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Chapter: <b>Control of Expenditures</b>			
Directive Title: <b>GOVERNMENT CONTRACTS – TENDERS AND PROPOSALS</b>			

## 1. POLICY

The Government's procurement and contracting processes for the purchase of goods and services are based on the principles of transparency and fair competition to ensure the best value is obtained for resources expended. Government contracts must comply with the Government Contract Regulations and the Nunavummi Nangminiaqtunik Ikajutti Regulations (NNI Regulations).

Competitive Request for Tenders (RFT) and Request for Proposals (RFP) processes are the primary tools for the achievement of these objectives.

## 3. DIRECTIVE

This directive explains the minimum requirements of the Government Contract Regulations with respect to requesting tenders and proposals and awarding government contracts. Detailed procedures and guidelines are provided in the GN Contracting Procedures Manual and Procurement Procedures.

All contracts for goods, services, or construction in excess of \$5,000 or for architectural or engineering services in excess of \$25,000 must be entered into as a result of a competitive RFT or RFP process, unless specifically exempted under the Government Contract Regulations. No person other than a Contract Authority may enter into a contract on behalf of the Government.

Except as permitted in the Government Contract Regulations or the NNI Regulations, a contract must be awarded through a competitive RFT or RFP process. All contract amounts are excluding GST.

The NNI Regulations apply to the design, award and interpretation of any contract to which the Government or any of its public agencies listed in *Schedule B* of the *Financial Administration Act* is a party. The NNI Regulations do not apply to contracts for insurance, contracts of employment, sole-source contracts as defined in the Government Contract Regulations, and contracts with another government or government agency. The NNI Regulations apply if the Government directly provides more than 51% of the total contract funds or 51% of the operating funds of one of the parties to the contract.

The definitions of terms used in Financial Administration Manual (FAM) Directives 808 Government Contracts series can be found in Appendix E of FAM Directive 808 Government Contracts – General.

This directive applies to all government departments and public agencies.

## **4. PROVISIONS**

### 4.1. Responsibility

- 4.1.1. The Department of Community and Government Services (CGS) is primarily responsible for the GN Contracting Procedures Manual, and as such, is the department of expertise for the RFT and RFP processes described in Parts II and III of the Government Contract Regulations, and on the application of the NNI Regulations.
- 4.1.2. All government contract authorities are subject to the Government Contract Regulations and NNI Regulations when entering into contracts on behalf of the Government. The GN Contracting Procedures Manual and Procurement Procedures provide detailed guidance, procedures and other information that will assist all contract authorities with competitive procurement processes and in complying with their obligations under the Government Contract Regulations and the NNI Regulations.
- 4.1.3. CGS may administer a competitive RFT/RFP process on behalf of any other department, public agency or the Legislative Assembly. However, once a contract is awarded, it is the responsibility of the client to manage and administer the contract.
- 4.1.4. CGS may advertise a competitive RFT/RFP process on behalf of any other department, public agency, the Legislative Assembly, or a municipal corporation on its public tender website or in any other media where public advertising is required by the Canadian Free Trade Agreement, the Canada – European Union Comprehensive Economic and Trade Agreement, and the Comprehensive Trans – Pacific Partnership Agreement.

4.1.5. Where required, CGS may advertise a competitive RFT/RFP process on the single point of access procurement website operated by the Government of Canada.

#### 4.2. Thresholds for Tenders and Proposals:

4.2.1. All contracts with total values exceeding \$5,000 for goods and services or \$25,000 for architectural and engineering services are subject to the Government Contract Regulations and the NNI Regulations, except as authorized under those regulations.

4.2.2. Where contracts are exempt from the NNI Regulations, all contracts with values exceeding the thresholds outlined in the Canadian Free Trade Agreement (CFTA) must be awarded pursuant to a public procurement process.

