



## **1. Statement of Policy**

The Government of the Northwest Territories may negotiate contracts outside the competitive contracting process when negotiations can reasonably be expected to:

- (1) lead to benefits for businesses or residents which could not reasonably be expected to be achieved through competitive contracting; or
- (2) contribute to the creation, growth and competitive capacity of Northwest Territories-based businesses in a manner that complies with the Agreement on Internal Trade.

## **2. Principles**

The Government of the Northwest Territories will adhere to the following principles when implementing this Policy:

- (1) Economic benefits accruing to Northwest Territories businesses and residents through government contracting should be maximized.
- (2) Opportunities for economic diversification, and training and development of residents and businesses should be maximized.
- (3) Negotiated contracts should contribute to the support and development of self-sustaining businesses at the local and regional levels.
- (4) Goods and services obtained by the Government of the Northwest Territories through contracts shall be provided at a reasonable cost.
- (5) Nothing in this Policy should prejudice any present or future land claim, self-government, or treaty land entitlement agreements.

## **3. Scope**

This Policy applies to Ministerial submissions to the Executive Council recommending the negotiation and awarding of contracts outside the competitive contracting process.



## **Exclusion**

This Policy does not apply to:

- (1) contracts negotiated under the *Leasing of Improved Real Property Policy* (11.22);
- (2) sole-source contracts awarded in accordance with the Government of the Northwest Territories Government Contract Regulations;
- (3) forest fire management services contracts as defined below; or
- (4) contract negotiations subject to the terms of any self-government or land claim agreement.

## **4. Definitions**

Community Government – a community government established under Northwest Territories legislation.

Eligible Contractor – any Northwest Territories community government or any business enterprise, including joint ventures, eligible for registration as a "BIP Business" under the *Business Incentive Policy*.

Forest Fire Management Services Contracts – any contract primarily for the provision of aircraft, forest fire crews, supervisors, lookout tower personnel, community coordinators, general services or other services required to meet the Forest Fire Management Policy including training for such services.

Minister – for the purposes of this Policy, Minister refers to the Member of the Executive Council who has the authority, through legislation or policy, to issue the proposed contract.

Premium – an estimate of the potential difference in costs between negotiating a specific contract and awarding a similar contract through the competitive contracting process.

Regular Member of the Legislative Assembly – a Member of the Legislative Assembly not elected to serve on the Executive Council.

Specific Benefits - the benefits to be achieved as a result of negotiating a contract that could not reasonably be expected to be achieved if the contract were awarded through the competitive contracting process.



## **5. Authority and Accountability**

### (1) General

This Policy is issued under the authority of the Executive Council. The authority to make exceptions and approve revisions to this Policy rests with the Executive Council. Authority and accountability is further defined as follows:

#### (a) Premier

The Premier is accountable to the Executive Council for the implementation of this Policy.

#### (b) Secretary to Cabinet

The Secretary to Cabinet is accountable to the Premier and responsible for the administration of this Policy.

### (2) Specific

#### (a) Executive Council

The Executive Council:

- (i) may authorize a Minister to negotiate and award a contract in accordance with the provisions of this Policy;
- (ii) may place conditions on negotiating, awarding, announcing and reporting on contracts authorized under this Policy, including limits on duration and cost, as well as limits on the renegotiation of previously negotiated contracts; and
- (iii) may establish guidelines and other directions necessary to the implementation of this Policy; and
- (iv) will record the reasons for authorizing negotiations and awards under this Policy.



(b) Financial Management Board

The Financial Management Board may consider any matter regarding a negotiated contract referred to the Board by the Executive Council.

(c) Premier

The Premier will prepare and make publicly available an annual report on negotiated contracts awarded in accordance with this Policy.

(d) Ministers

Ministers:

- (i) may consider requests to negotiate contracts in accordance with this Policy;
- (ii) may direct staff to enter into exploratory discussions to determine whether proposed negotiations might be considered eligible under this Policy;
- (iii) may recommend to Executive Council the negotiation and awarding of contracts under this Policy;
- (iv) will give public notice of the awarding of contracts in accordance with this Policy; and
- (v) will monitor and report on negotiated contracts in accordance with this Policy and as directed by the Executive Council or Financial Management Board.

