

GENERAL ADMINISTRATION MANUAL

VOLUME 2: HIGHWAYS AND PUBLIC WORKS POLICIES

TITLE: PROCUREMENT POLICY

EFFECTIVE: February 22, 2021

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1. GENERAL

1(1) Purpose

- (a) The Government of Yukon is committed to Procurement that:
  - (i) Focuses on efficiency, economy and effectiveness to obtain maximum benefits with the resources available for public Procurement.
  - (ii) Builds a stronger economic future for Yukoners.
  - (iii) Increases the ability of local businesses and First Nations to secure Government Contracts through changes in how Government procures Goods and Services.
  - (iv) Creates a framework to ensure accountability for sound decision making that is embedded in clear roles and responsibilities across Government.
  - (v) Enables greater consistency across Government.
  - (vi) Enables us to be more transparent about monitoring Procurement activities and vendor performance.
  - (vii) Minimizes risks to the Government from inappropriate Procurement practices and decisions.
  - (viii) Is efficient, cost effective, timely and consistent with trade agreement requirements when acquiring Goods, Services and Construction.
  - (ix) Takes into account fiscal responsibility and accountability and ensures decisions are appropriately justified and documented.

1(2) Definitions

- (a) **ACAN** means an Advance Contract Award Notice, as described in Section 6, Exceptions to Open Tendering.
- (b) **Alternate Procurement** - specialized or exceptional situations that support the deviation from the regular procurement processes, including but not limited to: a negotiated procurement or negotiated request for proposals.
- (c) **CETA** means the *Comprehensive Economic Trade Agreement*.
- (d) **CFTA** means the *Canadian Free Trade Agreement*.

- (e) **Competitive Procurement** means Procurement in which multiple Suppliers may submit a Response.
- (f) **Confirming Order** means a written notice to the Deputy Minister of the Procurement Authority that an after-the-fact contract was put in place after work has already started.
- (g) **Construction** means a Service that has as its objective the realization by whatever means of civil or building works.
- (h) **Contract** means a legally binding agreement between the Government and a Person for Goods or Services.
- (i) **Department(s)** means all departments, as defined in Policy 2.1 (GAM), Section 1.2.1.
- (j) **Deputy Minister (DM)** means a Person who is a deputy head within the meaning of the *Public Service Act* RSY 2002, c. 183.
- (k) **Deputy Minister of Highways and Public Works (DM of HPW)** means the Deputy Minister of the Department of Highways and Public Works or a Person authorized to act on behalf of the DM of HPW.
- (l) **Direct Award** means Procurement without competition.
- (m) **Employment Development Roster** means a list or lists of Yukon First Nations People seeking employment and training opportunities.
- (n) **FAA** means the *Financial Administration Act* RSY 2002, c. 87.
- (o) **Goods** means moveable property, and includes raw materials, products, equipment, and other physical objects of every kind and description, whether in solid, liquid, gaseous, or electronic form.
- (p) **Government** means the Government of Yukon.
- (q) **Government Corporation** means one or more of the following: Yukon Housing Corporation, Yukon Liquor Corporation, Yukon Development Corporation, and Yukon Lottery Commission.
- (r) **Invitational Tendering** means a Procurement method whereby the Procurement Authority contacts at least two or more Suppliers from a limited number of Suppliers.
- (s) **Limited Tendering** means either a Direct Award or Invitational Tender.
- (t) **Labour Component** means additional hiring that must be conducted by a Supplier once they have been determined to be the successful Response to a Procurement.
- (u) **Non-Settlement Land** means land and water as defined in the Umbrella Final Agreement.
- (v) **Open Tendering** means a Procurement method whereby all interested Suppliers may submit a Response.

- (w) **Operational Requirement** means a document ancillary to the Procurement Policy that provides additional guidance to Procurement Authorities, defining the roles and responsibilities related to specific Procurement activities.
- (x) **Person** means an individual, a corporation or other body corporate, a partner in a partnership, or other valid legal entity.
- (y) **Prequalification List** means a list of Suppliers that a Procurement Authority has determined satisfy the conditions for participation in that list, and that the Procurement Authority may intend to use more than once.
- (z) **Procurement** means the Government's acquisition, by any means or methods, of Goods, Services, Construction, leaseholds, and licences.
- (aa) **Procurement Authority** or **Procurement Authorities** means any Person who has authority to enter into a Contract or to undertake Procurement on behalf of the Government.
- (bb) **Request for Analysis of Change Order (RACO)** means request for analysis of change order, as described in Section 14, Contract and Performance Management.
- (cc) **Request for Analysis of Procurement (RAP)** means a request for analysis of procurement as described in Section 5, Request for Analysis of Procurement.
- (dd) **Request for Expression of Interest (RFEI)** means a market consultation document aimed at obtaining information about the level of potential interest among Suppliers in a possible Procurement.
- (ee) **Request for Information (RFI)** or means a market consultation document aimed at obtaining information from potential Suppliers regarding Goods and Services.
- (ff) **Response** means a Supplier's submission to a Procurement, and includes, but is not limited to: bids, proposals, and submissions for requests for qualification, request for standing offer arrangement or market consultations.
- (gg) **Review Authority** or **BCC** means the bid challenge committee, as described under section 15 – Procurement Complaint Procedures and this Policy.
- (hh) **Services** means all Services, including Construction, unless otherwise specified.
- (ii) **Settlement Land** means land as defined in Umbrella Final Agreement.
- (jj) **Standing Offer Arrangement (SOA)** means an arrangement with a Supplier or Suppliers under which a Procurement Authority may buy Goods or Services from the Supplier or Suppliers over a period specified in the arrangement. The arrangement includes all terms applicable to the Procurement, such as the cost of the Good or Service and delivery requirements.
- (kk) **Supplier or Vendor** means a Person or group of Persons that provides or could provide Goods or Services.

- (ll) **Utility** means a corporation which provides electrical, water, telecommunications, or municipal Services to the public.
- (mm) **Worker Development Plan** means a plan intended to support the skill and career development of Yukon First Nations People through opportunities specific to a procurement project.
- (nn) **Vendor Performance Review Program** means a regime established by the Government to assess and use Vendor past performance in Procurements.
- (oo) **Yukon Business** means a business that meets three of the following criteria:
- (i) Has an office with a physical address in Yukon;
  - (ii) Is subject to the *Yukon Income Tax Act*;
  - (iii) Is registered as per the *Business Corporations Act* or the *Partnership and Business Name Act*, where applicable;
  - (iv) Has a valid municipal business licence, where applicable.
- (pp) **Yukon First Nations** means one of the following:
- (i) Carcross/Tagish First Nation;
  - (ii) Champagne and Aishihik First Nations;
  - (iii) Kluane First Nation;
  - (iv) Kwanlin Dün First Nation;
  - (v) Liard First Nation;
  - (vi) Little Salmon/Carmacks First Nation;
  - (vii) First Nation of Nacho Nyak Dun;
  - (viii) Ross River Dena Council;
  - (ix) Selkirk First Nation;
  - (x) Ta'an Kwäch'än Council;
  - (xi) Tr'ondëk Hwëch'in;
  - (xii) Teslin Tlingit Council;
  - (xiii) Vuntut Gwitchin First Nation; or
  - (xiv) White River First Nation.
- (qq) **Yukon First Nations Business** means a Yukon First Nations Business that meets one of the following criteria:
- (i) a corporation or not-for-profit corporation where one or more Yukon First Nations is the direct or beneficial owner of 100% of the shares of the corporation;
  - (ii) a sole proprietorship owned by a Yukon First Nation Person;
  - (iii) a partnership or limited partnership where at least 50% of the partnership is owned by a Yukon First Nation Person or an organization described in (a) or (b);
  - (iv) a corporation with at least 51% of the corporation's voting shares owned by a Yukon First Nation Person or an organization described in (a) or (b); or
  - (v) a not-for-profit organization in good standing under the *Societies Act* with at least 51% of its membership comprised of Yukon First Nations People.

A sole proprietorship owned by a non-Yukon First Nations Person, which supports a Yukon First Nation spouse or common law partner, and/or a Yukon First Nations family, may qualify as a Yukon First Nations Business. The Government will engage the relevant Yukon First Nations government during its review.

- (rr) **Yukon First Nations Participation Measures** means those measures outlined in Section 11(7) of this policy.
- (ss) **Yukon First Nations Person** or **Yukon First Nations People** means one or more person enrolled as a citizen or member of a Yukon First Nation, as the context requires.
- (tt) **Yukon First Nations Procurement Policy** means Section 11 of this policy.

### 1(3) **Authority**

- (a) This policy, formerly the Contracting and Procurement Directive, was reviewed and approved by Management Board on March 2, 1995 by M.B.M. #95-05-02, and revised on September 17, 1998 by M.B.M. #98-26-05, February 6, 2013 by M.B.M. #13-03-04, January 14, 2019 by M.B.M. #19-01-05 and revised on December 9, 2020 by M.B.M. #20-40-02 and can be revised only with the approval of Management Board.

### 1(4) **Scope and Application**

- (a) This policy applies to all Contracts, but does not apply to:
  - (i) employment Contracts;
  - (ii) Contracts for physician services, as defined in the *Health Care Insurance Plan Act*, and dental Services, as described in the *Dental Profession Act*;
  - (iii) Contracts for legal services or practice of law as defined in the *Legal Professions Act* or related to expert evidence or specialized Services for legal proceedings;
  - (iv) Contracts for the purposes of investigation with a view towards law enforcement proceedings or Government employee disciplinary proceedings;
  - (v) Contracts for health services or social services relating to residential, specialized or group home placement, and daycare or day programming placement for vulnerable persons, including adults with disabilities and children; and
  - (vi) Acquisition or rental of land, acquisition of existing buildings or acquisition or rental of other immovable property, or the rights thereon.
- (b) This policy and all approved operational requirements established under this policy, apply to all Departments and Government Corporations.
- (c) For greater certainty, this policy and its operational requirements:
  - (i) apply to projects carried out by the Government on behalf of the Government of Canada;
  - (ii) do not apply to transactions covered by a transfer payment agreement; and,
  - (iii) do not apply to a Government Corporation that has adopted a contracting or Procurement bylaw that adheres to this policy, where Management Board so approves.

1(5) **Roles and Responsibilities**

- (a) The Minister of Highways and Public Works (HPW) has overall responsibility and authority for Government Procurement.
- (b) The DM of HPW is responsible for the supervision and management of this policy and is authorized to establish further terms and conditions related to the conduct of Procurement consistent with this policy through the use of operational requirements.
- (c) All Departments are responsible for understanding the strategic purpose of procurement and its role in achieving the desired outcomes of the Government. The Deputy Minister of each Department is responsible for ensuring the requirements in the table below are met. The responsibility for the requirements set out below continues whether the Deputy Minister has delegated them or not.

