- The amount of the bid
- Any amendments to the total amount of the bid, the final bid price, which would be the bid price plus or minus any amendments

No other announcements are made, nor should any other information be provided.

2.10.6.3. Completing the Tender Register

The Contracts Administrator (or equivalent) will complete the Tender Register. This register will include:

- The correct name of each bidder (occasionally the name appearing on the envelope is inconsistent with the name appearing on the tender)
- The original amount of each bid, any amendments to the price that were received prior to the bid submission deadline, and the revised total bid amount.
- The final bid value

2.10.6.4. Informal Tenders

In the case of informal tenders or quotations where the value of the contract is less than $25,000 for goods or $10,000 for services, it is recommended that bid information be released to bidders upon request.

2.10.6.5. GNWT Contract Event Opportunities System

For bids $25,000 and greater 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

Just like the tendering process, the RFP process must ensure that all proponents are treated fairly and equally so the Purchaser can be confident that proposals have been received from all interested parties. This section explains how to ensure that proposals are properly handled to achieve this objective.

2.10.7.2. Receiving Locations

Every RFP will establish a receiving location where proposals will be accepted. Usually, this will be done through the Contract Event Opportunities website.

2.10.7.3. Receipt of Proposals

Proposals are generally submitted electronically through the GNWT Contract Event Opportunities website, which is the primary and preferred method for receiving competitive submissions. The system records the date and time of submission and closes the event at the proposal submission deadline stated in the RFP, preventing proponents from submitting late proposals through the online portal. Proponents are responsible for ensuring that their proposal, including all required attachments and forms, is fully uploaded and submitted before the closing date and local time specified in the solicitation documents.

Where physical proposal submissions are expressly permitted in the RFP, proposals must be delivered only to the submission address or drop-off location identified in the solicitation documents. Upon receipt, the date and exact time of delivery should be recorded on the proposal envelope or package, and the Contract Administrator or other authorized receiving employee should initial or sign beside the recorded date and time. The envelope or package should be clearly labelled with the Event ID, project title, and submission deadline.

GNWT employees must not accept proposals unless they are specifically identified in the RFP as an authorized submission contact person or receiving location. A proposal delivered to an incorrect office, employee, or location is the responsibility of the proponent and may be rejected if it is not received at the designated submission address before the deadline. The receiving office is not responsible for late, lost, misplaced, or misdirected proposals resulting from insufficient or incorrect delivery information.

Proposals submitted by email, facsimile, courier, or any other method should only be accepted where that method is expressly permitted in the RFP. If an alternate submission method is permitted, the proposal must be received in its entirety at the designated submission address before the closing date and local time stated in the solicitation documents. The onus remains on the proponent to ensure the proposal is properly transmitted, delivered, and received on time.

Facsimile submissions should not be used where original documents, original signatures, bid security, or other original materials are required. Where original documents are required, the RFP must clearly identify the required form and method of submission.

2.10.7.4. Protection of Proposals

All proposals received must be stored in a private and secure manner. This includes either a locked physical filing cabinet or a secure electronic location within the GNWT's Digital Integrated Information Management System (DIIMS), as applicable.

Prior to the proposal submission deadline, all information related to the proposals received is strictly confidential. This includes, but is not limited to, the number of proposals received and the identity of proponents. Under no circumstances may this information be disclosed to anyone prior to the official opening of proposals.

Disclosing proposal information before the proposal submission deadline could compromise the fairness of the procurement process. Such information may influence a proponent's pricing decisions or discourage participation altogether. For example, if a proponent becomes aware shortly before the closing deadline that no other proposals have been received, they could submit an inflated price and gain an unfair advantage. Although this type of situation is rare, it must be anticipated and prevented.

2.10.7.5. Opening Proposals

To ensure fairness for all proponents, the opening process must be timely and conducted in a professional manner.

It is important to note that the GNWT usually applies a two-envelope approach for the submission of proposals, which means that each proponent will submit one technical proposal and one financial proposal. The opening of the technical proposals and financial proposals is done at different times.

Technical proposals will be opened as soon as possible, and the name of the proponent will be recorded in a register and posted to the Contract Event Opportunities website.

Financial proposals are only reviewed by the evaluation committee after the technical proposal has been evaluated. This approach is used to ensure that the financial proposal does not improperly influence the technical proposal evaluation process.

2.10.7.6. Modification and Withdrawal of Proposals

2.10.7.6.1. Modification

After the proposal submission deadline, modifications to a proposal 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 proposal or submit remove the original proposal and upload a new version.

