

Vendor Performance Management Guidelines

Vendor Performance Management Policy
Version 1.0

January | 2024



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1. Introduction

The Vendor Performance Management Policy (the “Policy”) was issued on the authority of the Executive Council of the Government of the Northwest Territories (“GNWT”), effective September 29, 2023. The Policy is essential in ensuring the delivery of quality goods, services, and construction, and the prudent stewardship of public funds. The Policy requires the Financial Management Board to approve Vendor Performance Management Guidelines.

2. Purpose

The Policy was introduced as a means of formally monitoring and recording Vendor performance while requiring Vendors to improve compliance with contractual obligations and influencing improved service expectations. Vendor performance management is an essential element of effective supply chain management and must:

- be applied in a standardized and consistent manner;
- support procurement and contracting objectives;
- align with other policies, procedures, and best practices;
- ensure, support, and enable openness, fairness, and transparency, while obtaining best value in contracting; and
- incentivize good Vendor performance and hold poor or inadequate performers accountable.

The purpose of these Vendor Performance Management Guidelines (the “Guidelines”) is to provide the tools necessary to apply the Policy fairly and consistently.

3. Application

These Guidelines will be applied by GNWT departments and Public Agencies subject to the Policy.

The Guidelines apply to all construction and design-build contracts, competitive or non-competitive, as well as contracts for construction awarded through the GNWT Negotiated Contracts Policy and other cooperative contracting approaches. The tracking of BIP compliance provided for at Part 6 of these Guidelines and the payment adjustment provisions provided for at Part 7 of these Guidelines apply only to contracts valued at \$250,000 or higher.

The process provided for at Part 9 of these Guidelines will apply to all Vendors that have submitted a Bid or have entered into a contract with any of the GNWT departments and Public Agencies subject to the Policy, regardless of the value or type of contract.

4. Implementation of Future Phases

The Guidelines will be updated periodically to reflect the following future phases:

- Expansion of the Policy to include other forms of contracts, including general services, professional services, architectural and engineering services, and goods.
- Introduction of quantitative and qualitative metrics for the broad assessment and monitoring of Vendor performance of contracts.

5. How These Guidelines Were Developed

These Guidelines are approved by the Financial Management Board. The content is based on the work, input, and recommendations of the Vendor Performance Management Working Group, the Procurement Procedures Committee (the “PPC”), and the GNWT Internal Audit Bureau. The PPC has been delegated responsibility by the Financial Management Board to maintain the vendor performance management program and system and provide coordination, monitoring, and reporting on the Policy and these Guidelines.

6. Tracking BIP Compliance

An important goal of the vendor performance management program is to consistently track compliance with contractual commitments relating to the Business Incentive Policy (“BIP”). It is essential that the GNWT supports NWT-based businesses and labour as much as possible and ensures that contracted Vendors meet their commitments relating to BIP.

For construction contracts valued \$250,000 and greater, BIP compliance is tracked through SAM, which requires GNWT departments and Public Agencies to enter data collected through the BIP content substantiation reports (detailed below) submitted with Bids, Vendor invoices, and any contract change orders issued during the Contract term. Specifically, this data is entered using the Supplier Performance MGMT (management) module in SAM, where users will input the BIP content associated with each Progress Claim (invoice) and contract change orders throughout the life of a Contract. This data may be posted publicly to ensure transparency.

GNWT departments and Public Agencies should not approve any invoices for payment until the BIP content substantiation report has been reviewed to ensure it accurately captures the entire value of the Progress Claim. Vendors shall be solely responsible for updating and correcting any issues on BIP content substantiation reports prior to becoming eligible for payment.

BIP Forms

It is important to note that there are two distinct BIP substantiation report forms used in the enforcement of BIP.

First, there is the Substantiation of BIP Adjustment Form (see [Annex D](#)). This is submitted with a Bid or contract change order. This form establishes the contractual commitment to engage the specified levels of BIP content. It is essential that the form also be provided by a Vendor with contract change orders to ensure the target BIP content is updated to reflect any agreed upon changes to the Contract value.

Second, there is the Substantiation of BIP Content Form (see [Annex E](#)). This is submitted by a Vendor with each Progress Claim / Invoice. This form substantiates the amount of BIP content involved in a specific Payment Period. The form includes separate pages to substantiate: (1) labour, (2) services, and (3) goods/materials. Currently the Substantiation of BIP Content Form is required under architectural and engineering consulting contracts, construction contracts, and design-build contracts.

