



Nunavummi
Nangminiqaqtunik Ikajuuti
(NNI Policy)

Reviewed, Revised and Prepared By
The GN / NTI NNI Review Committee

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Nunavummi Nangminiqaqtunik Ikajuuti

1.0 Title

- 1.1 The Policy is entitled the "Nunavummi Nangminiqaqtunik Ikajuuti" or "NNI Policy".

2.0 Coming into Effect and Replacement

- 2.1 The NNI Policy was first approved by the Government of Nunavut on March 17, 2000 and came into effect on April 1, 2000. As a result of periodic reviews, it has been amended over time. The latest version came into effect on April 20, 2006 (the "2006 Policy").
- 2.2 This NNI Policy will come into effect on April 1, 2017. On its coming into effect, this NNI Policy shall replace the 2006 Policy.
- 2.3 Any guidelines, directives, or procurement processes issued under the 2006 Policy continue in effect until otherwise modified, but shall be interpreted so as to comply with this NNI Policy.

3.0 Authority of Cabinet

- 3.1 Cabinet may, where warranted by the public interest, depart from the provisions of the NNI Policy in exceptional circumstances.
- 3.2 Prior to departing from the provisions of the NNI Policy, the Government of Nunavut shall consult with Nunavut Tunngavik Incorporated on the reasons for the departure and on alternative measures that the Government of Nunavut shall undertake to achieve the objectives of Article 24 of the Nunavut Land Claims Agreement. The consultation requirement for Contracts exempted by the Government of Nunavut shall follow the process outlined in section 6.0.

4.0 Application

- 4.1 Subject to section 4.3, the NNI Policy applies to the design, administration and interpretation of any Procurement Process, as defined in section 7.1, and the award of any Contract:
- (a) to which the Government of Nunavut is a party;
 - (b) where the Government of Nunavut provides directly more than 51% of the total Contract funds for an identified purchase or purchases; or
 - (c) where the Government of Nunavut directly provides more than 51% of the annual operating funds of one of the parties.
- 4.2 For greater certainty the NNI Policy applies to all Government of Nunavut territorial corporations listed in Schedule B of the *Financial Administration Act*, R.S.N.W.T. (Nu) 1988, c.F-4, including without limitation, Nunavut Arctic College, Qulliq Energy Corporation, Nunavut Housing Corporation, Nunavut Development Corporation, Nunavut Business Credit Corporation and any other subsequently created territorial corporations which are subject to Schedule B.
- 4.3 The NNI Policy does not apply to:
- (a) a Contract that provides the Government of Nunavut with insurance against a liability;
 - (b) a Contract that establishes an employer-employee relationship with the Government of Nunavut;
 - (c) a sole-sourced Contract, in all cases as described in the Government Contract Regulations, for the supply of goods, services, real property or construction where the Contract Authority reasonably believes:
 - (i) that the supply thereof is urgently required, and delay would be injurious to the public interest;
 - (ii) only one party is available and capable of performing the Contract; or

(iii) the value of the Contract will not exceed \$25,000 in the case of a Contract for architectural or engineering services, or \$5,000 in the case of any other type of Contract.

(d) municipalities, except as otherwise provided in sub-sections 4.1(b) or (c), or where the municipality and the Government of Nunavut have come to an agreement for unique or exceptional circumstances; or

(e) a Contract with any other government or government agency.

4.4 The Government of Nunavut shall provide Nunavut Tunngavik Incorporated, on an annual basis, a list of all Contracts under sub-section 4.3(c). For each contract, the list shall contain, at a minimum, an indication of which of the three sole-source justifications under sub-section 4.3(c) the Government of Nunavut exercised, a brief description of the nature of the contract, the name of the selected vendor, and the value of the Contract. Within 12 months of the release of the list of contracts and upon written request the Government of Nunavut shall within thirty (30) days of the request provide written justification and reasonable supporting information regarding specific contracts under sub-section 4.3(c) identified by Nunavut Tunngavik Incorporated. Where the Government of Nunavut is unable to disclose details of certain Contracts due to concerns based on confidentiality or privilege, the existence of the Contracts and a general description of the contracting activities shall be provided.