2.10.7.6.2. Withdrawal

Proponents can withdraw their proposals at any time.

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

- 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)

Request for Proposals

- Proposals are revocable at any time prior to contract award
- 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 bids beyond the acceptance period. The procedure for extending the acceptance period depends on the type of tender that was used.

2.11.2.2. Proposals

Proposals that have been submitted in response to an 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. Unless specified in the RFP 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 workload.

2.11.3. Results Notification

A number of notification templates have been prepared by the Department of Finance for use by purchasers.

- **System Generated - Notice of Intent to Award**

  The Notice of Intent to Award process was introduced as part of the revised Vendor Complaint Process implemented on June 1, 2026. It is used to advise participating vendors that the evaluation of a competitive procurement has been completed and that a preferred vendor has been identified, before the contract is formally awarded. The notice supports transparency, fairness, and accountability by giving vendors a clear opportunity to review the outcome and raise process-related concerns before the award is finalized. It is required for competitive procurements where the value exceeds the established thresholds: goods or services valued $200,000 and greater and construction valued $500,000 and greater.

  Once the evaluation is complete, the Notice of Intent to Award is issued through the procurement system, or manually where required, to participating vendors at the email address associated with their bidder account for the Contract Event Opportunities website. The procurement remains on hold during the protest period, and vendors have three business days from the date and time the notice is issued to submit a Notice of Protest Form if they have concerns about the procurement process. Any protest received under the Vendor Complaint Process must be reviewed and addressed before the procurement proceeds to award, helping ensure that identified issues are considered in a consistent and defensible manner while maintaining the integrity of the procurement process.

- **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 bidders/proponent has been awarded the contract.

  For RFT processes, letters of regret would usually only be used when the Purchaser has 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 RFT 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 an 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 an RFP or *RFT* process.

2.11.4.2. Request for Proposals

Since you will 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

Negotiations following a Request for Tenders process should be limited and approached with caution. The purpose of an RFT is to award a contract to the lowest responsive and responsible bidder based on the requirements, specifications, terms, and conditions set out in the tender documents. As a result, negotiations should not be used to materially change the tendered requirement, correct a non-responsive bid, provide an advantage to a bidder, or produce a final contract that is substantially different from what was outlined in the tender documents.

Limited negotiations may be appropriate in defined circumstances, such as where only one responsive bid is received or where all responsive bids exceed the available budget and the GNWT is considering whether a limited scope adjustment may preserve the competition. In these situations, negotiations must be confined to matters that do not compromise the intent of the tender, the stated evaluation basis, or the fairness of the process.

Any negotiated change must remain consistent with the original scope, specifications, and procurement objective. The GNWT should not negotiate changes that would reasonably have

affected bidder interest, pricing, ranking, or the decision of other suppliers to participate. A Contract Authority should never place the GNWT in a position where a supplier could reasonably argue that it would have bid, or bid differently, had it known the final contract would be based on different terms or requirements.

Before entering into negotiations following an RFT, the Contract Authority should consider whether it would be more appropriate to cancel and re-tender, revise the requirements, or use another procurement method. Any decision to negotiate should be documented, limited in scope, and reviewed with Procurement Shared Services where there is uncertainty about fairness, responsiveness, or process integrity.

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

2.11.5.3.1. Corporations

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.

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.

2.11.5.3.2. 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.

2.11.5.3.3. Sole Proprietorship

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.

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.

2.11.5.3.5. 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 *Business Corporations 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.

2.11.5.3.6. Municipalities

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 must hold a valid business license issued by the municipality in which the vendor operates. Where the vendor operates from a community or area where the municipality does not issue business licenses, the contractor must obtain a business license from the Department of Municipal and Community Affairs.

2.11.5.6. Signatures by GNWT

When signed contract documents have been received from a contractor, the contract should be examined and signed as soon as possible.

If the contractor fails to return the signed contract documents or does not provide required documentation, such as contract security, proof of insurance, or other specified deliverables, you may need to reconsider the contract award.

Options may include:

- terminating the contract
- 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

2.11.6. Electronic Signatures

Electronic signatures may be used to execute GNWT contract documents where permitted by law and the applicable contract requirements. The Northwest Territories *Electronic Transactions Act* recognizes the legal effect of electronic information, records, and signatures in many circumstances, and provides that electronic means may satisfy certain legal requirements for writing, original documents, and signatures where the applicable requirements of the *Act* are met. Electronic signatures should therefore generally be considered valid for contract execution purposes, unless a statute, regulation, policy, contract requirement, or other legal requirement requires an original or wet-ink signature.