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| <p>(i) Management of Procurement Authorities, including:</p>   | <ul style="list-style-type: none"> <li>a. ensuring employees have the proper authority (Section 23 and 24 of the FAA);</li> <li>b. ensuring Procurement Authorities have the required skills and participate in the appropriate training to effectively manage the Procurements and Contracts over which they have authority;</li> <li>c. ensuring employees declare any conflict of interest perceived or real, as per GAM 3.39, to the DM of the Department; and</li> <li>d. ensuring employees follow the code of conduct, as applicable.</li> </ul>  |
| <p>(ii) Planning, managing and fully documenting Procurement processes and decisions, including:</p> | <ul style="list-style-type: none"> <li>a. seeking and receiving advice from Government Procurement staff, as required, during Procurement;</li> <li>b. seeking and receiving advice from corporate advisors and subject matter experts, as appropriate or required, during the development of complex or higher risk Procurements;</li> <li>c. complying with this Procurement policy and any operational requirements and the applicable trade agreements; and</li> <li>d. ensuring appropriate use of existing SOAs and other corporate Service agreements for Goods, Services and</li> <li>e. Construction to meet program requirements when they offer value to the Government.</li> </ul> |

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| <p>(iii) Managing procurement and Contract award processes in a manner consistent with the Purpose in Section 1, and:</p> | <ul style="list-style-type: none"> <li>a. using standard Government Procurement documents;</li> <li>b. conducting site visits, as required;</li> <li>c. responding in a timely, reasonable way, to inquiries during the Procurement process, using addenda to make responses available to all as required;</li> <li>d. issuing addenda, as required;</li> <li>e. evaluating and awarding (or recommending for award, subject to signing authorities), the Contract;</li> <li>f. decisions to reject or accept a Response after recommendations by the DM of HPW;</li> <li>g. decisions concerning Direct Awards (for example, to non-Yukon Suppliers, consistent with Section 6, Exceptions to Open Tendering, and Section 5, Request for Analysis of Procurement);</li> <li>h. offering and conducting debriefs, if requested;</li> <li>i. providing the DM of HPW, upon request, with the information necessary to monitor, audit and report on the Government's performance with respect to compliance with corporate Procurement policy and operational requirements; and</li> <li>j. making diligent efforts to resolve any complaints with Suppliers as a first step in the Government's dispute resolution process.</li> </ul> |
| <p>(iv) Contract management, including:</p>   | <ul style="list-style-type: none"> <li>a. ensuring adherence to the terms and conditions of the Contract; and</li> <li>b. ensuring timely payments to the Supplier for Services satisfactorily provided.</li> </ul>   |

- (d) The Deputy Minister of HPW is responsible for ensuring the requirements in the table below are met. These requirements are necessary to ensure transparency, uphold the integrity and accountability of all those involved in procurement, motivate the continuous improvement of Government Procurement, and provide enhanced support to program areas so that they may continue to provide excellent public service to Yukoners. The responsibility for the requirements set out below continues whether the Deputy Minister has delegated them or not.

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| <p>(i) Posting requests for Responses and for receiving Responses for all Open, competitive Procurements;</p> |   |
| <p>(ii) Establishing and managing Procurement operational requirements:</p>                                   | <ul style="list-style-type: none"> <li>a. creating Procurement operational requirements for Deputy Ministers' Review Committee (DMRC) approval. DMRC may choose to approve, reject, or forward the requirement to Management Board for final approval. Significant policy changes, public acceptability issues and/or financial implications will be brought to Management Board.</li> <li>b. establishing terms and conditions for the use of alternate Procurement methods, including negotiated Procurements;</li> <li>c. strategic sourcing initiatives, such as cooperative or joint Procurement, with other public organizations in North America;</li> <li>d. providing official communications and interpretations of Procurement policy;</li> <li>e. serving as the contact point for Procurement chapters of the trade agreements that apply to the Government, and for Procurement matters related to the implementation of trade agreements with other jurisdictions as appropriate; and</li> <li>f. delegating any matter, or confer a discretion in respect of any matter under this policy, to a Person, position, or office.</li> </ul> |



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| <p>(iii) Providing support, advice and oversight for Procurement Authorities, including:</p>                                   | <ul style="list-style-type: none"> <li>a. where appropriate, developing and maintaining corporate supply arrangements and Prequalification Lists that can be accessed by all Departments in order to provide best value to the Government;</li> <li>b. designing, implementing and overseeing the Government risk identification assessment and management framework for contracting and Procurement;</li> <li>c. providing operational, risk management and insurance advice to Departments on Procurement matters;</li> <li>d. developing, implementing and maintaining tools, such as templates, checklists, handbooks, manuals and other reference material, to assist Departments in carrying out Procurement in an effective and efficient manner while complying with this policy, operational requirements and trade agreements;</li> <li>e. developing and managing, with Public Service Commission, Procurement training curriculum, and identifying any training that is mandatory for particular Procurement processes or positions;</li> <li>f. providing support to Departments by reviewing Procurement documents and advising Procurement Authorities on how to plan Procurements, how to work with templates provided by the DM of HPW, and how to effectively manage complex or high risk Procurement; and</li> <li>g. disposing of all assets that are surplus to the Government, except as provided by Department legislation or Management Board directive(s).</li> </ul> |
| <p>(iv) Monitoring and reporting in respect of compliance with Procurement policy, including issuing reports on the extent</p> |  |

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| of compliance with Procurement laws and regulation, the policy, agreements, and best practices, across Departments;              |   |
| (v) Establishing and managing performance indicators to support the ongoing development of Procurement skills and practices; and |   |
| (vi) Supporting constructive relations with Suppliers, including:  | <ul style="list-style-type: none"> <li>a. establishing and maintaining mechanisms to coordinate and support development and communications with Suppliers; and</li> <li>b. establishing and managing guidelines and procedures for a formal dispute resolution process, including an internal escalating complaint resolution procedure.</li> </ul> |

**1(6) Conflict of Interest in Procurement**

- (a) All Procurement activity must be conducted with integrity to maintain the public's trust. All participants in a Procurement process, including Government staff who are involved in procurement, must declare any real or perceived conflict of interest to DM of the Procurement Authority.
- (b) Procurement Authorities must:
  - (i) refrain from any activities that would create a conflict of interest between personal interests and the interests of the public;
  - (ii) not solicit or accept money, loans, credits, discounts, favors, or Services from present or potential Suppliers which may influence or appear to influence purchasing decisions; and
  - (iii) be familiar with and adhere to related Government policies, including GAM 1.6, Gift Policy, and GAM 3.39, Conflict of Interest policy.

## **2. PROCUREMENT PLANNING**

### **2(1) Procurement Planning**

- (a) Effective Procurement planning is essential to ensure effective results and limit risk. Procurement Authorities are responsible for ensuring adequate planning is completed for every Procurement, including consideration for:
  - (i) an initial business case, including an estimated Procurement value;
  - (ii) determining other internal advice that may be required (e.g. Legal Services, Management Board Secretariat);
  - (iii) determining if external resources are required (e.g. use of a fairness monitor, etc.);
  - (iv) determining the appropriate Procurement method (e.g. Direct Award, Invitational Tendering, Open Tendering);
  - (v) selection of Procurement format (e.g. price driven, value driven, or two stage);
  - (vi) developing proper specifications and business requirements, including identifying opportunities for consolidation of requirements;
  - (vii) pricing structures; and
  - (viii) performance monitoring and post-project completion evaluation plan.

### **2(2) Market Research**

- (a) Procurement Authorities need to be informed about the current state of the markets and the Suppliers therein so that they can conduct procurements appropriately. Procurement Authorities may undertake research concerning the availability of Goods or Services, the availability of potential Suppliers, and the potential level of interest in the opportunity. This research may include, but is not limited to, using a Request for Information (RFI) or Request for Expression of Interest (RFEI), if warranted, taking into consideration the time and effort required to conduct them. The purpose of these activities is to obtain the information needed to assess whether a Competitive Procurement will be necessary or appropriate, and to provide the information needed to define the requirements before moving into the competitive phase. These activities are not a competitive process, and do not request quotes, bids or proposals.
- (b) A Response to RFI or RFEI must not be used to pre-qualify a potential Supplier and must not influence the probability of the participating Suppliers becoming the successful proponent in any subsequent Procurement opportunity.

### 2(3) **Contract Length**

- (a) The length of a commitment by Government in the form of a Contract, SOA or Prequalification List is important to Suppliers and to the Government because it affects certainty of income for Suppliers and may lead to lower prices for Government. Conversely, a longer commitment may limit competition by eliminating potential opportunities for others. Contracts or SOAs or Prequalification Lists, including renewals or change orders must have:
  - (i) Procurement Authority approval if the length of the Contract is up to and including three years;
  - (ii) Minister approval if the length of the Contract is greater than three years and up to and including five years; and
  - (iii) Management Board approval if the length of the Contract is greater than five years.
- (b) For the purposes of this section, the length of the Contract does not need to include warranty provisions if there are no obligations to the Government. If the warranty does impose obligations on the Government or Supplier, then the length of the warranty must be included in the Contract to make the warranty legally enforceable.

### 2(4) **Opportunity to Compete**

- (a) Procurement Authorities must not use standards, specifications, evaluation criteria or time limits to respond to Procurements, SOAs, or other practices or procedures to unfairly limit competition.
- (b) Procurement may refer to specific product trade names/brands only to establish a standard of performance expected, except where the requirement for a specific product has been explicitly justified by the Procurement Authority and documented in the Procurement file, in which case the Procurement documents will clearly stipulate the requirement for the product.

### 2(5) **Supplier Awareness**

- (a) Procurement Authorities are encouraged to make reasonable efforts to maintain ongoing awareness of the Suppliers and market conditions relevant to their areas of Procurement, and to maintain ongoing liaison with Suppliers.

## **3. PROCUREMENT THRESHOLDS**

- 3(1) Thresholds are set to align with generally-accepted Procurement best practices and to ensure compliance with the trade agreements to which the Government is

a signatory. Procurement thresholds also help to determine the cost figure at which the administrative savings of Direct Awards are outweighed by the desirability of competition (for competitive prices and openness). The table below indicates the values of Contracts for which Procurement Authorities may use either Limited Tendering or Open Tendering, and for which Open Tendering is required.

3(2) Procurement Authorities should note that:

- (a) Guidance on Direct Awards is in Section 6, Exceptions to Open Tendering.
- (b) Procurement for Goods and Services valued at greater than approximately \$365,000 and Construction valued greater than approximately \$9,100,000 must also adhere to CETA requirements, including those for Response periods for Procurements. Thresholds are approximate because they are adjusted for currency exchange rate changes every two years, beginning January 1, 2018. Links to the current thresholds can be found on the Procurement Support Centre website. Procurement Authorities must also adhere to requirements in other trade agreements to which Government is a signatory.
- (c) Government thresholds for Open Tendering will be adjusted automatically to align with the CFTA thresholds, which are adjusted for inflation every two years, beginning January 1, 2018, as posted on the Procurement Support Centre website.
- (d) Procurement Authorities shall not split Contracts by issuing two or more Contracts to the same Supplier, or multiple Suppliers, for the same work or project in order to maintain Contract values under threshold levels. This includes Contracts that take place over multiple fiscal years.

3(3) Tendering thresholds are located below and can be found on the Canadian Free Trade website <https://www.cfta-alec.ca/>

**Tendering Thresholds effective January 1, 2020 to December 31, 2021**

|                     | <b>Invitational Tendering or Open Tendering Required</b> | <b>Open Tendering Required</b> |
|---------------------|--|--------------------------------|
| <b>Goods</b>        | \$10,000 up to but not including \$26,400                | \$26,400 or greater            |
| <b>Services</b>     | \$50,000 up to but not including \$105,700               | \$105,700 or greater           |
| <b>Construction</b> | \$50,000 up to but not including \$105,700               | \$105,700 or greater           |

#### **4. PROCUREMENT METHODS AND TEMPLATES**

- 4(1) Procurement Authorities must make decisions regarding whether to employ a price-driven or value-driven procurement approach in a consistent manner that strikes a balance between obtaining the lowest price for a good or service and securing the greatest long-term value, taking into account economic benefits for Yukoners.
- 4(2) In conjunction with adherence to the threshold requirements (Procurement Thresholds), Procurement Authorities should determine the Procurement method that will achieve best value for the Government, taking into consideration such things as economic benefits to Yukoners, value, complexity, market analysis, administrative efficiencies and procurement costs for Government and the private sector.
- 4(3) Procurement methods may be competitive, for example when a Supplier submits a Response to a tender, or may be Direct Award.
- 4(4) Procurement methods may be price-driven, where the only factor being evaluated is price, or value-driven, where a range of criteria may be evaluated to qualify or rank a Response.
- 4(5) Except below the thresholds as stated in Section 3, Procurement Thresholds, or as provided in Section 5, Request for Analysis of Procurement, and Section 6, Exceptions to Open Tendering, the Procurement Authority must request Responses in accordance with this policy prior to entering into any Contract or SOA.
- 4(6) Procurement templates must be consistent, of high quality, and align with recent case law and trade agreements.
- 4(7) Procurement Authorities must use current versions of the standard Government Procurement documents and templates from the DM of HPW or must obtain the approval of the DM of HPW for any substantial changes to the standard documents prior to their use.