4.5 The NNI Policy will be implemented, in whole or in part, by the Government Contract Regulations, Nu Reg. 002-2011.

5.0 Definitions

5.1 The terms used in the NNI Policy have the meaning set out in Appendix A.

6.0 Consultation with Nunavut Tunngavik Incorporated and Revisions to the NNI Policy

6.1 Cabinet may make changes to the NNI Policy in a manner consistent with the obligations of the Government of Nunavut under Article 24 of the Nunavut Land Claims Agreement, which requires consultation with Nunavut Tunngavik Incorporated in the development and maintenance of preferential procurement policies, procedures and approaches.

- 6.2 Consultation with respect to any proposed revisions to the NNI Policy or any other policy of the Government of Nunavut aimed at implementing Article 24 of the Nunavut Land Claims Agreement requires, at a minimum, that the following procedure be followed:
- (a) the Government of Nunavut shall provide Nunavut Tunngavik Incorporated with notice of a matter to be decided in sufficient form and detail to allow Nunavut Tunngavik Incorporated to effectively address the matter and to prepare its views on the matter;
 - (b) the Government of Nunavut shall provide Nunavut Tunngavik Incorporated with thirty (30) business days in which to prepare its views on the matter and to provide any such views to the Government of Nunavut. In exceptional circumstances NTI may request an extension of time to respond;
 - (c) the Government of Nunavut shall give full and fair consideration to any such views provided by Nunavut Tunngavik Incorporated on the matter; and
 - (d) the Government of Nunavut shall provide Nunavut Tunngavik Incorporated with written reasons for rejecting or varying any views provided by Nunavut Tunngavik Incorporated on the matter. The said written reasons shall be provided no later than thirty (30) business days following the decision of the Government of Nunavut on the matter.
- 6.3 It is recognized that assessment of what constitutes a reasonable period of time with respect to any aspect of the consultation process with Nunavut Tunngavik Incorporated shall take into account:
- (a) the complexity of the matter;
 - (b) the economic significance of the matter;
 - (c) special cultural or community sensitivities;
 - (d) the need for Nunavut Tunngavik Incorporated to consult regional or other Inuit organizations;
 - (e) the availability of leaders or key advisors; and
 - (f) other logistical factors.

Part 1 – Provisions of General Application

7.0 Evaluation Process

- 7.1 The Government of Nunavut may purchase goods and services consistent with its procurement policies and procedures, and goods and services required for construction through a variety of procurement methods, including, but not limited to, requests for tenders, requests for proposals, invitational tenders, sole-source and standing offers, and where applicable through restricted invitational tendering and restricted invitational requests for proposals.
- 7.2 All Procurement Processes shall contain a provision requiring Proponents to demonstrate their capability of carrying out the work or supplying the goods and or services required.
- 7.3 No Proposal or Bid shall be evaluated or ranked if the Proponent or Bidder has been prohibited from receiving a Contract and the period of prohibition has not expired, or where the Bid or Proposal is considered non-compliant, incomplete, non-responsive or not responsible.
- 7.4 The Procurement Procedures shall clearly explain how the provisions of the NNI Policy will apply to the evaluation and selection of the successful Proponent or Bidder.
- 7.5 Where applicable, every Proposal or Bid that meets the mandatory conditions of the procurement documents and is evaluated shall have the price component adjusted by the adjustments detailed in Parts 2 and 3 of the NNI Policy.
- 7.6 All Procurement Processes shall comply with the Government Contract Regulations and be administered by the relevant Contract Authority in a manner that promotes the objectives of the NNI Policy as set out in Parts 2 and 3 and in a manner that promotes good value and fair competition, to the extent possible.
- 7.7 For the purpose of the application of adjustments, where applicable or required by the procurement documents, a Bid or Proposal shall provide a breakdown of the price showing the value of the work attributable to, and to be completed by, each of the Proponent, any subcontractors and any suppliers. The adjustments shall then be assessed and, where applicable, applied in respect of the value of the work

attributable to, and to be completed by, the Proponent or Bidder, any subcontractors and any suppliers.

