

EXECUTIVE ORDER ESTABLISHING STANDARDS, POLICIES AND PROCEDURES TO BE FOLLOWED BY THE NUNATSIAVUT GOVERNMENT AND ITS AGENCIES AND THE INUIT COMMUNITY GOVERNMENTS IN THE PROCUREMENT OF GOODS AND SERVICES (TRANSITIONAL)

EXECUTIVE ORDER MADE UNDER AUTHORITY OF THE FINANCIAL ADMINISTRATION ACT

Executive Order Establishing Standards, Policies, and Procedures to be Followed by the Nunatsiavut Government and its Agencies and the Inuit Community Governments in the Procurement of Goods and Services (Transitional)

The President of Nunatsiavut, acting with the advice of the Nunatsiavut Executive Council, is pleased to **ORDER** that:

Short Title

1

This Executive Order is the *Nunatsiavut Procurement Order (Transitional)*.

Authority

2

This Order is made under sections 65 and 66 of the *Financial Administration Act*.

Interpretation

3

(1) Unless the context otherwise requires, terms used in this Order have the same meaning as in the *Financial Management Act*.

(2) In this Order:

“agency” means a Government corporation, a trust established by a Government, a trust for which all of the trustees are appointed by a Government and a department or division of a Government;

“commercial goods or services” means goods or services of a type that are offered for sale to, and routinely purchased by, non-Government buyers for non-Government purposes;

“decision-maker” means a minister, a deputy minister or other official authorised pursuant to the *Financial Administration Act* to approve proposals to spend public money and includes:

- (a) a person referred to in subsection 69(4) of the *Financial Administration Act* who authorizes a requisition for payment
- (b) an Inuit Community Council,
- (c) the Executive Committee of an Inuit Community Corporation, and
- (d) an officer of an Inuit Community Government or an Inuit Community corporation who is authorized to procure goods or services on behalf of the Council or the Corporation;

“goods” means every type of right, interest or thing which is legally capable of being owned and includes public works, physical goods, leases and real property as well as intangibles such as intellectual goods, contract options and goodwill;

“Government” means the Nunatsiavut Government, Inuit Community Governments and Inuit Community Corporations;

“includes” and “including” are not restrictive or limiting;

“Inuit Business” means:

- (a) a sole proprietorship owned by an Inuk; or
- (b) an entity that is:
 - (i) a corporation with more than 50 percent of the corporations voting shares beneficially owned by Inuit;
 - (ii) a co-operative controlled by Inuit;
 - (iii) a partnership that is more than 50 percent controlled by Inuit or by an entity described in subclause (i) or (ii);
 - (iv) a not-for-profit organization controlled by Inuit; or
 - (v) a joint venture or consortium in which Inuit have, or an entity described in subclause (i), (ii), (iii) or (iv) has, more than 50 percent ownership and control;

“Inuit content” is comprised of one or more of the following:

- (a) Inuit ownership and working interest or other participation in the tendering entity;
- (b) physical location of the head office and operating offices of the tendering entity in an Inuit Community or in Labrador;
- (c) training for Inuit by the tendering entity or in relation to the procurement;
- (d) percentage of all employees of the tendering entity who are Inuit;
- (e) proportion of wages paid by the tendering entity that accrue to Inuit;
- (f) value of goods and services purchased from Inuit Businesses in relation to the procurement; and
- (g) commitment by the tendering entity to utilize other Inuit Businesses as sub-contractors;

“Inuit content factor” in relation to a bid is the factor determined by a calculation under section 17;

“official” means an individual who is in or is a part of an agency;

“open tender” is the process that involves publishing an open invitation for tender and accepting for evaluation all submissions received before the deadline for submissions from any potential suppliers who satisfy the conditions for participation;

“public money” means any money received by a Government or an agency or held or administered by a Government or agency, whether in the Nunatsiavut Fund, in trust or otherwise;

"public work" means the construction, extension, enlargement, repair, maintenance or improvement at the expense of an agency of a building, structure, road or other work in, under or over real property and includes the acquisition by an agency by purchase, lease or otherwise of a public work specifically constructed for the purpose of that acquisition;

"qualified bid" means a bid that meets the specifications established by an agency for purposes of a procurement of goods or services and that provides value for money;