#### **5. REQUEST FOR ANALYSIS OF PROCUREMENT**

- 5(1) The purpose of a Request for Analysis of Procurement (RAP) is to ensure that the principles of accountability, transparency and fairness are reflected in Procurement decisions. RAPs apply an appropriate level of scrutiny to proposed situations in which a proposed Procurement would otherwise contravene an element or a principle of this policy. The RAP process ensures that the Procurement Support Centre is able to provide advice to the DM of the Procurement Authority so that the DM understands the implications of the decision before deciding whether to proceed or not. A RAP is required if a Procurement Authority wishes to:

- (a) issue a Direct Award Contract above the thresholds for Invitational or Open Tendering identified in Section 3, Procurement Thresholds;
  - (b) issue a change order to a Direct Award Contract that increases the Contract value to above the Invitational or Open Tendering thresholds as identified in Section 3, Procurement Thresholds.
  - (c) use Invitational Tendering above the threshold requiring Open Tendering;
  - (d) issue a change order to a Contract awarded as a result of Invitational Tendering, to above the Open Tendering threshold, as identified in Section 3, Procurement Thresholds
  - (e) bypass the lowest priced or highest ranked Response;
  - (f) use an Alternate Procurement method;
  - (g) use an evaluation process that does not include price as an initial criterion; or
  - (h) use an exception when required in Section 6, Exceptions to Open Tendering.
- 5(2) In the cases identified, the Procurement Authority must submit a written RAP to the DM of HPW for review, accompanied by factual evidence to support the request. After review, the DM of HPW will send written recommendations to the DM of the Department, who will make the final decision. Overturned recommendations must be communicated to the DM of HPW in writing.
- 5(3) Where a Procurement Authority can establish that the circumstances described in the RAP related to use of an Alternate Procurement method, or the use of an evaluation process that does not include price as an initial criterion, will occur on multiple occasions, and that the Procurement Authority has demonstrated expertise and established processes for managing the proposed Procurement described in the RAP, the DM of HPW may provide written authority for the Procurement Authority to undertake multiple Procurements without submitting further RAP documents, subject to any terms and conditions provided by the DM of HPW.

## **6. EXCEPTIONS TO OPEN TENDERING**

- 6(1) Procurement Authorities are encouraged to maximize the amount of competition in a Procurement process, keeping in mind that the cost and time required for Suppliers and staff to prepare and participate in Procurement processes should be commensurate with the value and complexity of the Procurement.
- 6(2) To balance the need to be open and competitive with the demands of urgent, specialized, or exceptional circumstances, Procurement Authorities may use Limited Tendering in accordance with this policy and Government's trade agreement commitments.

6(3) **Direct Award**

- (a) When the Contract value is lower than the thresholds requiring Invitational or Open Tendering, as indicated in the Section 3, Procurement Thresholds, a Procurement Authority may enter into a Direct Award Contract with a Supplier.
- (b) Direct Awards must be conducted in a manner that ensures fairness and fiscal responsibility, so that, as informed buyers, Procurement Authorities may seek fair market prices and conduct Procurement with integrity and good judgement.
- (c) Procurement Authorities should contract with Yukon and First Nation businesses where possible, keeping in mind reasonable prices and product availability in Yukon.
- (d) Procurement Authorities may also issue a Direct Award Contract above the threshold requiring competitive Procurement, after following the RAP process (outlined in Section 5, Request for Analysis of Procurement) where indicated below:
  - (i) for an agreement with another Government or its agent, regulatory or administrative body;
  - (ii) for an agreement with a Utility for work on the Utility's facilities;
  - (iii) where the Contract is to extend the existing occupancy of substantially the same real property leased by the Procurement Authority;
  - (iv) in the event of an emergency, as defined in the *Civil Emergency Measures Act* or its regulations, or where immediate action is required to prevent or respond to injury or death to persons or animals or livestock, or damage to property or immediate damage to the environment;
  - (v) if the Goods or Services can be supplied only by a particular Supplier and no reasonable alternative or substitute Goods or Services exist for any of the following reasons:
    - a. the protection of patents, copyrights, or other exclusive rights;
    - b. an absence of competition for technical reasons, and the use of a Direct Award has followed the RAP process as set in this policy;
    - c. the supply of Goods or Services is controlled by a Supplier that is a statutory monopoly;
    - d. to ensure compatibility with existing Goods, or to maintain specialized Goods that must be maintained by the manufacturer of those Goods or its representative;
    - e. if work is to be performed on property by a Supplier according to provisions of a warranty or guarantee held in respect of the property or the original work;
    - f. if work is to be performed on a leased building or related property,



or portions thereof, that may be performed only by the lessor; or

- g. if the Procurement is for subscriptions to newspapers, magazines, or other periodicals;
  - (vi) for Goods purchased on a commodity market;
  - (vii) if a Procurement Authority procures a prototype or a first Good or Service that is developed in the course of, and for, a particular Contract for research, experiment, study, or original development. Original development of a first Good or Service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the Good or Service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs; or
  - (viii) for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals, such as those arising from liquidation, receivership, or bankruptcy, but not for routine purchases from regular Suppliers; and the use of a Direct Award has followed the RAP process as set in this policy.
- (e) Procurement Authorities need written authorization from the DM of the Procurement Authority or the DM's delegate for Direct Award of any Contracts with Suppliers that are not Yukon Businesses where the estimated value of the Good or Service is more than \$5,000 and below the threshold for which a Competitive Procurement would be required.

**The following provision is from the Yukon First Nations Procurement Policy – Section 11(7.5) Direct Award Contracts and Invitational Tenders**

- (a) Subject to Section 3 – Procurement Thresholds, Procurement Authorities may use Direct Award Contracts and Invitational Tenders to:
  - (i) help meet departmental targets;
  - (ii) support projects of cultural or heritage importance to Yukon First Nations;
  - (iii) advance reconciliation;
  - (iv) build Yukon First Nations Business capacity in specific sectors where Yukon First Nations Businesses are underrepresented or have limited capacity;
  - (v) promote development of Yukon First Nations Businesses within communities;
  - (vi) contribute to workforce development in sectors of the economy where Yukon First Nations People are underrepresented;
  - (vii) facilitate the acquisition of knowledge, skills, and experience by Yukon First Nations People; or
  - (viii) recognize businesses and organizations that support workforce readiness, well-being, and resiliency of Yukon First Nations People.

6(4) **Limited Tendering**

- (a) When the Contract value is lower than the thresholds requiring Open Tendering, as indicated in the Section 3, Procurement Thresholds, a Procurement Authority may restrict the Procurement to a limited number of Suppliers in accordance with the provisions of this policy.
- (b) Limited tendering must be conducted in a manner that ensures fairness, fiscal responsibility, integrity, good judgement and consideration of economic benefits to Yukoners. Procurement Authorities may use a less competitive process than is required by Section 3, Procurement Thresholds, including a Direct Award or Invitational Tendering, in the following circumstances (after following the RAP process outlined in Section 5, Request for Analysis of Procurement, when it is required below):
  - (i) If:
    - a. no Responses were submitted or no Suppliers requested participation;
    - b. no Responses that conform to the essential requirements of the Procurement documentation were submitted;
    - c. no Suppliers satisfied the terms and conditions for participation; or
    - d. the submitted Responses were collusive, provided that the requirements of the tender documentation are not substantially modified;
  - (ii) If a less competitive process is in the public interest for reasons including but not limited to:
    - a. the use of a less competitive process would provide best value for the Government including the advancement of reconciliation with First Nations, or
    - b. it would be impractical to use an Open Tendering process, provided it is consistent with applicable Trade Agreements and the use of Limited Tendering has followed the RAP process as set in this policy;
  - (iii) For additional deliveries by the original Supplier of Goods or Services that were not included in the initial Procurement, if a change of Supplier for such additional Goods or Services:
    - a. cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, Services, or installations procured under the initial Procurement, and
    - b. would cause significant inconvenience or substantial duplication of costs, and
    - c. the use of Limited Tendering has followed the RAP process as set

in this policy;

- (iv) If a Contract is awarded to a winner of a design contest provided that:
  - a. the contest has been organized in a manner that is consistent with the principles of this policy, and
  - b. the participants are judged by an independent jury with a view to a design Contract being awarded to a winner, and
  - c. and the use of Limited Tendering has followed the RAP process as set in this policy;
  
- (v) If Goods or Services relating to matters of a confidential or privileged nature are to be purchased and the disclosure of those matters through an Open Tendering process could reasonably be expected to compromise Government confidentiality, result in the waiver of privilege, cause economic disruption, or otherwise be contrary to the public interest and the use of Limited Tendering has followed the RAP process as set in this policy; or
  
- (vi) Where the opportunity is exempt from trade agreement requirements, in particular:
  - a. Under the regional economic development provisions of CFTA and CETA that enable the Government to derogate up to 10 opportunities per year valued at \$1 million or less from the requirements of the procurement chapter or article. Projects being considered for the exceptions will be selected against specific criteria and approved by the DM of HPW, and the Procurement process will be either Open Tendering or Invitational Tendering, with preferences clearly stipulated in the Procurement document. The DM of HPW is responsible for posting or sending requests for Responses and for receiving Responses for all Procurements for these opportunities. The use of these exceptions must be focused on regional economic development in all Yukon communities and areas and be as transparent as practicable. These exceptions should require competition to the greatest extent possible.
  - b. Procuring goods for the sole purpose of commercial sale or resale.
  - c. When other exemptions may be applicable. The use of Limited Tendering for exemptions not listed above must follow the RAP process as set in this policy.
  
- (c) In all cases, the Procurement Authority is responsible for documenting in the Contract file the circumstances that support the use of any of the above exceptions and the rationale for the Procurement method chosen (for example, Invitational Tendering, or Direct Award).

**The following provision is from the Yukon First Nations Procurement Policy – Section in 11(7.5) Direct Award Contracts and Invitational Tenders**

(b) Subject to Section 3 – Procurement Thresholds, Procurement Authorities may use

Direct Award Contracts and Invitational Tenders to:

- (i) help meet departmental targets;
- (ii) support projects of cultural or heritage importance to Yukon First Nations;
- (iii) advance reconciliation;
- (iv) build Yukon First Nations Business capacity in specific sectors where Yukon First Nations Businesses are underrepresented or have limited capacity;
- (v) promote development of Yukon First Nations Businesses within communities;
- (vi) contribute to workforce development in sectors of the economy where Yukon First Nations People are underrepresented;
- (vii) facilitate the acquisition of knowledge, skills, and experience by Yukon First Nations People; or
- (viii) recognize businesses and organizations that support workforce readiness, well-being, and resiliency of Yukon First Nations People.

(c) Invitational Tenders

- (i) Before issuing an Invitational Tender for Goods or Services, Procurement Authorities will check the Yukon First Nations Business Registry for Yukon First Nations Businesses that supply such Goods or Services.
- (ii) If the Yukon First Nations Business Registry lists one or more Yukon First Nations Businesses that supply the Goods or Services for an Invitational Tender, at least one Yukon First Nations Business shall be invited to submit a Response to the Invitational Tender.
- (iii) Procurement Authorities can invite a Yukon First Nations Business not listed on the Yukon First Nations Business Registry to participate in an Invitational Tender provided the Yukon First Nations Business meets the policy's definition of Yukon First Nations Business.
- (iv) If the Procurement Authority intends to issue invitations to more than three Suppliers, the Procurement Authority will endeavour to ensure that at least one-third of the Suppliers are Yukon First Nations Businesses.

