

NUNATSIAVUT ASSEMBLY

IL 2011-04

AN INUIT LAW TO ESTABLISH PROCEDURES TO BE FOLLOWED BY THE NUNATSIAVUT GOVERNMENT, THE INUIT COMMUNITY GOVERNMENTS AND THEIR AGENCIES IN THE PROCUREMENT OF GOODS AND SERVICES

Preamble

Whereas the Nunatsiavut Assembly wishes to promote integrity in the spending of Inuit public monies by requiring that Government spending decisions are consistent with the values of efficiency, openness, transparency and accountability;

And whereas the Nunatsiavut Assembly wishes Government purchasing to be conducted in an open and competitive market and to provide fair access to opportunities for suppliers to compete for Government business;

And whereas Nunatsiavut suffers from underdevelopment and a general lack of business capacity and Inuit Businesses suffer numerous competitive disadvantages in the market place and the Nunatsiavut Assembly wishes to encourage and promote the development of business capacity in Nunatsiavut and by Inuit;

NOW THEREFORE BE IT ENACTED by the Nunatsiavut Assembly as follows:

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Short Title

1 This Inuit Law may be cited as the *Procurement Act*.

Interpretation

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(1) In this Act:

“agency” means a Government Corporation 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;

“Controller” means the Controller of the Nunatsiavut Government appointed pursuant to section 12 of the *Financial Administration Act*;

“decision-maker” means:

- (a) a minister, a deputy minister or other official of the Nunatsiavut Government or one of its agencies authorized to:
 - (i) to approve or authorize proposals to spend public money, or
 - (ii) procure goods or services on behalf of the Nunatsiavut Government or an agency of the Nunatsiavut Government;
- (b) an Inuit Community Council;
- (c) the Executive Committee of an Inuit Community Corporation;
- (d) an official of an Inuit Community Government or an Inuit Community Corporation who is authorized to procure goods or services on behalf of the Inuit Community Government or the Inuit Community Corporation; and
- (e) an official of a Government Corporation authorized by the Government Corporation to procure goods or services on its behalf;

“direct sourcing” is the procurement process under this Act in which a decision-maker invites one supplier, chosen by the decision-maker, to make submissions with a view to the negotiation of a contract for supply of goods or services;

“Executive Council” means the Nunatsiavut Executive Council;

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

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

"Government Corporation" means a corporation:

- (a) that is an agent of the Nunatsiavut Government under an Inuit Law;
- (b) that is an agent of an Inuit Community Government under an Inuit Law or a Bylaw of the Community Government; or
- (c) of which more than 90% of the issued voting shares are owned by or held in trust for a Government,

and includes a corporation without share capital, association, board, commission, society or other similar not-for-profit entity where a majority of the members or the board of directors are persons appointed by a Government or are officials of a Government acting in their official capacities, but, for greater certainty, does not include a Nunatsiavut Trust or a corporation owned or controlled by a Nunatsiavut Trust;

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

“Inuit Business” means a business listed on the Inuit Business Register;

“Inuit Business Register” means the register of Inuit businesses maintained by the Nunatsiavut Government or maintained by some other entity and designated by order of the Executive Council to maintain the register of Inuit businesses;

"Inuit content" is comprised of one or more of the following:

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

"Inuit content factor" means the factor determined by a calculation under section 17;

“Inuit Law” means an Act made by the Nunatsiavut Assembly and includes subordinate legislation under an Act of the Nunatsiavut Assembly;

“invited tender” is the procurement process under this Act that involves inviting selected qualified suppliers to submit bids for the supply of goods or services;

“Joint Management Committee” means the Inuit Communities Joint Management Committee established under section 30 of the *Financial Administration Act*;

“Nunatsiavut Trust” means:

- (a) the Labrador Inuit Capital Strategy Trust;
- (b) the Tasiujatsoak Trust;
- (c) the Labrador Inuit Land Claims Settlement Trust; and
- (d) the Labrador Inuit Land Claims Implementation Trust;