“qualified bidder” means a person who makes a qualified bid and is fully capable of undertaking the contract;

“select tender” is the process that involves issuing an invitation to tender to those potential suppliers selected following a request for proposals referred to in subsection 12(1);

"services" does not include legal, engineering, architectural, accounting, land surveying, banking or insurance services, voice telephone services, or other services that require the giving of an opinion, creativity, the preparation of a design, or technical expertise;

“significant Inuit content” means an Inuit content factor of at least 25;

- (3) Obligations in this Order which must be complied with, in all circumstances, are denoted by the use of the term “must”. The use of the term “should” denotes matters of sound practice.
- (4) All dollar figures in this Order are exclusive of harmonized sales taxes.

Purpose

4

This Order establishes the core procurement rules and procedures that are to be followed by all Governments and agencies and their respective decision-makers and officials when performing duties in relation to procurement.

Scope

5

- (1) This Order applies to:
 - (a) all decision-makers and officials;
 - (b) all procurement and procurement activities conducted by decision-makers and officials; and
 - (c) unless specifically exempted, all Governments and agencies.
- (2) For greater certainty, this Order applies to Labrador Inuit Development Corporation and the directors, officers, and employees of Labrador Inuit Development Corporation engaged in procurement on behalf of Labrador Inuit Development Corporation.

- (3) *Procurement* encompasses the whole process of acquiring goods or services. It begins when agency has identified a need and decided on its procurement requirement. Procurement continues through the processes of preparing estimates, risk assessment, seeking and evaluating alternative solutions, contract award, delivery of and payment for the goods or services and, where relevant, the ongoing management of a contract and consideration of options related to the contract. Procurement also extends to the ultimate disposal of goods at the end of their useful life.
- (4) In addition to the acquisition of goods or services by an agency for its own use, procurement also covers a situation where an agency is responsible for the procurement of goods or services for other agencies, or for third parties.
- (5) An integral part of the procurement cycle is the ongoing monitoring and assessment of the procurement, including the goods or services procured and the tasks related to procurement.
- (6) While procurement relates to the acquisition of goods or services, including professional, consultancy and communications services, it does not include:
 - (a) grants (whether in the form of a contract or conditional gift);
 - (b) appointments made by the Nunatsiavut Assembly or appointments by the Nunatsiavut Government under Inuit Law or the *Appointments Act*, or
 - (c) the engagement of employees under the *Civil Service Act* or by an Inuit Community Government or Inuit Community Corporation.
- (7) This Order applies to all matters related to the procurement of goods or services by governments and agencies, irrespective of whether those matters are specifically mentioned in the Order.

Duty of Decision-Makers

6

- (1) Proposals to spend public money for the procurement of goods or services must be approved by a decision-maker.
- (2) A decision-maker must be satisfied, after making reasonable inquiries, that the spending proposal is in accordance with an approved budget and Government policy and that it is an efficient and effective use of public money.

Open Tenders Required

7

- (1) Where goods or services are to be procured by an agency the agency must invite open tenders for the procurement.
- (2) Despite subsection (1), an agency is not required to invite open tenders
 - (a) where the services can be more expeditiously or economically executed by the employees of the agency or, with the prior approval of the Executive Council, the employees of another agency,

- (b) where the estimated cost of goods, other than a public work, or services is not more than \$15,000
- (c) where the estimated cost of a public work is not more than \$15,000;
- (d) in the case of an emergency, where the delay resulting from inviting open or select tenders would be injurious to the public interest;
- (e) where the dealer, supplier or contractor providing the goods or services is the only source of the goods or services, including circumstances where the requirement is for
 - (i) works of art or materials protected by patent, copyright, or other exclusive rights,
 - (ii) proprietary information or licensed software, or
 - (iii) is available from a single source due to an absence of competition for technical reasons;
- (f) where set rates have been established under the province's *Public Utilities Act*;
- (g) where a contract will be awarded to the winner of a design contest in which the winner is decided by an independent jury
- (h) where the procurement is of a lease that is being renewed or extended on the same or more favourable terms than those that applied under the original lease or on terms established under or pursuant to the original lease; or
- (i) where, in the opinion of the relevant decision-maker, inviting an open tender in respect of goods, other than a public work, and services would not achieve the best value and the Executive Council in the case of an agency of the Nunatsiavut government or the Community Council in the case of an Inuit Community Government has authorized the decision-maker to carry out a request for proposals, as prescribed by this Order, instead of an open tender.