- 7.8 For Procurement Processes for the supply of goods only, the maximum Bid Adjustment percentages provided in sub-sections 17.1(a) to (c) and sections 25.1 (a) and (b) shall apply to the first \$125,000 of the bid value (“Bid Adjustment Cap for Goods Only”) without further allocation to each bid component.
- 7.9 For Procurement Processes for the supply of mixed Goods and Services,
- (a) the maximum Bid Adjustment provided in sections 17.1(a) to (c), 17.2, 17.3 and sections 25.1(a) to (b), 25.2, 25.3 and 25.4 shall not exceed \$125,000; (The Bid Adjustment Cap for a Goods and Services Procurement Process)
 - (b) the Bid Adjustment Cap for Goods and Services shall apply to but not be limited to such Procurement Processes as annual fuel resupply and annual Government of Nunavut sealift requirement, but shall not apply to minor or major construction procurement.

8.0 Monitoring and Enforcement

- 8.1 Monitoring and enforcement procedures shall be implemented by the Government of Nunavut to ensure:
- (a) that Contractors comply with the NNI Policy;
 - (b) that Contractor performance assessment is accurately and consistently undertaken by the Government of Nunavut; and
 - (c) that the NNI Policy is accurately and consistently applied by the Government of Nunavut.
- 8.2 Each Contract Authority within the Government of Nunavut is responsible for the monitoring and enforcement of Contracts under which it expends funds.
- 8.3 Each Contract Authority within the Government of Nunavut shall provide monitoring and enforcement information to the NNI Secretariat in a manner as agreed to by the NNI Secretariat and the Contract Authority.

- 8.4 The Government of Nunavut shall provide Nunavut Tunngavik Incorporated with information in a timely manner regarding the outcomes of its monitoring and enforcement efforts.
- 8.5 As part of its enforcement responsibilities pursuant to the Nunavut Land Claims Agreement and the NNI Policy, the Contract Authority may, where circumstances warrant, prohibit a Contractor and, where circumstances warrant, its Principals from being awarded another Contract on a temporary or permanent basis as per the following enforcement schedule:
- (a) on the first occurrence of failure to comply with the committed Inuit Labour levels of the Contract the Contractor will be advised that any bid submitted on any Government of Nunavut contracts will not be eligible for the NNI adjustments for a period of twelve (12) months from date of notification of contract compliance failure;
 - (b) on the second occurrence of failure to comply with the committed Inuit Labour levels of the Contract the Contractor will be advised that any bid submitted on any Government of Nunavut contracts will not be eligible for any NNI adjustments for a period of eighteen (18) months from the date of notification of contract compliance failure;
 - (c) on the third occurrence of failure to comply with the committed Inuit Labour levels of the Contract the Contractor will be advised that any bids submitted on any Government of Nunavut contracts will not be eligible for any NNI adjustments for a period of twenty four (24) months from the date of notification of contract compliance failure; and
 - (d) on the fourth occurrence of failure to comply with the committed Inuit Labour levels of the Contract the Contractor will be advised that any bid submitted on any Government of Nunavut contracts will not be accepted and the contractor will be deemed not responsible until further notice.
- 8.6 The Contract Authority may implement additional penalty schedules in the event that:
- (a) a Contractor failed to meet the committed levels of supplies, work or services for which the Contractor receives Inuit Firm, Nunavut Business and/or Local Adjustments;
 - (b) a Contractor failed to meet, where required, the minimum Inuit Labour level requirement of a Contract;

- (c) a Contractor failed to meet, where required, the mandatory training and skills development requirements of a Contract; or
 - (d) the Contracting Authority determines that a Contractor purposely provided the Government of Nunavut with specific inaccurate information in respect of its contractual obligations arising pursuant to the NNI Policy.
- 8.7 In respect of an in progress Contract and in addition to the authority detailed in sections 8.5 and 8.6, as part of its enforcement responsibilities pursuant to the Nunavut Land Claims Agreement and the NNI Policy, the Contract Authority may, in addition to whatever other remedies and measures are available to the Contract Authority and where circumstances warrant, terminate a Contract in the event that:
- (a) a Contractor fails to meet the committed levels of supplies, work or services for which the Contractor receives Inuit Firm, Nunavut Business and/or Local Adjustments;
 - (b) a Contractor fails to meet the minimum Inuit Labour level during the course of the Contract;
 - (c) a Contractor fails to meet the mandatory training and skills development requirements of a Contract; or
 - (d) the Contracting Authority determines that a Contractor provided the Government of Nunavut with specific inaccurate information in respect of its contractual obligations arising pursuant to the NNI Policy.

