

Issue Date: March 1995	Amended Date: March 24, 2022	Responsible Agency: Office of the Comptroller General/Department of Community and Government Services	Directive No: 808
Chapter: Control of Expenditures			
Directive Title: GOVERNMENT CONTRACTS – GENERAL			

1. POLICY

The Government's contracting processes for the procurement of goods and services are based on the principles of transparency, fair competition and risk mitigation to ensure that the Government obtains the best value for resources expended.

2. DIRECTIVE

Government contracts must comply with the *Financial Administration Act (FAA)*, the Government Contract Regulations (Regulations), the Nunavummi Nangminiqagtunik Ikajuuti Regulations (NNI Regulations) and the provisions of this and other directives in this manual, and in or made pursuant to the GN Contracting Procedures Manual. All contract amounts are excluding GST.

Public Officers authorized to contract on behalf of the Government must comply with the requirements of s.44 to 49 of the *FAA*, the Regulations pursuant to the Act and Financial Administration Manual (FAM) Directives 808 Government Contracts series when entering into contracts and incurring expenditures or making payments related to contracts.

No person other than a public officer authorized as a Contract Authority by the Regulations may enter into a contract on behalf of the Government. This authority may only be exercised for the type of contract and within the limits permitted under the Regulations.

Contract Authority may be delegated in accordance with s.13 of the *FAA*, s.4 of the Regulations and FAM directives 802 Delegation of Powers and Duties, and 802-1 Financial Signing Authorities.

The *Nunavummi Nangminiqaqtunik Ikajuuti Implementation Act* and the NNI Regulations apply to all to all contracts except: liability insurance contracts, employment contracts, sole-source contracts as defined in section 8 of the Regulations, emergency services contracts, contracts between the Government and another government or government agency, most contracts between the Government and municipal corporations, and contracts that have been exempted from the application of the NNI Regulations by the Executive Council. The NNI Regulations do not apply to procurement by public agencies listed in *Schedules A and C* of the *FAA*.

The NNI Regulations prevail in the event of any conflict with this directive or the Regulations. The Regulations and the provisions of this directive do not apply to employment contracts.

The assistance of the Procurement section of CGS should be obtained to ensure compliance with the Government's procurement policies, procedures and directives; and Risk Management section of the Department of Finance must be consulted with respect to the security and insurance provisions needed to ensure the Government's interests are protected in that regard.

The definitions of terms used in FAM Directives 808 Government Contracts series can be found in Appendix E.

This directive applies to all government departments and public agencies.

3. PROVISIONS

3.1. Trade Agreements

- 3.1.1. The Government is subject to the Canada-European Union Comprehensive Economic and Trade Agreement (CETA). Article 19 of the CETA applies to all procurement processes which are not subject to the NNI Regulations.
- 3.1.2. The Government is subject to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CTPP). Article 15 of the CTPP applies to all procurement processes which are not subject to the NNI Regulations or Article 24 of the Nunavut Agreement.
- 3.1.3. The Government is a signatory to the Canadian Free Trade Agreement (CFTA). Chapter 5 of the CFTA applies to all procurement processes which are not subject to the NNI Regulations.
- 3.1.4. Government and public agency contracts exempt from the application of the NNI Regulations must comply with the provisions of the CFTA, CETA, and the CTPP.

3.2. Competitive Tender and Proposal Requirements

- 3.2.1. Government contracts must comply with the competitive tender or proposal requirements of the Regulations and FAM Directive 808-1 Government Contracts – Tenders and Proposals. All contracts for goods and services in excess of \$5,000, and all contracts for architectural and engineering services in excess of \$25,000 must result from a competitive Request for Tender (RFT) or Request for Proposal (RFP) process unless an exception, as set out in provision 4.3, applies.

3.3. Exceptions to Competitive Tender and Proposal Requirements

3.3.1. Negotiated Contracts (Executive Council Prerogative)

The Regulations permit the Executive Council to enter into or direct a Contract Authority to enter into a contract with any person or organization, subject to the NNI Regulations. The power to enter into a contract includes the power to renegotiate the terms of the contract or terminate it.

The contract resulting from this exercise of Executive Council prerogative is referred to as a negotiated contract.

The Financial Management Board (FMB) may recommend that a contract be entered into by the Executive Council with someone other than the person who would otherwise be awarded a contract if the FMB believes it to be in the public interest.

Contracting authorities seeking an exemption from all or part of the NNI Regulations must demonstrate compliance with the consultation requirements in section 3 of the NNI Regulations.

3.3.2. Sole Sourcing

According to the Regulations, a Contract Authority may enter into a contract without issuing a request for tenders or a request for proposals 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:

- \$25,000, in the case of a contract for architectural or engineering services, or
- \$5,000, in the case of any other type of contract.

3.3.3. Existing Standing Agreements

If a competitive process has already been conducted by CGS Procurement to establish a Standing Offer Agreement (SOA), Standing Supply Agreement (SSA) or Master Supply Service Agreement (MSSA) in accordance with the provisions of FAM Directive 808-4 Government Contracts – Standing Agreements, a Contract Authority may choose to enter into a contract under a SOA, SSA or MSSA consistent with the provisions of that directive and any additional requirements set out in the GN Contracting Procedures Manual, and subject to the terms and conditions of the SOA, SSA or MSSA so long as expenditure authority and accounting authority certifications have been provided on a requisition prior to the contract award.

If a Contract Authority chooses not to contract under an established SOA, SSA or MSSA, and the provisions of 3.3.1 or 3.3.2 are not applicable, the Contract Authority must award the contract through a competitive RFT or RFP process pursuant to FAM Directive 808-1 Government Contracts – Tenders and Proposals.