Purchasers should ensure that electronic signatures are appropriate for the specific contract and that no statutory or procedural requirement requires an original signature. Where there is uncertainty about whether an electronic signature may be used, the Purchaser should seek advice from Procurement Shared Services and, where appropriate, Legal Division.

Purchasers may use OpenText™ Core Signature to facilitate electronic signing of contract documents. OpenText Core Signature provides a comprehensive audit trail that supports the integrity of the signing process by recording information such as the signer, date and time of signing, sequence of signatures, and related authentication or transaction details.

For lower-value and lower-risk procurements, Purchasers may use Adobe e-Sign where it is appropriate for the nature of the contract and consistent with GNWT processes. The use of Adobe e-Sign should be limited to procurements where the risks associated with identity verification, document integrity, and audit requirements are low.

Regardless of the electronic signing platform used, the Purchaser's actual signature must be visible on the executed contract document. The Purchaser's visible signature is important because it aligns with the Purchaser's specimen signature record and confirms the authority relied on to sign contracts on behalf of the GNWT and HNWT. A platform-generated approval, typed name, initials, or certificate alone should not replace the visible signature of the authorized Purchaser unless otherwise approved through the applicable signing authority process.

Electronically signed contracts, together with any certificate of completion, audit trail, signing log, or related evidence of execution, should be retained as part of the official contract file in accordance with GNWT records management requirements.

2.11.7. Identity of the Successful Bidder or Proponent

Following a competitive procurement process, the contract will be awarded to the same legal person or entity that submitted the successful bid or proposal, using the same legal name identified in the submission. The contract should not be issued to an affiliate, parent company, subsidiary, related business, joint venture participant, individual owner, or other entity that did not submit the successful bid or proposal.

This requirement helps preserve the fairness, transparency, integrity, and defensibility of the procurement process and ensures that the procurement and contract records accurately identify the party whose qualifications, experience, pricing, representations, and proposed performance were evaluated.

A minor correction or clarification to a business name may be permitted where the legal entity remains unchanged and the correction does not affect the bidder's or proponent's identity, eligibility, qualifications, evaluation, ranking, or obligations. Any uncertainty regarding the identity of the proposed contractor, including a request to contract with a different legal entity, should be referred to Procurement Shared Services before award. A material change in legal entity should not be treated as an administrative correction and may require the proposed award to be reconsidered.

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.
- Engage with the contractor as a collaborative partner, recognizing their expertise and role in delivering the project, rather than treating them as a subordinate.
- 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 compliance with commitments made by the vendor under the Business Incentive Policy (BIP). In the case of contracts for services and construction, monitor the BIP Content Substantiation (Invoice) Reports that must be submitted with each invoice.
    - BIP Content Substantiation (Invoice) Reports must be submitted with each invoice whenever the contract includes BIP commitments that have been made by the vendor. It is important to understand the BIP commitments when the contract is awarded and monitor compliance with those commitments throughout the term of the contract. If, at the end of the contract, the vendor has failed to comply with its commitments, this is considered a breach of contract, and Procurement Shared Services should be notified as soon as possible.
    - BIP Content Substantiation (Invoice) Reports will be submitted with each invoice and will identify the BIP content involved in that invoice period. The value of the BIP Content Substantiation (Invoice) Report must equal the value of the invoice that it is being submitted with.
- Monitor contract price and payments against budget.
- Administer warranty arrangements.
- Monitor contractor safety management systems, as required, for services.
- Fulfilling 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 (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 provides guidance on the minimum retention periods for records related to the solicitation, award, administration, and performance of contracts.

Contract records are generally considered administrative records and must be retained in accordance with the GNWT's Administrative Records Classification Schedule (ARCS). Records that

relate to a department's specific program, mandate, or operational activities must be retained in accordance with the applicable Operational Records Classification Schedule (ORCS).

The information in this section is provided for guidance only and should not be relied on as a substitute for official records management direction. Contract Authorities should consult their Records Coordinator, the Department of Finance Records Manager, or their DIIMS contact to confirm the appropriate classification, retention period, and disposition requirements for specific records.

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. Deviation

from this requirement requires the approval of the Department of Justice and the Department of Finance's Insurance and Risk Management office.

3.3.3. Types of Standard Insurance Coverage

3.3.3.1. Comprehensive/Commercial General Liability

Contractors are required to carry Comprehensive/Commercial 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 $2,000,000 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 address financial loss, third-party claims, and related liabilities that may arise from a cyber incident, privacy breach, unauthorized access, data loss, or compromise of information systems. The need for cyber liability insurance should be assessed on a case-by-case basis, in consultation with Risk Management, based on the nature of the work, the sensitivity of the information involved, the vendor's access to GNWT systems or data, and the potential impact of a breach or service disruption.