9.0 NNI Tribunal

- 9.1 An independent NNI Tribunal (the “Tribunal”) shall be established to hear and decide on complaints regarding the application of the NNI Policy in the award of any contracts covered by the NNI Policy in accordance with section 4.1. The Tribunal will not review any aspect of a procurement process other than the application of the NNI Policy.
- 9.2 The Tribunal shall be comprised of five (5) members, all of whom will serve on a part-time basis. Each member of the Tribunal shall be appointed by the Government of Nunavut for a period of three (3) years. The members shall be subject to the *Conflict of Interest Act*, R.S.N.W.T. 1988, c.C-16, including requirements on disclosure of conflict of interest.

- 9.3 The members shall have background, training and/or actual experience in procurement law, procurement practises, government contracting or administrative law. Preference shall be given to individuals with working knowledge or experience in Nunavut.
- 9.4 The Government of Nunavut shall appoint two (2) of the five (5) members from a list of nominees provided by Nunavut Tunngavik Incorporated.
- 9.5 The Government of Nunavut shall appoint, among the five members, an individual to serve as the Chairperson and another individual as the Vice-Chairperson.
- 9.6 The Chairperson shall be responsible for the assignment of members to a complaint as well as any administrative matters necessary to ensure the efficient operations of the Tribunal. The Vice-Chairperson shall act in the place of the Chairperson if the Chairperson is unable or unwilling to act.
- 9.7 All complaints shall be heard by either a panel of three (3) members or by all members of the Tribunal. The Chairperson and the Vice-Chairperson may participate in hearing and deciding upon any complaint and have the same power, authority and privilege as a regular member. Where practical, a panel shall include at least one (1) member nominated by Nunavut Tunngavik Incorporated.
- 9.8 A quorum shall be two (2) members if a complaint is heard by a three-member panel and three (3) members if a complaint is heard by all members of the Tribunal.
- 9.9 Decisions of the Tribunal shall be made by way of consensus and in the absence of consensus by majority vote.
- 9.10 The Tribunal may retain counsel or other experts to assist in its work.
- 9.11 An unsuccessful Bidder or Proponent (the “Complainant”) who wishes to challenge a Bid or Proposal award shall follow the process and timeline below
- (a) the Complainant shall submit the challenge in writing specifying the details of the contract and the details of the challenge to the respective Contract Authority within five (5) Business Days of the notice of award;
 - (b) the Contract Authority shall respond in writing within five (5) Business Days of receiving the Complainant’s challenge;
 - (c) if the Complainant is not satisfied with the response to the challenge the Complainant may file a complaint with the Tribunal within five (5) Business Days of the receipt of the response concerning any alleged breach of the NNI

Policy related to the Procurement Process and request that the Tribunal conduct a review of the complaint.

