

FINANCIAL ADMINISTRATION ACT
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GOVERNMENT CONTRACT REGULATIONS

The Commissioner, on the recommendation of the Board, under section 107 of the *Financial Administration Act* and every enabling power, makes the annexed *Government Contract Regulations*.

Interpretation

1. (1) In these regulations,

"architectural or engineering services" means architectural or engineering services required in the planning, design, preparation or supervision of the construction of a work or structure; (*services d'ingénierie ou d'architecture*)

"bid" means a written offer to provide goods, services, real property or construction submitted in response to a request for tenders; (*soumission*)

"bidder" means a person who submits a bid; (*soumissionnaire*)

"construction" means work to build, supply, repair, renovate, restore, maintain or demolish a structure and the hiring of labour, materials and equipment necessary for that work; (*construction*)

"contract" means a contract for the supply of goods, services, real property or construction, whether by way of sale, conditional sale, lease or otherwise; (*contrat*)

"contract authority" means

- (a) the Minister of the contracting department,
- (b) the Deputy Minister of the contracting department, or
- (c) a public officer who is authorized to enter into contracts under section 4; (*autorité contractante*)

"Director of Child and Family Services" means the Director of Child and Family Services appointed under the *Child and Family Services Act*, (*directeur des services à l'enfance et à la famille*)

"goods" includes

- (a) assets, equipment or materials whether in existence or not in existence at the time of the contract, and
- (b) intangible assets, such as intellectual property, leases and licenses; (*biens*)

"NNI Policy" means the "Nunavummi Nangminiqaqtunik Ikajuuti (NNI Policy)" approved by the Executive Council on April 20, 2006; (*Politique NNI*)

"person" includes an unincorporated association and a partnership; (*personne*)

"proponent" means a person who submits a proposal; (*promoteur*)

"proposal" means a written offer to provide goods, services, real property or construction submitted to a contract authority in response to a request for a proposal; (*proposition*)

"request for proposals" means the solicitation of a proposal by public advertisement or private invitation; (*demande de propositions*)

"request for tenders" means the solicitation of a bid in respect of a proposed contract by public advertisement or private invitation; (*appel d'offres*)

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"responsible" means, in relation to a bidder or proponent, the capability in all material respects to fully perform the contract requirements and the integrity and reliability to assure performance of the contract obligations; (*responsable*)

"responsive" means, in relation to a bid or proposal, compliance in all material respects to the request for tenders or the request for proposals; (*admissible*)

"sealed" means, in relation to a bid or proposal received by fax, being placed in a sealed envelope or locked cabinet or file in order to prevent public access; (*scellée*)

"security" means

- (a) cash,
- (b) a bank draft or certified cheque payable to the Government of Nunavut, or
- (c) any other security considered appropriate by the contract authority and approved by the Comptroller General; (*garantie*)

"transportation services" means the transportation, by any method, of a person or of property owned by the Government of Nunavut or by an employee of the Government of Nunavut. (*services de transport*)

(2) An insurance contract that forms an integral part of another contract shall be deemed to be a contract of the other type.

(3) For the purposes of a contract for the performance of legal services, "contract authority" means the Minister or the Deputy Minister of Justice, a public officer employed in the Department of Justice who is authorized to enter into contracts under section 4, or, in respect of legal services for the benefit of a child or youth in the care or custody of the Director of Child and Family Services, the Director of Child and Family Services.

(4) For the purposes of the following types of contracts, "contract authority" means the Minister or the Deputy Minister of the department responsible for government services or a public officer employed in that department who is authorized to enter into contracts under section 4:

- (a) a construction contract;
- (b) a contract for the purchase or lease of real property;
- (c) a contract, with a value exceeding \$5,000, for the supply of
 - (i) goods
 - (ii) communication services,
 - (iii) computer services, or
 - (iv) transportation services.

(5) Despite subsection (4), for the purposes of a construction contract in respect of a transportation facility, "contract authority" means the Minister or the Deputy Minister of the department responsible for transportation or a public officer employed in that department who is authorized to enter into contracts under section 4.

PART I

GENERAL

Application

2. These regulations apply to all contracts that are entered into by or on behalf of the Government of Nunavut, except

- (a) contracts of employment;
- (b) contribution agreements with third parties to fund or facilitate projects or programs for their own benefit, but not projects or programs to be delivered on behalf of the Government of Nunavut; and
- (c) contracts with a value of less than \$5,000.

Paramount Authority of the Executive Council

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3. (1) Despite any other provision of these regulations, the Executive Council may, on behalf of the Government of Nunavut, enter into or direct a contract authority to enter into a contract with any person.