Valuing Procurement

8

- (1) Procurements need to be valued to determine whether they are exempt from open tender under section 7.
- (2) The estimated value of the goods or services being procured must include:
 - (a) all forms of remuneration, including any premiums, fees, commissions, interest and other revenue streams that may be provided for in the proposed contract;
 - (b) the total maximum value of the goods or services being procured, including the value of any options in the proposed contract; and
 - (c) any taxes or charges (including HST).

- (3) For procurement by lease or rental, or a procurement that does not specify a total price, the basis for estimating the value of the goods or services being procured is:
 - (a) for a fixed-term contract where the term is 12 months or less, the total estimated contract value for the contract's duration;
 - (b) for a fixed-term contract where the term exceeds 12 months, the total estimated contract value, including the estimated residual value which will be payable at the end of the contract; or
 - (c) for a contract for an indefinite period or where there is doubt as to whether the contract is to be a fixed-term contract, the estimated monthly instalment multiplied by 48.
- (4) Where procurement is to be conducted in multiple parts with contracts awarded either at the same time or over a period of time, with one or more suppliers, the estimated value of the goods or services being procured must include the estimated total maximum value of all of the contracts.
- (5) Where the total maximum value of a contract over its entire duration cannot be estimated, the procurement must be treated as requiring open tender.
- (6) A procurement must not be divided into separate parts for the purpose of avoiding an open tender threshold.

Procedures to be followed for Open Tenders

9

- (1) Where an open tender is required under section 7, the agency must call for tenders by publishing a call for tenders in at least one newspaper in general circulation in Labrador and in the other printed or electronic media that the agency considers appropriate to ensure adequate notice.
- (2) A call for tenders shall include the following:
 - (a) a brief description of the public work to be constructed, the goods or services to be procured or the space to be leased and the location of the construction, procurement or space;
 - (b) the place where a person may obtain information and documents necessary to tender;
 - (c) the conditions for obtaining the documents to tender;
 - (d) any conditions for participation, including any financial guarantees, information, and documents that potential suppliers are required to submit;
 - (e) all evaluation criteria to be considered in assessing submissions, including those referred to in paragraph (j), and any other terms or conditions relevant to the evaluation of submissions.
 - (f) the place where the tenders are to be sent;

- (g) the date and time limit for submitting tenders;
 - (h) the time and place of the opening of the tenders
 - (i) notice that the lowest or any tender may not be accepted; and
 - (j) notice the tender will be evaluated on the principles of value for money which includes an evaluation of Inuit content factors.
- (3) Tenders must be in writing.
 - (4) Agencies must ensure that potential suppliers are dealt with fairly and in a non-discriminatory manner when providing information leading to, or following, a call for tenders.
 - (5) Agencies must promptly reply to any reasonable request for relevant information by a potential supplier participating in procurement and must take particular care when responding to enquiries from potential suppliers to avoid practices that would lead to a potential supplier, or group of potential suppliers, gaining an unfair advantage in a competitive procurement process.
 - (6) An agency must provide sufficient time for potential suppliers to prepare and lodge a tender in response to a call for tender.
 - (7) The time limit for potential suppliers to lodge a bid must be at least 25 days from the date that an agency publishes a call for tenders except under the following circumstances where an agency may establish a time limit that is less than 25 days but no less than 10 days:
 - (a) where the agency has published details of the procurement in an annual procurement plan at least 30 days and not more than 12 months in advance, and these details include a description of the procurement, the estimated timing of the approach to the market, and the procedure to obtain request documentation;
 - (b) where the agency procures commercial goods or services;
 - (c) in the case of second or subsequent approaches to the market for procurement of a recurring nature; or
 - (d) where an emergency renders the normal time limit impracticable.
 - (8) All potential suppliers participating in procurement must be required to submit tenders by a common deadline.
 - (9) Where an agency extends the time limit for submission of tenders, or where negotiations are terminated and potential suppliers are permitted to submit new tenders, the new time limit must apply equitably to all participating potential suppliers.
 - (10) Procedures to receive and open all tenders must guarantee fairness and impartiality.
 - (11) An agency that invites open tenders must open the tenders in a place where the public is permitted to watch and at the time indicated in the call for open tenders. All tenders must be opened at the same time.

