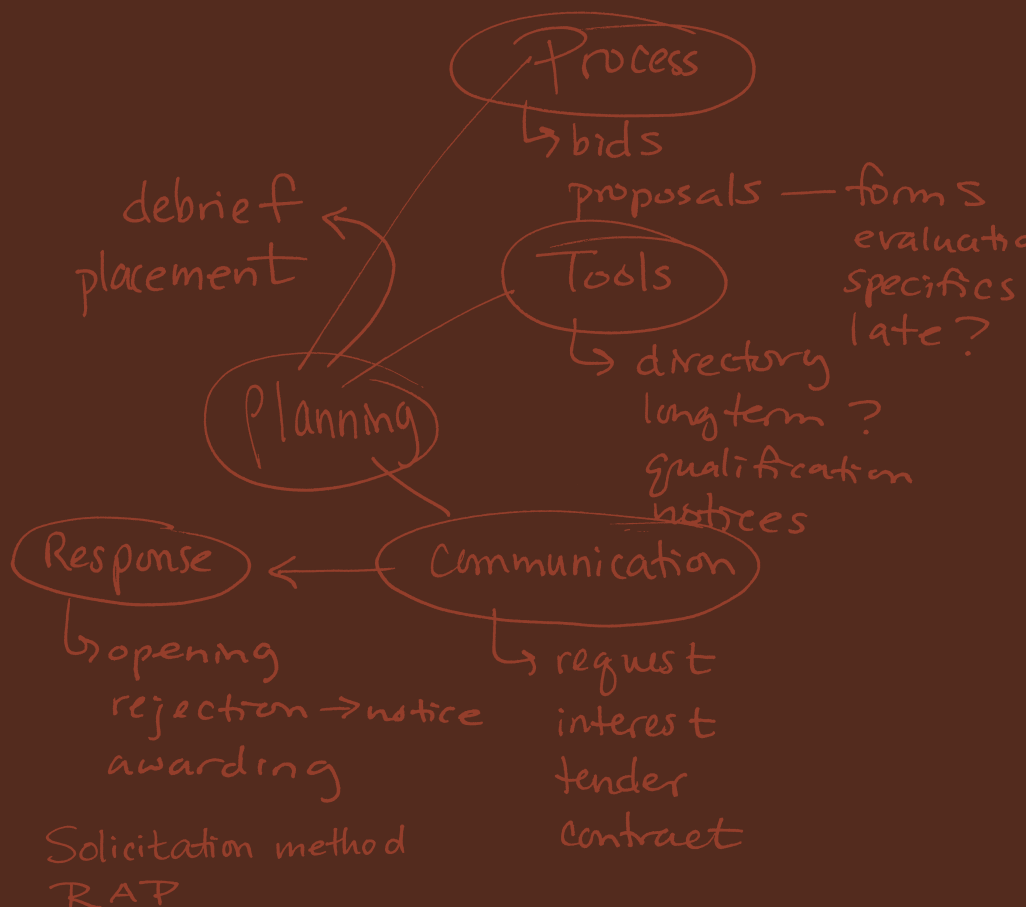


Contracting and Procurement Regulation and Contracting and Procurement Directive

OFFICE CONSOLIDATION

Next steps?
How?
Who?





Maintaining the integrity of the Yukon government procurement process is of paramount importance in protecting the public interest.

I am pleased to provide the two cornerstones of our procurement framework to promote this integrity, and I would further like to bring to your attention the principles that apply to procurement by Government of Yukon as established in the Regulation:

- **Fairness** – to observe procedural policies free of bias, personal interest and conflict of interest.
- **Openness and transparency** – to create the maximum number of competitive procurement opportunities, and to be transparent in the way business is conducted.
- **Fiscal responsibility** – to justify contracting and procurement decisions and actions as appropriate in the circumstances.
- **Competition** – to open procurement opportunities to the maximum number of respondents.
- **Value for money** – to focus on efficiency, economy and effectiveness to obtain the maximum benefits with the resources available.
- **Accountability** – to be willing and able to account for the way contracting and procurement activities have been conducted.

Procurement Support Centre staff in Highways and Public Works are available to assist you with any questions about these documents.

Mike Johnson, P. Eng
Deputy Minister, Highways and Public Works

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Contracting and Procurement Regulation

PART I – Interpretation

Definitions

1 The following definitions apply in this Regulation

“bid” means an offer, submitted in response to a request for bids, to supply the government, or to purchase from it, under stated terms and conditions and at a stated price or a price determined by a stated formula;

“bidder” means a person who submits a bid;

“contract” means an agreement between the government and a person in which the person agrees that they will supply the government or purchase from it;

“contractor” means a person who makes a contract with the government;

“Deputy Minister” means the deputy head of the Department of Highways and Public Works or a person authorized to act on behalf of the deputy head;

“employment contract” means a contract of service which establishes an employer – employee relationship;

“evaluation criteria” means criteria (which for greater certainty may include the effectiveness of the proposed solution and the experience, qualifications and financial capabilities of the proponents, and need not be price alone) against which proposals are evaluated for the purposes of determining

- (a) which proposals qualify for consideration, and
- (b) how to rank proposals;

“person” means an individual, a corporation or other body corporate or a partnership;

“procurement” means the government’s acquisition, by any means, of goods, leaseholds, licences, services or construction;

“procurement authority” means any person who has the authority under the Act to enter into a contract or to undertake procurement on behalf of the government;

“proponent” means a person who submits a proposal;

“proposal” means a proposed solution to a problem, need or objective, which proposed solution may be in response to a request for proposals or may be unsolicited;

“public work” means a project involving the expenditure of public money for building construction, heavy construction or road, sewer or water main

construction as specifically defined in the request for the project;

“purchase” means the acquisition, for consideration, of any property other than real property and interests in real property;

“request” means, as the context requires, a request for bids, a request for proposals or both;

“request for bids” means a document that sets out the minimum standards to be met by bidders in respect of a contract and the requirements of the contract;

“request for proposals” means a document that invites persons to propose solutions to a stated problem, need or objective;

“security” means anything (including any bond and any money or other property) that is provided to the government by or on behalf of a person

- (a) in respect of a bid, to guarantee the person’s entry into a contract if the contract is awarded to the person, or
- (b) in respect of a contract, to make good on any default by the person under the contract or to guarantee the person’s performance of the contract;

“standing offer agreement” means an agreement under which a person agrees that they will, when required by the government and at the price and subject to the conditions specified in the agreement, supply to or purchase from the government;

“subcontractor” means a person who, under an agreement with a contractor, provides goods, or performs services or work on a public work for which the contractor was engaged under a contract;

“supply” means the carrying out, for consideration, of any of the following

- (a) the provision of a good, a leasehold or a licence,
- (b) the performance of a service,
- (c) the construction of a public work, or
- (d) the sale, letting or licensing of real property or an interest in real property;

“transfer payment agreement” means a written agreement between the government and a person as to the amount, terms and conditions of a payment by the government to the person for a specific purpose in furtherance of a government program objective.

PART II – General

Scope

- 2 This Regulation applies to all contracts except
 - (a) employment contracts;
 - (b) contracts for physician services, as defined in the *Health Care Insurance Plan Act*; and
 - (c) contracts for the practice of law, as defined in the *Legal Profession Act*.

Application

- 3 This Regulation applies to
 - (a) all departments which have deputy heads; and
 - (b) the French Language Services Directorate, the Workers' Compensation Health and Safety Board, Yukon Development Corporation, Yukon Housing Corporation, Yukon Liquor Corporation and Yukon Lotteries Commission.