- 9.12 In exceptional cases where a Complainant demonstrates that it is unable to file a complaint within the timeframes set out in sub-section 9.11 (c), and that the failure to file the complaint in a timely manner was not due to matters over which it had control, the Tribunal may permit the filing of a late complaint. However, in no circumstance shall a late complaint be accepted for review if it is filed more than twenty (20) Business Days from the date of the award notice.
- 9.13 A complaint must be in writing, identify the Complainant, identify the Procurement Process at issue, contain a clear statement of the grounds of the complaint, identify the relevant part or parts of the NNI Policy that the Government of Nunavut is alleged to have breached, set out what form of relief is requested, and include all relevant information in the possession of the Complainant. The Tribunal shall not accept complaints regarding an act or omission relating to the performance of a contract that has been awarded.
- 9.14 A complaint shall be filed with the NNI Secretariat, which will perform the necessary administrative functions to assist the Tribunal to process the complaint.
- 9.15 Where the Tribunal determines that a complaint is properly filed, the Chairperson shall assign a panel of members or all members to determine whether the Tribunal has the jurisdiction to hear the complaint and whether the complaint discloses a reasonable indication that the NNI Policy was breached. Where the Tribunal decides that it has jurisdiction over the subject matter and that said complaint discloses a reasonable indication of a breach of the NNI Policy, the Tribunal shall notify the Complainant and any parties whose interests are affected that it will conduct a review.
- 9.16 The Tribunal shall establish procedures to permit parties to a complaint to file information and documents both in a public and confidential version. Information and documents that are confidential shall only be available to the party submitting them, the Government of Nunavut, the Tribunal and its staff, counsel and experts who have been given authorization by the Tribunal to review confidential documents. No one who has access to confidential information or documents shall disclose the confidential information or documents to anyone not authorized by the Tribunal to receive confidential information or documents.
- 9.17 Where the Tribunal decides to conduct a review, it may recommend a postponement of contract award if the Contract has not been awarded. Where the Tribunal recommends a postponement of contract award, the Government of Nunavut may, in exceptional cases, determine that the goods, services or

construction required by the Contract are urgent or a delay in awarding the contract would be contrary to the public interest, and where such determination is received, the Tribunal shall rescind its recommendation for the postponement of contract award.

- 9.18 The Tribunal shall conduct a review process that is fair, expeditious and as informal as circumstances permit. The Tribunal's process must ensure that parties have a reasonable opportunity to present their cases, and to respond to the case submitted by opposing parties.
- 9.19 The Tribunal's proceedings shall be conducted by way of written process except where the Tribunal determines that an oral hearing is warranted and necessary in the interest of justice. The Tribunal may conduct the oral hearing in person, or by such electronic means it deems appropriate in the circumstances.
- 9.20 Following receipt of submissions of the parties, the Tribunal shall issue its decision as expeditiously as possible, but no later than thirty (30) days following the initiation of the review by the Tribunal. In exceptional circumstances, the Tribunal may extend the time to issue its decision by an additional thirty (30) days.
- 9.21 The Tribunal can decide that the complainant did not adequately demonstrate a breach of the NNI Policy and dismiss the complaint.
- 9.22 The Tribunal can decide that the complainant demonstrated a breach of the NNI Policy and may recommend one or more of the following:
- (a) that the Government of Nunavut review and amend the Procurement Process taking into account the proper application of the NNI Policy;
 - (b) that the Government of Nunavut re-evaluate a Proposal taking into account the proper application of the NNI Policy;
 - (c) that the Government of Nunavut cancel the Procurement Process or contract award and issue a new solicitation in compliance with the NNI Policy; or
 - (d) that the Government of Nunavut award the Complainant its bid preparation costs.
- 9.23 In deciding what remedy is appropriate, the Tribunal shall take into account the seriousness of the breach, the extent to which the breach prejudiced the parties, whether the parties were acting in good faith, and any other relevant factors that the Tribunal deems appropriate.

- 9.24 The Government of Nunavut shall implement all recommendations given by the Tribunal to the greatest extent possible. Where the Government of Nunavut certifies that, for reasons of sound procurement management and public policy, it is unable to implement any or all recommendations given by the Tribunal, it shall provide written reasons within sixty (60) days of the issuance of the Tribunal's decision and provide certification for its decision to the Tribunal and parties.
- 9.25 The costs of the complaint shall be at the discretion of the Tribunal.
- 9.26 The Government of Nunavut, through the NNI Secretariat, shall be responsible for the administration services and costs of the Tribunal in accordance with policies of the Government of Nunavut.

10.0 Leases

- 10.1 The NNI Policy applies to the evaluation and award of lease contracts obtained by the Government of Nunavut.