#### 4.3. Determining whether to Request Tenders or Request Proposals

4.3.1. Where it is possible to develop detailed specifications and directions for the performance of the work, and the only evaluation factor to be considered is price, the contract should be awarded after conducting an RFT process as described in Part II (sections 10 to 14 inclusive) of the Government Contract Regulations. The resulting contract will be formed with the bidder entitled to the award pursuant to section 14 of the Government Contract Regulations.

4.3.2. If detailed specifications cannot be developed, or if marketplace proposals for goods or services are desirable, competitive proposals, as described in Part III (sections 15 to 18 inclusive) of the Government Contract Regulations, should be requested instead.

#### 4.4. Advice on Preparing a Request for Proposals

4.4.1. A department may obtain advice and assistance from CGS when preparing the terms of reference, scope of work, proposal response guidelines and evaluation criteria and appropriate weights in anticipation of issuing an RFP. Detailed guidelines are provided in the GN Contracting Procedures Manual.

4.4.2. Departments should consult the GN Contracting Procedures Manual for guidance to determine whether other procurement options, in addition to the standardized RFT/RFP processes, would be suitable for them depending on the nature and complexity of the project or resulting contract, and the department's program objectives.

#### 4.5. Importance of Confidentiality

4.5.1. Departments and public agencies must comply with the legal requirements and rules for maintaining confidentiality of the process whether requesting proposals or tenders. Evaluation committee notes, evaluation committee meeting minutes, and preliminary scores are confidential and must only be released as required by law. Refer to Access to Information and Protection of Privacy legislation, policies and procedures and the GN Contracting Procedures Manual for guidance. In certain procurement processes, comprehensive confidentiality and non-disclosure agreements may be necessary to ensure the integrity of the process.

#### 4.6. Minimum Content of a Request for Proposals

4.6.1. The content of an RFP must be sufficient to promote competitive and sound proposals. Detailed guidance is provided in the GN Contracting Procedures Manual and Procurement Procedures. Each RFP shall contain:

- a) the instructions, to proponents and evaluators, governing the competitive process;
- b) project description, objectives and desired outcomes including deliverables; and
- c) proposal content requirements and manner of evaluation.

#### 4.7. Requesting Tenders or Proposals by Private Invitation

4.7.1. Requests for Tenders and Proposals may be issued by invitation to a minimum of three vendors, and according to the NNI Regulations, wherever possible, should include companies selected from the Government's registry of approved local businesses and the list of Inuit firms maintained by the Nunavut Tunngavik Incorporated (NTI).

#### 4.8. Public Advertisement of Requests for Tenders or Proposals

4.8.1. Where the value of the contract for goods or services is estimated to be in excess of \$25,000 or in excess of \$100,000 for construction, the RFT/RFP must be publicly advertised in the manner set out in the GN Contracting Procedures Manual.

#### 4.9. Records to be Kept on the Procurement File

- 4.9.1. The following records must be kept for all RFTs and RFPs and for all bids received:
- a) certification of funds and expenditure and accounting authority to enter into the contract;
  - b) contract records to satisfy that the requirements of the Government Contract Regulations and this and any other relevant Financial Administration Manual directive were adhered to;
  - c) records to satisfy that the requirements of the Government's contracting procedures were adhered to;
  - d) records to satisfy that the requirements of the NNI Regulations were adhered to;
  - e) a copy of the issued RFT/RFP document including any addenda issued prior to closing;
  - f) a copy of all bids or proposals received; and
  - g) a copy of the resultant contract.
- 4.9.2. Where applicable, unless a contract is for architectural or engineering services that will not exceed \$25,000 in value, or is any other type of contract that will not exceed \$5,000 in value, a Contract Authority shall record:
- a) the reason for awarding a contract without using the competitive RFT or RFP process;
  - b) the reason for awarding a contract to other than the bidder with the lowest tendered contract price. For example, when the lowest priced tender is not responsive or the lowest priced bidder is not responsible;
  - c) the reason for awarding a contract to a proponent other than the proponent submitting the proposal which provides the best value to the Government; and
  - d) the impact of bid adjustments permitted under the NNI Regulations on the contract award.
- 4.9.3. Refer to the GN Contracting Procedures Manual for detailed procedures regarding maintaining a procurement file.