“official” means an individual who is employed in, or occupies a position of responsibility in the service of, an agency and includes a minister;

“open tender” is the procurement process under this Act that involves publishing a public call for tenders and accepting for evaluation all submissions received before the deadline for submissions from any suppliers who satisfy the conditions for participation;

“President” means the President of Nunatsiavut;

“procurement” means the act of acquiring, purchasing or obtaining goods or services, including public works, using public money;

“public money” means any money received, held or administered by a Government or an agency;

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

"qualified bid" means a bid that meets the specifications established by a decision-maker for purposes of a procurement and that provides value for money;

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

“request for proposals” is the procurement process under this Act in which a decision-maker may issue a request for interested suppliers who the decision-maker considers to be qualified to develop and submit proposals to supply goods or services;

"services" does not include legal, engineering, architectural, accounting, land surveying, banking, financial, insurance 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;

“supplier” means an individual or entity that supplies, contracts to supply, or proposes, offers, bids or tenders to supply goods or services to a Government or agency and includes:

- (a) merchants, dealers, traders, contractors, agents, vendors, service providers, and lessors; and
- (b) all individuals and entities that respond to an open or invited call for tenders or a request for proposals or that enter into direct sourcing negotiations with a decision-maker; and

“Treasurer” means the Nunatsiavut Treasurer.

- (2) All dollar amounts in this Act are in Canadian dollars and are exclusive of harmonized sales taxes.
- (3) In this Act and regulations under this Act:
 - (a) words importing female persons include male persons and corporations and words importing male persons include female persons and corporations;
 - (b) words in the singular include the plural, and words in the plural include the singular;
 - (c) where a word is defined, other parts of speech and grammatical forms of the word have corresponding meanings;
 - (d) the expression “shall” or “must” is to be construed as imperative and the expression “may” as permissive; and
 - (e) where reference is made to a part, section, subsection, paragraph, sub-paragraph, or clause the reference is a reference to a part, section, subsection, paragraph, sub-paragraph or clause of this Act unless otherwise stated.

Purpose

- 3** This Act establishes the procurement rules and procedures that are to be followed by Governments, agencies and their respective decision-makers when making decisions or performing functions or duties in relation to procurement.

Application

4

- (1) This Act applies to all procurement unless exempted under or pursuant to this Act and for greater certainty applies to:
 - (a) all decision-makers engaged in procurement;
 - (b) all procurement activities conducted by decision-makers;
 - (c) Governments and agencies; and
 - (d) the procurement of goods or services by an agency for other agencies or persons.

- (2) This Act does not apply to:
- (a) to the acquisition of gifts, grants and contributions;
 - (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 by Governments or agencies.

Duty of Decision-Makers

5

- (1) Proposals to spend public money for the procurement of goods or services must be approved by a decision-maker.
- (2) Before making a decision referred to in subsection (1), a decision-maker must be satisfied, after making reasonable inquiries, that the proposal:
- (a) is in accordance with an approved budget and Government or agency policy;
 - (b) will deliver value for money; and
 - (c) is an efficient and effective use of public money.

Procurement Procedure Thresholds

6

- (1) Where an agency intends to procure goods or services valued at \$100,000 or more the agency must proceed by way of open tenders unless the procurement has been exempted pursuant to section 7.
- (2) Where an agency intends to procure goods or services valued at between \$15,000 and \$100,000 the agency may proceed either by way of open tender or invited tender unless the procurement has been exempted pursuant to section 7.
- (3) Where an agency intends to procure goods or services valued at less than \$15,000 the agency may proceed in any manner that ensures value for money.