- (12) A tender may not be opened unless there are at least 2 witnesses present who are acceptable to the agency opening the tender.
- (13) An agency must not penalise any potential supplier whose tender is received after the specified deadline if the delay is due solely to mishandling by the agency.
- (14) Where an agency provides potential suppliers with opportunities to correct unintentional errors of form between the opening of tenders and any decision, the agency must provide the same opportunity to all participating potential suppliers.
- (15) An agency must only give further consideration to a tender where, at the time of opening, the tender includes the minimum content and format of tenders as stated in all notices and documentation issued by or on behalf of the agency during the course of the procurement. That is, the submission must be in a form meeting the required format and must include all required information, statements, certifications and declarations.
- (16) Where an agency intends to lease space, it shall provide the following to persons interested in tendering:
 - (a) a statement of all requirements respecting the space;
 - (b) specification standards for the space;
 - (c) an offer form;
 - (d) a proposed lease; and
 - (e) other information that the agency considers necessary to ensure bidders have as much information as possible that is relevant to the lease proposal.

Procedure to be followed where there is no acceptable tender

10

- (1) Where, in response to an invitation to tender under section 9 or a request for proposals under section 12:
 - (a) no tenders or proposals are received;
 - (b) no tenders or proposals were received that conform to the minimum content and format of a bid or request for proposals as stated in the approach to the market; or
 - (c) no potential supplier satisfies the conditions for award or negotiation of a contract to supply the goods or services;

and the agency does not substantially modify the essential requirements of the procurement; the procurement may be made through direct sourcing under section 13.

- (2) If as a consequence of one of the circumstances referred to in subsection (1) the agency substantially modifies its procurement requirements, it must make a new approach to the market under either section 9 or section 12.

Procedure where no public tender is invited

11

- (1) Where a public tender is not invited under paragraph 7(2)(a), (b), (c) or (d) the decision-maker may procure the goods or services by direct sourcing under section 13 but the decision-maker must, before entering a contract and having regard to subsection (3):
 - (a) obtain quotations from at least 3 legitimate dealers, suppliers, contractors, service providers or lessors by direct quotation; or
 - (b) establish for the circumstance a fair and reasonable price for the goods or services through direct quotation substantiated by reference to trade catalogues, price lists or in a manner that the decision-maker considers advisable.
- (2) Where a public tender is not invited under paragraph 7(2)(e), (f), (g) or (h) the decision-maker may procure the required goods or services through direct sourcing under section 13.
- (3) In proceeding under subsection (1) or subsection (2) the decision-maker must, as appropriate, obtain quotations from, refer to price lists maintained by or consider every Inuit Business enrolled on the Inuit Business Registry that is in the business of supplying the goods or services that the agency intends to procure.

Procedure to be followed when using a request for proposals

12

- (1) A request for proposals under paragraph 7(2)(i) may include requests for information or for proposals to be considered in selecting potential suppliers to be invited to submit tenders. Where, following a request for proposals under this subsection potential suppliers are invited to submit tenders, the procedure for submission of tenders set out in section 9, excluding subsection 9(1), must be followed.
- (2) Where a request for proposals other than a request for select tenders described in subsection (1) is issued under paragraph 7(2)(i), section 9 applies to the request for proposals with all necessary changes in points of detail and:
 - (a) the request for proposals must clearly describe the goods or services that are required, or the problem to be addressed by the proponent;
 - (b) the request for proposals must state the criteria, in addition to price, to be used in evaluating proposals and the methods to be used in weighing and

evaluating the criteria, and no criterion shall be used that is not expressed in the request for proposals;