Access to policy documents and related material

- 4 Any government document that sets out government policy in respect of contracting or procurement, or that relates to any particular contracting or procurement matter or transaction, is to be made reasonably available to any person who requests it.

Competition guidelines

- 5 (1) Procurement authorities must use fully competitive processes to undertake procurement, except where a management board directive authorizes procurement to be undertaken otherwise.
 - (2) Evaluation criteria and standards used to evaluate bids and proposals must be fully and clearly described in requests, and only those evaluation criteria and standards may be used to evaluate bids or proposals received.

Security

- 6 (1) If a procurement authority requires a person who is a bidder or a contractor to provide security in respect of the bid or the contract, the person must provide the security
 - (a) in the amount specified by the procurement authority; and
 - (b) in the form of
 - (i) if the procurement authority so requires, a bond that is acceptable to the procurement authority, or
 - (ii) in any other case
 - (A) a bank draft (or a certified cheque drawn on a bank or a Canadian postal money order) that is payable to the government, or
 - (B) an unconditional irrevocable letter of credit, or a bond, that is acceptable to the procurement authority.
- (2) If a procurement authority requires a person to provide security under subsection (1) but does not specify that the security must be in the form of a bond, the person may at any time, with the consent of the procurement authority, replace one form of security described in paragraph (b) with another.
- (3) If at any time the amount payable by the government under a contract changes, the procurement authority responsible for the contract may require additional security.

Unit price corrections

- 7 (1) Where a bid includes a unit price table that incorrectly calculates an extended total based on a unit price or that omits a unit price or an extended total
- (a) if there is a discrepancy between a unit price and the corresponding extended total, the unit price prevails and the Deputy Minister shall correct the extended total;
 - (b) if a unit price is included but the corresponding extended total is omitted, the Deputy Minister shall insert the extended total as calculated from the unit price and the estimated quantity; and
 - (c) if an extended total is included but the corresponding unit price is omitted, the Deputy Minister shall insert the unit price as calculated from the estimated quantity and the extended total.
- (2) If a unit price table in a bid is modified under subsection (1), the bid is deemed for all purposes (other than for the application of this Section) to have included the modified table when it was submitted.

Dispute resolution mechanism

- 8 In respect of any contract, or any anticipated contract, for which bids or proposals were received, the applicable procurement authority must ensure that there is available a dispute resolution mechanism based on the following terms of reference
- (a) bidders and proponents must be given a reasonable opportunity to register complaints;
 - (b) both the complainant and the applicable procurement authority have a responsibility to make all reasonable attempts to settle their dispute before referral of the matter to the dispute resolution mechanism;
 - (c) there is an opportunity for redress, including compensation for costs of complaining and bid/proposal preparation costs; and
 - (d) the mechanism includes an opportunity for the Deputy Minister to be informed, in writing, of any recommended changes to the government's procurement and contracting procedures and policies.

PART III – Financial Protection for Subcontractors

Application

- 9 This Part applies only to contracts for public works.

Claim by unpaid subcontractors

- 10 (1) If a subcontractor on a contract for a public work has not been paid by the contractor an amount due, under the subcontractor's agreement with the contractor, for labour, material, equipment or services rendered, the subcontractor may file with the Deputy Minister a claim (in this part referred to as a "subcontractor's claim") for the unpaid amount.
- (2) A subcontractor's claim must be filed within 120 days after the subcontractor performed the labour or services, or provided the material or equipment, to which the subcontractor's claim relates.
- (3) The Deputy Minister may require subcontractors' claims to be in a particular form or to include particular information.

Processing of claim

- 11 (1) If a subcontractor files a subcontractor's claim in accordance with Section 10
- (a) the Deputy Minister must notify the contractor and the procurement authority of the subcontractor's claim
 - (b) the procurement authority must retain from monies remaining to be paid to the contractor on the contract the lesser of
 - (i) the amount of the subcontractor's claim, and
 - (ii) the total amount of those moneys; and
 - (c) the procurement authority must
 - (i) if the subcontractor and the contractor settle the matter within 30 days after the Deputy Minister's notification under paragraph (a), pay the retained amount in accordance with the settlement, or
 - (ii) in any other case, transfer the retained amount to the Deputy Head of the Department of Justice, or a person authorized by that Deputy Head for this

purpose, for disposition as provided in subsection (2).

- (2) A retained amount that is at any time (in this subsection referred to as the "transfer time") transferred under subparagraph (1)(c)(ii) is to be disposed of as follows
- (a) if, within 90 days after the transfer time, the subcontractor and the contractor file with the person (in this subsection referred to as the "holding official") to whom the retained amount was transferred a joint written request for the payment of the retained amount to a particular person (including, for greater certainty, a person acting as a trustee), together with the particular person's written confirmation that the particular person will accept the payment, the retained amount is to be paid to the particular person;
 - (b) if, within 90 days after the transfer time, the subcontractor or the contractor commences a court action in respect of the retained amount and so notifies the holding official in writing, the retained amount is, unless payment has already been made under paragraph (a), to be paid into court to the credit of the action; and
 - (c) if neither paragraph (a) nor paragraph (b) applies, the retained amount is to be paid to the contractor.

Discharge of obligation

- 12 If, as a result of a subcontractor's claim, an amount is retained under paragraph 11(1)(b) from monies remaining to be paid to a contractor and is paid under any of subparagraph 11(1)(c)(i) and paragraphs 11(2)(a) to (c)
- (a) the payment is sufficient discharge by the government of any obligation it may have to pay the retained amount to the contractor or the subcontractor; and
 - (b) the government has no liability to the contractor or the subcontractor in respect of any difference between the retained amount and the amount that was lawfully payable by the contractor to the subcontractor.

Contracting and Procurement Directive

PART I – Interpretation

Definitions

1. The following definitions apply in this directive.

Anticipated change order – a document issued by the procurement authority to effect a change in the contract that was foreseen and explicitly included in the request for bids or proposals and in the resulting contract.

Award of contract or standing offer agreement – refers to the communication of the selection of a bidder or proponent to enter into a contract or standing offer agreement as a result of a successful bid or proposal.

Best practice – methods and techniques that have consistently shown results which are superior to those achieved by other means and which are used as benchmarks to strive for.

Bid – an offer, submitted in response to a request for bids, to supply the government, or purchase from it, under stated terms and conditions and at a stated price or a price determined by a stated formula.

Bidder – a person who submits a bid.

Closing time – the time and date by which bids or proposals must be received at the designated place.

Construction – the building, erection, maintenance, repair, renovation, alteration and demolition work on building and civil engineering works, including land clearing, earth moving and site preparation work.

Contract – an agreement between the government and a person in which the person agrees that they will supply the government or purchase from it.

Contractor – a person who makes a contract with the government.

Contract price – the price or price formula stipulated in a contract.

Corporate supply arrangement – an offer from a supplier, proponent or bidder to supply goods or perform services or construction to all procurement authorities at pre-arranged prices, terms and conditions. Corporate supply arrangements are not contracts.

Department – a department as defined in the *Financial Administration Act*.

Direct award – procurement without competition.

Deputy Minister – the deputy head of the Department of Highways and Public Works or a person authorized to act on behalf of the deputy head.

Employment contract – a contract of service which establishes an employer – employee relationship.

Estimated contract value – the total estimated value of the contract or standing offer agreement prior to issuing the request for bids or proposals.