Exemptions from Prescribed Procurement Procedures

7

- (1) Despite anything in section 6, a Government or agency is not required to procure goods or services by way of open tender or invited tender:
- (a) where the Executive Council determines that the goods or services can be more expeditiously or economically supplied by:
 - (i) the employees of the agency;
 - (ii) another agency or the employees of another agency; or
 - (iii) a legal entity that is wholly owned, directly or indirectly, by another agency;

- (b) in the case of an emergency, the President determines that the delay resulting from a call for open tenders or for invited tenders would be injurious to the public interest;
- (c) where the supplier 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) goods or services available from a single source due to an absence of competition for technical reasons;
- (d) where set rates have been established under the Provincial Public Utilities Act;
- (e) where a contract will be awarded to the winner of a design contest in which an independent jury decides the winner;
- (f) 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
- (g) where, in the opinion of the relevant decision-maker, inviting an open tender in respect of goods or services would not achieve the best value for money and
 - (i) the Executive Council in the case of the Nunatsiavut Government or an agency of the Nunatsiavut Government or
 - (ii) the Joint Management Committee in the case of an Inuit Community Government or an agency of an Inuit Community Government

has authorized the decision-maker to proceed by way of invited tender, a request for proposals or a direct source contract, instead of open tender.

- (2) Where the Executive Council makes a determination under paragraph 7(1)(a) or the President makes a determination under paragraph 7(1)(b) the Executive Council or the President, as the case may be, may order the decision-maker or agency responsible for the procurement to take any measure or follow any procedure in relation to the procurement, including a procedure set out in this Act, that the Executive Council or the President, as the case may be, determines will serve the principles set out in the preamble.
- (3) In circumstances referred to in paragraphs (c), (d), (e) and (f) of subsection 7(1) the decision-maker may make the procurement in accordance with the direct sourcing procedures set out in section 13.
- (4) For purposes of clauses (ii) and (iii) of subsection (2)(a) “agency” includes the Labrador Inuit Capital Strategy Trust.

Valuing Procurement

8

- (1) For purposes of section 6 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 similar charges other than harmonized sales taxes.
- (2) For purposes of section 6 the estimated value of the goods or services being procured by way of 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 any 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.
- (3) For purposes of section 6, 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.
- (4) 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 a threshold established in section 6.

Procedures to be Followed for Open Tenders

9

- (1) Where an open tender is required under subsection 6(1) or a decision-maker proceeds with a procurement by way of open tender under subsection 6(2) or subsection 6(3), the agency must call for tenders by publishing a call for tenders in at least one newspaper in general circulation in Labrador and in such other printed or electronic media that the decision-maker 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 suppliers are required to submit;
 - (e) all evaluation criteria to be considered in assessing tenders, including those referred to in paragraph (j), and any other terms or conditions relevant to the evaluation of tenders;
 - (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 include an evaluation of Inuit content and application of the Inuit content factor.
- (3) Tenders must be in writing.
 - (4) Agencies must ensure that suppliers are dealt with fairly and in a non-discriminatory manner when providing information leading to, or following, a call for open tenders.
 - (5) Agencies must promptly reply to any reasonable request for relevant information by a supplier participating in an open tender and must take particular care when responding to enquiries from suppliers to avoid practices that would lead to a supplier, or group of suppliers, gaining an unfair advantage in the open tender process.
 - (6) An agency must provide sufficient time for suppliers to prepare and submit a tender in response to a call for open tenders.
 - (7) The time limit for suppliers to submit a bid must be at least 21 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 21 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 documentation related to the procurement;
 - (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 21-day time limit impracticable.
- (8) All suppliers participating in an open tender must be required to submit tenders by a common deadline.
- (9) Where an agency extends the time limit for submission of open tenders, or where negotiations are terminated and suppliers are permitted to submit new tenders, the new time limit must apply equitably to all participating 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, and 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 supplier whose tender is received after the specified deadline if the delay is due solely to mishandling by the agency.
- (14) An agency must not give further consideration to a tender unless, at the time of opening, the tender meet the minimum content and format requirement for tenders (including all required information, statements, certifications and declarations) as stated in the notices and documentation issued by or on behalf of the agency for purposes of the procurement.
- (15) Where an agency intends to lease space, it shall provide the following in its open tender documents:
 - (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 suppliers have as much information as possible that is relevant to the lease proposal.