6(5) **Unsolicited Proposals**

- (a) Unsolicited proposal is defined as a Supplier-initiated offering of Goods or Services to Government. The aim of such proposal is to enable a Supplier to establish a sales Contract or business partnership with Government that is neither the result of a competitive solicitation or a Direct Award. Unsolicited proposals can provide opportunities to Government that might not have been known otherwise. If Government determines that an unsolicited proposal warrants consideration, then that proposal must be handled in accordance with the requirements of this policy and the related operational requirements. The operational requirements will include instructions about how to analyse such proposals so that proposals with value are supported.

**6(6) Advance Contract Award Notice (ACAN)**

- (a) A Procurement Authority must obtain written approval from the DM of their Department prior to using an ACAN.
- (b) A Procurement Authority may arrange for the posting of an ACAN to advise the Supplier community of a Department's intention to Direct Award a Contract above the threshold at which Competitive Procurement is required, if they believe only one Supplier is available and qualified to provide the Goods or Services and yet that fact cannot be proven. If the ACAN process identifies that there are other available, qualified and interested Suppliers, the Procurement Authority will not proceed with the Direct Award, and will instead use a Competitive Procurement method. An ACAN is considered an Open Tendering process once completed.
- (c) ACANs must not be used for Procurements where an exception already applies. In addition, ACANs are not to be used when there is known competition for the planned procurement. Therefore, Procurement Authorities must conduct market research in order to provide evidence that there is only one Supplier before using an ACAN; all market research findings must be documented.

**7. COMPETITIVE PROCUREMENT**

**7(1) Standing Offer Arrangements (SOAs)**

- (a) A SOA is a competitive method of supply used to provide direct access to sources of supply for Goods and/or Services, on an as-required basis, for specific periods of time, at prearranged prices and delivery conditions. Individual Contracts are awarded for work carried out under an SOA. Procurement Authorities are encouraged to establish SOAs to achieve cost savings and process efficiencies through the consolidation of requirements. SOAs also reduce administrative costs and effort for Suppliers, who might otherwise bid on multiple procurements.
- (b) Procurement Authorities are responsible for determining whether a SOA is already in place that would satisfy their requirement prior to undertaking a Procurement, and must use an applicable SOA if it is in place and appropriate under the circumstances.
- (c) SOAs must be approved by the PS Centre before they are tendered.
- (d) The aggregate value of all Contracts issued against a SOA will not exceed the sourcing thresholds of the Procurement method used.
- (e) Contracts issued against SOAs may be issued up to the applicable threshold; see Section 3, Procurement Thresholds, or the maximum value indicated in the SOA, whichever is less.

- (f) SOAs must be created, maintained and used to provide, through the tender process, the opportunity to establish, pricing agreements that will offer lower costs for frequently-required Goods and Services through the consolidation of demand (“economies of scale”).

**The following provision is from the Yukon First Nations Procurement Policy – Section 11(7.11) Standing Offer Arrangements**

- (a) Each year, the Government will offer information sessions to Yukon First Nations Businesses to increase awareness of and familiarity with existing Standing Offer Arrangements and Request for Standing Offer Arrangement (RSO) processes. Information sessions will involve:
  - (i) reviewing RSO documents;
  - (ii) identifying qualities that contribute to a strong submission;
  - (iii) describing the call-up method(s); and
  - (iv) responding to questions from Yukon First Nations Businesses.
- (b) The Operational Requirement for Standing Offer Arrangements describes the timing of information sessions.
- (c) In addition to S13(5)(b), if a Yukon First Nations Business responding to a Standing Offer Arrangement does not qualify for the Standing Offer Arrangement, the Procurement Authority will offer to meet with the Yukon First Nations Business to review and discuss the submission's deficiencies, identify improvements that could strengthen future submissions, and, where appropriate, highlight business development programs and other resources that could assist with the resolution of deficiencies.
- (d) Two years after the effective date of the Yukon First Nations Procurement Policy, the Government will review the Standing Offer Arrangements to consider their impact on Yukon First Nations Businesses and the number of Yukon First Nations Businesses called up.

**7(2) Prequalification Lists**

- (a) Prequalification Lists must be established to support a modern, flexible and stronger, outcome-based process for prequalifying Suppliers.
- (b) Procurement Authorities may gather information about Supplier capabilities and qualifications in order to pre-qualify Suppliers for a planned, known Good or Service need or to identify qualified Suppliers in advance of expected future Procurements.
- (c) Establishing a Prequalification List is the first stage of a two-stage Procurement process. The second stage includes a process for selecting one or more Suppliers from the list of Prequalified Suppliers.

- (d) Procurement Authorities may establish Prequalification Lists, provided they follow the requirements of Section 7(7) Tender Notices, including that notices are issued and Responses received by the DM of HPW, and that Responses are evaluated accordingly. Terms and conditions of the pre-qualification document must stipulate that there is no obligation by the Procurement Authority to engage any Supplier to provide Goods or Services or to award a Contract as a result of pre-qualification. Suppliers who meet the qualifications will be placed on the Prequalification List and will be notified of this placement by the Procurement Authority.
- (e) If a Procurement Authority proposes to undertake a Procurement for which there is a valid Prequalification List, the Procurement Authority must invite all Persons included in the Prequalification List to submit Responses in respect of the Procurement, unless the terms of the Prequalification List state otherwise, and include alternative criteria for selecting Suppliers.
- (f) The DM of HPW may establish and maintain corporate supply arrangements, including Prequalification Lists, as may be appropriate for implementing the provisions of this policy.

**The following provision is from the Yukon First Nations Procurement Policy – Section 11(7.12) Prequalification Source List**

- (a) Procurement Authorities will generally consider Supplier experience working with Yukon First Nations during the pre-qualification stage.
- (b) Prior to the end of the 5-year period for implementing Vendor Performance Review scores, or in circumstances involving a Supplier that has not been assigned a Vendor Performance Review score, Suppliers will describe their previous experiences working with Yukon First Nations Businesses and People.
- (c) Following the prequalification stage, Yukon First Nations Participation Measures will apply to the second-stage Procurement for performance/delivery of the Procurement Authorities' requirements.
- (d) Second-stage Procurements issued to qualified Suppliers will encourage the Suppliers to consult the Yukon First Nations Business Registry described in Section 11(7.13) and Yukon First Nation Employment Development Rosters when developing their Response.
- (e) Each year, HPW will offer information sessions to Yukon First Nations Businesses to: increase awareness and familiarity of the request for qualification process, such as Prequalification List tender documents; identify qualities that contribute to a strong submission; and respond to questions from Yukon First Nations Businesses.
- (f) In addition to S13(5)(b), if a Yukon First Nations Business responding to a Prequalification List does not qualify for the next stage of the procurement process, the Procurement Authority will:

- (i) offer to meet with the Yukon First Nations Business to review and discuss the submission's deficiencies;
- (ii) identify improvements that could strengthen future submissions; and
- (iii) where appropriate, highlight business development programs and other resources that could assist with the resolution of deficiencies.

7(3) **Communications with Suppliers:** Information within tender documents and addenda will be provided at the same time to all Suppliers that have indicated an interest in the Procurement or been invited to respond. Tender documents shall include relevant information relating to:

- (a) the requirements related to the submission of the Responses;
- (b) the requirements to be fulfilled by the Supplier, including any technical specifications, terms and conditions; and
- (c) the evaluation criteria that will be used, including the methods of weighting and evaluation, unless price is the sole criterion.

7(4) **Performance Bonds:** For Construction projects with an estimated value greater than \$1 Million, a performance bond will be required as part of the terms of the Contract.

7(5) **Bid Depository:** For Construction Procurements with an estimated value greater than \$2.5 Million that include the use of mechanical or electrical sub-trades, the Procurement documents shall require the use of the Yukon Contractors Association bid depository by the Suppliers.

7(6) **Listed Subcontractors:** For Construction projects, the Procurement documents shall include:

- (a) a section in which the general contractor must provide a list of subcontractors they will use and, if applicable, indicate their own name as general contractor, and what work the subcontractor or general contractor will be performing; and
- (b) a clear statement that the Supplier who is awarded the Contract will be required to obtain prior approval of the Procurement Authority in order to employ subcontractors other than those listed (including themselves).

7(7) **Tender Notices**

- (a) Public notices for Open Tendering must be in compliance with applicable trade agreements, and must provide a reasonable period of time for Suppliers to prepare and submit Responses, taking into account such factors and the nature and complexity of the Procurement, the extent of sub-contracting anticipated, and the time necessary for delivering Response documentation by



non-electronic means.

- (b) Open Tendering must be posted for a minimum of 15 business days, unless otherwise approved by the DM of HPW.
- (c) The minimum Response times for Procurements covered by the CETA vary, and Procurement Authorities should confirm the requirements through review of Article 19.10 of CETA or through consultation with the DM of HPW.

**7(8) Addenda**

- (a) After issuing the Procurement document, all communication with potential Suppliers must be made in writing through Addenda.
- (b) No addendum for Open Tendering shall be issued within three business days of the closing date and time, unless it also extends the closing date by five business days.
- (c) Procurement Authorities that are procuring for Construction projects and using the Yukon Contractors Association bid depository, as required in this policy, may not issue an addendum once the bid depository has closed. Projects requiring addenda at or after this time must be cancelled and, if appropriate, re-tendered.

**7(9) Receipt of Responses**

- (a) Receipt of Responses shall be conducted in a manner that is transparent and ensures the integrity of the Response receipt and opening process.
- (b) All Responses shall be received, opened and held under procedures that ensure the fairness and impartiality of the Procurement process and the confidentiality of Responses.

**7(10) Rejection of Responses**

- (a) Any Responses received after the closing time, as stated in the Procurement documents, will be rejected.
- (b) A Response received prior to the closing time may be rejected if:
  - (i) it is not submitted in the required form;
  - (ii) there are significant omissions of required information;
  - (iii) a Response is not properly signed by an authorized person, as required in the Procurement documents;
  - (iv) the required bid security in the required form is not provided (if it is a requirement of the Procurement);
  - (v) the Response includes additional terms or conditions; or
  - (vi) the Response is not in accordance with, or fails to meet, one or more terms, requirements, or standards in the Procurement documents.

- (c) If a Response is rejected, the Procurement Authority will notify the Person who submitted the Response within a reasonable time, and will confirm the rejection in writing.
- (d) Where the DM of HPW recommends rejection or acceptance of a Response, the Procurement Authority shall not overturn the recommendation without the written authorization of the DM of the Procurement Authority.

## **8. EVALUATION CRITERIA AND PROCESS**

- 8(1) Evaluation criteria must be created, and the evaluation process conducted in a manner that supports consistency, clarity, procurement quality and alignment with Government requirements.
- 8(2) Procurement documents must clearly describe the manner in which submissions will be evaluated for value-driven procurements, including the weightings assigned to the evaluation criteria and, if applicable, the process for negotiation (after the Procurement Authority has followed the RAP process outlined in Section 5, Request for Analysis of Procurement, for alternate procurements).
- 8(3) Procurement Authorities will evaluate and rank Responses only on the basis of the evaluation criteria and requirements contained in the Procurement documents.
- 8(4) The evaluation criteria are to include consideration of price, unless the Procurement Authority has followed the RAP process outlined in Section 5, Request for Analysis of Procurement. All of the evaluation criteria and sub-criteria must be stated in the tender documents, as only the criteria and sub-criteria stated in the tender documents will be used for evaluation.
- 8(5) Procurement Authorities will use evaluation criteria to recognize northern experience and knowledge.
- 8(6) Where evaluation criteria are used, they must, where permitted by trade agreements, include the methods used by the Supplier to maximize the benefits for Yukoners in carrying out the work.
- 8(7) Where a value-driven evaluation is used, Procurement Authorities will evaluate and score non-price factors before taking price into account.