Evaluation criteria – criteria (which for greater certainty may include the effectiveness of the proposed solution and the experience, qualifications and financial capabilities of the proponents, and need not be price alone) against which bids and proposals are evaluated for the purposes of determining which bids and proposals qualify for consideration, and how to rank bids and proposals.

Expression of interest – a publicly advertised precursor to procurement, seeking an indication of interest in, and any required information about, the particular category of work or anticipated project. No evaluation of responses is done.

Factual evidence – consists of material facts sufficient for independent examination and verification. Evidence may consist of written documents, records, supporting data, affidavits, or other information proving that the findings of fact are true and accurate.

Formal solicitation methods – competitive methods which require a higher level of effort commensurate with the larger size and increased complexity of the procurement. Examples include requests for bids and requests for proposals.

Goods – articles, commodities, equipment, goods, materiel or supplies, which may include installation, warranty and maintenance agreements.

Government Corporation – Yukon Housing Corporation, Yukon Liquor Corporation, Yukon Development Corporation, and Yukon Lotteries Commission.

Informal solicitation methods – competitive or non-competitive methods which are suitable for lower cost, lower risk procurement. Examples are: quote request, direct award.

Invitational tender – a request for bids or proposals for a contract or standing offer agreement given to a limited number of identified bidders or proponents.

Low-cost procurement – a procurement for services or construction that does not exceed an aggregate amount of \$50,000, or goods not exceeding an aggregate amount of \$10,000.

Notice of Intent – the method by which a procurement authority advertises the intention to enter into a contract with a specified contractor.

Open – descriptive of a procurement opportunity that is available to all.

Person – an individual, a corporation or other body corporate or partnership.

Pre-qualified source list – a list of bidders or proponents who meet the evaluation criteria specified for planned contracts.

Procurement – the government’s acquisition, by any means, of goods, leaseholds, licences, services or construction.

Procurement authority – any person who has the authority under the Act to enter into a contract or to undertake procurement on behalf of the government.

Proponent – a person who submits a proposal.

Proposal – a proposed solution to a problem, need or objective, which proposed solution may be in response to a request for proposals or may be unsolicited.

Public work – a project involving the expenditure of public money for building construction, heavy construction or road, sewer or water main construction.

Purchase – the acquisition, for consideration, of any property other than real property and interests in real property.

Qualified – the determination that a response from a bidder or proponent or respondent has met the specified evaluation criteria set out in the procurement documents in order to be considered further.

Quote request – informal process used in soliciting price and delivery quotations that meet minimum quality specifications for a stated quantity of specific goods and/or services.

Real property lease – a lease or agreement whereby the Government of Yukon acquires a leasehold interest in or a licence to occupy real property.

Reasonable and adequate procedures – procedures that ensure fairness for and a level of competition commensurate with the type of procurement, considering price, requirements, available competition, risk and complexity of terms and conditions.

Rejection of bid or proposal – the determination that a bid or proposal will not be considered on the basis that it does not meet the requirements specified in the request for bids or proposals.

Request – as the context requires, a request for bids, a request for proposals or both.

Request for bids – a document that sets out the minimum standards to be met by bidders in respect of a contract and the requirements of the contract.

Request for proposals – a document that invites persons to propose solutions to a stated problem, need or objective.

Scope – the work that needs to be performed to deliver a product, service, or result with the specified features and functions.

Screened qualified source list – a list of bidders or proponents who meet the evaluation criteria specified for potential contracts. Such a list would include potential contractors for a general type of recurring work.

Security – anything (including any bond and any money or other property) that is provided to the government by or on behalf of a person

- (a) In respect of a bid, to guarantee the person's entry into a contract if the contract is awarded to the person, or
- (b) In respect of a contract, to make good on any default by the person under the contract or to guarantee the person's performance of the contract.

Services – the furnishing of labour, time or effort by a contractor that does not produce goods.

Solicitation method – a quote request, a request for bid or proposals, or any other method of soliciting bids, proposals, or quotes to perform a Government of Yukon contract

Standing offer agreement – an agreement under which a person agrees that they will, when required by the government and at the price and subject to the conditions specified in the agreement, supply to the government.

Subcontractor – a person who, under an agreement with a contractor, provides goods, or performs services or work on a public work for which the contractor was engaged under a contract.

Supply – the carrying out, for consideration, of any of the following

- (a) the provision of a good, a leasehold or a licence,
- (b) the performance of a service,
- (c) the construction of a public work, or
- (d) the sale, letting or licensing of real property or an interest in real property.

Supplier – a person who supplies goods or services or performs work on a public work.

Supplier directory – a list of persons which have indicated their willingness to respond to requests for bids or proposals.

Unanticipated change order – a document issued by the procurement authority to effect a change in the contract that was unforeseen at the time of the request for bids or proposals and was not included in the original contract.

Unit price – a method of pricing in which the total amount payable is calculated by multiplying the number of identical units of work or items delivered by a fixed price per unit or item.

Utility – a corporation which provides electrical, water, telecommunications, or municipal services to the public.

Valid bid or proposal – a bid or proposal which meets the requirements set out in the procurement documents.

Yukon business – a business that meets some or all of the following criteria:

- the business employs Yukon resident(s);
- the business owns, for purposes directly related to the operation of the business, real property in the Yukon;
- the business operates a year-round, locally staffed office in the Yukon;
- the business is owned, or is a corporation that is owned, 50% or more by Yukon residents.

PART II – Overview

Principles

2. The following principles apply to procurement by Government of Yukon:
 - (a) Fairness: to observe procedural policies as expressly laid out in this Directive free of bias, personal interest and conflict of interest.
 - (b) Openness and transparency: to create the maximum number of competitive procurement opportunities, and to be transparent in the way business is conducted.
 - (c) Fiscal responsibility: to justify contracting and procurement decisions and actions to a relevant authority or publicly as appropriate in the circumstances.
 - (d) Competition: to open procurement opportunities to the maximum number of respondents.
 - (e) Value for money: to focus on efficiency, economy and effectiveness to obtain the maximum benefits with the resources available.
 - (f) Accountability: to be willing and able to account for the way contracting and procurement activities have been conducted.

Objectives

3. The following objectives for government contracting and procurement activities for goods, services and construction are based on the principles above.
 - (a) Procurements are managed in a manner consistent with government policy and requirements of trade agreements to which the Government of Yukon is subject or signatory.
 - (b) Government receives the best value for money spent on contracts.
 - (c) Suppliers have reasonable access to information on procurement opportunities, processes and results.
 - (d) Departments and procurement authorities are accountable for the results of their procurement decisions and the appropriateness of the processes followed.

- (e) Procurement authorities use adequate and reasonable procedures to ensure the cost of the procurement process, to both suppliers and departments, is appropriate in relation to the value and complexity of each procurement.

Authority

4. This 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 can be revised only with the approval of Management Board.

Scope

5. This directive applies to all contracts except:
 - (a) employment contracts;
 - (b) contracts for physician services, as defined in the *Health Care Insurance Plan Act*; and
 - (c) contracts for the practice of law as defined in the *Legal Professions Act*.

Application

6. Subject to the terms of any agreement between the Government of Yukon and the Government of Canada, this directive applies to projects carried out by the Government of Yukon on behalf of the Government of Canada.
7.
 - (1) Subject to subsection (2), this directive applies to all departments which have deputy heads as defined in the *Public Service Act*.
 - (2) Where a Government Corporation adopts a contracting or procurement bylaw which adheres to the Contract and Procurement Regulation and is substantially consistent with this directive, and where Management Board so approves, that bylaw will apply in place of this directive.