Procedure to be Followed for Invited Tenders

10

- (1) Where a decision-maker is permitted under section 6, paragraph 7(1)(g) or other provision of this Act to procure goods or services by invited tender, the decision-maker shall:
 - (a) consider whether any Inuit Business is capable of delivering the goods or services required; and

- (b) invite tenders from two or more known and available suppliers assessed by the agency as being most capable of delivering the goods or services required.
- (2) The procedure for tendering in relation to an invitation to tender shall be the same as set out in section 9, excluding subsection 9(1).

Procedure to be Followed for Requests for Proposals

11

- (1) In circumstances referred to in subsection 6(3) or in circumstances where an agency is authorized to procure goods or services following a request for proposals, the decision-maker may issue a request for interested suppliers who the decision-maker considers to be qualified to develop and submit proposals to supply the required goods or services.
- (2) Where a request for proposals is issued under subsection (1) the procedure to be followed shall be the same as in section 9, excluding subsection 9(1), 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 supplier;
 - (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 decision-maker must evaluate the extent to which each proposal meets the technical and performance specifications of the procurement;
 - (d) the decision-maker may, in the course of evaluating proposals that it has received, request and consider additional information from a supplier; and
 - (e) the agency may negotiate a detailed contract with the supplier 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 suppliers in order of evaluation ranking.
- (3) In proceeding under subsection (2) the decision-maker must request proposals from every Inuit Business that is in the business of supplying the goods or services that the agency intends to procure.

Where there is No Acceptable Tender or Proposal

12

- (1) Where, in response to a call for open tenders under section 9, an invitation to tender under section 10, or a request for proposals under section 11:
 - (a) no tender or proposal is received;

- (b) no tender or proposal is received that conforms to the minimum content and format requirement for tenders or proposals as stated in the call for tenders or request for proposals; or
 - (c) no 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 call for open tenders under section 9 or, where authorized to proceed by way of invited tender or request for proposals, issue a new invitation to tender under section 10 or a new request for proposals under section 11.

Procedure for Direct Sourcing

13

- (1) Except as authorized under subsection 6(3) or in circumstances described in subsection 12(1), a decision-maker may not award a contract through direct sourcing without prior written authorization from the Executive Council or the Inuit Community Council, as appropriate.
- (2) In circumstances where a decision-maker may procure goods or services by direct sourcing the procedures set out in this section must be followed.
- (3) A decision-maker must, before procuring goods or services by direct sourcing:
 - (a) obtain quotations from at least 3 legitimate suppliers 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; and
 - (c) in proceeding under paragraph (a) or (b) obtain quotations from, refer to price lists maintained by, or consider every Inuit Business that is in the business of supplying the goods or services that the agency intends to procure.
- (4) The general procurement policy set out in this Act applies to direct sourcing including, in particular, the criteria for evaluation of procurement contracts set out in section 14 and the Inuit content factor.

Criteria for Evaluation of Procurement Contracts

14

- (1) Decision-makers must consider value for money in all procurement processes under this Act.

- (2) For purposes of subsection (1) “value for money” includes consideration of the Inuit content factor and is enhanced 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.
- (3) In every procurement process the decision-maker shall make a comparative analysis of all relevant risks, costs, and benefits of each bid, proposal, offer or alternative under consideration.
- (4) In order to be in the best position to determine value for money when conducting a procurement process, decision-makers must ensure that documentation in respect of a contract or supply:
 - (a) is logical, clearly articulated, comprehensive and sets relevant conditions for participation; and
 - (b) specifies evaluation criteria that will enable the proper identification, assessment and comparison of the costs and benefits of all bids, proposals, offers or alternatives on a fair and common basis over the whole procurement cycle.
- (5) In addition to considering the factors referred to in sections 15 and 16, when assessing procurement options the decision-maker must undertake a whole-of-life assessment that shall include, as appropriate, consideration of factors such as:
 - (a) the maturity of the market in Nunatsiavut and Labrador for the goods or services sought;
 - (b) the performance history of each 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 supplier to supply and deliver the goods or services and follow-up service when required;
 - (d) personnel available to each 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 in the supply or the supplier’s business, including commitments with respect to the training and employment of Inuit and the participation of Inuit Businesses in the bid, proposal or offer;