3.4. Indemnification and Insurance Requirements (see Appendix C)

- 3.4.1. All contracts must contain an indemnity clause in which the contractor indemnifies the Government against any third-party claim arising out of the contractor's performance of the contract. Appendix C provides the standard wording to be used. Where circumstances warrant, the standard indemnity provision may be modified or removed following consultation with Risk Management section of the Department of Finance and the Department of Justice.
- 3.4.2. When a proposal contains a clause whereby the Government must indemnify the proponent or the contractor offering the proposal, the clause must be forwarded to the Departments of Justice and Finance for review and approval or rejection. Any guarantee or indemnity on behalf of the Government must be authorized by Regulations.
- 3.4.3. All contracts must contain terms and conditions that ensure adequate insurance coverage by the contractor. Appendix C provides the standard wording. Any amendments to the standard wording must be approved by Risk Management.
- 3.4.4. The requirement for insurance coverage by a contractor may be modified or waived by the Department of Finance in consultation with the Department of Justice where appropriate.

- 3.4.5. The Contract Authority may consult with the Manager, Risk Management, on appropriate or alternative insurance provisions prior to the issuing of a RFP or RFT, and upon receipt of proposals and tenders, prior to awarding a contract.

3.5. Legal Review of Proposed Contracts

- 3.5.1. Before entering into a Non-Standardized Contract or accepting a High Risk Proposal, the Contract Authority shall submit the proposed contract to the Department of Justice for review and formal approval.
- 3.5.2. Before entering into a contract that is an altered or amended version of a Standardized Contract, the Contract Authority shall submit proposed alterations or amendments to CGS to coordinate with the Department of Justice for review and formal approval.

See Appendix B for legal review requirements.

3.6. Financial Review of Proposed Contracts

- 3.6.1. Proposed contracts that include terms and conditions for the purchase or lease of goods or services that may add to or otherwise change the Government's costs or required payments based on the future change in or value of a defined index or other measure must be referred to the Office of the Comptroller General for review prior to signing to determine whether they contain an embedded financial instrument that under the public sector accounting standards (PSAS) will need to be recognized and measured separately for accounting purposes.

3.7. Conflict of Interest

- 3.7.1. A public officer shall not permit to arise any influence, interest or relationship with a contractor that might conflict with the interests of the Government or that might endanger or prejudice the Government's reputation for open, fair open and transparent dealings.
- 3.7.2. A public officer shall not use the Government's contracting relationship with a contractor for personal gain or benefit.
- 3.7.3. Refer to the Nunavut Public Service Code of Values and Ethics, as well as Human Resources Manual (HRM) Directive 203: Outside Activity, for additional information on conflict of interest.

- 3.7.4. Generally, former public officers who have served in senior management positions are not permitted to enter into contracts with the Government for a term of one year after the date their employment with the Government ceases. In some cases an exception can be made. Refer to the HRM Directive 205: Post-Employment Restrictions, for additional information on contracting with former senior managers.
- 3.8. Standards for Goods and Construction
- 3.8.1. CGS shall develop and set minimum quality standards for architectural and engineering capital infrastructure design services and construction procured by the Government.
- 3.8.2. CGS shall develop and set minimum quality standards for goods purchased or equipment leased for government use. The development of these standards may be delegated to other departments. In the interest of the Government receiving the highest possible value for its expenditures, and the legal requirements for performance over brands specifications, CGS may question the specifications for goods requisitioned by other departments.
- 3.9. Standards for Office and Communications Equipment
- 3.9.1. CGS maintains standards for most types of office and communications equipment such as photocopiers, fax machines, printers, computers, and peripherals. The authority to procure office or communications equipment by any means such as purchase, lease, rental, rent-to-buy or lease-to-buy rests with CGS. If office or communications equipment is needed, a Requisition for Services form must be submitted to CGS. This section does not apply to public agencies.
- 3.9.2. Requisitions for computer hardware and software not consistent with approved standards will not be installed on the government network or supported by Helpdesk.
- 3.10. Restrictions on Contract Authority for Certain Types of Contracts
- The Regulations restrict the exercise of Contract Authority for specific categories of contracts.
- 3.10.1. Architectural and Engineering Services
- Architectural/engineering services are engaged through a competitive RFP process. Contract authorities, before entering into a contract, shall take into account the following criteria for the provision of architectural and engineering services:

- a) the qualifications and experience of the architect, engineer, or firm;
- b) the past performance of the architect, engineer, or firm on similar projects;
- c) the number, qualifications and experience of the personnel who will assist in the performance of the contract; and
- d) the size, complexity and time constraints of the contract.

In considering qualifications as per (a) above, the Contract Authority shall ensure that the successful firm complies with applicable legislation governing the architectural and engineering professions and that proof of professional liability and errors and omission insurance coverage is obtained before entering into the contract.

CGS has the required expertise to assist contract authorities in complying with this requirement and with conducting the competitive procurement process (including requesting proposals using a Standardized Request for Proposals and Architectural/Engineering Services Contract template). Competitive procurement processes are mandatory for architectural or engineering services contracts over \$25,000.

Architectural and engineering services are normally required and acquired in the planning of construction or renovation projects. CGS sets standards and has Contract Authority for construction on behalf of the Government.

Contract authorities should consult with CGS prior to procuring these services to ensure that their procurement and contracting is coordinated with the procurement and contracting for the rest of the construction or renovation project and is in compliance with the Regulations and other applicable legislation, standards, codes and requirements.

The procurement of architectural and engineering services must be publicly advertised if the value of the contract will exceed \$25,000.

This section does not apply to public agencies. However, public agencies are encouraged to consult with CGS with respect to these types of contracts.

3.10.2. Goods, Transportation, Construction, Real Property, Leases, Communications and Office Equipment

Contracts for the following values must be entered into and administered by CGS:

- goods with a value exceeding \$5,000;
- transportation services (excluding air ambulance and scheduled medical travel) with a value exceeding \$5,000;
- computer services with a value exceeding \$5,000;
- communication services with a value exceeding \$5,000;
- real property including leases; and
- construction, with the exception of a construction contract in respect of a transportation facility.

In order to maintain uniform standards of compatibility, interoperability and network connectivity of office and communications equipment, departmental contract authorities are required to procure computers, phones, fax machines, photocopiers, computer services and communications services through CGS.

This section does not apply to public agencies.