Contracts of employment not authorized

8. Nothing in this directive authorizes the appointment or employment of any person as an employee of the government.

Roles and responsibilities

9. The Deputy Head of each department subject to this directive is responsible for:
- (a) Management of procurement authorities, including:
 - (i) managing and administering assignment of authority to procure to individuals in the department; and
 - (ii) ensuring procurement authorities have the required training to effectively manage the procurement and contracts over which they have authority.
 - (b) Planning, managing and fully documenting procurement processes and decisions, including:
 - (i) seeking and receiving advice from Government of Yukon procurement staff, as required, during procurement;
 - (ii) seeking and receiving advice from Government of Yukon risk management staff and from the Department of Justice, as required, during the development of complex or higher risk procurement; and
 - (iii) using existing standing offer agreements and other corporate service agreements for goods, services and construction to meet program requirements when they offer value to Government of Yukon.
 - (c) Managing solicitation and contract award processes in a manner consistent with the objectives in Section 3, including:
 - (i) using standard government procurement documents;
 - (ii) ensuring that contracts for goods, services and construction are designed to provide the best value to government;
 - (iii) ensuring the correctness of the contract award information published on the Government of Yukon contract registry;
 - (iv) providing the information requested by the Department of Highways and Public Works necessary to monitor, audit and report on the government's performance with respect to complying with corporate procurement policy;
 - (v) ensuring compliance with corporate procurement and asset management policy and guidelines, including applicable legislation and trade agreements; and
 - (vi) making diligent efforts to resolve any complaints with proponents and bidders as a first step in the government's dispute resolution process.
10. In addition to the above, the Deputy Minister is responsible for:
- (a) issuing solicitations for bids or proposals and for receiving responses for all open, competitive procurement; and
 - (b) establishing and managing corporate procurement policy and procedures, including:
 - (i) providing official communications and interpretations of procurement policy;
 - (ii) serving as the contact point for Chapter 5 (Procurement) requirements of the national Agreement on Internal Trade, and for procurement matters related to the implementation of trade agreements with other jurisdictions as appropriate; and
 - (iii) enabling various agreements with other public procurement organizations.
 - (c) providing support for procurement authorities, including:
 - (i) managing and fully documenting the procurement processes for goods, services and construction (processes that are not already the mandate of Highways and Public Works) when requested or required to do so on behalf of a department;
 - (ii) identifying, planning, negotiating, establishing, managing and fully documenting corporate supply arrangements and screened qualified source lists that will provide best value to government;

- (iii) designing, implementing and overseeing a government risk identification; assessment and management framework for contracting and procurement;
 - (iv) providing operational, risk management and insurance advice to departments on procurement matters;
 - (v) developing, implementing and maintaining tools such as checklists, handbooks and other reference material to assist departments in carrying out procurement in an effective and efficient manner while complying with corporate procurement policy;
 - (vi) establishing and maintaining standard government procurement documents;
 - (vii) developing and managing, with Public Service Commission, procurement training curriculum and requirements;
 - (viii) reviewing procurement documents and advising procurement authorities on how to plan procurements, how to draft procurement documents, and how to effectively manage complex or high risk procurement;
 - (ix) establishing guidelines and processes for implementation and management by procurement authorities, to assist in resolving procurement complaints prior to the complaint escalating to the dispute resolution mechanism; and
 - (x) disposing of all assets that are surplus to government except as provided by department legislation or Management Board directive(s).
- (d) monitoring and reporting for compliance with procurement policy including issuing reports on the extent of compliance with procurement and contracting legislation, regulation, policy and best practices, across departments.
 - (e) supporting constructive relations with suppliers, proponents and bidders including:
 - (i) establishing and maintaining mechanisms to coordinate and support development and communications with suppliers, proponents and bidders;

- (ii) establishing and managing guidelines and procedures for a formal government dispute resolution process, including an internal escalating complaint resolution procedure in departments and the Department of Highways and Public Works, and a last resort procedure in the dispute resolution process(es).

- (f) strategic sourcing initiatives, such as cooperative or joint procurement, with other public organizations in North America.

Overpayment not authorized

- 11. Nothing in this directive authorizes the making of a payment in excess of the amount payable under the terms of the contract.

Honoraria

- 12. Nothing in this directive prohibits a procurement authority from offering honoraria to prospective bidders or proponents provided that:
 - (a) the availability of such incentives is clearly identified in the request for bids or proposals;
 - (b) the availability of the honorarium is provided equally to all prospective bidders and proponents; and
 - (c) the honoraria do not arbitrarily or unnecessarily limit the number of bidders or proponents.

Request for bids or proposals required

- 13. Except as provided in Sections 18 (Exceptions) and 22 (Request for Analysis of Procurement), the procurement authority will invite bids or proposals in accordance with this directive prior to entering into any contract or standing offer agreement.

Use of standard documents

- 14. Procurement authorities must use current versions of the standard government procurement documents available from Highways and Public Works procurement staff, or must obtain the approval of the Department of Highways and Public Works procurement staff for any changes to the standard documents.

PART III – Procurement Planning

Reasonable and adequate procedures

15. For low-cost procurement, procurement authorities will use reasonable and adequate procedures for the type and complexity of the procurement in order to obtain best value for the Government of Yukon. Formal and informal solicitation methods may be used for low-cost procurement according to Section 17 (Solicitation Methods).

No contract splitting

16. Procurement authorities shall not issue two or more contracts to the same contractor, or multiple contractors, for the same work or project in order to maintain contract values under threshold levels.

Solicitation methods

17. Solicitation methods are classified into two categories, informal solicitation and formal solicitation. See Section 19 (Thresholds).
 - (a) Informal solicitation methods are:
 - Direct Award (also known as a sole-sourced contract) – Direct Award of a contract should only be used, if best practices have been followed, for the procurement of simple, uncomplicated goods, services or construction of standard and firm specifications, where competitive procurement is impractical.
 - Quote Request – A Quote Request should be used for the competitive procurement of simple, uncomplicated goods, services or construction of standard and firm specifications.
 - (b) Formal solicitation methods may be used on an invitational or open basis. The methods are:
 - Request for Bids (RFB) – A Request for Bids should be used for the procurement of goods, services or construction of standard and firm specifications, where price is the determining factor in awarding the contract.

Request for Proposals (RFP) – A Request for Proposals should be used for procurement of deliverables that cannot be quantitatively or qualitatively expressed in sufficient detail to allow use of an RFB at the time the solicitation document is issued, such as for professional services or consulting services.

Requests for Qualifications (RFQ) – An RFP may be preceded by an RFQ as an optional first step in the procurement process. RFQs are not solicitation methods on their own but establish a list of pre-qualified proponents who meet the minimum threshold of qualifications required to respond to the subsequent Request for Proposals. An RFQ may also be used to establish a screened qualified source list.