- (f) the relative risk of each bid, proposal, offer or alternative;
- (g) the flexibility to adapt to possible change over the lifecycle of the goods or services;
- (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 A decision-maker must award a contract to the supplier that the decision-maker has determined:

- (a) satisfies the conditions for participation;
- (b) is fully capable of undertaking the contract;
- (c) will provide value for money in accordance with the requirements and evaluation criteria specified in the call for open tenders, the invitation for tenders or the request for proposals, as the case may be, and related documentation; and
- (d) is the preferred supplier.

Establishing the Preferred Supplier

16

- (1) The preferred supplier for purposes of procurement is a qualified supplier whose bid or proposal:
 - (a) is within 5 percent of the price of the lowest qualified bid or proposal;
 - (b) has significant Inuit content; and
 - (c) has the highest Inuit content factor of all qualified bids or proposals received.
- (2) Where there is no bid or proposal that meets the requirements set out in subsection (1) to be the preferred supplier, the qualified supplier who offers the best value for money shall be the preferred supplier.

Determination of Inuit Content Factor

17

- (1) The Inuit content factor for purposes of evaluating 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 supplier calculated as 0.5 points per 1% of Inuit participation in excess

of 50% of the ownership and control of the supplier with 0 points being awarded to a supplier that is not at least 50% owned and controlled by Inuit or Inuit Businesses;

- (b) a maximum of 10 points related to the physical location of the head office and operating offices of the supplier where 10 points is awarded to a supplier 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 all training money spent by the supplier on the training of Inuit;
 - (d) a maximum of 20 points related to the percentage of the supplier's 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 by the supplier 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 by the supplier from Inuit Businesses in relation to the procurement calculated as 0.1 point per 15 of the value of all purchases obtained from Inuit Businesses; and
 - (g) a maximum of 10 points related to the commitment by the supplier to utilize 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 supplier is responsible for making all calculations necessary to establish the Inuit content factor of a bid, offer 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) Decision-makers must consider the requirements and guidelines established in this section in order to further encourage and promote the participation of Inuit Businesses in agency procurement.
- (2) Decision-makers shall, to the extent it is reasonably practical to do so, ensure that procurement methods do not unfairly discriminate against small and medium sized businesses.
- (3) Agencies shall seek to ensure that procurement processes are readily communicated and accessible to small and medium sized businesses and shall 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 that is in the business of supplying the goods or services which the agency intends to procure.
- (5) Decision-makers must take reasonable steps to meet procurement requirements through small contracts by breaking multi-component contracts into separate, smaller, contracts where it is appropriate to do.

Prohibition Against Avoidance of Procurement Thresholds

- 19** Despite subsection 18(5), procurement must not be divided into separate parts for the purpose of avoiding a procurement threshold under this Act.

Considerations Related to Costs of Procurement Processes

20

- (1) Decision-makers must consider the costs to agencies and suppliers of participation in a procurement process when determining which procurement process shall be used in relation to a proposed procurement.
- (2) A procurement process must 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 designated commercial goods or services to the Governments and their agencies.
- (2) A contract of standing offer must contain minimum requirements, including a set price or rate, as appropriate for the designated commercial goods or services to be procured, during the term of the standing offer.
- (3) Despite any other section of this Act to the contrary, a contract of standing offer may be established only by open tender or invited tender.
- (4) The Treasurer may enter into more than one contract of standing offer in respect of the same designated commercial goods or services 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 designated commercial goods or services under a standing offer is referred to in this section as a “panel”.
- (5) Where the Treasurer has entered into a standing offer, all decision-makers must procure the designated commercial goods or services from the panel and must not enter into separate procurement processes in respect of the designated commercial goods or services.
- (6) Designated 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, “designated commercial goods or services” means goods or services (such as travel agency services, air transportation, office stationery and similar commercial goods or services) that have been designated as eligible for supply by standing offer in a regulation enacted by the Executive Council on the advice of the Treasurer.