7. Enforcement of BIP Commitments

Vendors are required to submit BIP content substantiation report forms with each Progress Claim. These forms are essential for monitoring compliance with BIP commitments and must be submitted with every invoice/Progress Claim, carefully reviewed by the GNWT department or Public Agency to ensure accuracy, and promptly entered in the SAM Supplier Performance MGMT module for tracking.

As Vendors receive credit for BIP content during the evaluation phase or during negotiations, as applicable, for fairness and accountability it is essential that the GNWT consistently track and monitor levels of Local Content and NWT Content throughout the life of a Contract to verify compliance. These commitments are contractual obligations and must be treated as such when a Vendor defaults on that obligation.

There are two overarching consequences under the Vendor performance management program when Vendors do not satisfy their obligations agreed to under the terms of their Contract with the GNWT.

These are:

1. Payment adjustments for failing to meet BIP obligations
2. Deemed “Not Responsible” (See Part 9 below)

The Payment Adjustment

The payment adjustment applies to all construction contracts and design-build contracts valued at \$250,000 or greater, competitive or non-competitive, including contracts for construction awarded through the GNWT Negotiated Contracts Policy or other cooperative contracting approaches.

The GNWT and Public Agencies subject to the Policy have introduced language to these Contracts that apply a payment adjustment for Vendors that fail to comply with their contractual BIP commitments. Contractual BIP commitments refers to the levels of Local Content and NWT Content identified in the Substantiation of Business Incentive Policy Adjustment Forms (“BIP Forms”) that are submitted.

These BIP Forms are contractual commitments to engage the levels of local and NWT BIP content identified on the forms and will be incorporated into the final Contract documents. The payment adjustment applies only if the Vendor fails to meet their BIP obligations.

To fairly apply the payment adjustment, it is essential that GNWT departments and Public Agencies consistently review the BIP Content Substantiation Reports each month. The reports must balance with the value of the Progress Claim and be promptly entered in the SAM Supplier Performance MGMT module for tracking. Contract change orders must also be entered in the SAM system whenever they are issued, as changes to the value of the Contract will impact tracking and content levels. GNWT departments and Public Agencies must ensure that Vendors substantiate any contract change orders by submitting BIP Forms that identify the levels of NWT and local BIP content involved in the value of the contract change order (e.g. if the change order is valued at \$100,000, the Vendor substantiates that amount – they do not redo the BIP Forms that originally formed part of the Contract).

A Vendor's compliance with its BIP commitments by GNWT departments and Public Agencies should not only be confirmed at the end of the project but monitored throughout the project. However, it is the Vendor's sole responsibility to ensure they comply with their commitments for local and NWT BIP content.

An example of a standard payment adjustment clause is as follows:

The Contractor has completed a Substantiation of BIP Adjustment Form (the Substantiation of BIP Adjustment Form attached to this Contract), setting out the Contractor's commitments to achieve a specified amount of Local Content and NWT Content, as those terms are defined in the Business Incentive Policy of the G.N.W.T. It is a condition of this Contract that those commitments are achieved, and this Contract is awarded to the Contractor pursuant to those commitments. The amount of the Payment Adjustment, which applies only if the commitments are not achieved, shall equal fifteen percent (15%) of the amount by which the Contractor failed to meet the commitments to NWT Content and twenty percent (20%) of the amount by which the Contractor failed to meet the commitments to Local Content (see the Example below). The Contractor agrees to provide documentation substantiating the Local Content and NWT Content, in the form set out in Schedule 1 [Annex E of these Guidelines], with each Progress Claim (to be used to calculate the actual Local and NWT Content) and, at the time the Contractor requests the Substantial Certificate of Completion, provide the estimate of remaining Local Content and NWT Content to be completed after Substantial Completion. Applying the Payment Adjustment does not limit any other rights of the Owner related to the failure of the Contractor to meet the commitments to Local Content and NWT Content.