Exceptions to use of formal solicitation methods (when open competition is not required)

18. (1) The procurement authority may enter into a contract or standing offer agreement directly with a bidder or proponent as provided in Section 19(1)(a), 19(2)(a), 19(3)(a) and 19(4)(a);
- (2) The procurement authority may enter into a contract or standing offer agreement directly with a bidder or proponent:
 - (a) in the event of an emergency as defined in the *Civil Emergency Measures Act* or its regulation;
 - (b) where immediate action is required to prevent or respond to injury or death to persons or animals or livestock, or damage to property;
 - (c) where the contract is to extend the existing occupancy of substantially the same real property leased by the procurement authority;
 - (d) for an agreement with another government or with a utility for work on the utility's facilities; or

- (e) where the contract relates to the protection of exclusive rights, such as patents or licences, or where the existing equipment (which includes technology or software) compels the procurement authority to purchase specific equipment or services for reasons of compatibility.
- (3) The procurement authority is responsible for documenting in the contract file the rationale or the circumstances that support the use of one or more of the above exemptions.

Thresholds

19. Thresholds are dollar value boundaries above which the options for procurement are reduced. They are set to comply with reasonable procurement practices and trade agreements.

- (1) For goods, the procurement authority:
 - (a) may use informal or formal solicitation methods for procurement up to and including a value of \$10,000 (this can be referred to as low-cost procurement)
 - (b) must use formal solicitation methods for procurement above \$10,000 and up to and including \$25,000,
 - (c) must use a formal, open solicitation method for procurement over \$25,000.
- (2) **Until March 31, 2014**, for price-driven contracts, the procurement authority:
 - (a) may use informal or formal solicitation methods for procurement up to and including a value of \$10,000 (this can be referred to as low-cost procurement);
 - (b) must use formal solicitation methods for procurement above \$10,000 and up to and including \$50,000;
 - (c) must use a formal, open solicitation method for procurement over \$50,000.

- (3) **Until March 31, 2014**, for value-driven contracts, the procurement authority:
 - (a) may use informal or formal solicitation methods for procurement up to and including a value of \$25,000 (this can be referred to as low-cost procurement);
 - (b) must use formal solicitation methods for procurement above \$25,000 and up to and including \$50,000;
 - (c) must use a formal, open solicitation method for procurement over \$50,000.
- (4) **As of April 1, 2014**, and for services and construction, the procurement authority:
 - (a) may use informal or formal solicitation methods for procurement up to and including a value of \$50,000, (this can be referred to as low-cost procurement)
 - (b) must use formal solicitation methods for procurement above \$50,000 and up to and including \$75,000,
 - (c) must use a formal, open solicitation method for procurement over \$75,000.
- (5) For goods or services related to work to be carried out primarily in Yukon and where the estimated value of the good or service is more than \$1,000 and within the limits specified in (1)(a) and (2)(a) and (3)(a) and (4)(a), procurement authorities may enter into contracts directly only with contractors that are Yukon businesses, except as otherwise authorized by the Deputy Head of the procurement authority for specific contracts.

Invitational tenders

20. Where, under Sections 19(1)(b) (Thresholds – goods), 19(2)(b) (Thresholds – price-driven contracts), 19(3)(b) (Thresholds – value-driven contracts) and 19(4)(b) (Thresholds – services and construction) procurement authorities invite bids or proposals from a limited number of bidders or proponents, if three or more Yukon businesses who provide the goods, services and construction required can be identified, the procurement authority may invite bids or proposals solely from Yukon businesses.

Analysis of procurement

21. An Analysis of Procurement is required for any procurement activity which cannot be accommodated by the solicitation methods listed in Section 17, or by exceptions in Section 18, or which exceed the thresholds in Section 19. In these cases, a Request for Analysis of Procurement (RAP) must be written by the procurement authority and sent to the Deputy Minister for review. A RAP must be accompanied by factual evidence to support the request. After the review, the Deputy Minister will send written recommendations to the Deputy Head of the procurement authority who will make or delegate the final decision.
22. A Request for Analysis of Procurement (RAP) is required for:
- (1) direct award of a contract above the thresholds, whether as the original contract price or through a change order.
 - (2) the use of formal, invitational solicitation method above the threshold for formal, open solicitation methods.
 - (3) the bypassing of a bid or proposal as set out in Section 63(4) (Award of contract or standing offer agreement).
 - (4) the award of a contract when valid bids or proposals received in response to an invitational request for bids or proposals are in excess of the limits specified in Section 23 (Effect of bids higher than estimated contract value for invitational tenders).

- (5) the use of an alternate procurement method, for example, a co-operative agreement or a non-Contract A format for open competition.

Effect of bids higher than estimated contract value for invitational tenders

23. Subject to Section 18 (Exceptions), where all bids or proposals submitted in response to a request for bids or proposals are higher than the estimated contract value, the request for bids or proposals will not necessarily be invalidated for this reason.
24. (1) The procurement authority will not award a contract in excess of 10% above the thresholds as provided in Section 19 (Thresholds), where the bids or proposals were solicited by inviting only a limited number of sources, without meeting the requirements of subsection 24(2) below.
- (2) In the event that all valid bids or proposals received in response to an invitational request for bids or proposals are in excess of the 10% limit specified in subsection (1), the procurement authority must comply with the process set out in Sections 21 (Analysis of Procurement) and 22 (4) (Request for Analysis of Procurement).

Opportunity to compete for government contracts

25. Procurement authorities must not use standards, specifications, evaluation criteria, time limits to respond to requests for bids or proposals, standing offer agreements, or other practices or procedures to unfairly limit competition.

PART IV – Communication

Transparent communication during competitions

26. All information provided to one bidder or proponent related to a procurement will be provided to all bidders or proponents.

Requests to receive invitational procurement information

27. If the solicitation method is an invitational one, the procurement authority must, upon request, provide the procurement information to bidders or proponents who were not invited.

Expression of interest

28. Procurement authorities may issue a publicly advertised Expression of Interest for the purpose of gathering information on interest, capabilities or to help with the development of a future solicitation. An Expression of Interest does not pre-qualify potential contractors, nor lead directly to a contract. An Expression of Interest is not a solicitation method.

Tendering forecast

29. (1) **Until March 31, 2014**, procurement authorities will, before the end of each fiscal year or portion thereof, provide to the Deputy Minister a listing of contracts and standing offer agreements in excess of \$25,000 contemplated to be tendered in the following fiscal year, or portion thereof. Procurement authorities will provide this information for any contracts that are funded through their budget.
- (2) **As of April 1, 2014**, procurement authorities will, before the end of each fiscal year or portion thereof, provide to the Deputy Minister a listing of contracts and standing offer agreements in excess of \$75,000 contemplated to be tendered in the following fiscal year, or portion thereof. Procurement authorities will provide this information for any contracts that are funded through their budget.

- (3) The Deputy Minister will make available to the public the information provided by procurement authorities in subsection (1).

Contract registry

30. (1) Procurement authorities will provide accurate contract award information in a public contract registry. The Deputy Minister will provide public access to the registry.
- (2) The registry(ies) maintained pursuant to subsection (1) will be public document(s).

Non-disclosure of estimated contract value

31. Subject to subsection 75(1) (Access to Information – ATIPP), the procurement authority may refuse to disclose the estimated contract value.

Contracting and procurement information for Yukon First Nations

32. Based upon the obligations of the Government of Yukon arising out of the First Nations Final Agreements, the Deputy Minister will:
- (a) at the time it publicly requests bids or proposals, notify those Yukon First Nations who have indicated a wish to be so advised of all publicly advertised requests for bids or proposals;
 - (b) at the time it uses standing offer agreements and pre-qualified and screened qualified source lists, notify those Yukon First Nations who have indicated their interest in contracting and their ability to supply the tendered goods or services;
 - (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 Indian People and First Nation's corporations information on:
 - (i) how to compete for contracts and standing offer agreements; and
 - (ii) how to register on the Supplier Directory and submit proposals for pre-qualified source lists and screened qualified source lists;

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- (e) give full opportunity to Yukon Indian People and First Nation's corporations to be registered on the Supplier Directory, and submit proposals for pre-qualified source lists and screened qualified source lists that the Government of Yukon uses.