3.10.3. Construction in Respect of a Transportation Facility

The Minister or Deputy Minister of the department responsible for transportation or a Contract Authority within that department who has been delegated that authority is authorized to enter into construction contracts in respect of a transportation facility.

Notwithstanding the foregoing, all construction contracts entered into under this provision shall comply with the requirements of the NNI Regulations and with applicable standards set by CGS pursuant to 3.8 above.

3.10.4. Employment Contracts

For direction on distinguishing between employment and personal services contracts, refer to FAM Directive 808-5 Government Contracts – Personal Service Contracts.

3.10.5. Insurance

An insurance contract must be entered into only with the approval of the Minister or the Deputy Minister of Finance.

3.10.6. Legal Services

A legal services contract must be entered into only with the approval of the Executive Council or the Minister of the Department of Justice, except that the Director of Child and Family Services, may enter into a legal services contract for the benefit of a child or youth in the care or custody of the Director.

APPENDIX A

MINIMUM REQUIREMENTS FOR GOVERNMENT CONTRACTS

Naming the Government, Public Agencies, and the Legislative Assembly

The contract must contain the proper legal names for all parties. For all contracts except leases of Commissioner's Lands, the following is to be used for the Government:

The Government of Nunavut as represented by the Minister of [contracting department].

For leases of Commissioner's Lands, the lease shall be made in the name of the Commissioner of Nunavut as represented by the Minister of Community and Government Services.

For leases of Commissioner's Airport Lands, the lease shall be made in the name of the Commissioner of Nunavut as represented by the Minister of Economic Development and Transportation.

Public agencies may contract in their own names and should not name the Government or a responsible Minister.

The Legislative Assembly may contract in its own name and is properly named as the Legislative Assembly of Nunavut as represented by the Speaker.

There is no Crown in right of Nunavut. The Government should not be named as "Her Majesty the Queen in right of Nunavut" and the Government should not be referred to as "the Crown".

Expenditure and Commitment Controls

Before a contract is entered into on behalf of the Government, an expenditure officer and an accounting officer shall provide separate approvals pursuant to s.44(1) of the *FAA*.

Where a tender or proposal exceeds the amount estimated and approved for the expenditure, prior to awarding the contract, an expenditure officer and an accounting officer shall provide separate certifications to approve the additional funding required to award. For greater clarity, the following shall apply:

If one or both of the following criteria apply, additional authority is required to award:

- if the overage is over \$1,000 – obtain approval from the department
- if the overage is over 10% – obtain approval from the department
- if the overage is over 10%, but under \$1,000 – obtain approval from the department
- where the lowest acceptable bid amount does not exceed the approved amount by more than 10% or \$1,000, whichever is lower, – proceed with award
- if the overage is under 10%, and less than \$1,000 – proceed with award

Multi-year Contracts

Multi-year contracts must clearly state the requirement for an expenditure in a subsequent fiscal year as required by s.44(2) of the *FAA*.

Departments shall maintain adequate records for multi-year contracts to record related outstanding commitments at the end of a fiscal year.

Statutory Condition in Contracts

Government contracts must contain the following clause, which directly quotes s.46 of the *FAA*:

In compliance with s.46 of *FAA*, it is a statutory condition of this contract that “an expenditure pursuant to the contract will be incurred only if there is a sufficient uncommitted balance in the appropriated item for the fiscal year in which the expenditure is required under the contract”.

Object of Contract

Government contracts must clearly identify the objectives of the contract and the contractor's obligations.

Contracts must also stipulate a deadline for the completion, performance or delivery of the stated objectives.

Validity of Contract

When entering into a contract with anyone other than an individual, a Contract Authority should ensure that:

- a) the contractor is a legal and properly registered entity, such as a sole proprietorship, partnership, or corporation (a contract is not legally valid if the contractor is not a legal entity);

- i) in order to legally do business in Nunavut, the contractor must be registered, or register, with the Department of Justice Legal Registries division;
- b) if the contract is with a not-for-profit organization, the organization's charter permits the contract;
- c) when contracting with a corporation the signing officer(s) of the contractor corporation sign the contract above their name(s) and title(s). The signature(s) must be dated and witnessed;
 - i) where appropriate (i.e., for very large and important contracts), a letter may be obtained from the corporation's lawyer stating that the person signing for the corporation is authorized to do so by the corporation's board of directors; and
 - ii) if an agent is signing the contract for the contractor, proof of the agent's authority is obtained and the agent is properly identified on the contract.
- d) If the contract is with a joint venture, or where there is more than one contractor, the contract must state that all of the obligations in the contract will be joint and several on all of the parties to the joint venture.
- e) If the contract is with a special purpose vehicle, which is a legal entity established solely for the purposes of carrying out the contract, the contracting authority must seek legal advice to determine if a parental guarantee from the principals of the special purpose vehicle is required.

Contract Price

The contract price must be clearly identified and part of the contract and be fixed, or else determined by a fixed formula.

Change Orders

Where it is appropriate under special circumstances to change a contract price within the duration of a contract, prepare a written change order clearly indicating the reasons the changes are necessary. The change order must not fundamentally increase or alter the scope of the contract.

The value of the change order must not exceed the spending limit of the financial signing authority of the responsible financial officer. The responsible financial officer may sign individual contract change orders to a cumulative total not exceeding 15% of the original contract value. Every change order thereafter shall be approved by the Deputy Minister responsible for the contract budget.

In considering whether the proposed change order represents a fundamental increase or alteration in the original scope of the contract, the contracting authority may consult with the Contracts Support offices of CGS.

Contracts Requiring Accommodation for Workers

Where the nature of a contract necessitates that accommodation for workers be provided by the contractor, contractors will accommodate workers in commercial room and board in the community where the work is to be done whenever such accommodation is available.

Assignment of Debt and Progress Payments

Subject to s.69(3) and (4) of the FAA, the Assignment of Government Debt Regulations and FAM Directive 873 Assignments, the Comptroller General may approve in writing the assignment to third parties of debt owed under contract by the Government to the contractor.