The payment adjustment is applied as follows:

Payment Adjustment Example				
A	Original Local and NWT Content Commitment			
		Local	NWT	Non-NWT
	Labour	\$130,000	\$50,000	\$25,000
	Services	\$30,000	\$10,000	\$5,000
	Totals	\$285,000	\$75,000	\$35,000
B	Change Order Amendments to Local and NWT Content			
		Local	NWT	Non-NWT
	Labour	\$7,500	\$5,000	\$0.00
	Services	\$0.00	\$2,500	\$0.00
	Totals	\$7,500	\$7,500	\$5,000
C	Target Local and NWT Content (Total of Original and Change Order Content)			
		Local	NWT	Non-NWT
	Labour	\$137,500	\$55,000	\$25,000
	Services	\$30,000	\$12,500	\$5,000
	Totals	\$292,500	\$82,500	\$40,000
D	Actual Local and NWT Content			
		Local	NWT	Non-NWT
	Labour	\$132,000	\$53,000	\$30,500
	Services	\$30,000	\$12,500	\$5,000
	Totals	\$279,000	\$80,500	\$53,500
E	Difference Between Actual and Target Content			
		Local	NWT	Non-NWT
	Labour	(\$5,500)	(\$2,000)	(\$5,500)
	Services	\$0.00	\$0.00	\$0.00
	Totals	(\$13,500)	(\$2,000)	(\$13,500)
F	Price Adjustment (below percentages applied to the difference value)			
		Local (20%)	NWT (15%)	Non-NWT
	Labour	(\$1,100)	(\$300)	N/A
	Services	\$0.00	\$0.00	N/A
	Totals	(\$2,700)	(\$300)	N/A
Payment (Reduction) Adjustment:				(\$3,000)

For reference, a Flowchart showing BIP Compliance Monitoring is attached as Annex B.

Payment adjustments valued at \$500 or less will not be pursued or applied by the GNWT.

Unit Price Contracts

A unit price contract is an arrangement where the contract prescribes the unit price of goods or services multiplied by an estimated quantity for those goods or services. A Vendor is then paid a sum that is equal to the final measurement of the goods and services (total actually used) multiplied by

the specified unit price. Since the final expenditure under the Contract is estimated and may vary based on the actual quantities that were required, the value of BIP content may also vary. In these situations, the value of BIP content will be adjusted on a pro-rata basis.

For example, if, based on the final measurement of goods and services, the value expended under a Contract was to decrease by 10% from the original estimated contract amount, the value of the BIP content commitment would also be decreased by 10%. Likewise, if a Contract was to increase by 10% from the original estimated contract amount, the value of the BIP content commitment would also be increased by 10%.

8. Monitoring Compliance

Compliance to the Policy and Guidelines will be monitored by GNWT departments and Public Agencies through the SAM Performance MGMT module. On a quarterly basis, reports will be generated from the SAM Performance MGMT module that will identify the status of Contracts subject to the Policy. Accordingly, it is essential that Contract details, change orders, and BIP Content Substantiation Reports are entered as soon as possible, and promptly following approval of payment. The reports generated from the SAM Performance MGMT module may be reported publicly on the GNWT website.

9. Deeming a Vendor “Not Responsible”

Vendor Contracts include the ability to deem a Vendor not “responsible” for future Contracts, based on past performance that fails to demonstrate that the Vendor has the ability to meet the definition of being “responsible”.

There are several factors that need to be considered when deciding whether to deem a Vendor “not responsible”. These include their financial capacity, operational capacity, managerial capacity, relevant experience, and past performance (including compliance with BIP).

Without limiting the possibility for other methods, there are usually two approaches to deeming a Vendor “not responsible”.

1. A prospective Vendor’s Bid may be deemed “not responsible” when they fail to demonstrate that they have the “capability to perform fully the contract requirements and the integrity and reliability to assure performance of the contract obligations”¹. This designation is assessed by the applicable GNWT department or Public Agency on a case-by-case basis in consultation with Procurement Shared Services (“PSS”) and the Comptroller General and is based strictly on the work associated with the contract for which a Bid was submitted.

A prospective Vendor’s Bid can also be rejected on the basis they have, on one or more occasions in the course of previous or ongoing Contracts with the GNWT or any of its public agencies:

¹ S.14 (1) *Government Contract Regulations*, R-032-2006

- failed to complete work by the Contract completion date;
- failed to meet their obligations under the GNWT Business Incentive Policy;
- failed to meet their obligations with respect to community engagement;
- had work rejected due to poor or incomplete workmanship or due to supply and/or use of unsatisfactory materials;
- had a Contract terminated, or had the work taken out of their hands; or
- is in, or has been in litigation or another dispute resolution process, brought by or against the GNWT or Public Agencies, or involving other parties which in any way calls into question its ownership, financial affairs, unpaid indebtedness, or its management.