- (c) the agency must evaluate the extent to which each proposal meets the technical and performance specifications of the procurement;
 - (d) the agency may, in the course of evaluating proposals that it has received, request and consider additional information from a proponent;
 - (e) the agency may negotiate a detailed contract with the proponent whose proposal ranks highest following the evaluation process, but the resultant contract must contain substantially the terms of the proposal and, where contract terms cannot be agreed upon, the agency may reject that proposal and negotiate with successive proponents in order of evaluation ranking.
- (3) In proceeding under subsection (1) or subsection (2) an agency must request proposals from every Inuit Business enrolled on the Inuit Business Registry that is in the business of supplying the goods or services that the agency intends to procure.
 - (4) Where no proposals or no proposals that are acceptable to the agency are received following a request for proposals, the responsible decision-maker may directly source the goods or services from a source or sources identified as having the capability to supply the goods or services that the agency wishes to procure.
 - (5) Where an agency proceeds with a negotiation under subsection (2) or (4), section 13 applies.
 - (6) Where an agency procures goods or services under this section the decision-maker shall, within 10 days of the procurement, provide the Treasurer with a synopsis of the relevant contract and any further information the Treasurer may request and where the value of the procurement exceeds \$15,000 the Treasurer must table the synopsis in the Assembly as soon as practicable.

Direct sourcing

13

- (1) Direct sourcing refers to a procurement process, permitted only under the conditions set out in subsection 10(1), subsection 11(2), subsection 12(2) and subsection 12(4), in which an agency may invite a potential supplier of its choice to make submissions with a view to the negotiation of a contract for goods or services.
- (2) Direct sourcing must not be used for the purposes of avoiding competition, or to discriminate against any business, and in all circumstances the general procurement policy framework still applies including, in particular, the requirement to achieve value for money.
- (3) For each contract awarded through direct sourcing, agencies must obtain prior written authorization to enter the contract from the Executive Council or the Inuit Community

council, as appropriate, and prepare and file with the Treasurer, a written report that includes:

- (a) the value and kind of goods or services procured; and
- (b) a statement indicating the circumstances and conditions that justify the use of a procedure other than an open or select tender process.

Criteria for evaluation of contracts

14

- (1) Value for money is the core principle underpinning all agency procurement.
- (2) In every procurement process this principle requires a comparative analysis of all relevant risks, costs, and benefits of each proposal throughout the whole procurement cycle.
- (3) Value for money includes Inuit preferences as established in this Order.
- (4) Value for money is enhanced in agency procurement by:
 - (a) using competitive procurement processes;
 - (b) promoting the use of resources in an efficient, effective and ethical manner; and
 - (c) making decisions in an accountable and transparent manner.
- (5) In order to be in the best position to determine value for money when conducting a procurement process, documentation in respect of a contract or supply must specify:
 - (a) logical, clearly articulated, comprehensive and relevant conditions for participation; and
 - (b) evaluation criteria which will enable the proper identification, assessment and comparison of the costs and benefits of all bids or proposals on a fair and common basis over the whole procurement cycle.
- (6) Cost is not the only determining factor in assessing value for money. In addition to considering the factors referred to in section 15 and 16, when assessing procurement options, a whole-of-life assessment should include consideration of factors such as:
 - (a) the maturity of the market in Nunatsiavut and Labrador for the goods or service sought;
 - (b) the performance history of each prospective supplier including:
 - (i) previous experience and quality of work,
 - (ii) safety performance,
 - (iii) continuity of supply,
 - (iv) timely performance; and
 - (v) performance within budget;
 - (c) service, including the ability of each prospective supplier to supply and deliver the goods and services and follow-up service when required;

- (d) personnel available to each prospective supplier and their qualifications, experience, and history in relation to the supplier or the goods or services being procured;
- (e) where a bid or proposal does not contain significant Inuit content, commitments to Inuit participation, including commitments with respect to the training and employment of Inuit and the participation of Inuit Businesses in the bid or proposal;
- (f) the relative risk of each bid or proposal;
- (g) the flexibility to adapt to possible change over the lifecycle of the goods or service;
- (h) financial considerations including financial capacity and all relevant direct and indirect benefits and costs over the whole procurement cycle;
- (i) the anticipated price that could be obtained, or cost that may be incurred, at the point of disposal; and
- (j) the evaluation of contract options (for example, contract extension options).