**The following provision is from the Yukon First Nations Procurement Policy – Section 11(7.3) Value-Driven Request for Proposals**

- (a) Procurement Authorities will consider inclusion of evaluation criteria in value-driven Procurements that evaluate a Supplier's:
  - (i) experience working with Yukon First Nations;
  - (ii) commitment and capacity to engage with Yukon First Nations; and
  - (iii) commitment to provide employment, sub-contracting and training opportunities to Yukon First Nations People and Businesses.

- (b) When carrying out a value-driven Procurement requiring a Worker Development Plan, the Procurement Authority will evaluate a Supplier's:
- (i) experience working with Yukon First Nations;
  - (ii) commitment and capacity to engage with Yukon First Nations; and
  - (iii) commitment to working with the Government and Yukon First Nations to develop a Worker Development Plan.
- (c) Procurement Authorities may allocate additional points to increase the participation of Yukon First Nations People and Yukon First Nations Businesses in value-driven procurement involving projects that:
- (i) help meet departmental targets;
  - (ii) are of cultural or heritage importance to Yukon First Nations;
  - (iii) advance reconciliation;
  - (iv) build Yukon First Nations Business capacity in specific sectors where Yukon First Nations Businesses are underrepresented or have limited capacity;
  - (v) promote development of Yukon First Nations Businesses within communities;
  - (vi) contribute to workforce development in sectors of the economy where Yukon First Nations People are underrepresented;
  - (vii) facilitate the acquisition of knowledge, skills, and experience by Yukon First Nations People; or
  - (viii) recognize businesses and organizations that support workforce readiness, well-being, and resiliency of Yukon First Nations People.
- (d) In future, evaluation criteria in value-driven Procurements will include recognition of certifications issued by recognized organizations, such as the Canadian Council Aboriginal Business' Progressive Aboriginal Relations (PAR) certification, that promote and support Aboriginal businesses, people and communities.

## **9. SAFETY**

- 9(1) Where Government creates and implements a safety program or policy that requires guidance for staff regarding how to properly conduct Procurement in support of that program, the DM of HPW will provide that guidance in the form of an operational requirement that establishes additional terms, conditions and requirements for Procurements to follow the safety program.

## **10. SOCIAL AND SUSTAINABLE PROCUREMENT**

- 10(1) Social and sustainable Procurement shall support the use of Procurement as a means of encouraging innovation and the achievement of social, environmental and economic benefits.

- 10(2) When procuring Goods, Services or Construction for use or for performance in the communities outside of Whitehorse, Procurement Authorities should make

reasonable efforts to support community-based businesses while ensuring compliance with existing Procurement policy and trade agreements.

- 10(3) In order to identify and implement strategies for maximizing the economic, environmental, and social value of purchases, Procurement Authorities are encouraged to maintain current knowledge of product and Service standards, codes and certifications, changing market conditions, new green products, innovative technologies and best practices in sustainable Procurement.
- 10(4) Procurement Authorities should include social and environmental performance standards and evaluation criteria where appropriate, in particular incorporating those adopted by the Government from time to time.

## 11. YUKON FIRST NATIONS PROCUREMENT POLICY

### 11(1) Objectives

- (a) The Government is committed to:
- (i) Providing Yukon First Nations People with opportunities to participate in the Yukon economy and develop economic self-reliance as part of broader efforts to achieve equality of outcomes for Yukon First Nations People.
  - (ii) Ensuring Procurement processes are undertaken in accordance with the provisions of Yukon First Nation Final Agreements.
  - (iii) Advancing reconciliation, renewing the relationships with Yukon First Nations, and respecting treaty and Aboriginal rights and title, based on respect, cooperation and partnerships.

### 11(2) Yukon First Nations Procurement Policy Principles

To help guide decision-making and to contribute to the success of the Yukon First Nations Procurement Policy, the following principles have been established:

- (a) **Reconciliation:** The Government is committed to adopting and implementing substantive measures that advance reconciliation with Yukon First Nations People.
- (b) **Community:** The Government recognizes the value of its purchasing power to effect positive social change in Yukon First Nations communities as part of strengthening the well-being and self-sufficiency of Yukon First Nations People.
- (c) **Opportunity:** Policy measures, designed to stimulate growth in Yukon First Nation-owned businesses and provide employment opportunities to Yukon First Nations People, will lead to job creation, reduce inequalities, and advance socio-economic and other outcomes for Yukon First Nations People.
- (d) **Planning and Early Notification:** The Government recognizes the importance of making information on its capital investments and procurements available to Yukon

First Nations in a timely fashion to assist Yukon First Nations Businesses, People and communities to plan for and respond to Government Procurement opportunities.

- (e) **Local Benefit-Open Access:** Each Yukon First Nation derives direct benefits from Procurement within its traditional territory and has access to opportunities external to its traditional territory.
- (f) **Partnership:** Strengthened relationships between Yukon's business community and Yukon First Nations Businesses and workforce will produce more effective partnerships, which will increase the scale and capacity of Yukon businesses, resulting in a greater share of Procurement benefits and a stronger territorial economy.
- (g) **Balance:** The Government remains committed to Procurement processes that are competitive, deliver value for money and contribute direct benefits to communities throughout the territory.

### **11(3) Responsibility, Authority Amendments and Revisions**

- (a) Government will only change the Yukon First Nations Procurement Policy after requesting and considering the advice of Yukon First Nations.
- (b) The Premier and Cabinet are responsible for the success of the Yukon First Nations Procurement Policy.

### **11(4) Land Claims Obligations**

- (a) The policy is to be interpreted and implemented in accordance with Yukon First Nations Final and Self-Government Agreements.
- (b) For greater certainty, nothing in this policy will be interpreted so as to conflict with or detract from any Yukon First Nation Final Agreement or other treaty right or any Aboriginal right under section 35 of the Constitution Act, 1982. In the event of a conflict between this policy and a treaty right or section 35-protected right, the treaty or section 35-protected right will prevail.
- (c) This policy shall apply throughout the Yukon.

### **11(5) Impact of Trade Agreements**

- (a) The Yukon First Nations Participation Measures are exempt from the following trade agreements:
  - (i) Canada-European Union Comprehensive Economic and Trade Agreement (Annex 19-7, 1.2);
  - (ii) Canada Free Trade Agreement (Part IV, Article 800);
  - (iii) Comprehensive and Progressive Agreement for Trans-Pacific Partnership (Annex 15-A, Section G.3); and
  - (iv) World Trade Organization Agreement on Government Procurement (Appendix 1, Canada, Annex 7.3).

### **11(6) Application**

- (a) Organizations not required to follow the policy are encouraged to adopt the Yukon First Nations Participation Measures or establish an organization-specific policy with

- the same objectives and similar measures for achieving the objectives.
- (b) The Government will actively promote the Yukon First Nations Participation Measures through outreach to organizations that are not subject to the policy and its measures. The Government will report on its efforts on an annual basis. Refer to the Operational Requirement entitled 'Application' for further detail.
  - (c) Where the Government collaborates with other governments or agencies to fund projects or initiatives, it will encourage partner governments or agencies to establish terms and conditions within the project contribution agreement obligating the funding recipient to undertake procurement according to the Yukon First Nations Participation Measures.

## **11(7) Yukon First Nations Participation Measures**

### **11(7.1) Bid Value Reductions**

- (a) A Response that meets the requirements of the tender documents will have its price adjusted for the purposes of price evaluation and ranking only. For greater certainty, the Contract price will not be based on the adjusted price used for evaluation.
- (b) Bid value reductions (BVR) will be applied by HPW and are calculated as follows:
  - (i) Ownership:
    - a. A Yukon First Nations Business that is at least 50% Yukon First Nation-owned will receive a 5% reduction to its price (BVR = 5%).
    - b. Where the Yukon First Nations Business is at least 75% Yukon First Nation owned, it will receive an additional 5% reduction to its price (BVR = 5% + 5%).
    - c. Where the Yukon First Nations Business is 100% Yukon First Nation owned, it will receive an additional 5% reduction to its price (BVR = 5% + 5% + 5%).
    - d. For greater certainty, a non-Yukon First Nations Business submitting a Response involving a Yukon First Nations Business serving as a project sub-contractor, will qualify for bid value reductions to be applied to that component of the price related to the work to be performed by the Yukon First Nations Business.
  - (ii) Business Location
    - a. Where the primary operation of a Yukon First Nations Business is located in a Yukon community other than Whitehorse and the contract activities are to occur within the traditional territory in which the Yukon First Nations Business is located, as specified in the Procurement documents, the Yukon First Nations Business will receive an additional 5% reduction to its price.
  - (iii) Hiring of Yukon First Nations Labour
    - a. Where a tender process involves a Labour Component, a Response

committing to employ Yukon First Nation labour will receive a reduction of up to 15%, applied to the price of the labour to be performed by Yukon First Nations People, irrespective of the firm's status as a Yukon First Nation or non-Yukon First Nations Business.

- (c) Two years after the effective date of the Yukon First Nations Procurement Policy, Government will review the bid value reduction measures, including maximum bid value reductions, to consider their impact and make policy amendments to address any unintended consequences.
  - (i) The review will also consider the impact of the bid value reduction measures on the number of Yukon First Nations Businesses qualifying for SOAs along with the number of Yukon First Nations Businesses that are being called-up through SOAs.
  - (ii) As part of the review undertaken by Government, the Monitor and Review Committee will assess the effectiveness of bid value reduction measures. Government will consider the Monitor and Review Committee's assessment and the Committee's recommendations, if any, prior to amending section 11(7) of the Yukon First Nations Procurement Policy.

#### **11(7.2) Labour Levels**

- (a) On value-driven tenders for projects that involve a Labour Component, 20% of the total available points will be allocated towards hiring of Yukon First Nations People.
- (b) Procurement Authorities may allocate points within the overall 20% allocation to Responses that include commitments to hire Yukon First Nations People in whose traditional territory the Contract activities are to take place as specified in the Procurement documents.
- (c) Five years after the effective date of the Yukon First Nations Procurement Policy, if targets (as referenced in Section 11(11) Performance Measurement Framework) are not being met for Yukon First Nations employment, then the Government will begin setting mandatory labour levels for projects with a Labour Component. Mandatory labour levels will be set by Procurement Authorities based on labour market research.

#### **11(7.3) Value-Driven Request for Proposals**

- (a) Procurement Authorities will consider inclusion of evaluation criteria in value-driven Procurements that evaluate a Supplier's:
  - (i) experience working with Yukon First Nations;
  - (ii) commitment and capacity to engage with Yukon First Nations;
  - (iii) commitment to provide employment, sub-contracting and training opportunities to Yukon First Nations People and Businesses.
- (b) When carrying out a value-driven Procurement requiring a Worker Development Plan,

the Procurement Authority will evaluate a Supplier's:

- (i) experience working with Yukon First Nations;
  - (ii) commitment and capacity to engage with Yukon First Nations; and
  - (iii) commitment to working with the Government and Yukon First Nations to develop a Worker Development Plan.
- (c) Procurement Authorities may allocate additional points to increase the participation of Yukon First Nations People and Yukon First Nations Businesses in value-driven Procurement involving projects that:
- (i) help meet departmental targets;
  - (ii) are of cultural or heritage importance to Yukon First Nations;
  - (iii) advance reconciliation;
  - (iv) build Yukon First Nations Business capacity in specific sectors where Yukon First Nations Businesses are underrepresented or have limited capacity;
  - (v) promote development of Yukon First Nations Businesses within communities;
  - (vi) contribute to workforce development in sectors of the economy where Yukon First Nations People are underrepresented;
  - (vii) facilitate the acquisition of knowledge, skills, and experience by Yukon First Nations People; or
  - (viii) recognize businesses and organizations that support workforce readiness, well-being, and resiliency of Yukon First Nations People.
- (d) In future, evaluation criteria in value-driven Procurements will include recognition of certifications issued by recognized organizations, such as the Canadian Council Aboriginal Business' Progressive Aboriginal Relations (PAR) certification, that promote and support Aboriginal businesses, people, and communities.