Payment Terms in Contracts

All payment terms and related exceptions in contracts must follow FAM Directive 803-3 Account Verification – Timing of Payments.

Advance Payments upon Signing Contracts

Subject to FAM Directive 817 Accountable Advances, a Contract Authority shall not advance a payment for services not yet rendered by a contractor without the authorization of the Comptroller General.

Progress Payments in Contracts

A contract may include progress payments to the contractor in accordance with FAM Directive 803 - Verification and Approval of Expenditures and Disbursements.

Contracts with Embedded Derivative Financial Instruments

In situations where the terms and conditions proposed may represent an embedded derivative financial instrument, the Office of the Comptroller General must be consulted for advice and an accounting assessment prior to signing.

Service Contracts

Where applicable, service contract conditions must require that:

- a) confidential information and records in the possession of the contractor be returned to the Government or securely destroyed immediately upon substantial completion of the contract;
- b) the contractor use confidential information only for the purpose of the contract unless written permission for another use is given in advance by the Deputy Minister of the contracting department with appropriate consultation and in compliance with the *Access to Information and Protection of Privacy Act (ATIPP)*; see Appendix D for privacy and data security requirements.
- c) the contract contains appropriate provisions respecting privacy and data security including a prohibition on storing or processing the Government's data outside of Canada without the express written approval from the Government;
- d) the contractor adhere to specific copyright and intellectual property requirements; and
- e) the contractor adhere to and comply with the laws of Nunavut and the laws of Canada as they apply in Nunavut.

Personal service contracts are made with self-employed individuals (also known as "sole proprietors"). If a proposed service contract is with a person or a person operating under a proprietorship name, FAM Directive 808-5 Government Contracts – Personal Service Contracts and applicable provisions of the HRM directives must be reviewed to ensure that the proposed contract is not an employment contract. Personal service contracts cannot be made with corporations, including with professionals such as doctors and lawyers who self-incorporate as professional corporations.

Service contracts must contain the written condition that the Government is not responsible or liable for collecting or remitting source deductions (such as income tax, payroll tax, CPP, EI) and Workers' Safety and Compensation Commission premiums relating to payments made to the contractor.

APPENDIX B

LEGAL REVIEW OF CONTRACTS

Certain government contracts must be reviewed and approved by the Legal and Constitutional Law division of the Department of Justice and/or, in the case of a public agency, its legal counsel.

Review:

The purposes of contract review are:

- To ensure that the terms and conditions of the contract do not contravene legislation, directives, and policies;
- To ensure that the contract reflects the stated objectives in the tender or RFP;
- To assess any legal risks associated with the contract;
- To ensure that any non-standard aspects of the contract do not conflict with the Government's standard contract provisions;
- To ensure adequate protections are in place to protect the Government's copyright, intellectual property, and privacy and data security; and
- Where the contract is exempt from the NNI Regulations, to ensure compliance with Article 24 of the Nunavut Agreement and the CFTA, CETA, and the CTPP.

The legal review will not assess:

- Whether the proposed contract represents good value for money for the Government; or
- The accuracy of the financial information provided by the contracting department.

The originating department, in its request for the review, shall identify all non-standard aspects of the contract, list specific concerns and indicate the date by which the contract review should be completed.

Reasonable time should be given for the review; this will depend on the size and complexity of the contract. Departments should allow at least 7 to 14 days for legal review. Complex and high-risk contracts should be provided to the Legal and Constitutional Law division of the Department of Justice as soon as possible, as reviews of these types of contracts can take considerable time to complete.

An originating department shall determine and submit the following information for review with the proposed contract:

- a) Contract Documents
The department must submit the contract (including all schedules and appendices) and the procurement documents (including all addenda), and any requested amendments from the contractor at the same time as the request for review.
- b) Capacity of Contractor
The proof that the contractor is a legal entity capable of contracting.
- c) Object of Contract
The evidence that the purpose of the contract and the obligations of both parties are clearly set out.
- d) Authority to Contract
The name and position of the person proposed to sign for the Government and evidence that the person is a Contract Authority pursuant to the Government Contract Regulations.
- e) Authority of Expenditure Officer and Accounting Officer
The names and positions of these persons and evidence that they are authorized to provide the certifications required by s.44 and 49 of the *FAA*.
- f) Compliance with Requirements for Contracting
The evidence that required tendering or proposal procedures have been employed pursuant to the Government Contract Regulations, the GN Contracting Procedures Manual and applicable FAM directives.
- g) Grammatical and Typographical Correctness
The evidence that the proposed contract has been reviewed and edited for grammatical and typographical correctness.

Standardized Contracts

Standardized contract templates are types of recurring contract forms and templates developed by the Procurement section of CGS in consultation with and approved by the Legal and Constitutional Law division of the Department of Justice and are used for recurring purposes to facilitate the delivery of government programs.

These standardized contracting templates may be updated from time to time. Each contract's terms and conditions:

- a) remain unchanged except for the parties, price, description of property and matters of a like nature; or
- b) contain approved contract clauses, terms and conditions.

When modifying approved clauses, terms and conditions in any approved template, it is important to confirm the modifications do not inadvertently open the Government to legal risk and liability. These modifications must be consulted with the Procurement section of CGS to coordinate assistance from the Legal and Constitutional Law division of the Department of Justice and if appropriate from the Office of the Comptroller General or Risk Management section of the Department of Finance.

Information and descriptions of standardized contract forms and templates can be found in the GN Contracting Procedures Manual.

Non-Standardized Contracts

A non-standardized contract is a contract that requires drafting to suit the unique purpose of the activity being procured and for which the Government does not have a pre-existing template. This includes the use of the contractor's standard contracting terms such as conditions for the purchase and sale of goods.

In the case of a non-standardized contract, the advice and assistance of the Legal and Constitutional Law division of the Department of Justice, must be obtained to establish the terms and conditions governing performance of the activity being procured.

APPENDIX C

INDEMNIFICATION AND INSURANCE REQUIREMENTS

Indemnification

All contracts shall contain the following clause relating to indemnification. This clause may be modified or removed only with the approval of the Risk Management section of the Department of Finance, and legal counsel from the Department of Justice.