Awarding of contracts

15

An agency must award a contract to the bidder or proponent that the agency has determined:

- (a) satisfies the conditions for participation;
- (b) is fully capable of undertaking the contract;
- (c) whose submission is determined to provide value for money, in accordance with the essential requirements and evaluation criteria specified in the invitation for tenders or for proposals and related documentation; and
- (d) who is the preferred bidder.

Establishing the preferred bidder

16

- (1) Inuit Businesses suffer numerous competitive disadvantages in the market place and Nunatsiavut suffers from underdevelopment and a general lack of business capacity. The Nunatsiavut Government has a policy of encouraging and promoting the development of business capacity by Inuit and in Nunatsiavut and has established the preferences set out in subsection (2) with a view to providing Inuit Businesses an equal opportunity to participate in agency procurement.
- (2) The preferred bidder for purposes of procurement is a qualified bidder whose bid or proposal:
 - (a) is within 5 percent of the price of the lowest qualified bid or proposal; and
 - (b) has significant Inuit content; and

- (b) has the highest Inuit content factor of all qualified bids or proposals received.
- (3) Where in procurement, there is not a bid or proposal that meets the requirements to be the preferred bidder set out in paragraphs (2)(a), (b) and (c), the qualified bidder who offers the best value for money is the preferred bidder.

Determination of Inuit content factor

17

- (1) The Inuit content factor for purposes of evaluating tender bids and the awarding of contracts is a number that is the aggregate of the numbers established by the following calculations:
- (a) a maximum of 20 points related to the percentage of Inuit ownership of the business calculated as 0.5 points per 1% of Inuit participation in excess of 50% of the ownership and control of the business with 0 points being awarded to a business that is not at least 51% owned and controlled by Inuit;
 - (b) a maximum of 10 points related to the physical location of the head office and operating offices of the Inuit Business where 10 points is awarded to a company having both its head office and principal operating office in an Inuit Community and 6 points is awarded to a company having an operating or a head office in an Inuit Community and 4 points is awarded for a head office or operating office elsewhere in Labrador;
 - (c) a maximum of 10 points related to training for Inuit calculated as 0.1 point per 1% of training money spent by the business on the training of Inuit;
 - (d) a maximum of 20 points related to the percentage of employees who are Inuit calculated as 0.2 points per 1% of employees who are Inuit;
 - (e) a maximum of 10 points related to the proportion of wages paid to Inuit calculated as 0.1 point per 1% of payroll paid to Inuit;
 - (f) a maximum of 10 points related to the percentage of goods and services purchased from other Inuit Businesses in relation to the procurement calculated as 0.1 point per 1% of the value of all purchases obtained from other Inuit Businesses; and
 - (g) a maximum of 10 points related to the commitment by the Business to utilize other Inuit Businesses as sub-contractors calculated as 0.1 point per 1% of the value of all sub-contracts awarded to Inuit Businesses.
- (2) A bidder or proponent is responsible for making all calculations necessary to establish the Inuit content factor of a bid or proposal and must supply to the agency the data on which the calculations are based in order to facilitate verification.
- (3) The Inuit content factor and the points awarded for Inuit content in each category under subsection (1) is public information but the data on which the factor and the points are calculated is confidential and must be kept confidential by the agency.

Other measures to promote equal opportunity for Inuit Businesses

18

- (1) The majority of Inuit Businesses are small and medium sized businesses. In order to further encourage and promote the participation of Inuit Businesses in agency procurement, the requirements and guidelines established in this section must be considered in all agency procurement.
- (2) To ensure that small and medium sized businesses are able to engage in fair competition for agency business, officials undertaking procurement should ensure that procurement methods do not unfairly discriminate against small and medium sized businesses.
- (3) Agencies should seek to ensure that procurement processes are readily communicated and accessible to small and medium sized businesses and should not take action to deliberately exclude small and medium sized businesses from participating in a procurement process.
- (4) Without limiting the generality of subsection (3), an agency must communicate each of its procurement requirements to each Inuit Business enrolled on the Registry of Inuit Businesses that is in the business of supplying the goods and services that the agency intends to procure.
- (5) Decision-makers should take all reasonable steps to meet procurement requirements through small contracts by breaking multi-component contracts into separate, smaller, contracts.

Prohibition against avoidance of procurement thresholds

- 19 Despite subsection 18(4), procurement must not be divided into separate parts for the purpose of avoiding a procurement threshold under section 7 or section 22.