(2) The Board may recommend that a contract be entered into under subsection (1) with a person other than a person who would otherwise be awarded a contract under these regulations if the Board believes it to be in the public interest.

(3) Parts II and III do not apply to contracts entered into under subsections (1) and (2).

(4) The power under subsection (1) to enter into a contract includes the power to renegotiate the terms of the contract or terminate it.

Entering into Contracts

4. A Minister or Deputy Minister may authorize a public officer to enter into contracts, subject to any terms and conditions the Minister or Deputy Minister considers necessary.

5. (1) No person other than a contract authority may enter into a contract on behalf of the Government of Nunavut.

(2) A contract purportedly entered into by a person other than a contract authority acting in accordance with these regulations is not binding on the Government of Nunavut.

6. Despite anything in Parts II or III, no insurance contract may be entered into without the approval of the Minister or Deputy Minister of Finance.

7. Subject to the Act and these regulations, a contract authority may, on behalf of the Government of Nunavut,

- (a) enter into a contract in accordance with any terms and conditions imposed by the Minister or Deputy Minister;
- (b) renegotiate the amount payable under, or any other term of, a contract in accordance with any terms and conditions imposed by the Minister or Deputy Minister; or
- (c) terminate the contract.

8. A contract authority may enter into a contract without issuing a request for tenders or request for proposals if the contract authority reasonably believes that any of the following conditions are met:

- (a) the goods, services, real property or construction at issue in the contract are urgently required and delay would be injurious to the public interest;
- (b) only one party is available and capable of performing the contract; or
- (c) the value of the contract will not exceed
 - (i) \$25,000, in the case of a contract for architectural or engineering services, or
 - (ii) \$5,000, in the case of any other type of contract.

9. Before entering into a proposed contract for architectural or engineering services, whether by way of request for tenders, request for proposals or otherwise, the contract authority shall take into account the following criteria:

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

PART II

REQUEST FOR TENDERS

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10. (1) Subject to sections 8 and 15, a contract authority shall, before entering into any contract, issue a request for tenders.

(2) Every request for tenders shall be issued so as to promote the submission of competitive bids.

11. Every request for tenders must specify

- (a) the terms, conditions and requirements of the contract;
- (b) any criteria, in addition to price, that will be considered by the contract authority in the evaluation of a bid;
- (c) the address to which the bid shall be submitted;
- (d) the deadline for the submission of the bid; and
- (e) the security, if any, required to be provided with the bid.

Goods and services

12. (1) This section applies to a request for tenders involving a contract for goods or services, except those described in section 13.

(2) The contract authority shall, as soon as practicable after the deadline referred to in paragraph 11(d), evaluate every bid that is not otherwise rejected under this section.

(3) Every bid received after the deadline referred to in paragraph 11(d) shall be rejected and the bidder shall be informed thereof.

(4) If a request for tenders requires that security be provided with the bid, every bid received without the requisite security shall be rejected and the bidder shall be informed thereof.

(5) Subject to subsection (6), every bid which does not comply with the mandatory elements of the request for tenders shall be rejected and the bidder shall be informed thereof.

(6) A bid which appears to be substantially compliant in all material respects to the request for tenders may be evaluated if

- (a) a waiver of non-compliance is provided for in the request for tenders; and
- (b) the contract authority is satisfied that waiving the non-compliance is in the public interest and would not be unfair to the other bidders.

(7) The contract authority may award the contract in accordance with section 14.

(8) If a contract is awarded, the contract authority shall make the following information available to every bidder who responded to the request for tenders:

- (a) the name of the winning bidder and the amount of the bid; and
- (b) the bid analysis forms.

Construction & Maintenance

13. (1) This section applies to a request for tenders involving

- (a) construction contracts; and
- (b) maintenance contracts.

(2) Every bid shall be sealed until the bid opening.

(3) Every bidder is entitled to be present at the bid opening.

(4) The contract authority shall establish a tender committee consisting of

- (a) a chairperson;
- (b) a witness, other than the contract authority or a bidder or an agent of a bidder; and

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(c) any other person the chairperson considers necessary.

(5) The tender committee shall, as soon as practicable after the deadline referred to in paragraph 11(d), publicly open the bids.

(6) At the bid opening, the chairperson shall announce

- (a) the name of the bidder;
- (b) the amount of the bid; and
- (c) if applicable, whether or not the required security was provided.

(7) The information listed in subsection (6) shall be recorded in a tender register, which shall be signed by the chairperson and a witness.

(8) The tender committee shall evaluate every bid that is not otherwise rejected under this section.

(9) Every bid received after the deadline referred to in paragraph 11(d) shall be rejected and the bidder shall be informed thereof.