Legal Review of Nunatsiavut Government Procurement Contracts

22

- (1) Unless the Executive Council enacts a regulation to the contrary pursuant to subsection (3), before a decision-maker within the Nunatsiavut Government or one of its agencies enters into a procurement contract valued greater than \$15,000 the decision-maker shall submit the proposed contract to the Director of Legal Services for review.
- (2) Before a decision-maker within the Nunatsiavut Government or one of its agencies enters into an amendment to the terms of a procurement contract valued greater than \$15,000 the decision-maker shall submit the proposed amendment to the Director of Legal Services for review.
- (3) The Executive Council may make regulations
- (a) respecting legal review of procurement contracts;
 - (b) the use of standardized procurement contracts;
 - (c) requiring legal review of contracts valued less than \$15,000;
 - (d) exempting standardized procurement contracts from legal review despite anything in subsection (1) to the contrary;
 - (e) establishing thresholds for exemption from review of standardized procurement contracts that are different from the threshold established in subsection (1); and
 - (f) requiring legal reviews of changes in procurement contracts including changes authorized under section 24.

Nunatsiavut Government Expenditure and Commitment Controls

- 23** Before a decision-maker within the Nunatsiavut Government or one of its agencies enters into a procurement contract, the Controller or an official or officials designated in writing by the Controller, must approve the procurement having regard to the applicable provisions of the *Financial Administration Act*.

Change Orders in Relation to Contracts

24

- (1) Subject to subsection (2), a decision-maker may authorize changes within the requirements of a procurement contract or authorize extensions of the contract as long as a change, extension, or the cumulative value of all changes and extensions does not exceed:
- (a) 30% in the case of a contract up to an original value of \$100,000;

- (b) 25% in the case of a contract having an original value greater than \$100,000 but less than \$500,000; and
 - (c) 20% in the case of a contract having an original value equal to or greater than \$500,000.
- (2) A decision-maker may authorize a change order under subsection (1), with the prior written approval of:
- (a) the Controller and the Treasurer in the case of the Nunatsiavut Government, and all such approvals shall be reported by the Treasurer to the Executive Council;
 - (b) the Inuit Community Council in the case of an Inuit Community Government;
 - (c) the Executive Committee in the case of an Inuit Community Corporation; and
 - (d) the board of directors in the case of a Government Corporation.
- (3) Any change that is not provided for in subsection (1) shall be separately procured in accordance with this Act unless otherwise ordered under section 7.

Notification of Decisions

25

- (1) Where a supplier makes a bid or a proposal in response to a call for open tenders, an invitation to tender or a request for proposals, the agency must promptly advise the supplier of its final decision regarding the bid or proposal.
- (2) On request, an agency must provide an unsuccessful supplier with the reasons that its bid or proposal was not successful.

Ethics in Procurement

26

- (1) Without limiting the provisions of the Code of Conduct, which shall apply to all decision-makers when implementing a procurement process under this Act, officials involved in procurement must treat all participating suppliers as equitably as possible.
- (2) Agencies must ensure that officials involved in procurement, particularly those dealing directly with suppliers:
 - (a) recognize and deal with any conflicts of interest, including perceived conflicts of interests;
 - (b) deal with 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 gifts or hospitality;
 - (e) are scrupulous in their use of public goods and public money; and

- (f) are knowledgeable about the procedures and requirements of this Act and any regulations under this Act.
- (3) Agencies must not seek to benefit from suppliers' mistakes or supplier practices that may be dishonest, unethical or unsafe.
- (4) The Treasurer shall take reasonable steps to ensure that the procurement process rules under this Act are readily available to the public and suppliers.

Documentation in Procurement

27

- (1) Agencies must maintain documentation for each procurement necessary to ensure there is a record of:
 - (a) the reasons for the procurement,
 - (b) the process that was followed,
 - (c) all relevant decisions, including approvals and authorizations, and
 - (d) the basis of those decisions.
- (2) A decision-maker who enters into a procurement contract valued greater than \$15,000 must provide a copy of the signed contract to the Director of Legal Services and to the Controller.
- (3) Documentation relating to procurement must be retained for a period of at least six years unless the Director of Legal Services issues written instructions to the contrary.