#### **11(7.4) Set Asides**

- (a) Set Asides are Procurements that are only open to Yukon First Nations Businesses. Procurement Authorities may use Set Asides to:
- (i) help meet departmental targets;
  - (ii) support projects of cultural or heritage importance to Yukon First Nations;
  - (iii) advance reconciliation;
  - (iv) build Yukon First Nations Business capacity in specific sectors where Yukon First Nations Businesses are underrepresented or have limited capacity;
  - (v) promote development of Yukon First Nations Businesses within communities;
  - (vi) contribute to workforce development in sectors of the economy where Yukon First Nations People are underrepresented;
  - (vii) facilitate the acquisition of knowledge, skills, and experience by Yukon First Nations People; or
  - (viii) recognize businesses and organizations that support workforce readiness, well-being, and resiliency of Yukon First Nations People.



- (b) Set Asides must be approved in advance by the Deputy Minister of HPW as part of ensuring that set-asides are administered correctly.

### **11(7.5) Direct Award Contracts and Invitational Tenders**

- (a) Subject to Section 3 – Procurement Thresholds, Procurement Authorities may use Direct Award Contracts and Invitational Tenders to:
  - (i) help meet departmental targets;
  - (ii) support projects of cultural or heritage importance to Yukon First Nations;
  - (iii) advance reconciliation;
  - (iv) build Yukon First Nations Business capacity in specific sectors where Yukon First Nations Businesses are underrepresented or have limited capacity;
  - (v) promote development of Yukon First Nations Businesses within communities;
  - (vi) contribute to workforce development in sectors of the economy where Yukon First Nations People are underrepresented;
  - (vii) facilitate the acquisition of knowledge, skills, and experience by Yukon First Nations People; or
  - (viii) recognize businesses and organizations that support workforce readiness, well-being, and resiliency of Yukon First Nations People.

#### **(b) Invitational Tenders**

- (i) Before issuing an Invitational Tender for Goods or Services, Procurement Authorities will check the Yukon First Nations Business Registry for Yukon First Nations Businesses that supply such Goods or Services.
- (ii) If the Yukon First Nations Business Registry lists one or more Yukon First Nations Businesses that supply the Goods or Services for an Invitational Tender, at least one Yukon First Nations Business shall be invited to submit a Response to the Invitational Tender.
- (iii) Procurement Authorities can invite Yukon First Nations Business not listed on the Yukon First Nations Business Registry to participate in an Invitational Tender provided the Yukon First Nations Businesses meet the policy's definition of a Yukon First Nations Business.
- (iv) If the Procurement Authority intends to issue invitations to more than three Suppliers, the Procurement Authority will endeavour to ensure that at least one-third of the Suppliers are Yukon First Nations Businesses.

### **11(7.6) Government Capital Spending Plan**

- (a) The Government will offer to meet annually with Yukon First Nation governments to discuss capital spending plans for capital projects planned within the traditional territories of the Yukon First Nations.

- (b) Sharing capital spending plans allows Yukon First Nations governments, Yukon First Nations Businesses, and Yukon First Nations communities to plan and prepare for capital projects.
- (c) The Government will:
  - (i) communicate clearly the Government's spending plans during the five-year term of the capital plan;
  - (ii) communicate well in advance of project procurement to allow Yukon First Nation governments, Yukon First Nations Businesses and Yukon First Nations People to plan and prepare for the procurement opportunities;
  - (iii) where requested by a Yukon First Nation government, engage in government-to-government discussions around projects that are of interest to Yukon First Nation governments and communities, project timing, and opportunities for partnerships on projects; and
  - (iv) consider government-to-government discussions about projects and capital spending plans with respect to procurement planning and design.
- (d) This measure demonstrates progress toward fulfilling Section 22.6.6 of the Yukon First Nations Final Agreements, but is not considered Joint Capital Planning.

#### **11(7.7) Community Contract Forecast**

- (a) Forecasting of Government contracts helps Yukon First Nation governments, Yukon First Nations Businesses and Yukon First Nations People plan.
- (b) Procurement Authorities must, by April 1 of each fiscal year, provide the Deputy Minister of HPW with a list of upcoming anticipated Contracts within a specific community for that fiscal year.
- (c) The Government will share the Community Contract Forecast annually with Yukon First Nation governments, Yukon First Nations Businesses and Yukon First Nations People for Contracts expected to occur within the traditional territories of Yukon First Nations. The same information will be shared with businesses listed in the Yukon First Nations Business Registry according to Yukon First Nations affiliation and business location.
- (d) Each year, the Government will offer to present community procurement forecasts to each Yukon First Nation community by the end of the first quarter of each fiscal year. The Government will seek the assistance of Yukon First Nation governments to organize and host community forecast meetings.
- (e) The Government will offer to provide updates six months after the initial forecasts are provided.

#### **11(7.8) Workforce Development**

- (a) The purpose of this section is to provide a measurable increase in the number and quality of employment and training opportunities available to Yukon First Nations People

as a result of Government Procurement activity.

- (b) A Procurement that has an estimated Labour Component of \$500,000 or more and an estimated labour duration of 26 weeks or more, will require a Worker Development Plan for Yukon First Nation hires as part of the Contract requirements.
- (c) A Worker Development Plan may also be required for a Procurement that does not meet the threshold referred to Section 11(7.8)(b), if agreed to by the Government and a Yukon First Nation government. For any Procurement that has a Labour Component, a Worker Development Plan should be considered.

### **Workforce Development Initiatives**

- (d) As part of ongoing labour market engagement and government-to-government discussions with Yukon First Nations, Government will explore options for meeting the objectives of increasing the number and quality of employment and training opportunities for Yukon First Nations People. The discussions may include:
  - (i) how to create and maintain lists of Yukon First Nations People seeking employment and training opportunities;
  - (ii) avenues for connecting Yukon First Nations People with training opportunities related to procurement; and
  - (iii) arrangements for exchanging information respecting workforce development outcomes specific to procurement projects.
- (e) Supplier financial contributions to a trust that is responsible for disbursing funds for grants, scholarships and bursaries, will be a requirement of contracts for projects exceeding a value of \$10 million as outlined in the Operational Requirement.

## **11(7.9) Yukon First Nations Community Development Agreement**

### **Agreement Purpose**

- (a) The Government is committed to working collaboratively with Yukon First Nation governments on the development and implementation of Yukon First Nation Community Development Agreements (YFNCDAs).
- (b) The purpose of YFNCDAs is to maximize benefits related to business and employment development for Yukon First Nations People and communities from projects within Yukon First Nations traditional territories.

### **YFNCDAs Thresholds**

- (c) The Government will work with each of the 14 Yukon First Nation governments to conclude a fixed number of YFNCDAs within a 6-year period, based on a methodology that is described in an Operational Requirement.
- (d) The 6-year cycle will provide Yukon First Nation governments with the flexibility to identify projects that contribute the greatest community benefit to their Businesses, People and communities, and address Yukon First Nation scheduling and timelines.

- (e) The cycle will provide the Government with consistency and reliability to plan projects over a 6-year period.
- (f) The Government will consider requests made by Yukon First Nations to conclude additional YFNCDAs during the 6-year period on a case-by-case basis.
- (g) For projects in Whitehorse, Government will aim to achieve a target of 15% or greater of the overall project value to be allocated for contracting and employment opportunities for Yukon First Nations Businesses and labour. Projects outside of Whitehorse will have a target of 25% or greater.
- (h) The Government recognizes that targets will be influenced by a number of factors, such as the size and availability of the local Yukon First Nation workforce, the Goods and Services offered by the local Yukon First Nations Business community, and other projects occurring within the timeframe of the project.
- (i) The Government recognizes that Yukon First Nation governments can augment community capacity through partnerships with other Yukon First Nation governments and Yukon First Nations Businesses to achieve the values set out in a YFNCDAs.

### **Eligible Projects**

- (j) Prior to selecting a project for a YFNCDAs, the Government and Yukon First Nations governments shall discuss whether the project would be appropriate for a YFNCDAs.
- (k) Procurement projects eligible for YFNCDAs are not limited to asset construction. Examples of other types of projects are listed in the Operational Requirement.
- (l) YFNCDAs may address opportunities related to the operational phase of a project. Examples of opportunities in the operational phase are listed in the Operational Requirement.

### **Early Engagement**

- (m) The Government will discuss the need for and plan the development of YFNCDAs with Yukon First Nations governments through the annual capital planning process and community Contract forecast (provided for in sections 11(7.6) and Section 11(7.7), respectively).
- (n) The Government will aim to conclude YFNCDAs with Yukon First Nation governments at a date that is sufficiently in advance of project commencement to ensure adequate time to develop and implement an Implementation and Capacity Development Plan.

### **Unbundling**

- (o) The Government will not subdivide a project in advance of YFNCDAs negotiations as a way of reducing the value of the project subject to the YFNCDAs.

### **YFNCDAs Contents**

- (p) When developing a YFNCDAs, discussions between the Government and Yukon First Nation governments may include, but are not limited to, the following subjects:

- (i) extent to which the Government and the Yukon First Nation government will work together to develop the project design and specifications;
- (ii) extent to which the Government and Yukon First Nation government will collaborate on the development of the tender package as well as the assessment of tender responses;
- (iii) roles and responsibilities for the Government and the Yukon First Nations specific to the project;
- (iv) the type and value of work to be completed by Yukon First Nations Businesses, the amount of Yukon First Nation labour to be employed through the project, and opportunities for training and skills development during project implementation;
- (v) identification of procurement opportunities that would contribute to Yukon First Nations Business and employment development in the lead-up to a project, based on information exchanged during Government Capital Spending Plan (Section 11(7.6) and Community Contract Forecast (Section 11(7.7));
- (vi) whether standards and certification for procurement opportunities accord with the work to be performed;
- (vii) the level of funding that may be provided by the Government to Yukon First Nation government to address costs related to supporting:
  - a. the Yukon First Nation's participation in the procurement process and project implementation;
  - b. planning initiatives and efforts by Yukon First Nation governments related to workforce and business development to prepare for benefits and opportunities related to a project;
- (viii) the timeframe in which the project is to be developed, including the timeframe for project procurement, design, implementation and completion;
- (ix) other projects that could affect the availability of Yukon First Nations Businesses and labour; and
- (x) extent to which the YFNCDA interacts with any applicable Yukon First Nation Final Agreement or other treaty right or any Aboriginal right under section 35 of the *Constitution Act, 1982*.

### **Implementation & Capacity Development Plan**

- (q) The Government will work with Yukon First Nation governments on the development of an Implementation and Capacity Development Plan to accompany the YFNCDA.
- (r) The intent of the Plan is to ensure Yukon First Nations Businesses and the Yukon First Nation workforce have the skills and training necessary to participate in project work.

### **YFNCDA Review**

- (s) Upon project completion, the Government will work with the Yukon First Nation government(s) to conduct an informal review of the implementation of the YFNCDA to assess its success in achieving the objectives of the Yukon First Nations Procurement Policy.

### **Yukon Legacy Projects Agreements**

- (t) A Yukon Legacy Project is a project that presents substantial business and workforce

development opportunities for more than one Yukon First Nations as a result of the project's scale, duration and value.

- (u) Yukon Legacy Projects are generally equal to or greater than \$100,000,000 in value as defined by the Government during the initial planning stage.
- (v) Yukon Legacy Projects can be geographically dispersed (spanning multiple traditional territories) or centered in one traditional territory.
- (w) An Operational Requirement will set out a process used by the Government to engage Yukon First Nations in the development of Yukon Legacy Project Agreements.

### **11(7.10) Project Unbundling**

- (a) The Government shall, where reasonable, make best efforts to structure contracts, on both Settlement Land and Non-Settlement Land, so that they are of a size manageable by Yukon First Nations Businesses.