(10) If a request for tenders requires that security be provided with the bid, every bid received without the requisite security shall be rejected and the bidder shall be informed thereof.

(11) Subject to subsection (12), every bid which does not comply with the mandatory elements of the request for tenders shall be rejected and the bidder shall be informed thereof.

(12) A bid which appears to be substantially compliant in all material respects to the request for tenders may be evaluated if

- (a) a waiver of non-compliance is provided for in the request for tenders; and
- (b) the contract authority is satisfied that waiving the non-compliance is in the public interest and would not be unfair to the other bidders.

(13) The contract authority may award the contract in accordance with section 14.

(14) If a contract is awarded, the contract authority shall make the following information available to every bidder who responded to the request for tenders:

- (a) the name of the winning bidder and the amount of the bid; and
- (b) on request, the information recorded in the tender register.

14. (1) A contract authority may refuse all bids and award the contract to no one.

(2) The lowest bid will not necessarily be accepted.

(3) A contract authority shall award a contract as a result of a request for tenders only to a bidder

- (a) who is, in the opinion of the contract authority, responsible; and
- (b) whose bid is
 - (i) responsive; and
 - (ii) lower, after the application of any bid adjustment permitted under the NNI Policy, than any other responsive bid submitted by any other equally responsible bidder.

(4) If two or more identical lowest bids are received by a contract authority, the Minister of the contracting department may

- (a) award the contract, in whole or in part, to one or more of the bidders; or
- (b) award the contract to no one.

PART III

REQUEST FOR PROPOSALS

- 15.** If, in the opinion of a contract authority, a proposal would be more appropriate than a bid, the contract authority may enter into a contract pursuant to a request for proposals.
- 16.** (1) Every request for proposals shall be issued so as to promote the submission of competitive proposals.
- (2) Every request for proposals must state the criteria to be used in evaluating the proposals, and only the stated criteria may be used in evaluating a proposal.
- 17.** (1) This section applies to a request for proposals involving any type of contract.
- (2) The contract authority shall establish an evaluation committee consisting of
- (a) a chairperson;
 - (b) a witness, other than the contract authority or a proponent or an agent of a proponent; and
 - (c) any other person the chairperson considers necessary.
- (3) The evaluation committee shall, as soon as practicable after the deadline referred to in paragraph 11(d), open the proposals.
- (4) At the proposal opening, the chairperson shall announce
- (a) the name of the proponent;
 - (b) the address of the proponent; and
 - (c) if applicable, whether or not the required security was provided.
- (5) The information listed in subsection (4) shall be recorded in a proposal register, which shall be signed by the chairperson and a witness.
- (6) The evaluation committee shall evaluate every proposal that is not otherwise rejected under this section.
- (7) Every proposal received after the deadline referred to in paragraph 11(d) shall be rejected and the proponent shall be informed thereof.
- (8) If a request for proposals requires that security be provided with the proposal, every proposal received without the requisite security shall be rejected and the proponent shall be informed thereof.
- (9) Subject to subsection (10), every proposal which does not comply with the mandatory elements of the request for proposals shall be rejected and the proponent shall be informed thereof.
- (10) A proposal which appears to be substantially compliant in all material respects to the request for proposals may be evaluated if
- (a) a waiver of non-compliance is provided for in the request for proposals; and
 - (b) the contract authority is satisfied that waiving the non-compliance is in the public interest and would not be unfair to the other proponents.
- (11) The contract authority may award the contract in accordance with section 18.
- (12) If a contract is awarded, the contract authority shall make the following information available to every proponent who responded to the request for proposals:
- (a) the name of the winning proponent or proponents; and
 - (b) on request, the information recorded in the proposal register.
- 18.** (1) A contract authority may refuse all proposals and award the contract to no one.

- (2) The lowest proposal will not necessarily be accepted.
- (3) A contract authority shall award a contract as a result of a request for proposals only to a proponent who
 - (a) is, in the opinion of the contract authority, responsible; and
 - (b) has submitted a proposal that, after the application of the NNI Policy, will potentially provide the best value for the government.

PART IV

REPEAL AND TRANSITIONAL

19. (1) The *Government Contract Regulations*, R.R.N.W.T. 1990, c.F-3, as duplicated for Nunavut by section 29 of the *Nunavut Act* (Canada), are repealed.

(2) Where a request for tenders or a request for proposals is issued in respect of a proposed contract before the day on which these regulations come into force and the contract is not entered into before that day, the *Government Contract Regulations*, R.R.N.W.T. 1990, c.F-3, as duplicated for Nunavut by section 29 of the *Nunavut Act* (Canada), as they read immediately before the coming into force of these regulations, apply in respect of the proposed contract until it is entered into.