“The Contractor will indemnify and save harmless the Government of Nunavut, its employees and agents from and against all claims, demands, losses, damages, causes of action, costs and expenses made against or incurred, suffered or sustained by the Government of Nunavut at any time either before or after the expiration or termination of this agreement, where the same or any of them are based upon, arise out of or occur, directly or indirectly, by reason of any act or omission of the Contractor or of any agent, employee, officer, director or subcontractor of the Contractor pursuant to this agreement, excepting always liability arising out of the independent negligent acts of the Government of Nunavut.”

Insurance Requirements

All contracts shall contain the following clauses where indicated, except with the approval of the Risk Management section of the Department of Finance, in consultation with the Department of Justice. These clauses may be modified only with the approval of the Deputy Minister of Finance through consultation with the Risk Management section of the Department of Finance, and in the case of high-risk proposals, Legal Counsel from the Department of Justice.

Note: In some circumstances, this may not be enough coverage; consider the risks and consult with the Risk Management section in the Department of Finance prior to initiating the procurement process.

Public agencies must replace all references to the Government with the name of the public agency.

1. The Contractor shall without limiting his obligations or liabilities hereto, obtain, maintain and pay for during the period of this Agreement, the following insurance:

- a) Workers' Safety and Compensation Commission (WSCC) coverage. The Nunavut *Workers' Compensation Act* requires that all persons working in Nunavut for more than 10 days in a calendar year be covered under the Nunavut WSCC program, even if the employer is not a Nunavut-based company. If the contractor is assessed any extra levies or assessment as a result of an injury or death to an employee (worker) of the contractor or subcontractor, or due to unsafe working conditions, these extra amounts will not be reimbursed by the Government.
- b) Commercial General Liability insurance with limits of not less than five million dollars (\$5,000,000) inclusive per occurrence for bodily injury, death and damage to or loss of use of property. Such insurance shall include but shall not be limited to the following terms and conditions:
- Products and Completed Operations; *[this may be deleted if the contract does not involve construction, survey or demolition]*
 - Owners & Contractors Protective; *[this may be deleted if the contract does not involve construction, survey or demolition]*
 - Contractual Liability;
 - Broad Form Property Damage;
 - Personal Injury;
 - Cross Liability and Severability of Interest;
 - Medical Payments;
 - Non-Owned Automobile Liability including contractual liability;
 - Underground Property Damage in respect to any work involving ground disturbance; *[this may be deleted if the contract does not involve construction, survey or demolition]*
 - Contingent Employers Liability;
 - Employees as Additional Insureds.
 - Privacy and Data Breach coverage with limits that the Contractor considers appropriate in terms of type, coverage, and limit, taking into account the nature, extent, and scope of the personal and commercially confidential information collected, used, or disclosed in the performance of the Services; *[this may be deleted if the contract does not involve personal information or commercially confidential information, or if all of the relevant information will not leave the Government's custody or control; consult with Legal and Risk Management if unsure]*

- c) Professional Liability Insurance with limits of not less than two million dollars (\$2,000,000) per claim, to cover claims arising out of the rendering of or failure to render any professional service under the Agreement. *[Note: This kind of insurance applies to certain kinds of professionals such as accountants, engineers, lawyers, and architects, and covers 'errors and omissions']*.
 - d) All motor vehicles, watercraft or snowcraft used by the Contractor in the performance of the agreement, regardless of ownership, shall be insured by Standard Liability Insurance in an amount not less than two million dollars (\$2,000,000) per occurrence for bodily injury, death and damage to property.
 - e) The Contractor should ensure that all individuals (including the Contractor if an individual, and including all employees, officers and subcontractors) who are physically present in Nunavut and engaged in the performance of this contract, have appropriate insurance to cover the full cost of ambulance and medical evacuation. Nunavut Inuit enrolled under the Nunavut Agreement are automatically covered through the Non-Insured Health Benefits Program. Individuals may have extended medical benefits through a group program, including a group program to which their spouse belongs. Private coverage is available. Individuals present for a short time in Nunavut may buy the necessary coverage with their airfare. In the event this coverage is not in place for an individual who requires an ambulance or must be medically evacuated from Nunavut while in the performance of any obligations under this contract, the Contractor will be solely responsible and indemnify the Government for the full cost of the medical evacuation.
 - f) Any other insurance that the Contractor, acting as diligent prudent and competent contractor considers appropriate in terms of type, coverage and limit, taking into account the nature, extent, scope and location of the Services undertaken in this Agreement.
2. All insurance policies shall include a provision whereby the insurers agree to provide not less than thirty (30) days written notice to the Government prior to any insurance policies being materially altered, cancelled, or terminated by the insurers.
 3. The Contractor must have an account in good standing with its respective Workers' Compensation authority and provide evidence of same to the Government upon request from time to time.

4. The Contractor shall be responsible for any deductibles, exclusions and/or insufficiencies of coverage relating to such policies. The Contractor's liability is not capped to the amount of and scope of coverage required under the agreement.
5. The Contractor shall deposit with the Government prior to commencing the work, certificate(s) of insurance evidencing the insurance required by this Agreement in a form satisfactory to the Government and with insurance companies satisfactory to the Government, and shall provide evidence of continuing coverage on request.
6. The insurance policies shall name the Government, its directors, officers, employees, agents and contractors as Additional Insureds, only with respect to the terms of this Agreement (except on Workers' Compensation, motor vehicles insurance and Professional Liability insurance), with a cross liability and severability of interests clauses. Such insurance shall be primary without right of contribution from other insurances available to the Government, and shall extend to cover the employees of the insureds hereunder.

The following additional insurance coverage provisions apply for specific types of contracts:

Buses and contracts for bus services:

For buses, including but not limited to school buses, limits of not less than ten million dollars (\$10,000,000) per occurrence.

School buses or contracts for school bus services:

The Contractor will maintain in effect during the term of this Agreement SEF 6B - School Bus Endorsement.