In determining whether cyber liability insurance should be required, purchasers should consider whether the vendor will access, collect, use, transmit, host, store, or manage GNWT information, particularly personal information, health information, financial information, employment records, educational records, court records, or other confidential or sensitive information. Purchasers should also consider where data will be hosted or stored, whether the data will be located in Canada or outside Canada, whether encryption and other security controls will be used, whether the vendor will connect to GNWT systems, and whether the vendor will rely on subcontractors or third-party cloud service providers.

Risk Management must be advised of any information technology, digital service, cloud service, software, data management, or other contract where the vendor may have access to

confidential, personal, or otherwise sensitive information. The Office of the Chief Information Officer must also be consulted where the contract involves GNWT information systems, technology services, cybersecurity requirements, cloud hosting, data storage, system integration, or access to GNWT networks or data.

Risk Management will determine whether cyber liability insurance is required and, if so, the appropriate coverage limits and any policy requirements. This determination should be made before the solicitation is issued so that insurance requirements are clearly identified in the procurement documents and reflected in the resulting contract.

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. 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/RFT, Geotechnical Report, Contract, IFC Drawings, and the Construction Schedule.

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.wscc.nt.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-mentioned 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 the 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 would usually 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.

Notwithstanding the guidance set out in this section, the release of any holdback must be administered in accordance with the terms of the applicable contract, unless otherwise required by law.

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/NWT 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.

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-mentioned issues. These include:

- 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, or
- a binding and enforceable Judgement or Order of a court of competent jurisdiction setting forth such amount as would have been payable by the Contractor to the claimant pursuant to the provisions of the Territorial lien legislation had such legislation been applicable to the work, or
- a final and enforceable award of an arbitrator setting forth such amount as would have been payable by the Contractor to the claimant pursuant to the provisions of the applicable Territorial lien legislation, had such legislation been applicable to the work.

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.
- 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, where practical, be covered under a separate, competitively procured 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 PW&S 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 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 (contract change order).

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 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 terms of 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 any damage 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
- referee
- 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 on 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. Pubic 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 a tender and evaluate bids in accordance with these Procurement Guidelines.
2. 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
    - method of payment
3. Award of the sale will be to the highest responsive bidder.
4. Contact the successful bidder and set a date for pickup of the item(s) sold.
5. Write up an Interim Receipt (NWT 6532) for the acceptable bid.
6. 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.
7. Payment for all items purchased is made by the successful bidder prior to removal from the GNWT premises.
8. Normal methods of payment would be cash, certified cheque, bank draft or credit card (where available).

9. Record the GST as a separate item on the General Receipt and FIS Transaction Sheet.
10. 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 Regulations or Law.

Also, 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 service*s, 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 (*RFT*s and *RFP*s), 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.

NWT Indigenous Business: Is a business that: is registered under the GNWT BIP; and is registered on the Government of Canada's Indigenous Business Directory or a publicly available business registry maintained by an NWT Modern Treaty Partner.

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.

Purchaser: Is the employee responsible for administering and managing the overall procurement process. This may be a Procurement Specialist, Senior Procurement Specialist, Senior Contracts Advisor with Procurement Shared Services, or another employee assigned procurement responsibility, such as a Project Officer from the Department of Infrastructure or Housing NWT. It could also include other employees that have procurement responsibility for under threshold purchases.

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 pre-qualify 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 compliance and 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 “if, as and when required” basis, during a set term.

Appendix 1
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 needed?	
10	Is the Inspection, Technical, Project, Design, or Contracting Authority specified?	
11	Are the evaluation criteria and sub-criteria specified?	
12	Are the weightings and sub-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?	

Appendix 2
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 format needed?	
10	Is the Inspection, Technical, Project, Design, or Contracting Authority specified?	
11	Is some form of Bid or Performance security required?	
12	Are the evaluation criteria and sub-criteria specified?	
13	Are the weightings and sub-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?	

Appendix 3
Requisition Checklist for the Procurement of Air Charters

1	Identify the number of passengers	
2	Identify the number of bags and/or total weight of cargo	
3	Provide Flight details (origin/destination)	
4	Dates of travel	
5	Hold/Pickup or Drop off	
6	Are there any specific aircraft requirements?	
7	Any special requirements (accessibility, engines, navigational equipment, etc.)	