Considerations related to competitive procurement processes

20

- (1) The procurement process itself is an important consideration in achieving value for money. Participation in a procurement process imposes costs on agencies and potential suppliers. These costs should be considered by decision-makers when determining a procurement process.
- (2) A procurement process should be commensurate with the scale, scope and relative risk of the proposed procurement.

Procurement under standing offers

21

- (1) The Treasurer may enter into contracts of standing offer for the provision of specified commercial goods or services.
- (2) A contract of standing offer must contain minimum requirements, including a set price or rate, as appropriate for the goods or services to be procured, during the term of the standing offer.

- (3) Despite and other section of this Order, a contract of standing offer may be established only by open tender or select tender.
- (4) The Treasurer may enter into more than one contract of standing offer in respect of the same specified goods or service if the contracts are for the same set price and for the same term and are entered into following a single procurement process. One or more suppliers of goods or a service under a standing offer is referred to in this section as a “panel”.
- (5) Where the Treasurer has entered into a standing offer, Governments, agencies, decision-makers and officials must procure the specified commercial goods or services from the panel and must not enter into separate procurement processes in respect of the specified commercial goods and services.
- (6) Specified commercial goods or services may be procured from a panel by a decision-maker within the Nunatsiavut Government by way of requisition and purchase order.
- (7) In this section, “specified commercial goods or services” means:
 - (a) travel agency services;
 - (b) air transportation;
 - (c) office stationery; and
 - (d) any other commercial goods or services specified in an order of the Treasurer issued on the advice of the Executive Council.

Change orders in relation to contracts

22

- (1) Subject to subsection (2), a decision-maker may authorize change orders within the requirements of a contract awarded on public or invited tender or authorize extensions of the contract as long as a change order, extension or the cumulative value of all change orders and extensions does not exceed:
 - (a) 15% in the case of a contract up to an original value of \$100,000.00;
 - (b) 10% or \$20,000.00, whichever is greater, in the case of a contract having an original value greater than \$100,000 but less than \$500,000.00; and
 - (c) 5% or 50,000.00, whichever is the greater in the case of a contract having an original value equal to or greater than \$500,000.00.
- (2) A decision-maker may authorize a change order under subsection (1), with the prior written approval:
 - (a) in the case of the Nunatsiavut Government, of the Controller and the Treasurer and all such approvals shall be reported by the Treasurer to the Executive Council;

- (b) in the case of an Inuit Community Government, the Inuit Community Council;
 - (c) in the case of an Inuit Community Corporation, the Executive Committee; and
 - (e) in the case of an agency corporation or a trust, the board of Directors or the Trustees, as the case may be.
- (3) Any change that is not provided for in subsection (1) shall be separately procured in accordance with this Order unless the Executive Council orders otherwise.
 - (4) Any Order under subsection (3) shall be tabled in the Assembly by the Treasurer as soon as practicable.

Notification of Decisions

23

- (1) Where a potential supplier makes a bid or a proposal in response to an invitation to tender or a request for proposals, the agency must promptly advise the potential supplier of its final decision regarding the bid or proposal.
- (2) On request, an agency must provide an unsuccessful potential supplier with the reasons that its bid or proposal was not successful.
- (3) Where an agency rejects an expression of interest, the agency must promptly inform the potential supplier and, on request, promptly provide the potential supplier with a written explanation of the reasons for its decision.

Ethics in Procurement

24

- (1) Ethics are the moral boundaries or values within which officials work. Ethical behaviour encompasses the concepts of honesty, integrity, diligence, fairness, trust, respect and consistency. Ethical behaviour identifies and avoids conflicts of interests, and does not make improper use of an individual's position.
- (2) A procurement conducted in an ethical manner will enable purchasers and potential suppliers to deal with Governments and agencies and with each other on a basis of mutual trust and respect. Adopting an ethical, transparent approach enables business to be conducted fairly, reasonably and with integrity.
- (3) All officials involved in procurement must treat all participating potential suppliers as equitably as possible. The procurement process rules under this Order need to be open, well understood and applied equitably to all parties to the process.
- (4) Agencies must ensure that officials involved in procurement, particularly those dealing directly with suppliers and potential suppliers:
 - (a) recognise and deal with any conflicts of interests, including perceived conflicts of interests;
 - (b) deal with suppliers and potential suppliers even-handedly;
 - (c) consider seeking advice where issues related to fairness or honesty arise;

- (d) do not compromise a Government's standing and good reputation by accepting inappropriate gifts or hospitality; and
 - (e) are scrupulous in their use of public goods and public money.
- (5) Agencies must not seek to benefit from suppliers' mistakes or supplier practices that may be dishonest, unethical or unsafe.