Charter Aircraft:

The Contractor accepts the risk of loss to the Aircraft.

The Contractor will maintain in effect during the term of this agreement the following:

- a) Aircraft Public Liability Insurance, including third party bodily injury, death and property damage or loss, with limits of no less than ten million (\$10,000,000) dollars per occurrence and, in addition, Passenger legal liability coverage with limits of no less than one million (\$1,000,000) dollars per passenger seat including crew seats installed on the aircraft.

- b) Workers' Compensation coverage as required by statute and Contingent Employers' Liability coverage with a limit of no less than five million (\$5,000,000) dollars per occurrence. For Contractor's employees not covered by Workers' Compensation, Employers' Liability Insurance coverage shall be obtained with limits of no less than two million (\$2,000,000) dollars per occurrence.
- c) Airport Premises Liability Insurance including Contractual Liability covering bodily injury, death and property damage or loss with a combined single limit of no less than five million (\$5,000,000) dollars per occurrence.
- d) All Risks Hull Insurance covering the aircraft (including all flight and ground risks and ingestion and each engine coverage) with limits of no less than its full replacement value.
- e) Passenger Baggage Liability Insurance with limits of no less than their full replacement value.
- f) Property Insurance covering equipment, cargo and freight transported by the Contractor with limits of no less than full replacement value.
- g) If the flight originates or terminates outside Nunavut: War Risks and Allied Perils Insurance covering war, invasion, acts of foreign enemies, hostilities, rebellion, revolution, martial law, military power, strikes, riots, civil commotions, malicious act of sabotage, confiscation, nationalization, seizure, detention, restraint, hijacking or unlawful seizure, with limits of no less than \$50,000,000 or the limits of liability herein; whichever is lesser.

Scheduled Passenger Travel on Air Carriers:

Replace paragraph (a) above with the following:

Aircraft Public Liability Insurance, including third party bodily injury, death and property damage or loss:

- a) For all routes serviced with turboprop aircraft, with limits of no less than ten million (\$10,000,000) dollars per occurrence;
- b) For all routes serviced with jet aircraft, with limits of no less than three hundred million (\$300,000,000) dollars per occurrence; and
- c) In addition, Passenger legal liability coverage with limits of no less than two million (\$2,000,000) dollars per passenger seat including crew seats installed on the aircraft.

Construction where the Cost of Materials Exceeds \$100,000:

The Contractor will maintain in effect during the term of this Agreement Course of Construction Insurance with limits no less than the value of the contract.

Construction Involving Extensive Renovations to an Existing Facility:

The Contractor will maintain in effect during the term of this Agreement Course of Construction with limits no less than the value of the renovated building upon completion.

Construction, and Contracts for Operations where Pollution is a Risk:

Contractor's Pollution Liability insurance with limits of not less than ten million dollars (\$10,000,000) per occurrence to cover claims that the Contractor may have to pay as a result of any claims caused by pollution (including for any clean-up costs). This policy must cover damages sustained by the Owner and any third parties. This policy must also cover claims arising out of the rendering, or failure to render, any professional services under this Contract (in relation with pollution claims).

This policy shall provide third party coverages for pollution damages caused by the Contractor performing insured services at a third-party site. The Owner is to be added as an additional insured without its ability to claim against the policy being affected.

Marine Transportation, Including Sealift and Bulk Fuel Resupply:

Protection and Indemnity or Marine Liability Insurance, including Cargo Legal Liability, shall be provided for by the Proponent for all Vessels used in connection with this Agreement. For ocean going vessels, Owners P&I terms must be on full standard conditions with a member of the International Group of P&I Clubs. The cover shall include liability for collision and damage to fixed and floating objects and shall include, but not be limited to, crew liability in accordance with the P&I Club Rules and the compulsory requirements of the Maritime Labour Convention as amended; third party bodily injury; wreckage and debris removal; and property damage liability, towers liability, and contractual liability (as applicable). The cover shall include liability for collision and damage to fixed and floating objects to the extent not covered by the Hull and Machinery cover arranged by vessel owners.

If not covered under the terms of the policy or applicable P&I Club rules, insurance for cargo legal liability during the entire period that cargo carried under this Agreement is under the responsibility of the Contractor and the Carrier.

Marine Physical Damage Insurance: All Risk marine physical damage and Hull and Machinery insurance shall be provided with a limit equal to the replacement value of the Vessel and Owner's items used in connection with the services; or in transit thereto or therefrom. Coverage shall include, but not be limited to, collision liability and navigation limits applicable to this Agreement. Insurers waive their rights of subrogation against the Government.

Property Insurance ("All Risks" Course of Construction)

Property or course of construction insurance is physical damage insurance for the project while it is under construction. This insurance protects against most risks of physical loss of or damage to the materials and work in progress.

The contractor is responsible for obtaining and maintaining this form of insurance to protect all those who directly participate in the construction project, including the Government.

Course of construction insurance coverage is the responsibility of the contractor for hamlet or settlement buildings when the Government owns the materials during the management of construction and where full authority or block funding is provided to the hamlet and the municipality undertakes the project on their own behalf.

Medical Insurance

This insurance is required to ensure that all individuals (including the Contractor if an individual, and including all employees, officers and subcontractors) who are physically present in Nunavut during the term of contract have extended medical benefits that cover the full cost of ambulance and medical evacuation. Beneficiaries under the Nunavut Land Claim Agreement are automatically covered. Individuals may have extended medical benefits through a group program, including a group program to which their spouse belongs. Individuals present for a short time in Nunavut may buy the necessary coverage with their airfare. In the event this coverage is not in place for an individual who must be medically evacuated while in Nunavut, the Consultant will indemnify the Government for the cost of the medical evacuation.

Deductibles

The contractor is responsible for deductibles, exclusions and/or insufficiencies of coverage related to any policy they carry.