## 6. Provisions

(1) Eligible Proposals

Executive Council authorization to negotiate and award a contract under this Policy may be sought when:

- (a) a request to negotiate the contract has been received from an eligible contractor who has the operational, financial and management potential to undertake the work;



- (b) goods or services provided through the proposed negotiated contract would be provided at a reasonable cost;
- (c) the proposed negotiated contract has the potential to provide opportunities to improve the skills and experience of residents and northern businesses or to realize economic benefits for residents, the community or region, which could not reasonably be expected to be provided or realized through the competitive contracting process; and
- (d) the above provisions notwithstanding, effective September 2009, the Executive Council may determine that any contractor:
  - (i) who has been awarded five or more negotiated contracts for substantively the same type of services; or
  - (ii) with whom the Government of the Northwest Territories has contracted, either through a negotiated or public process, for substantively the same type of service, through one or more contracts for a cumulative total of five or more years;

should reasonably be expected be in a position to compete and should no longer be considered an eligible contractor for the purposes of this Policy.

(2) Assessing Proposals

When assessing a proposal to negotiate a contract outside the competitive contracting process, the Executive Council will consider:

- (a) the eligible contractor's ability to fulfil the contract;
- (b) the eligible contractor's ability to compete for the contract through the competitive contracting process;
- (c) the duration and value of the contract;
- (d) the specific benefits that might be achieved that could not reasonably be expected to be achieved if the contract were awarded through the competitive contracting process;



- (e) any premium associated with the proposed contract;
- (f) any significant proposed involvement of a subcontractor or partner which would not qualify as an eligible contractor under this Policy;
- (g) whether the proposed negotiations are supported by any regular Member or Members of the Legislative Assembly representing the community or communities in which the proposed contract would be carried out;
- (h) whether the proposed negotiations are supported by the elected leaders of the body responsible for the delivery of public municipal services in the community or communities in which the proposed contract would be carried out;
- (i) any previous contracts, including both negotiated and competitive contracts, awarded to the eligible contractor and an assessment of the contractor's performance with respect to those contracts;
- (j) any experiences with contracting for the same or comparable work which the sponsoring Minister deems relevant;
- (k) the possibility that other qualified NWT businesses might be interested in competing on the proposed contract if the contract were to follow the competitive contracting process; and
- (l) the extent to which negotiating the proposed contract would advance or conflict with the objectives of any intergovernmental agreements.

(3) Benefits Reporting

Any contract awarded under this Policy will incorporate provisions requiring the contractor, prior to the expiry of the contract, to provide a statement on the specific benefits achieved and to provide quantitative and qualitative data in support of that statement.

(4) Contract Reassignments

Any contract awarded under this Policy will incorporate provisions restricting the contractor's ability to further assign or subcontract the contract, in whole or in part, or to provide substitute personnel for the purposes of performing the services without the written consent of the Minister responsible.

(5) Contract Reporting

Where contract negotiations have been authorized under this Policy, the Minister responsible will:

- (a) upon the failure of negotiations to conclude in the awarding of a contract, advise the Executive Council that the negotiated contract will not be awarded; or
- (b) upon completion of the contract, or at the end of each year of a multi-year contract, provide the Executive Council with a report on the contract, including:
  - scope of the contract,
  - location of contract,
  - total contract value,
  - fiscal year of contract (if multi-year),
  - duration of contract,
  - specific benefits analysis,
  - the total estimated premium (if applicable),
  - the significant extent, if known, to which the contract involved a subcontractor or partner not eligible under this Policy.

(6) Contract Announcements

When a contract is awarded under this Policy, the Minister responsible will give public notice of the awarding of the negotiated contract and the reasons for negotiating the contract rather than awarding the contract through a competitive contracting process.

## 7. Prerogative of the Executive Council

Nothing in this Policy shall in any way be construed to limit the prerogative of the Executive Council to make decisions or take action respecting the negotiation of contracts outside the provisions of this Policy.



Premier and Chairman of the  
Executive Council