### **11(7.11) Standing Offer Arrangements**

- (a) Each year, the Government will offer information sessions to Yukon First Nations Businesses to increase awareness of and familiarity with existing Standing Offer Arrangements and Request for Standing Offer Arrangement (RSO) processes. Information sessions will involve:
  - (i) reviewing RSO documents;
  - (ii) identifying qualities that contribute to a strong submission;
  - (iii) discussing the call-up method(s); and
  - (iv) responding to questions from Yukon First Nations Businesses.
- (b) The Operational Requirement for Standing Offer Arrangements describes timing of information sessions.
- (c) In addition to Section 13(5)(b), if a Yukon First Nations Business responding to a Standing Offer Arrangement does not qualify for the Standing Offer Arrangement, the Procurement Authority will offer to meet with the Yukon First Nations Business to review and discuss the submission's deficiencies, identify improvements that could strengthen future submissions, and, where appropriate, highlight business development programs and other resources that could assist with the resolution of deficiencies.
- (d) Two years after the effective date of the Yukon First Nations Procurement Policy, the Government will review the Standing Offer Arrangements to consider their impact on Yukon First Nations Businesses and the number of Yukon First Nations Businesses called up.

### **11(7.12) Prequalification Source List**

- (a) Procurement Authorities will generally consider Supplier experience working with Yukon First Nations during the pre-qualification stage.
- (b) Prior to the end of the 5-year period for implementing Vendor Performance Review scores, or in circumstances involving a Supplier that has not been assigned a Vendor Performance Review score, Suppliers will describe their previous experiences working with Yukon First Nations Businesses and People.
- (c) Following the prequalification stage, Yukon First Nations Participation Measures will apply to the second-stage Procurement for performance/delivery of the Procurement Authorities' requirements.
- (d) Second-stage Procurements issued to qualified Suppliers will encourage the Suppliers to consult the Yukon First Nations Business Registry described in Section 11(7.13) and Yukon First Nation Employment Development Rosters referred to in Section 11(7.8) when developing their Response.
- (e) Each year, HPW will offer information sessions to Yukon First Nations Businesses to: increase awareness and familiarity of the request for qualification process, such as Prequalification List tender documents; identify qualities that contribute to a strong submission; and respond to questions from Yukon First Nations Businesses.
- (f) In addition to S13(5)(b), if a Yukon First Nations Business responding to a Prequalification List does not qualify for the next stage of the procurement process, the Procurement Authority will:
  - (i) offer to meet with the Yukon First Nations Business to review and discuss the submission's deficiencies;
  - (ii) identify improvements that could strengthen future submissions; and
  - (iii) where appropriate, highlight business development programs and other resources that could assist with the resolution of deficiencies.

### **11(7.13) Yukon First Nations Business Registry**

- (a) A list of Yukon First Nations Businesses will be maintained within a Yukon First Nations Business Registry. The Yukon First Nations Business Registry serves as:
  - (i) a verification tool that confirms a Yukon First Nations Business meets and maintains the policy definition of Yukon First Nations Business;
  - (ii) a link between Yukon First Nations Businesses and Government Procurement Authorities; and
  - (iii) a marketing tool for Yukon First Nations Businesses to promote the Goods and Services they sell to Procurement Authorities and other interested organizations.

### **11(8) Vendor Performance Review Program**

- (a) The Vendor Performance Review Program will assess whether a Supplier is meeting commitments related to the objectives of the Yukon First Nations Procurement Policy.
- (b) Procurement Authorities will incorporate the vendor performance review score into the tender evaluation process.
- (c) A Supplier's performance in meeting contract terms and conditions related to the Yukon First Nations Procurement Policy will contribute to the determination of whether the Supplier will be awarded future contracts.
- (d) Procurement Authorities will follow the Vendor Performance Review Program to assist with the management of Supplier performance in meeting Contract terms and conditions.
- (e) When the Supplier fails to meet the terms and conditions, the Procurement Authority will communicate this failure to the Supplier.
- (f) Failure to meet Yukon First Nations Participation Measures will be reflected in the Supplier's Vendor Performance Review Program score for the project, which will contribute to the Supplier's overall Vendor Performance Review Program score.
- (g) The Vendor Performance Review Program will contain corrective measures for managing notable breaches in Contract performance, or situations where Suppliers have acted with fraudulence or intentional dishonesty. Corrective measures include debarment.
- (h) The Vendor Performance Review Program will assign a Yukon First Nations participation score with a material weighting in relation to the overall performance score, and will include both measures to incentivize and/or reward good performance and help poor performers to improve.
- (i) The Vendor Performance Review Program shall be established as per Section 14(2) Performance Monitoring and Management, with criteria assessing vendor performance.

### **11(9) Contract Enforcement**

- (a) To ensure implementation of Yukon First Nations Participation Measures, Procurement Authorities may use a range of tools from standardized tender language, contractual obligations, increased monitoring and communication with Suppliers, and application of contractual and Vendor Performance Review Program consequences.

### **Contract Terms**

- (b) Procurement Authorities will:
  - (i) integrate commitments made by the bidders / proponents, related to applicable Yukon First Nations Participation Measures, into the contract;
  - (ii) include provisions, as appropriate, for payment holdbacks or other related measures to encourage the fulfillment of Yukon First Nations Participation Measures commitments, as described in an Operational Requirement; and
  - (iii) reference the Vendor Performance Review Program in contracts where applicable.



## **Contract Management and Monitoring**

- (c) To reduce Supplier(s) non-compliance with Contract obligations related to the Yukon First Nations Participation Measures, Procurement Authorities will engage in the following Contract management activities:
  - (i) regularly monitor the Supplier's progress in meeting the Yukon First Nations Participation Measures;
  - (ii) engage Suppliers early to resolve any issues in fulfilling the Yukon First Nations Participation Measures; and
  - (iii) communicate with Suppliers on a frequent and consistent basis to discuss and resolve emerging project issues before they impact project results.
  
- (d) Consequences for non-performance of Yukon First Nations Participation Measures commitments are described in an Operational Requirement. The Operational Requirement will:
  - (i) outline a process for addressing Supplier performance issues;
  - (ii) address Supplier non-compliance with contract terms; and
  - (iii) describe circumstances beyond the Supplier's control that affect the fulfillment of the relevant Yukon First Nations Participation Measures.

## **Dispute Resolution**

- (e) If the Procurement Authority and Supplier cannot reach agreement on whether or not the Supplier is meeting the Yukon First Nations Participation Measure, the dispute may be resolved as per the terms of the Contract, and/or using the Government's Procurement complaint processes, as described in the Procurement Complaint Procedures Operational Requirement.

## **11(10) Review Authority**

- (a) An impartial Review Authority will consider complaints related to the application of the Yukon First Nations Procurement Policy during the Procurement stage. The Yukon First Nations Procurement Policy will rely upon the Procurement Complaint Procedures referenced in Section 15.
- (b) The Government will aim for a minimum 25% Yukon First Nation membership on the Review Authority. Where possible, a minimum of one Yukon First Nation member will serve on the three-person Panel convened to hear a challenge presented to the Review Authority.
- (c) The representatives, appointed to the Review Authority, are recommended by Yukon First Nations for consideration by the Minister. The Yukon First Nation appointees may be the same as those serving on the Monitor and Review Committee (see Section 11(15) Monitor and Review Committee).

## **11(11) Performance Measurements and Targets**

- (a) A Performance Measurement Framework will accompany the Yukon First Nations Procurement Policy. The purpose of the framework is to establish a system for:

- (i) generating policy-related data and information necessary to report on progress in meeting the objectives of the Yukon First Nations Procurement Policy;
  - (ii) tracking implementation and assessing results and outcomes of the Yukon First Nations Procurement Policy;
  - (iii) determining whether the Yukon First Nations Procurement Policy's measures are having the desired impacts as well as the identification of any unintended consequences; and
  - (iv) adopting policy improvements to address shortcomings in the Yukon First Nations Procurement Policy's effectiveness as part of focusing on continuous improvement.
- (b) The Performance Measurement Framework will be built around a policy logic model, and will identify a set of evaluation questions, key performance indicators, and the approach to data collection and management.
- (c) Additional components of the Performance Measurement Framework include:
- (i) targets;
  - (ii) a Monitor and Review Committee; and
  - (iii) a periodic evaluation of the Yukon First Nations Procurement Policy to be undertaken at 5-year intervals by an independent 3<sup>rd</sup> party, the first of which will be initiated 5-years after the effective date of the Yukon First Nations Procurement Policy.

## **Targets**

- (d) The Government will work toward awarding 15% or higher of all Government Procurements, measured by number and value, to Yukon First Nations Businesses.
- (e) A progressive approach to achieving targets will be adopted involving annual targets for the Deputy Minister of each Department and Government Corporation subject to the policy and further detailed in the Performance Measurement Framework.

## **11(12) Monitor and Review Committee**

- (a) A Monitor and Review Committee will be established to monitor and assess the progress of the Yukon First Nations Procurement Policy in achieving its objectives. The Monitor and Review Committee will provide advice and recommendations to the Government to increase the effectiveness of the Yukon First Nations Procurement Policy.
- (b) The Monitor and Review Committee will serve as an advisory body by providing advice and recommendations for the Government's consideration.
- (c) The Monitor and Review Committee will be comprised of an equal number of Yukon First Nation and Government representatives. The Monitor and Review Committee will be co-chaired by a Yukon First Nation and Government representative.
- (d) Key functions of the Monitor and Review Committee include:

- (i) monitoring, examining, and evaluating data, and assessing the extent to which outcomes of the Yukon First Nations Procurement Policy are being achieved;
  - (ii) providing recommendations on the mechanisms developed by the Government for collecting and tracking data to be used by the Monitor and Review Committee;
  - (iii) making recommendations to the Government and Yukon First Nations regarding: measures intended to improve the Yukon First Nations Procurement Policy's effectiveness, implementation, and initiatives to advance the objectives;
  - (iv) providing recommendations on targets set by Government and key performance indicators;
  - (v) preparing the annual reports, updates and briefings as outlined in the Monitor and Review Committee Terms of Reference. The Monitor and Review Committee will share the annual report with each of the fourteen Yukon First Nation governments;
  - (vi) collaborating with the Government on the development of a scope of work for and execution of an evaluation to be performed by an independent third party at five-year intervals. The Monitor and Review Committee will make recommendations to the Government based on evaluation findings; and
  - (vii) providing advice to the Government on the need for new Operational Requirements or amendments to existing Operational Requirements, and to provide feedback on the proposed changes the Government intends to make to the Operational Requirements, where related to the Yukon First Nations Procurement Policy.
- (e) The Government will collect, collate and make data and information available to the Monitor and Review Committee related to key performance indicators needed to assess the effectiveness of the Yukon First Nations Procurement Policy over time, along with reports relating to the Yukon First Nations Procurement Policy the Government develops.
- (f) To advance accountability and transparency, the Government will consider recommendations it receives from the Monitor and Review Committee as part of promoting continuous improvements to the effectiveness of the Yukon First Nations Procurement Policy and desired outcomes. The Government will provide a written response to the Monitor and Review Committee indicating whether it intends to adopt the committee's recommendation along with a rationale.
- (g) The Government will cover committee meeting expenses (e.g. online or teleconference meeting costs).

## **12. PROCUREMENT SUPPORT TOOLS AND ACTIVITIES**

### **12(1) Tender Forecasting**

- (a) Forecasting Government tenders helps Suppliers plan. Procurement Authorities must, by April 1 of each year, provide the DM of HPW with a listing of Contracts, valued at more than the threshold for Open Tendering contemplated to be procured in that fiscal year. Procurement Authorities must provide this information for any planned Contracts funded through their budget and must provide quarterly updates in July, October, January and April for public posting.