APPENDIX D

PRIVACY AND DATA SECURITY REQUIREMENTS

1. Any information obtained from, or concerning any department of the Government, or clients of any department of the Government, by the Contractor, its agents or employees in the performance of the Service Request, or of any other contract, shall be confidential.
2. The Parties acknowledge the *Access to Information and Protection of Privacy Act* (Nunavut) and the *Personal Information Protection and Electronic Documents Act (Canada)* and acknowledge that the Consultant and its employees and sub-contractors are included in the definition of “employees” under the *Access to Information and Protection of Privacy Act* (Nunavut) and so bound by that Act while performing services under this Agreement.
3. The Contractor agrees to protect confidential information in its custody or control by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure, retention or disposal.
4. The Contractor shall take such steps as are necessary to ensure that any such information is not disclosed to any other person, and shall maintain confidential and secure all material and information that is the property of the Government and in the possession or under the control of the Contractor.
5. The Contractor will report any suspected or confirmed privacy breach, as defined in *section 49.8* of the *Access to Information and Protection of Privacy Act* (Nunavut), to the Government as soon as the breach becomes known, and will comply with the Government’s breach investigation, or any investigation initiated by the Information and Privacy Commissioner of Nunavut.
6. Except as required by this Agreement, the Contractor agrees to securely destroy any copies, either in paper or electronic format, upon completion or early termination of this Agreement, and will provide the Government with proof of secure destruction in the form of a certificate of secure destruction or a statutory declaration.
7. The Contractor shall not store confidential information on unprotected mobile computing devices such as, but not limited to, memory sticks, notebook computers, smart phones, tablet computers, and personal digital assistants. Where personal information must be stored on such devices, the Contractor will store only a minimal amount of information for the minimal amount of time necessary to complete the work. Where personal information is stored on mobile computing devices or other vulnerable devices, the Contractor shall use both strong password protection and strong encryption.



8. The Contractor will ensure that data containing confidential information shall not be processed or stored outside of Canada without the express written approval of the Government.
9. This section survives the completion or early termination of this Agreement.

APPENDIX E

DEFINITIONS

Architectural or Engineering Services

Architectural or engineering services required in the planning, design, preparation or supervision of the construction of a work or structure.

Bid

A written offer to provide goods, services, real property or construction submitted in response to an RFT or RFP.

Bidder

A person or legal entity who submits a bid.

Construction

Work to build, supply, repair, renovate, restore, refurbish, maintain or demolish a structure and the hiring of labour, materials and equipment necessary for that work.

Contract Authority

1) with respect to a contract to which the Government Contract Regulations apply, Contract Authority has the same meaning as in those regulations:

- (a) the Minister of the contracting department,
- (b) the Deputy Minister of the contracting department, or
- (c) a public officer who is authorized to enter into contracts under section 4 of Government Contract Regulations.

2) with respect to any other contract to which the NNI Regulations apply, Contract Authority means a person authorized to enter into the contract for the purchaser.

Note: the “Contract” box on the Contract Authority’s Specimen Signature Record (SSR) should specify a maximum monetary limit, above which the Contract Authority cannot initiate or enter into a contract.

Contracts with Embedded Financial Instruments

Contracts that include terms and conditions for the purchase or lease of goods or services that may add to or otherwise change the government’s costs or required payments based on the future change in, or value of, a defined index.

Emergency Contracts

Any contracts that are sole sourced (awarded without promoting competitive bids or proposals) under the provisions of s.8 (a) of the Regulations: “where the Contract Authority reasonably believes that the goods, services, real property or construction at issue in the contract are urgently required and delay would be injurious to the public interest”.

Employee

For the purposes of FAM Directives 808 Government Contracts series, an employee is either:

- a) A person employed in the public service of Nunavut subject to the *Public Service Act*; or
- b) A person employed to do skilled or unskilled manual, clerical, technical, operational or administrative work for the Government or a public agency.

Employer

For the purpose of FAM Directives 808 Government Contracts series, the employer is the Government or a public agency subject to the *Public Service Act* and Public Service Regulations.

Employment Contract

An employment contract exists where there is an employer/employee relationship between the employer and the worker performing the contract work. Only the Minister of Human Resources and individuals with delegated authority from the Minister may bind the Government to employment contracts. FAM Directive 808-5 Government Contracts – Personal Service Contracts provides direction on distinguishing between employment and personal service contracts.

Financial Instruments

Any contracts that give rise to financial assets of one entity and financial liabilities or equity instruments of another entity.

GN Contracting Procedures Manual

The operations manual providing procedural guidance to public officers in entering into contracts on behalf of the Government. This manual is maintained and updated from time to time by the Department of Community and Government Services (CGS).

Throughout this 808 series of Government Contracts directives, reference is made to the GN Contracting Procedures Manual as a source of procedural authority, information, reference and guidance with respect to government contracts. Except as set out in the *NNI Implementation Act*, the *FAA* and the Regulations prevail as higher authority if there is any conflict with FAM directives or the GN Contracting Procedures Manual.

Goods

Assets, equipment or materials whether in existence or not at the time of the contract, and intangible assets, such as intellectual property, leases and licenses, that include:

- office equipment and supplies including but not limited to furniture and fixtures, photocopiers and fax machines;
- computers, computer peripherals and accessories
- vehicles, mobile equipment and rentals; and
- promotional and printed materials.

Government Contract Regulations (Regulations)

The regulations enacted by the Commissioner on the recommendation of the Financial Management Board pursuant to s.107 of the *FAA* respecting procurement and contracting.