Reporting in Relation to Procurement

28

- (1) Agencies must, at the end of each calendar year, advise the Treasurer in writing of all contracts valued at more than \$15,000 that have been entered into during the previous 12 months and that have not been fully performed.
- (2) Agencies must publish details of all procurement contracts including standing offers with a value of more than \$15,000, 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.
- (3) Information that may be made public under this section is the name 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 or services to be supplied under the contract.
- (4) 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 (3) and such other information as the Treasurer may direct.

- (5) The Treasurer must table an annual report under this Act in the Assembly as soon as practicable following receipt of the information referred to in subsection (4).

Complaints

29

- (1) Every agency engaged in a procurement must designate an official to act as spokesperson to respond to complaints about the procurement process or procurement decisions.
- (2) A person making a complaint about the procurement process or a procurement decision must be referred by the person receiving the complaint to the spokesperson for the agency responsible for the procurement process or decision.
- (3) In the event that a complaint is received, the agency responsible for the procurement must use reasonable efforts to manage the complaint internally, through communication and conciliation with the supplier.
- (4) Agencies must ensure that the initiation of a complaint respecting the agency's procurement process or decision does not prejudice a supplier's participation in future procurement processes.
- (5) The Executive Council may enact regulations respecting procedures for handling complaints.

Regulations

- 30** The Executive Council may make regulations for the purposes of this Act including regulations to elaborate or supplement:
- (a) any procedure established for procurement under this Act; and
- (b) any standard or consideration to be used in the making of procurement decisions under this Act.

Consequential Amendment to Section 37 of the Financial Administration Act

- 31** Section 37 of the *Financial Administration Act* is deleted and replaced as follows:

37

- (1) The Communities Joint Management Committee is responsible for providing advice to the Treasurer, the Executive Council, the Assembly and the Inuit Community Councils, as appropriate, with respect to the following matters:
- (a) Inuit Community Government Budgets as they pertain to the Consolidated Financial Plans of the Nunatsiavut Government and the corresponding appropriations;
- (b) the equitable division among the Inuit Community Governments of revenue available under fiscal financing agreements and appropriated by the Assembly for purposes of the basic programs

and services for which the Inuit Community Governments are responsible having regard to:

- (i) the needs and interests of the Nunatsiavut Government and the Labrador Inuit residing in Nunatsiavut as a whole;
 - (ii) the need to ensure that the Inuit Community Governments are able to provide the functions and services allocated to them and meet their obligations under the Labrador Inuit Land Claims Agreement, the Labrador Inuit Constitution or Inuit law;
 - (iii) the fiscal capacity, efficiency and effectiveness of the Inuit Community Governments;
 - (iv) developmental and other needs of the Inuit Community Governments as determined under their respective annual financial plans;
 - (v) economic disparities within and among the Inuit Communities; and
 - (vi) the desirability of stable and predictable allocations of revenue shares.
- (c) procurement of capital facilities, public works, community infrastructure and heavy equipment in or for purposes of the Inuit Communities;
 - (d) any Inuit Law that will substantially affect the finances of the Inuit Community Governments; and
 - (e) any other matter relating to the financial affairs of the Inuit Community Governments.
- (2) The Joint Management Committee may:
- (a) when requested by a Community Council or an agency of an Inuit Community Government, authorize the Inuit Community Government or agency to procure goods or services by inviting tenders, requesting proposals or through direct sourcing instead of proceeding by way of open tender as prescribed by the Procurement Act if the Joint Management Committee considers that inviting an open tender in respect of the goods or services would not achieve the best value for money; and
 - (b) exercise any other power or authority or make any other decision specifically conferred on the Joint Management Committee under Inuit Law.

Effective Date

32 This Act comes into effect on July 1, 2011.