

GENERAL ADMINISTRATION MANUAL

VOLUME 2: HIGHWAYS AND PUBLIC WORKS POLICIES

TITLE: PROCUREMENT POLICY

EFFECTIVE: April 1, 2019

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) **CETA** means the *Comprehensive Economic Trade Agreement*.

- (c) **CFTA** means the *Canadian Free Trade Agreement*.
- (d) **Competitive Procurement** means Procurement in which multiple Suppliers may submit a Response.
- (e) **Contract** means a legally binding agreement between the Government and a Person for Goods or Services.
- (f) **Construction** means a Service that has as its objective the realization by whatever means of civil or building works.
- (g) **Department(s)** means all departments, as defined in Policy 2.1 (GAM), Section 1.2.1.
- (h) **Deputy Minister (DM)** means a Person who is a deputy head within the meaning of the *Public Service Act* RSY 2002, c. 183.
- (i) **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.
- (j) **Direct Award** means Procurement without competition.
- (k) **FAA** means the *Financial Administration Act* RSY 2002, c. 87.
- (l) **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.
- (m) **Government** means the Government of Yukon.
- (n) **Government Corporation** means one or more of the following: Yukon Housing Corporation, Yukon Liquor Corporation, Yukon Development Corporation, and Yukon Lotteries Commission.
- (o) **Invitational Tendering** means a Procurement method whereby the Procurement Authority contacts at least two or more Suppliers from a limited number of Suppliers.
- (p) **Limited Tendering** means either a Direct Award or Invitational Tender.
- (q) **Open Tendering** means a Procurement method whereby all interested Suppliers may submit a Response.
- (r) **Operational Requirement** means a document ancillary to the Procurement Policy that provides specific guidance to Procurement Authorities about how to conduct a Procurement.

- (s) **Person** means an individual, a corporation or other body corporate, a partner in a partnership, or other valid legal entity.
- (t) **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.
- (u) **Procurement** means the Government's acquisition, by any means or methods, of Goods, Services, Construction, leaseholds, and licences.
- (v) **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.
- (w) **Request for Analysis of Change Order (RACO)** means request for analysis of change order, as described in Section 14, Contract and Performance Management.
- (x) **Request for Analysis of Procurement (RAP)** means a request for analysis of procurement as described in Section 5, Request for Analysis of Procurement.
- (y) **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.
- (z) **Request for Information (RFI)** or means a market consultation document aimed at obtaining information from potential Suppliers regarding Goods and Services.
- (aa) **Response** means a Response to a Procurement and includes, but is not limited to, bids and proposals.
- (bb) **Services** means all Services, including Construction, unless otherwise specified.
- (cc) **Standing Offer Arrangement (SOA)** means an agreement 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.
- (dd) **Supplier** means a Person or group of Persons that provides or could provide Goods or Services.
- (ee) **Utility** means a corporation which provides electrical, water, telecommunications, or municipal Services to the public.

- (ff) **Yukon Business** means a business that meets three of the following criteria:
- Has an office with a physical address in Yukon;
 - Is subject to the *Yukon Income Tax Act*;
 - Is registered as per the *Business Corporations Act* or the *Partnership and Business Name Act*, where applicable;
 - Has a valid municipal business licence, where applicable.

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 and February 6, 2013 by M.B.M. #13-03-04, and revised on January 14, 2019, by M.B.M #19-01-05 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; and
 - (iv) 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.

<p>(i) Management of Procurement Authorities, including:</p>	<ul style="list-style-type: none"> a. ensuring employees have the proper authority (Section 23 and 24 of the FAA); 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; c. ensuring employees declare any conflict of interest perceived or real, as per GAM 3.39, to the DM of the Department; and d. ensuring employees follow the code of conduct, as per this policy.
<p>(ii) Planning, managing and fully documenting Procurement processes and decisions, including:</p>	<ul style="list-style-type: none"> a. seeking and receiving advice from Government Procurement staff, as required, during Procurement; 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; c. complying with this Procurement policy and any operational requirements and the applicable trade agreements; and d. ensuring appropriate use of existing SOAs and other corporate Service agreements for Goods, Services and

	Construction to meet program requirements when they offer value to the Government.
(iii) Managing procurement and Contract award processes in a manner consistent with the Purpose in section 1, and:	<ul style="list-style-type: none"> a. using standard Government Procurement documents; b. conducting site visits, as required; c. responding thoroughly, as required, to inquiries during the tender process; d. issuing addenda, as required; e. evaluating and awarding (or recommending for award, subject to signing authorities), the Contract; f. decisions to reject or accept a Response after recommendations by the DM of HPW; 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); h. offering and conducting debriefs, if requested; 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 j. making diligent efforts to resolve any complaints with Suppliers as a first step in the Government's dispute resolution process.
(iv) Contract management, including:	<ul style="list-style-type: none"> a. ensuring adherence to the terms and conditions of the Contract; and b. ensuring timely payments to the Supplier for Services satisfactorily provided.

