

Procurement Review Independent Panel
Leslie Anderson
Peter Vician
Darrell Beaulieu

Re: GNWT Procurement Review

March 31, 2021

Dear Procurement Review Independent Panel,

On behalf of our membership of 379 Yellowknife businesses, the Yellowknife Chamber of Commerce Procurement Working Group is pleased to share the following feedback in response to the Discussion Paper for the Review of Public Procurement Policies for the Government of the Northwest Territories.

For the purpose of providing preferential procurement, how would you define what constitutes a 'NWT business'? Should BIP Schedule 3 (non-resident grandfathered companies) be eliminated?

We recommend a new definition for NWT businesses similar to the approach used by Yukonⁱ, where businesses are considered local if they meet most but not all of the listed criteria.

The list of criteria should recognize the different ways NWT businesses are meaningfully contributing to the NWT economy and could include factors like: owning or leasing an office with a physical address, paying payroll tax, income tax and WSCC rates, maintaining permanent employees, duration of being an established business within the NWT, majority ownership residing within the NWT, and Indigenous collaboration.

We also recommend that the new policy not recognize any grandfathered businesses. However, the new definition of an NWT business should recognize that businesses that do not have ownership in the NWT still make meaningful contributions to the economy and should be eligible for BIP adjustments. An analysis should be conducted to ensure that grandfathered businesses that continue to meaningfully contribute to the NWT economy remain eligible for preferential bid treatment.

Do you agree that the current preferential bid adjustment of 15% for NWT businesses and an additional 5% for local community businesses in appropriate? Should BIP adjustments be applied to the full value of contracts?

We support the current preferential bid adjustment of 15% for NWT businesses and an additional 5% for local community businesses; no changes are required.

We recommend that BIP adjustments be applied to the full value of contracts.

What are your perspectives on the proposed establishment of an Indigenous procurement policy? How should an Indigenous Procurement Policy benefit NWT Indigenous businesses?

We are supportive of an Indigenous Procurement Policy and recommend that the GNWT develop such a policy in consultation with Northern and Indigenous businesses.

An important consideration when developing the Indigenous Procurement Policy, will be how an Indigenous business is defined. The Federal Procurement Strategy for Aboriginal Business (PSAB) outlines the following criteria that must be met:

- At least 51% of the firm must be owned and controlled by Indigenous people
- If the firm has 6 or more full-time staff, at least one third of the employees must be Indigenous
- If the firm is starting a joint venture, at least 51% of the joint venture must be owned and controlled by Indigenous businesses. In addition, the firm must demonstrate, for the duration of the contract, a level of Indigenous content amounting to 33% of the value of the work being performedⁱⁱ.

There are currently 111 NWT businesses registered under the PSAB policyⁱⁱⁱ. We recommend that the NWT definition of an Indigenous business align with this criteria to provide consistency and reduce the administrative burden on businesses.

How can the transparency of GNWT procurement and contracting data be improved?

We recommend that the GNWT develop a vendor performance review system similar to the Yukon^{iv}, where suppliers are reviewed based on performance indicators, including performance in meeting commitments under the policy. The likelihood of winning future contracts is increased for companies that perform well and hire Indigenous workers and businesses.

In addition, we support the NWT & NU Construction Association's (NNCA) recommendation for the improved monitoring and enforcement of provisions within BIP, including clarification of penalties for non-compliance.

We also recommend an appeal mechanism that would provide a business that disputes the GNWT's application of the new procurement policy with an opportunity to have the decision reviewed by an independent third-party.

What other ways could the GNWT strengthen the relationship between GNWT procurement and contracting personnel and NWT and Indigenous businesses?