- 33. Where a procurement authority invites bids or proposals from a limited number of prospective bidders or proponents pursuant to Sections 19(1)(b) (Thresholds – goods), 19(2)(b) (Thresholds – price-driven contracts), 19(3)(b) (Thresholds – value-driven contracts) and 19(4)(b) (Thresholds – services and construction), the procurement authority will give notice of the invitation to Yukon First Nations who have indicated a wish to be so advised or who have registered on the Supplier Directory maintained under this directive.

Liaison with suppliers, proponents and bidders

- 34. Procurement authorities will make reasonable efforts to maintain ongoing liaison with suppliers, proponents and bidders as per the Interpretive Guide to this Directive.

Community business development

- 35. Procurement authorities, when procuring goods, services or construction for use or for performance in the communities outside of Whitehorse, should make reasonable efforts to support community-based businesses within the context of existing procurement policy and trade agreements by:
 - (a) ensuring that community-based businesses have the opportunity to submit bids or proposals on contracts, and that they are competing on an equitable basis with contractors from outside the community;
 - (b) encouraging community-based employees to make community-related procurement decisions to the extent possible;
 - (c) developing communications channels with local business organizations and contractors that will enable them to anticipate government needs in the community and to develop their businesses to meet those needs; and
 - (d) taking into account the full cost of procurement from outside the community when the goods, services and construction are to be utilized or performed within the community.

PART V – Procurement Tools

Contracts and standing offer agreements in excess of three years

36. (1) No contract or standing offer agreement, including renewals or change orders, will exceed three (3) years without Management Board approval.
- (2) Contracts or standing offer agreements entered into with Management Board approval pursuant to subsection (1) will be identified in the contract registry(ies) maintained pursuant to Section 30 (Contract Registry).

Supplier Directory

37. The Deputy Minister will maintain and issue a Supplier Directory for use in implementing the provisions of this directive.
38. The Deputy Minister will decide which requirements, in compliance with applicable trade agreements, must be met by a prospective bidder or proponent in order to be added to the Supplier Directory.
39. Upon request and having met the requirements in Section 38, the name of a prospective bidder or proponent will be added to the Supplier Directory at any time.
40. A procurement authority may decide the method by which names are selected from the Supplier Directory for procurements that are below the thresholds for formal solicitation methods (that is, for low-cost procurements under the thresholds in Sections 19(1)(a), 19(2)(a), 19(3)(a) and 19(4)(a).

Screened qualified source lists (for potential contracts)

41. The Deputy Minister may establish and maintain corporate supply arrangements, including screened qualified source lists, as may be appropriate for implementing the provisions of this directive.

Pre-qualified source lists (for planned contracts)

42. (1) Where a procurement authority pre-qualifies bidders or proponents before issuing a request for bids or proposals for contracts, it will establish a pre-qualified source list pursuant to this directive, which will be valid for up to one year and up to three years if an extension is authorized by the Deputy Minister. As defined in this Directive, a pre-qualified source list is “a list of bidders or proponents who meet the evaluation criteria specified for planned contracts”.
- (2) The procurement authority will define the scope of each pre-qualified source list in terms of the specific contracts which are contemplated.
43. Procurement authorities will publicly advertise for bidders or proponents to submit their qualifications for pre-qualified source lists.
44. Responses to requests for qualifications issued pursuant to Section 43 will be considered proposals as defined by this directive, and will be evaluated accordingly. Notwithstanding Section 53 (Form of evaluation criteria), for pre-qualifying bidders or proponents, price is not a mandatory criterion.
45. A procurement authority will not add the name of a bidder or proponent to pre-qualified source lists except through the evaluation and acceptance of the proponent’s qualifications submitted in response to the request for bids or proposals.
46. If a procurement authority proposes to undertake procurement for which there is a valid pre-qualified source list, the procurement authority must invite all persons included in the list to submit bids or proposals, as the case may be, in respect of the procurement.

Standing offer agreements

47. (1) Procurement authorities may create, maintain and use standing offer agreements in accordance with and subject to the provisions of this Directive. As per the definition in this Directive, a standing offer agreement is “a 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”.
- (2) Standing offer agreements will have individual contracts issued against them for any work contemplated under the provisions of the Standing Offer Agreement.
- (3) The aggregate value of all contracts issued against a standing offer agreement will not exceed the sourcing thresholds of the solicitation method used.
- (4) Where standing offer agreements are competitively procured, contracts issued against them may be direct awarded up to the applicable solicitation method threshold (see Section 19 Thresholds), or the maximum value indicated in the standing offer agreement, whichever is less.
- (5) Contracts will be awarded under standing offer agreements as outlined in Section 63 (Award of contract or standing offer agreement).

Notice of intent

48. Notice of Intent (NOI): When a service or construction contract valued at more than \$50,000 is intended to be awarded on the basis that there is only one contractor that can provide the services, or when a goods contract valued at \$10,000 or more is intended to be awarded on the basis that there is only one supplier that can provide the goods required, but this cannot be strictly proven, a procurement authority may arrange for a Notice of Intent to be posted on the Government of Yukon public tenders website for a minimum of 14 calendar days. All objections received by the indicated response date must be reviewed by the procurement authority and if any are substantiated the procurement authority must undertake a competitive process. If the procurement authority receives no objections, or the objections are not substantiated, this may form part of the factual evidence submitted with a RAP (see Sections 21 and 22).

PART VI – Competitive Bidding Process

Request for bids or proposals – all terms and conditions disclosed

49. All terms and conditions of the request for bids or proposals must be stated in the request for bids or proposals.

Information in request for bids or proposals

50. A request for bids or proposals will include the following information:

- (a) the essential terms of the contract(s) or standing offer agreement(s) to be awarded, including:
 - (i) a full description of the goods or services or construction to be delivered, including estimated quantities where applicable and all performance requirements;
 - (ii) the form, amount, and terms and conditions of any required performance security, or any performance penalty or performance bonus permitted by law, if any;
 - (iii) the completion date or any other timing considerations which are to be terms of the contract(s) or standing offer agreement(s);
 - (iv) provisions relating to the confidentiality of the bids or proposals;
 - (v) information relating to post contract completion performance evaluations;
 - (vi) other terms and conditions which would be relevant in setting a price for the goods or services;
 - (vii) indication that the request for bids or proposals is for a screened qualified source list, pre-qualified source list, or a standing offer agreement, if this is the case; and
 - (viii) a statement that the procurement is subject to Chapter 5 of the Agreement on Internal Trade, if applicable.

(b) terms and conditions for the submission of bids or proposals, including:

- (i) the form in which bids or proposals are to be submitted;
- (ii) the information required to be provided in the bid or proposal;
- (iii) the place to which bids or proposals must be submitted;
- (iv) irrevocability period, if applicable and if not applicable, the irrevocability period may be removed if the process in Section 22 (5) (Request for Analysis of Procurement) has been followed; and
- (v) the closing date and time.