- 4.9.4. Refer to the Government's records management policies and procedures for appropriate operational and administrative records classification requirements.

#### 4.10. Evaluating Tenders and Awarding Contracts

- 4.10.1. Tenders must be comparatively evaluated based on price only, provided the tenders compared are responsible and responsive. Except as permitted in the Government Contract Regulations, a contract must be awarded to the responsible bidder submitting the lowest priced responsive tender after application of bid adjustments permitted by the NNI Regulations.
- 4.10.2. Permission or direction to award a contract to anyone other than the responsible bidder submitting the most responsive tender must be given by the Executive Council in compliance with s.3 of the Government Contract Regulations (paramount authority of Executive Council) and section 3.2 of the NNI Regulations (consultation with NTI). The competitive tendering process imposes certain legal obligations upon the Government once bids have been opened and evaluated. Because of this, departments or agencies wishing to contract with a specific firm rather than with the winner of a competitive tender process should seek this permission from the Executive Council prior to, and instead of, issuing a competitive RFT.

#### 4.11. Evaluating Proposals and Awarding Contracts

- 4.11.1. Proposals must be evaluated in a predetermined manner according to a predetermined formula including price and at least one other weighted criterion specified in a written RFP. Except as permitted in the Government Contract Regulations, a contract must be awarded to the responsible proponent submitting the proposal, which potentially will provide the best value to the Government. In the evaluation of proposals, the proposal achieving the highest overall score as determined by the predetermined formula stated in the request represents the best potential value and greatest probability for successful completion of the project according to the terms and conditions of the contract.

- 4.11.2. Permission or direction to award a contract to other than the responsible proponent submitting the proposal which potentially will provide the best value to the Government must be given by the Executive Council in compliance with s.3 of the Government Contract Regulations (paramount authority of Executive Council) and section 3.2 of the NNI Regulations (consultation with NTI). The competitive proposals process imposes certain legal obligations upon the Government once proposals have been received and evaluated. Because of this, departments or agencies wishing to contract with a specific vendor rather than to the successful proponent of a competitive proposals process should seek this permission from Cabinet prior to, and instead of, issuing a competitive RFP.
- 4.12. Paramount Authority of the Executive Council (Cabinet Prerogative)
- 4.12.1. In accordance with the Government Contract Regulations, the Executive Council may award or direct the award of any contract to any person or organization; the resulting contract is referred to as a “negotiated contract”. The power to enter into a contract includes the power to renegotiate the terms of the contract or terminate it.
- 4.12.2. Prior to departing from the application of the NNI Regulations, a contracting authority must consult with NTI to develop alternative means of achieving the Government’s obligations set out in Article 24 of the Nunavut Agreement. The consultation requirements are set out in sections 3.2 and 6.1 through 6.3 of the NNI Regulations.
- 4.12.3. The Financial Management Board may recommend that the Executive Council exercise its prerogative if the Financial Management Board believes it to be in the public interest.
- 4.12.4. Refer to the GN Contracting Procedures Manual for procedures and guidelines with respect to negotiated contracts.

#### 4.13. Sole Sourcing

4.13.1. According to the Government Contract Regulations, a Contract Authority may enter into a contract without issuing an RFT or RFP if the Contract Authority reasonably believes that any of the following conditions are met:

- a) the goods, services, real property or construction at issue in the contract are urgently required and delay would be injurious to the public interest;
- b) only one party is available and capable of performing the contract; or
- c) the value of the contract will not exceed:
  - (i) \$25,000, in the case of a contract for architectural or engineering services, or
  - (ii) \$5,000, in the case of any other type of contract.