- (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.

<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"> 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. b. establishing terms and conditions for the use of alternate Procurement methods, including negotiated Procurements; c. strategic sourcing initiatives, such as cooperative or joint Procurement, with other public organizations in North America; d. providing official communications and interpretations of Procurement policy; 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 f. delegating any matter, or confer a discretion in respect of any matter under this policy, to a Person, position, or office.

<p>(iii) Providing support, advice and oversight for Procurement Authorities, including:</p>	<ul style="list-style-type: none"> 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; b. designing, implementing and overseeing the Government risk identification assessment and management framework for contracting and Procurement; c. providing operational, risk management and insurance advice to Departments on Procurement matters; 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; e. developing and managing, with Public Service Commission, Procurement training curriculum, and identifying any training that is mandatory for particular Procurement processes or positions; 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 g. disposing of all assets that are surplus to the Government, except as provided by Department legislation or Management Board directive(s).
<p>(iv) Monitoring and reporting in respect of compliance with Procurement policy, including issuing reports on the extent</p>	

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"> a. establishing and maintaining mechanisms to coordinate and support development and communications with Suppliers; and b. establishing and managing guidelines and procedures for a formal dispute resolution process, including an internal escalating complaint resolution procedure.

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 tender format (e.g. Request for Qualification, Request for Proposal, negotiated process);
 - (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 Invitational 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, 2018 to December 31, 2019

	Invitational Tendering or Open Tendering Required	Open Tendering Required
Goods	\$10,000 up to but not including \$25,300	\$25,300 or greater
Services	\$50,000 up to but not including \$101,100	\$101,100 or greater
Construction	\$50,000 up to but not including \$101,100	\$101,100 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, whether as the original Contract or through a change order;
 - (b) use Invitational Tendering above the threshold requiring Open Tendering, whether as the original Contract or through a change order;
 - (c) bypass the lowest priced bid or highest ranked Response;
 - (d) use an alternate Procurement method;
 - (e) use an evaluation process that does not include price as an initial criterion;
or
 - (f) 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.
- 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) To balance the need to be open and competitive with the demands of urgent, specialized, or exceptional circumstances, Procurement may be conducted, under specific justifications, using a more limited competition than required by the Procurement thresholds in this policy, or in a non-competitive manner in accordance with this policy and Government's trade agreement commitments.
- 6(2) 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(3)

Direct Award

- (a) 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.
- (b) Procurement Authorities should Contract with Yukon and First Nation businesses where possible, keeping in mind reasonable prices and product availability in Yukon.
- (c) 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 with a Supplier.
- (d) Procurement Authorities may also use a Direct Award after following the RAP process (outlined in Section 5, Request for Analysis of Procurement) when it is required 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.

6(4) **Limited Tendering**

- (a) 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 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, for example 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) 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).

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 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 directly award a Contract in a situation where they believe that 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, a competitive process will result. 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 Agreements (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”).

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 candidates in advance of expected future competitions.

- (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 contractors from the list of Prequalified Suppliers.
 - (d) Procurement Authorities may establish Prequalification Lists, provided they follow the requirements for Competitive Tendering, including that Procurements 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. All 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.
- 7(3) Relevant information provided to one Supplier related to a Procurement 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) 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) For Construction projects 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) For Construction projects, the Procurement document on which the general contractor submits their bids or proposals shall include:
- (a) a section in which the general contractor must list the subcontractors they will use and, if applicable, indicate their own name as general contractor, where they will do the work; and
 - (b) a clear statement that the successful general contractor (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 subcontracting anticipated, and the time necessary for delivering Response documentation by non-electronic means.
- (b) A minimum of 15 business days for Suppliers to prepare a Response is required for Open Tendering, 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) No addendum shall be issued within three business days of the closing date and time, unless it also extends the closing date by five business days.
- (b) 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 bid 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.

- (c) Late, sealed Responses will be returned unopened to the bidder or proponent.

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 signed, 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 with successful proponents (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. 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(4) Procurement Authorities will use evaluation criteria to recognize northern experience and knowledge.
- 8(5) Where evaluation criteria are used, they must, where permitted by trade agreements, include the methods used by the proponent to maximize the benefits for Yukoners in carrying out the work.
- 8(6) Where a two-stage evaluation is used, Procurement Authorities will evaluate and score non-price factors before taking price into account.

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. PROCUREMENT AND FIRST NATIONS

This is a placeholder for a First Nation procurement policy that will be developed in collaboration with Yukon First Nations and will be embedded within this document, GAM 2.6. A principle of this First Nation procurement policy is the Government's commitment to work to advance reconciliation and renew the relationship with First Nations, based on recognition of rights, respect, cooperation and partnerships.