(c) a full description of the manner in which bids or proposals will be evaluated, including:

- (i) the method to be used to evaluate bids or proposals;
- (ii) the evaluation criteria, stated in such a manner as to clearly identify all the information to be provided by the bidder or proponent which will be used to evaluate the bid or proposal (see Section 53 Form of evaluation criteria);
- (iii) the weighting assigned to each evaluation criterion, where the criteria are used for ranking; and
- (iv) the process for negotiation with the bidder(s), if a non-Contract A, negotiated format is employed after the Request for Analysis of Procurement process has been followed (see Section 22).

(d) the tax-exempt status of the Government of Yukon under the Goods and Services Tax or Harmonized Sales Tax (GST/HST), except in the case of procurements by Government Corporations which pay taxes;

(e) a provision that bids or proposals do not contain an amount for the GST/HST;

- (f) the name, title and contact information of the designated contact person; and
- (g) in the case of publicly advertised requests for bids or proposals, the time and place of tender opening.

Form of bid for public works projects

51. For public works bids, the document on which bidders submit their bids shall include:
- (a) a section in which bidders must list the subcontractors they will use and/or indicate where they will use “own forces” in carrying out the work; and
 - (b) a clear statement that the successful bidder will be required to obtain prior approval of the procurement authority in order to employ subcontractors other than those listed;

Content of public notice for open procurement

52. (1) When public notice of a request for bids or proposals is given, the public notice need not contain the full request for bids or proposals, but must state where prospective bidders or proponents may obtain the full request for bids or proposals.
- (2) Public notices for open procurement must be in compliance with applicable trade agreements.

Form of evaluation criteria

53. (1) In the request for bids or proposals procurement authorities must be explicit about the evaluation criteria, which must include price, and the weighting of evaluation criteria as applicable.
- (2) Where ranking criteria are used, procurement authorities may consider:
- (a) the experience of the bidder or proponent with similar contracts or standing offer agreements;

- (b) the value of a partnership between an outside firm and a Yukon business for the purpose of carrying out the work under a contract, as long as that value is due to Yukon experience, knowledge or culture;

- (c) the qualifications of the bidder or proponent for the contract or standing offer agreement;

- (d) the means proposed by the bidder or proponent to carry out the contract or standing offer agreement;

- (e) the schedule proposed by the bidder or proponent; or

- (f) any other criteria relevant to the particular request for proposals.

- (3) Where ranking criteria are used, they may include the methods to be used by the proponent to maximize the full value of local community and Yukon content in carrying out the work, which may include local experience, knowledge, and culture.

- (4) Where applicable, evaluation criteria shall include environmental performance standards as adopted by the Government of Yukon from time to time.

Use of specific product trade names

54. Requests for bids or proposals 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, in which case the request for bids or proposals will clearly stipulate the requirement for the product.

Availability of requests for bids or proposals

55. (1) The procurement authority will use reasonable efforts to make requests for bids or proposals, or addenda to requests for bids or proposals, available to all bidders or proponents at the same time.
- (2) No addendum shall be issued within 48 hours of the closing date and time, unless it also extends the closing date and time.

Response period for requests for bids or proposals

56. The amount of time permitted for bidders or proponents to respond to a request for bids or proposals must be sufficient to allow all potential bidders or proponents to have a reasonable opportunity to compete, taking into account the time required to disseminate information, the complexity of the procurement, the time required to prepare an appropriate response and the minimums set in any applicable trade agreements.

Opening of bids or proposals

57. Where the value of the contract or standing offer agreement is estimated at more than \$75,000, or in the case of a goods contract is estimated at more than \$25,000, or the request for bids or proposals was publicly advertised, then:
- (a) all bids or proposals will be opened at a designated time and place in the presence of at least one witness;
- (b) anyone who wishes to be present at the bid or proposal opening will be permitted to attend; and
- (c) upon opening each bid or proposal, the following will be recorded in a written log and announced to those present:
- (i) the name of the bidder or proponent;
- (ii) the amount and form of bid security provided with the bid or proposal, if applicable; and
- (iii) in the case of a bid, the amount of the bid, where practicable.

Late bids or proposals

58. (1) The procurement authority will reject any bids or proposals received after the closing time.
- (2) Late, sealed bids or proposals will be returned unopened to the bidder or proponent.

Rejection of timely bids or proposals

59. (1) The procurement authority will only reject a bid or proposal which has been received prior to the closing time where:
- (a) it is not submitted in the required form;
- (b) there are significant omissions of required information;
- (c) a bid or proposal is not signed as required in the request for bids or proposals;
- (d) the required bid security in the required form is not provided (if it is a requirement of the procurement);
- (e) the bid or proposal has conditions attached which are not authorized by the request for bids or proposals (unless the format is non-Contract A and the process in Section 22 (5) (Request for Analysis of Procurement) has been followed); or
- (f) the bid or proposal fails to meet one or more standards specified in the request for bids or proposals.
- (2) Where the procurement is issued and received by the Deputy Minister as per Section 9(a), and where the Deputy Minister recommends rejection as per Section 59(1), the procurement authority shall not overturn the recommendation without authorization of the Deputy Head of the procurement authority.

Notice of rejection

60. Where a procurement authority rejects a bid or proposal as permitted under Section 59, the procurement authority will notify the bidder or proponent by the quickest means available, that the bid or proposal was rejected. In the case of a written bid or proposal, this will be confirmed in writing.

Two stage evaluations of proposals

61. Where a two-stage evaluation is used, procurement authorities will evaluate and score non-price factors before taking price into account.

Procurement authority to evaluate and rank bids or proposals

62. The procurement authority will evaluate and rank bids or proposals not rejected pursuant to Sections 58 (Late bids or proposals) or 59 (Rejection of timely bids or proposals) solely on the basis of the evaluation criteria and requirements contained in the request for bids or proposals.

Award of contract or standing offer agreement

63. (1) Subject to subsection (4), when a single contract or standing offer agreement is awarded, pursuant to a request for bids or proposals, it will be awarded to the bidder who submitted the lowest bid or to the proponent who submitted the highest ranking proposal.
- (2) Subject to subsection (4), where more than one contract is awarded pursuant to a request for bids or proposals, they will be awarded to:
- (a) bidders, from lowest price bid to highest, or
 - (b) proponents in the sequence in which their proposals were ranked, from highest to lowest.

(3) Subject to subsection (4), where more than one standing offer agreement is awarded pursuant to a request for bids or proposals, contracts will be awarded against those standing offer agreements as follows:

- (a) bidders, from lowest price(s) bid to highest,
 - (b) proponents in the sequence in which their proposals were ranked, from highest to lowest or
 - (c) in the manner specified in the standing offer agreement
- (4) (a) Only the Deputy Head of the procurement authority may authorize bypassing the lowest price bid or the highest ranking proposal. The RAP procedure set out in Section 22 (Request for Analysis of Procurement) shall be followed.
- (b) Pursuant to subsection 4(a) above, a bid or proposal may be bypassed if there is substantial evidence that, pursuant to the evaluation criteria contained in the request for bids or proposals, a bidder or proponent would be unable to carry out the contract as specified.

Debriefing

64. Unsuccessful bidders or proponents must be notified of the results and offered the opportunity for a debriefing on their bid or proposal, which will include a full explanation of why their bid or proposal was not successful. Successful bidders or proponents may also participate in a debriefing.

Placement on pre-qualified source list

65. If the purpose of the request for proposals under Section 42 (Pre-qualified source list for planned contracts) was to establish a pre-qualified source list, the procurement authority will place all bidders or proponents who meet the qualifications on the pre-qualified source list and notify them.