## **12(2) Contract Registry**

- (a) The DM of HPW will maintain and publish a Contract registry to create transparency for Suppliers and Yukoners. Suppliers can use this information to analyze past contracting activity. Procurement Authorities will provide Contract award information for a public Contract registry. Subject to the law, the DM of HPW will provide public access to the registry and determine the form and content of information on the public Contract registry.

## **12(3) Supplier Directory**

- (a) The DM of HPW will maintain and publish a Supplier Directory for use in implementing the provisions of this policy. A Supplier Directory helps Suppliers to advertise their Goods and Services to Government Procurement Authorities and the public. The DM of HPW will decide which requirements, in compliance with applicable trade agreements, must be met in order to be added to the Supplier Directory, and may establish further terms and conditions related to the establishment and use of the Supplier Directory through Operational Requirements.

## **12(4) Benchmarking**

- (a) The Government is committed to ensuring that Procurement activities align with its policies, applicable laws, trade agreements, and best practices. The DM of HPW may establish a Procurement Benchmarking Program to identify best practices as well as areas for improvement, and may create requirements for information management and reporting in order to support such a program.
- (b) Benchmarking must be conducted in accordance with the requirements of this policy and the related operational requirements.
- (c) To check for consistency, transparency and compliance, HPW will conduct a review of the outcomes of this policy and these procurement practices within 5 years of the policy's approval date.

## **12(5) Disposal of Assets**

- (a) To ensure asset disposal activities are conducted with integrity, Asset Management staff shall dispose of assets in accordance with MBD #11/93, Management of Capital Assets and Disposal of Surplus Public Property. Assets that are surplus to the needs of Government are to be disposed of at fair market value by Asset Management and the DM of HPW, who will determine the appropriate method of disposal.

## **13. CONTRACT AWARD AND EXECUTION**

13(1) Award of a Contract pursuant to a Procurement will be in accordance with the terms of the Procurement documents and this section.

13(2) Where the Procurement document provides for negotiation to take place and the

Procurement Authority has already followed the RAP process outlined in Section 5, Request for Analysis of Procurement, for an Alternate Procurement, a Procurement Authority may engage in negotiations with potential Suppliers, subject to the terms and conditions established in the Procurement document.

Any proposed changes to the standard Contract terms and conditions must be reviewed by Legal Services prior to finalizing the Contract.

13(3) Only the DM of the Procurement Authority may authorize bypassing the lowest priced or highest ranking compliant Response after following the RAP process outlined Section 5, Request for Analysis of Procurement.

13(4) Contracts must be awarded according to the Procurement documents and the Response. Procurement Authorities must use the standard Government Contract forms unless prior approval has been provided by Legal Services and the DM of HPW.

**13(5) Award Notification and Debriefing**

(a) After a Contract has been entered into, Procurement Authorities will post required Contract award information in a public Contract registry in a manner consistent with requirements under the applicable trade agreements, and no later than 72 days after the award of a Contract.

(b) Procurement Authorities are responsible for notifying Persons with Responses of the outcome of the competition and for offering an opportunity for a debriefing on their Response, after Contract award. For unsuccessful Responses, this will include an explanation of why their Response was not successful.

**13(6) Contract Execution**

(a) A Contract must not be entered into unless all requirements of this policy and applicable operational requirements have been met.

(b) The *Financial Administration Act* (FAA) is clear that authorizations pursuant to s.24 and s.23 of the *FAA* must be in place prior to commencement of work. Departments must promote good contract planning practices and establish efficient contract approval processes. The Procurement Authority is responsible for monitoring and then reporting any instances of work commencing before a contract is in place to the DM of the Procurement Authority who in turn, will provide that information to the DM of HPW.

(c) If a Contract is not signed prior to the Person with the successful Response beginning work, the Procurement Authority once apprised of the situation will put in place the required contract. A written Confirming Order will be sent to the Procurement Authority's DM to report the circumstances of the contract. The DM of the Procurement Authority will send a copy of the Confirming Order to the DM of HPW.

**14. CONTRACT MANAGEMENT and CHANGE ORDERS**

- 14(1) A change order is the mechanism used to modify a contract. Change orders fall into two categories – anticipated and unanticipated. To reduce the need for unanticipated change orders Procurement Authorities shall thoroughly plan their procurement and use high-quality documents and Contract terms. Any time a Procurement Authority adds change orders to an existing Contract, there is a risk that it may just be a Direct Award masquerading as a change order – or, at least, that it may be perceived as such. Knowing this, Government scrutinizes change orders to ensure fairness, transparency and competition.
- (a) Procurement Authorities may issue change orders to accommodate changes in the scope, schedule or price of the Contract which were foreseen if:
    - (i) the anticipated change was explicitly included in the Procurement documents and the resulting Contract, and
    - (ii) the change to be accommodated will not bring the total aggregate Contract value above the allowed threshold for the Procurement method used.
  - (b) Procurement Authorities may issue change orders for unanticipated changes when:
    - (i) the Contract (including any change orders) is valued at less than \$100,000, or
    - (ii) the original Contract value is over \$100,000, and the change is valued at less than 25% of the original contract value.
  - (c) An approved **Request for Analysis of Change Order (RACO)** is required to issue a change order if each of the following criteria are met:
    - (i) The change order is unanticipated; and
    - (ii) The change order increases the Contract value; and
    - (iii) The Contract is valued over \$100,000 (including change orders); and
    - (iv) The accumulated total of all unanticipated change orders (or the initial change order), are valued at 25% or greater of the original Contract value.
  - (d) If a RACO is approved, a new RACO is required for each additional unanticipated change order increasing the Contract value.
  - (e) RACO approval is required from the Procurement Authority's DM or delegate
  - (f) When a Contract awarded by Direct Award or Invitational Tendering requires a change order that will propel the Contract value over the threshold for the Procurement method used, a RAP is required prior to issuing the change order, as outlined in Section 5, Request for Analysis of Procurement. The RAP process will replace the RACO process in this case. If the RAP is approved, any subsequent unanticipated change orders increasing the Contract value will require a RACO, but no additional RAPs.
  - (g) The DM of HPW will identify all change orders to the public in the Contract registry maintained pursuant to Section 12(2), Contract Registry.

#### 14(2) Performance Monitoring and Management

- (a) Government shall establish a Vendor Performance Review Program that will support the collection of Vendor performance reviews. Vendor performance reviews enable performance monitoring and management and must be conducted in manner that is fair, consistent and of high quality.
- (b) Procurement Authorities will use effective Contract management practices and record the ongoing assessment of Supplier performance. Continuous monitoring, pro-active and on-going communication, management and recording of Supplier performance facilitates better recognition of good performance and encourages poor performers to improve.
- (c) Every Contract shall clearly establish the criteria for Contract performance and for the post-completion performance evaluation, if any.
- (d) Monitoring of the Supplier's performance should be timely and consistent as the Contract progresses, in accordance with the requirements of the Contract.
- (e) A post-completion evaluation is recommended for all Contracts, and is required on every Contract over \$50,000, to provide a record of the Supplier's performance and to assist in future Procurement activity.

#### 14(3) Records Retention and Management

- (a) The Government is subject to the *Access to Information and Protection of Privacy Act*. Procurement Authorities must be aware of and manage their obligations in respect of the maintenance, release and management of all Procurement records.

#### 14(4) Release of Information

- (a) To support consistent transparency of Government procurements, operational requirements will include guidance about which procurement information can be released or published proactively by Procurement Authorities, subject to the *Access to Information and Protection of Privacy Act*.

### 15. PROCUREMENT COMPLAINT PROCEDURES

15(1) Complaint procedures will be transparent, independent and fair, with a primary goal of improving Government procurement practices. Competitive Procurement documents must outline how Suppliers may access Procurement complaint procedures. These complaint procedures will include both an informal, escalating complaint procedure that does not have monetary compensation and a formal complaint procedure that will comply with trade agreement requirements.

- (a) The Minister of Highways and Public Works will appoint a standing bid challenge committee to address complaints in accordance with the terms of

this Policy. The Review Authority will be made up of a chair, an alternate chair who will act in the absence of the chair, and four (4) to ten (10) members of the Review Authority. Each appointment will be for a term of up to two (2) years and may be renewed. Subject to the terms of this Policy, the Review Authority may establish its own rules of procedure to review and hear complaints.

**The Following is a Provision from the Yukon First Nations Procurement Policy – Section 11(10) Review Authority**

- (a) The Government will aim for a minimum 25% Yukon First Nation membership on the Review Authority. Where possible, a minimum of one Yukon First Nation member will serve on the three-person Panel convened to hear a challenge presented to the Review Authority.
- (b) The representatives, appointed to the Review Authority, are recommended by Yukon First Nations for consideration by the Minister. The Yukon First Nation appointees may be the same as those serving on the Monitor and Review Committee (see Section 11(12) Monitor and Review Committee).

- (b) The DM of HPW will establish procedures and requirements for managing procurement-related complaints and the reporting of information related to those complaints, while making reasonable efforts to provide Suppliers with access to that information.
- (c) In the event a Supplier has a complaint regarding a specific Procurement, prior to submitting a written complaint to the Review Authority, the Procurement Authority and the Supplier shall first seek to resolve the complaint through a debrief and consultations. In responding to complaints, Procurement Authorities will follow a consultation facilitation process that is fair, consistent, and is accessible to Suppliers in a timely manner.
- (d) Procurement Authorities will maintain complete documentation and records of all activities related to addressing a complaint, including all communications with the Supplier.
- (e) Procurement Authorities will provide to the DM of HPW on a basis to be specified, statistics relating to the number of complaints received, and the disposition of these complaints, for reporting purposes.
- (f) Subject to terms of the Policy, where a Supplier has reason to believe that they have been treated unfairly or that the Procurement process has not been followed, the Supplier may make a written complaint to the Review Authority, subject to the following:
  - (i) The complaint is received within 60 calendar days following the closing time stated in the Procurement documents, or within 15 calendar days following the award of the Contract or SOA, whichever is later; or



- (ii) in the event of an extension of a SOA, within 30 calendar days following the date of the extension.
- (g) The complaint procedures process described under Section 15 – Compliant Procedures Process do not apply to Contracts issued through a Direct Award process by the Procurement Authority.
- (h) Prior to hearing or considering a complaint from a Supplier, the DM of HPW or Procurement Authority may require the Supplier with the complaint to provide full and sufficient details related to the complaint, including their efforts to resolve the complaint directly with the Procurement Authority.
- (i) The DM of HPW will, within a reasonable time, forward the complaint to the DM of the Procurement Authority and to the Review Authority.
- (j) The Chair of the Review Authority, will conduct an initial review of a complaint from a Supplier to determine whether or not there will be a formal inquiry or hearing by the Review Authority.
- (k) A complaint registered with the Review Authority, which is found by the Chair of the Review Authority to warrant a formal inquiry or hearing will be heard by a panel of three (3) members of the Review Authority. Where reasonably possible, the qualifications of the members selected to hear a complaint will be appropriate to the matter under consideration.
- (l) The Review Authority may refuse to hear and consider, or may cease to hear or consider a complaint on the grounds that the complaint is: without merit, trivial, frivolous, vexatious, or has already been resolved.
- (m) Where the Review Authority refuses to consider or ceases to consider a complaint, the chair of the Review Authority will inform the complainant and the Procurement Authority against whom the complaint was made and may state reasons therefor.
- (n) Where the Review Authority considers that a complaint is valid, it may:
  - (i) recommend that the Procurement Authority pay to the Supplier compensation for: the Supplier's reasonable costs in preparing a Response; and/or the complainant's reasonable costs for participating in the inquiry or hearing; and/or
  - (ii) make other recommendations related to addressing the issues in the complaint and/or changes or improvements related to the Procurement.
- (o) The Review Authority will make a report of its findings and recommendations, if any, to the Deputy Minister of the Procurement Authority and to the complainant.