For the purposes of assessing the above, a “not responsible” Vendor includes those where any director, officer, shareholder, signing authority, manager, owner, partner, or joint venture partner of the prospective Vendor held one or more of these roles in a Vendor previously determined to be not responsible.

2. Following a recommendation by Procurement Shared Services, a Vendor may be deemed “not responsible” by the Comptroller General for all future Contracts, on the basis of past performance. If a Vendor is deemed “not responsible” a timeframe may be provided after which the Vendor may apply to the GNWT to request that the “not responsible” designation be removed. For the “not responsible” designation to be removed by the GNWT, the Vendor would be required to explain and demonstrate how previous performance issues have been addressed, and how the Vendor can assure the performance of future Contracts.

The Comptroller General may choose to approve a conditional removal of the “not responsible” designation, where certain restrictions may be applied to the Vendor’s eligibility for new Contracts. This could include, but it not limited to, a restriction on the number of active Contracts the Vendor is permitted to undertake at the same time, and/or a restriction on the value of Contracts that the Vendor is permitted to be awarded. Such conditions would remain in place until the Vendor was able to demonstrate, through consistent and diligent performance of its contractual obligations, that it had addressed previous performance issues and did have the capacity to undertake unrestricted Contracts with the GNWT.

The act of deeming a Vendor “not responsible” will usually be the result of consistent performance issues, or a matter considered sufficiently egregious to render a contractual relationship untenable and not in the best interest of the GNWT, its Public Agencies or residents of the Northwest Territories.

When a Vendor is deemed “not responsible” for future Contracts the Vendor will be informed in writing by the Comptroller General that they have been deemed “not responsible” and therefore are no longer eligible to participate in any GNWT procurement processes.

The “not responsible” notice sent to a Vendor may include a time frame after which the Vendor can apply to the GNWT to request removal of the “not responsible” designation. The specific time frame identified in the notice is determined on a case-by-case basis and would consider factors such as:

- the number of contractual defaults;
- the number of active Contracts;
- the severity of defaults;
- the time necessary for a Vendor to implement meaningful changes at the organizational, strategic, and operational levels; and
- any ongoing litigation or dispute resolution processes with the Vendor.

Deeming a Vendor “not responsible” for all future Contracts is a serious decision with potentially significant impacts on the Vendor. Procurement Shared Services and the Comptroller General will carefully assess each case to ensure the Vendor is treated fairly and that the performance history of the Vendor warrants the action.

For reference, a Flowchart showing the steps in Deeming a Vendor “Not Responsible” for all future Contracts is attached as Annex C.

ANNEX A

Definitions

In addition to the terms defined elsewhere in these Guidelines, the following terms and have the meaning given to it in these definitions.

Bid – Means an offer to sell or provide goods, services, construction, or a combination of these, that is submitted to a GNWT department or Public Agency.

Business Incentive Policy – The [Business Incentive Policy](#), 63.02, of the GNWT, as may be amended.

Contract – Means a contract entered into by the GNWT or Public Agency for the supply of: (a) goods, (b) services, (c) construction, or (d) any combination of goods, services or construction referred to in this definition.

FAM – Means the GNWT Financial Administration Manual.

Financial Administration Act – Means the [Financial Administration Act](#) of the Northwest Territories, as may be amended.

Local Content – Has the meaning defined in the Business Incentive Policy .

NWT Content – Has the meaning defined in the Business Incentive Policy .

Payment Period – Means a period of 30 consecutive days or such other interval as has been agreed upon between the GNWT/Public Agency and Vendor by Contract.

PPC – Means the Procurement Procedures Committee. Details concerning the PPC may be found in [FAM IB 705.08](#).

Progress Claim – Means an invoice that fully describes any part of the work that has been completed during the Payment Period.

Public Agency – Means the Public Agencies set out in Schedule 1 of the Policy.