With the goal of improving communication and providing businesses with greater certainty as they move through the procurement process, we recommend that the GNWT take the following actions, several of which have been put forward by the NNCA:

- Provide more notice of upcoming construction projects and publish a list of these upcoming projects on a regular basis to assist with business planning;
- Disclose projects initiated through the Negotiated Contracts Policy before they begin construction so that interested subcontractors can offer their goods and services;
- Make important project milestones and deadlines more prominent on the GNWT website – especially deadlines that expire before the bid closing date such as bid intention deadlines, question submission deadlines and mandatory site visits;
- Standardize the procurement process as much as possible and ensure all GNWT agency bidding opportunities are available in one location;
- Add consistency to the use of Technical Design Narratives in the GNWT tender documents. These specify what materials are to be used to construct a given design element, but in some instances GNWT provided designs contain elements that are not defined in corresponding Technical Design

Narrative, meaning bidders are providing estimates based on inconsistent specifications;

- Avoid overly-narrow contract language that requires builders to use specific models or brands of products – this can create de facto sole source requirements when these products are distributed exclusively by non-local vendors. Contracts should instead specific technical criteria for project materials and give companies the flexibility to source products that meet this criteria. When contracts do make reference to specific products, priority should be given to those manufactured or supplied by northern companies;
- Develop service standards for BIP, including application review and site visit timelines, to ensure the efficient approval of BIP applications; and,
- Review the BIP registry goods and services categories to ensure they accurately capture the products and services offered by NWT businesses. An option should be included for businesses to add a category if their product or service is not listed.

Additional Recommendations:

Prompt Payment

We've heard from our membership that the timely payment of submitted invoices continues to be a problem. We recommend that the GNWT set timelines for payments to be processed and publish actual performance measurements against these timelines.

Sole Source Contracts

Our membership is concerned with the accountability and transparency of issuing sole source contracts.

To address this, we recommend that departments be required to obtain two quotes, as a minimum, for all sole-source contracts and be required to provide justification for using a non-competitive process, similar to the controls used by the federal government^v. Rationales should be reviewed and monitored by Procurement Shared Services and published in an annual sole source contracts report.

Creating More Opportunities For Small Businesses To Participate in GNWT Procurement

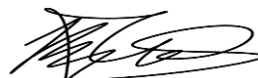
We recommend that the GNWT explore cost effective, reasonable opportunities to divide large projects into smaller projects to increase the participation of smaller companies.

We look forward to discussing these recommendations with you during our meeting scheduled for Wednesday, April 7th from 3:00pm to 5:00pm.

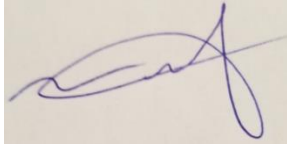
Sincerely,




Tim Syer
President, YK Chamber
Associate Lawyer, Lawson Lundell LLP



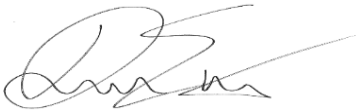
Kyle Thomas
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Community General Manager, CIBC



Roman Lacey
2nd Vice President, YK Chamber
Operations & Safety Manager, Bouwa Whee Catering



Deneen Everett
Executive Director, Yellowknife Chamber of Commerce

ⁱ Government of Yukon. (2021). Procurement Policy. Retrieved from:
<https://yukon.ca/sites/yukon.ca/files/hpw/hpw-2020-gam-2.6-yukon-first-nations-procurement-policy-2020-12-11.pdf>

ⁱⁱ Government of Canada. (n.d). Procurement Strategy For Aboriginal Business. Retrieved from:
<https://www.sac-isc.gc.ca/eng/1354798736570/1610985991318>

ⁱⁱⁱ Government of Canada. (n.d). Search Results – Indigenous Business Directory. Retrieved from:
<https://www.sac-isc.gc.ca/REA-IBD/eng/results>

^{iv} Government of Yukon. (2021). Learn About The Yukon First Nations Procurement Policy. Retrieved from:
<https://yukon.ca/en/doing-business/government-contracts/yukon-first-nations-procurement-policy>

^v Government of Canada. (n.d). 3.15 Non-Competitive Contracting Process. Retrieved from:
<https://buyandsell.gc.ca/policy-and-guidelines/supply-manual/section/3/15#section-3.15.1>