- 11(1) Government will conduct procurements by taking measures to ensure Indigenous peoples benefit from the provisions of trade agreements and support First Nation businesses and individuals to grow, enrich their lives and become partners in the economy.
- 11(2) From the Yukon First Nation Umbrella Final Agreement (UFA), the DM of HPW will:
- (a) at the time it publicly issues Procurements, make reasonable efforts to notify those Yukon First Nations (meaning all of the 14 Yukon First Nations defined as a Yukon First Nation in the UFA) who have indicated a wish to be so advised of all publicly advertised Procurements;
 - (b) at the time it publicly issues tenders for SOAs and Prequalification Lists, make reasonable efforts to notify those Yukon First Nations who have indicated their interest in contracting and their ability to supply the tendered Goods or Service;
 - (c) on a regular basis, provide Yukon First Nations with information on Contracts awarded which were not advertised for public tender;
 - (d) upon request, provide to Yukon First Nation individuals and First Nation corporations information on how to compete for Contracts and SOAs and how to register on the Supplier Directory and submit proposals for Prequalification List; and
 - (e) give reasonable opportunity to Yukon First Nation individuals and First Nation corporations to be registered on the Supplier Directory, and submit Responses for Prequalification Lists that the Government uses.
- 11(3) Where a Procurement Authority invites Responses from a limited number of prospective Suppliers for Goods Contracts valued at more than \$10,000, or for Services valued at more than \$50,000, the Procurement Authority will give notice of the invitation to the Yukon First Nations who have indicated a wish to be so advised or who have registered on the Supplier Directory maintained under this policy.

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 fiscal 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 Contracts that are funded through their budget and must provide quarterly updates in July, October, January and April for public posting.

12(2) Contract Registry

- (a) A Contract registry creates transparency for Suppliers and Yukoners in general. Suppliers can also use this information to analyze past contracting activity. Procurement Authorities will provide Contract award information for a public Contract registry. 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. 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. The operational requirements may direct Procurement Authorities to use the Supplier Directory, for example, during Limited Tendering.

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, as described in 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 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

- (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. 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 will write a confirming order (also known as an after-the-fact contract) and report the confirming order to their DM for approval. The DM of the Procurement Authority will send a copy to the DM of HPW.

14. CONTRACT AND PERFORMANCE MANAGEMENT

14(1) Change Orders fall into two categories – anticipated and unanticipated. 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. It also requires Procurement Authorities to take actions to prevent need for change orders using the best tools they have: thorough planning and high-quality Procurement documents and Contract terms.

- (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 change is valued at less than 25% of the original Contract.

- (c) Procurement Authorities wishing to issue a change order that is unanticipated and exceeds the limits identified above (the Contract value including change orders is greater than \$100,000 and the change order is worth 25% or more of the current Contract value), must complete a Request for Analysis of Change Order (RACO) for the proposed change and, if approved, for each additional change order under consideration for that Contract.
- (d) If a Procurement Authority does a direct award or invitational procurement and then needs to issue a change order that will take the contract value over one or more thresholds then the Procurement Authority must complete a RAP and follow the RAP process outlined in Section 5, Request for Analysis of Procurement. The RAP process will replace the RACO process in this case. If an additional unanticipated change order that exceeds the \$100,000 or 25% threshold is issued, then the Procurement Authority must follow the RACO process.
- (e) Procurement Authorities will forward all RACOs to the DM of the Procurement Authority or delegate, who will make the final decision.
- (f) The DM of HPW will identify all change orders to the public in the Contract registry(ies) maintained pursuant to Section 12(2), Contract registry.

14(2) Performance Monitoring and Management

- (a) 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, management and recording of Supplier performance facilitates better recognition of good performance and encourages poor performers to improve. Managing the performance of all Suppliers and using the recorded evaluations in future procurements will help to level the playing field for bidders and proponents while ensuring performance and value to Yukoners.
- (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 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.
 - (b) In the event a Supplier has a complaint regarding a specific Procurement, the Procurement Authority and the Supplier shall first seek to resolve the complaint through 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.
 - (c) Procurement Authorities will maintain complete documentation and records of all activities related to addressing a complaint, including all communications with the Supplier.
 - (d) 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.
 - (e) The DM of HPW will establish at least one impartial review authority to receive and review a complaint from a Supplier arising in the context of Procurement covered by this policy, and will ensure the rules of procedure

adopted by the review authority(ies) are consistent with the requirements of the trade agreements to which the Government is a signatory.

- (f) The DM of HPW may accept a complaint made in writing by a Supplier, where such Supplier has reason to believe that they have been treated unfairly or that the Procurement process has not been followed, as required by this policy, 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 in this part applies to all Competitive Procurements.
- (h) The DM of HPW may require the Supplier with the complaint to provide full 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 appropriate authority established to review the complaint.