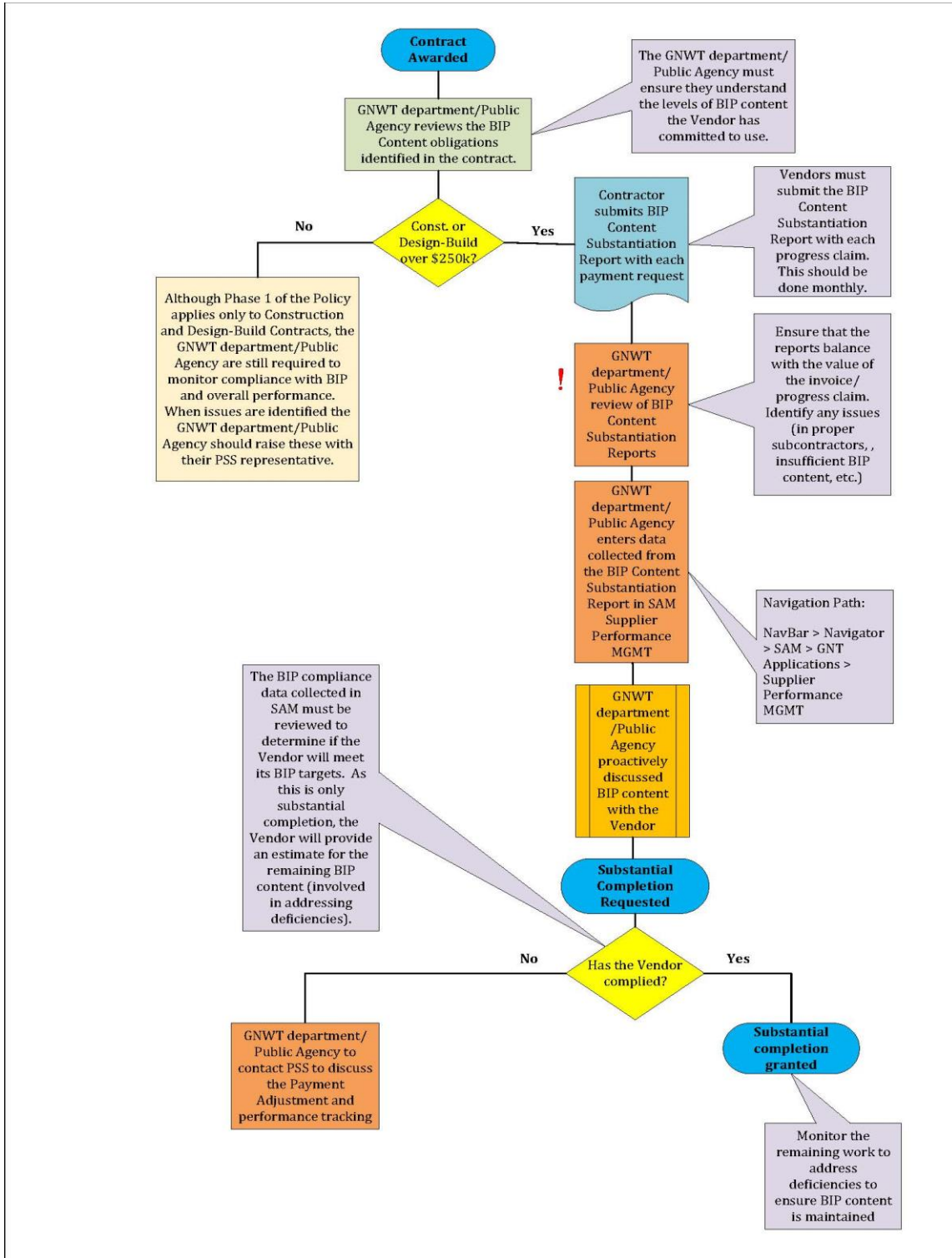
SAM – Means the System for Accountability and Management. This is the Enterprise Resource Planning system used by the GNWT which includes the procurement and performance management systems.

Vendor – A person or business that has entered into a Contract with the GNWT or Public Agency.

Vendor Performance Management Policy – Means the [Vendor Performance Management Policy](#), 15.05, of the GNWT, as may be amended.

ANNEX B

Flowchart – BIP Compliance Monitoring



ANNEX C

Flowchart – Deeming a Vendor “Not Responsible” for all future contracts