PART VII – Administration of the Contract

Contract insurance

66. The form and amount of any insurance required will be defined in the request for bids or proposals.

Change orders permitted

67. (1) Anticipated change orders: Subject to Section 22(1) (Request for Analysis of Procurement) procurement authorities may issue change orders to accommodate changes in the scope, schedule or price of the contract which were foreseen when the request for bids or proposals was issued, provided that the anticipated change was explicitly included in the request for bids or proposals and the resulting contract and provided that the change order would NOT bring the total aggregate contract value above the allowed threshold for the solicitation method used. Anticipated change orders must be included in the aggregate total value of the proposed contract when choosing the solicitation method. Annual or multi-year contract renewals will include a limit on the number of renewals.

- (2) Unanticipated change orders: Subject to Section 18 (Exceptions) and this Section 67, procurement authorities may issue change orders to accommodate changes in the scope, schedule or price of the contract if originally unforeseen when the request for bids or proposals was issued, up to a threshold of 25% value of the contract, or \$100,000.00, whichever is less. Change orders exceeding the thresholds will require a Request for Analysis of Change Order as explained in subsection (3).

- (3) Request for Analysis of Change Order (RACO):

A Request for Analysis of Change Order is required only for procurements where the change order exceeds the threshold for unanticipated change orders.

Procurement authorities will forward a Request for Analysis of Change Order to the Deputy Head of the procurement authority or delegate, who will make the final decision.

A Request for Analysis of Change Order must be accompanied by factual evidence to support the request.

- (4) The Deputy Minister will identify all change orders under this Section to the public in the contract registry(ies) maintained pursuant to Section 30 (Contract registry).
- (5) Signing and commitment authority approval, when applied, must comply with the Financial Administration Manual.

Contractor performance monitoring and contract post-completion evaluation

68. (1) Every contract shall clearly establish the criteria for contract performance and for the post-completion performance evaluation, if any, as per subsection 50 (a) (Information in request for bids or proposals).
- (2) Monitoring of the contractor's performance should be timely and consistent as the contract progresses in accordance with the requirements of the contract.
- (3) A post-completion evaluation is recommended for all contracts, and is required on every contract over \$50,000, to provide a record of the contractor's performance and to assist in future procurement activity.

Procurement complaint resolution process

69. (1) Procurement authorities will ensure that the procurement complaint resolution process is accessible, fair, consistent, comprehensive, impartial and timely.
- (2) Procurement authorities will maintain complete documentation and records of all activities related to addressing a complaint, including all communications with the complainant.
- (3) Procurement authorities will provide to the Deputy Minister on an ongoing basis, statistics relating to the number of complaints received, and the disposition of these complaints, for reporting purposes.

PART VIII – Dispute Resolution Process(es)

Bid challenge committee

70. (1) The Minister of Highways and Public Works will appoint a standing bid challenge committee to act on complaints registered pursuant to this directive.
- (2) The committee will be made up of a chair, an alternate chair who will act in the absence of the chair, five (5) representatives from the Government of Yukon, and five (5) representatives from the public.
- (3) Each appointment will be for a term of up to two (2) years and may be renewed.
- (4) Within the policy laid out in this directive, the committee may establish its own rules of procedure.

Registering a complaint

71. (1) The Deputy Minister will accept a complaint made in writing by a bidder or proponent who has reason to believe that a Deputy Head, or a public servant to whom a Deputy Head has delegated procurement authority, has treated them unfairly or has not followed the process required by the Contract Regulation or this directive, provided that the complaint is received
 - (a) up to 60 days following the closing time, or up to 15 days following the award of the contract or standing offer agreement, whichever is later, or
 - (b) in the event of an extension of a standing offer agreement, up to 30 days following the date of the extension.
- (2) The bid challenge process described in this Part does not apply to decisions made under Section 18 (Exceptions) of this directive.
- (3) The Deputy Minister may require the complainant to provide full details related to the complaint, including their efforts to resolve the complaint directly with the procurement authority.

- (4) The Deputy Minister will, without undue delay, forward the complaint to the Deputy Head of the procurement authority and to the bid challenge committee established pursuant to Section 70.

72. The registration of a complaint pursuant to Section 71 will not require the procurement authority to delay award of the contract.

Considering the complaint

73. (1) The procurement authority will provide a written report about the circumstances relating to the complaint to the chair without delay.
- (2) The chair of the bid challenge committee, without delay, will conduct an initial review of the complaint to determine whether or not there will be an inquiry or hearing.
- (3) A complaint registered with the committee which is found by the chair to warrant a hearing will be heard by a panel of three (3) members consisting of the chair and one (1) member appointed by the chair from the representatives of the government and one (1) member appointed by the chair from the representatives of the public.
- (4) Where possible, the qualifications of the members selected by the chair to hear a complaint will be appropriate to the matter under consideration.
- (5) The panel will hear and consider the complaint within a reasonable time following registration of the complaint.
- (6) The panel will allow the complainant and the procurement authority against whom the complaint was registered to address the panel in person and in writing.
- (7) The chair may call upon such advisors as the panel considers advisable to report to the panel.
- (8) Complaints may be heard in any place in the Yukon.
- (9) The panel will not cancel, revoke, amend or alter a contract.

Unfounded complaints

74. (1) The panel may refuse to hear and consider, or may cease to consider a complaint on the grounds that:
- (a) the complaint is trivial, frivolous, vexatious or not made in good faith, or
 - (b) the complainant does not have a sufficient personal interest in the subject matter of the complaint.
- (2) Where the panel refuses to consider or ceases to consider a complaint, the chair will inform the complainant and the procurement authority against whom the complaint was registered and may state reasons therefor.

Access to information

75. (1) Notwithstanding any restrictions on the disclosure of documents in this directive, the panel may examine any documents relating to the complaint.
- (2) All information used by the panel in its deliberations, and which may be disclosed under the *Access to Information and Protection of Privacy Act*, will be disclosed to both parties to the complaint.

Redress

76. (1) Where the panel considers that a complaint is valid, it may recommend that the procurement authority pay to the complainant compensation for:
- (a) the complainant's reasonable costs in preparing a bid or proposal; and/or
 - (b) the complainant's reasonable costs for participating in the inquiry or hearing.

- (2) In making its decision, the panel will consider all the circumstances relevant to the complaint, including:
- (a) the seriousness of any deficiency in the procurement process found by the panel;
 - (b) the degree to which the complainant and all other interested parties were prejudiced;
 - (c) the degree to which the integrity and efficiency of the competitive procurement system was prejudiced; and
 - (d) whether the parties acted in good faith.

Panel to report

77. The panel will make a report of its findings and recommendations, if any, to the Deputy Head of the procurement authority and to the complainant.

Duty to respond

78. (1) Where the panel recommends a change to government policy or procedure, the Deputy Head of the procurement authority will, within a reasonable period of time, address the recommendation to the government body which has the authority to consider, and if warranted, to act on the recommendation.
- (2) The Deputy Head of the procurement authority will, within a reasonable period of time, provide to the chair a written response(s) which describe(s) progress being made in addressing the panel's recommendation(s). The Deputy Head will provide a copy of the response(s) to his or her Minister.

Distribution of response

79. (1) The chair will forward a copy of the Deputy Head's response(s) to the complainant.
- (2) On forwarding the copy of the Deputy Head's response(s) to the complainant pursuant to subsection (1), the chair will forward a copy of all material relating to the complaint to the Deputy Minister.