Documentation in procurement

25

- (1) Documentation is critical to accountability and transparency. It provides a record of procurement activities and how they have been conducted, and facilitates scrutiny of these activities.
- (2) Agencies must maintain appropriate documentation for each procurement. The appropriate mix and level of documentation depends on the nature and risk profile of the procurement being undertaken. In all cases, officials need to ensure there is sufficient documentation to provide an understanding of:
- (a) the reasons for the procurement,
 - (b) the process that was followed,
 - (c) all relevant decisions, including approvals and authorisations, and
 - (d) the basis of those decisions.
- (3) Documentation relating to procurement must be retained for a period of at least three years or for a longer period if required.

Reporting in relation to Procurement

26

- (1) Agencies are required to comply with the reporting obligations set out in this section to provide broad visibility of their procurements using public money, including to the Assembly and to the public.
- (2) Agencies must, at the end of each fiscal year, publicly announce by press release all contracts with a consideration of \$15,000.00 or more which have not been fully performed or which have been entered into during the previous 12 months, and place a copy of the press release on the Internet with access through the Nunatsiavut home page.
- (3) The senior decision-maker in respect of a procurement must advise the responsible minister of any sensitivity in relation to disclosure before publishing information on contracts entered into by their agency. If there is any doubt or question as to the minister responsible for an agency which is not a department or division of The Nunatsiavut Government the decision-maker must advise the Treasurer.
- (4) Agencies must publish details of all procurement contracts including standing offers with an estimated contract value of \$15,000 or more, within six weeks of entering into the contract. In the event that an agency becomes aware of a failure to publish within the prescribed six weeks, it must remedy that failure immediately by publishing details of the arrangement.

- (5) Information that may be made public under this section is the name and address of the supplier, whether the supplier is an Inuit Business, the total contract value or estimated total contract value, the term of the contract and the goods and services to be supplied under the contract.
- (6) Every agency must, within 45 days of the end of each fiscal year, provide a written report to the Treasurer of all procurement contracts entered into by the agency during the preceding fiscal year containing the information referred to in subsection (5) and such other information as the Treasurer may, by Order require. The Treasurer must table the reports received under this subsection in the Assembly as soon as practicable.
- (7) Where confidential information is required to be disclosed (for example following a request from a committee of the Nunatsiavut Assembly) reasonable notice in writing must be given to the party from whom the information originated.

Complaints

27

- (1) Procurement processes need to be based on clearly articulated and defensible evaluation criteria consistent with the procurement policy framework. Agencies' actions in undertaking procurement processes must be straightforward and defensible.
- (2) A person making a complaint about the procurement process or a procurement decision must be referred to the agency responsible for the process or decision.
- (3) Every agency engaged in a procurement must designate an official to act as spokesperson to respond to complaints about the procurement process.
- (4) In the event that a complaint is received, agencies should use reasonable efforts to manage the complaint internally, through communication and conciliation with the bidder or supplier.
- (5) Agencies must have fair, equitable and non-discriminatory complaint handling procedures that meet the following criteria:
 - (a) the process needs to be systematic and well understood by the parties involved;
 - (b) senior management and officials independent of the process should be involved as appropriate;
 - (c) complaints should be dealt with in writing;
 - (d) each party must have sufficient time to appropriately respond to developments (no less than 10 days, unless urgent); and
 - (e) agencies must ensure that the initiation of a complaint process does not prejudice a supplier's or a potential supplier's participation in future procurement processes.

Effective date and duration of Order

28

This Order comes into effect on Dec. 1, 2006, and expires on Dec. 31, 2011, unless before its expiration is repealed, replaced or renewed by the Nunatsiavut Assembly.