High Risk Proposal

A proposed contract with any of the following characteristics:

- When, due to the nature of the goods or services, the consequences of an error or failure during contract performance could reasonably be expected to expose the Government, the contractor, or any affected third party to harm, including but not limited to bodily harm, damage to reputation, financial loss, damage to or loss of property, and breach of privacy or data security would be catastrophic;
- Where the procurement is exempt from the application of the NNI Regulations or Article 24 of the Nunavut Agreement;
- When the proposal resulting from RFP is in fact more than one proposal, containing more than one option;
- When the proponent is seeking positive obligations for the Government in the contract which were not contemplated in the RFP;
- When the proposal cost or required payments are based on the future change in value of a defined index or other measure or may contain an embedded financial instrument;
- When the proposed “creative solution” resulting from the RFP really is creative (i.e., when it is not familiar to the Contract Authority and it is unclear how it would work);
- Different copyright terms than those specified in the RFP;
- Where the RFP or contract requires complex privacy and data security provisions;
- Where the RFP or contract requires additional provisions respecting conflicts of interest, non-disclosure agreements, and improper or illegal conduct;
- Where the RFP or contract contains provisions respecting prohibited corporate structures, mandatory licensing requirements, and any other additional corporate due diligence measures;
- Different insurance terms than those specified in the RFP;
- When the proposal requires the Government to indemnify the proponent;

- When it is a proposal for one of two or more inter-related contracts (e.g., preparing the specifications of the terms of reference for a future contract); or
- Where it is a proposal for any of the following services: air ambulance (medevac), bulk petroleum resupply and delivery, marine transportation (sealift), scheduled medical and duty travel, public-private partnerships, retail alcohol and cannabis, construction of secure facilities (e.g., correctional centres), service contracts for group homes, residential care and long-term care, and service contracts for the delivery of primary health care services.

Legal Services Contract

A legal services contract is:

- any contract for the provision of any services defined as the practice of law in the *Legal Profession Act* that may only be provided by members of the Law Society of Nunavut or another applicable provincial or territorial legal regulator;
- contracts for the services of expert witnesses or factual witnesses used in court or legal proceedings; and
- any other service contract with a lawyer, Canadian legal advisor, law firm, or legal professional corporation.

Local Contract Authority

Local Contract Authority (LCA) has powers and duties of a Contract Authority to enter into a contract for the local procurement of goods and services not exceeding \$5,000 (excluding GST).

Master Supply Service Agreement (MSSA)

A Master Supply Service Agreement can be for services, goods or a combination of goods and services. Its use is restricted to the specific established categories of services that are difficult to staff by full-time government employees and/or to assist the Government with long-term capacity issues. New MSSA categories that meet the criteria may only be established with the approval of the Central Accountability Committee (CAC).

Multi-year Contract

Any contract that requires an expenditure in more than one fiscal year.

Nunavummi Nangminiqaqtunik Ikajuuti Regulations (NNI Regulations)

The set of rules for preferential treatment in public procurement of Inuit firms, Nunavut businesses and contractors employing Inuit, local or Nunavut labour that applies to all procurement processes issued on or after April 1, 2017, and to all contracts resulting from those procurement processes.

Personal Service Contract

An agreement between the Government or a public agency and an individual to perform a specific task (e.g., writing a report), or to fill an unplanned and temporary capacity gap by performing functions which would normally be filled by an employee. Personal service contracts are made with self-employed individuals (also known as “sole proprietors”).

Personal service contracts cannot be made with corporations, including with professionals such as doctors and lawyers who self-incorporate as professional corporations.

Procurement

Procurement includes supply source research and the formation of contracts with external sources for the acquisition, supply and delivery of goods, services, and real property. Procurement does not include the acquisition of goods and services procured with for the purposes of commercial sale or resale, or for use in the production or supply of a good or service for commercial sale or resale.

Procurement Officer Signing Authority

CGS procurement officers, designated positions and agencies shall have the authority to sign purchase order contracts on behalf of client departments where a properly completed requisition has been authorized by the appropriate expenditure and accounting authorities.

Proponent

A person who submits a proposal in response to an RFP.

Proposal

A written offer to provide goods, services, real property or construction submitted to a Contract Authority in response to an RFP.

Request for Proposals (RFP)

The solicitation of a proposal by public advertisement or private invitation.

Request for Tenders (RFT)

An offer in respect of a proposed contract by public advertisement or private invitation.

Responsible

In relation to a bidder, responsible means the capability in all material respects to fully perform the contract requirements and the integrity and reliability to assure performance of the contract obligations.

Responsive

In relation to a bid or proposal, responsive means compliance in all material respects to the RFT or the RFP.

Services

Services other than the provision of goods and construction that include:

- architectural, engineering, legal and other professional services;
- consulting services;
- insurance, security, and investigation services;
- repair, maintenance and custodial services;
- communication services;
- computer services (including informatics);
- rental or lease of real property; and
- transportation services (including air charters, medevacs and scheduled medical travel, ground transportation and marine transportation).

Services do not include lease-to-purchase agreements. Such agreements are contracts for the purchase of goods.

Service Contract

A service contract exists if the person performing the work of the contract performs it independent of the Contract Authority and is not an employee of the Government or a public agency for the purposes of the contract. This includes independent contractors performing services pursuant to an agreement with a Government contractor (sometimes referred to as “Contractor’s Resources”).

Standardized and Non-standardized Contracts

A standardized contract is a contract that uses a standard template that has been developed by CGS and that has been reviewed and approved by the Department of Justice.

Standardized contracts remain unchanged except for the parties, price, description of property and matters of a like nature; and contain approved contract clauses, terms and conditions.

A non-standardized contract is any contract that is not based on an approved standard template, or that contains any changes to a standardized template that are not permitted.

See Appendix A for minimum requirements for government contracts.

Standing Agreement (SA)

A Standing Agreement is not a binding contract and no obligation exists on the Government to order any of the goods or services. However, the Government does have the obligation not to amend the conditions specified for governing the standing offer, or the terms and conditions specified for individual contracts. The supplier has the obligation to provide, upon the Government's demand, the specified goods or services under the specified conditions at the agreed prices or discount structure during the set period. This obligation is satisfied upon receipt and fulfillment of a call-up or individual contract award from the Government.

Standing Offer Agreement (SOA) or Standing Supply Arrangement (SSA)

SOAs and SSAs are price agreements between the Government and a supplier, wherein the supplier agrees to provide, on demand, specified goods or services under specified conditions during a set period at a defined price or discount structure.

An SOA is used for services and an SSA is used for goods. An SOA/SSA cannot be in place for more than three (3) years due to the Canadian Free Trade Agreement (CFTA).