11.0 Periodic Review

- 11.1 The substance and application of the NNI Policy shall be reviewed and revised on a periodic basis to ensure that progress towards its objectives is being made in a demonstrable and balanced manner.
- 11.2 It is recognized that the achievement of the objectives of the NNI Policy will be most realistically secured by measured progress over time.

12.0 Review Committee

- 12.1 An NNI Policy Review Committee consisting of representatives appointed by the Government of Nunavut and Nunavut Tunngavik Incorporated shall be established to review the implementation of the NNI Policy on a periodic basis. The committee shall be co-chaired by a representative appointed by the Government of Nunavut and a representative appointed by Nunavut Tunngavik Incorporated and the number and representation of committee members shall be determined through consensus by the co-chairs.
- 12.2 The NNI Policy Review Committee shall meet on a quarterly basis or as often as deemed necessary by the committee co-chairs.

- 12.3 The Terms of Reference of the NNI Policy Review Committee are attached as Appendix B.
- 12.4 As part of its mandate, the NNI Policy Review Committee shall develop and apply specific mechanisms for assessing progress towards objectives and making recommendations for adjustments to the NNI Policy.
- 12.5 As part of its mandate, the NNI Policy Review Committee shall examine monitoring and enforcement concerns arising out of the implementation of the NNI Policy.
- 12.6 The NNI Policy Review Committee shall conduct a comprehensive review of the NNI Policy every five (5) years or as directed by Cabinet after consultation with Nunavut Tunngavik Incorporated.
- 12.7 The NNI Policy Review Committee shall submit all of its work to the Government of Nunavut and Nunavut Tunngavik Incorporated.
- 12.8 In carrying out its work, the NNI Policy Review Committee shall make efforts to collect public input and to consult with interested parties. Without limiting the ability of the NNI Policy Review Committee to make other parts of its work available to the public, these periodic or multi-year reviews shall in all cases be made available to the public.

13.0 Financial Resources

- 13.1 The expenditure of funds by the Government of Nunavut under the NNI Policy is conditional on approval of such funds in the Main Estimates by the Legislative Assembly of Nunavut and on there being sufficient uncommitted balance in the appropriated item for the fiscal year in which the expenditure is required, and on meeting such further requirements as may be set out in the *Financial Administration Act*, R.S.N.W.T. (Nu) 1988, C.F-4.

14.0 Contracting Policy for Territorial Parks

- 14.1 Pursuant to section 5.3 of the Umbrella Inuit Impacts and Benefits Agreement (IIBA) for Territorial Parks, the NNI Policy in effect on March 17, 2000 will continue in effect until such time as the relevant parts of this version of the NNI Policy have been adopted by the signatories to that agreement.
- 14.2 The Parks-Specific Procedures for Contracting and Business Opportunities are attached as Appendix C.

14.3 The minister for the department responsible for this version (Contracting Policy for Territorial Parks) of the NNI Policy shall ensure that the policy is implemented as directed by Cabinet.

15.0 Responsibility for the NNI Policy

15.1 The Minister for the department responsible for the NNI Policy (but not for Territorial Parks) shall be responsible for ensuring that the NNI Policy's objectives are being met and for reporting on an annual basis to Cabinet on the NNI Policy's performance.

Part 2 – Implementation of Article 24 of the Nunavut Land Claims Agreement

16.0 Objectives of Part 2 of the NNI Policy

16.1 In accordance with Article 24 of the Nunavut Land Claims Agreement, the objectives of Part 2 of the NNI Policy are as follows:

- (a) to increase participation of Inuit Firms in business opportunities in the Nunavut Settlement Area economy;
- (b) to improve the capacity of Inuit Firms to compete for contracts;
- (c) to promote employment of Inuit at a representative level in the Nunavut Settlement Area workforce;
- (d) to increase access by Inuit to on-the-job training, apprenticeship, skill development, upgrading and other job-related programs through the performance of work on contracts; and
- (e) to provide greater opportunities for Inuit to receive training and experience through the performance of work on contracts to assist Inuit in successfully creating, operating and managing Northern businesses.

16.2 The NNI Policy shall be interpreted and implemented in a manner consistent with the spirit and intent of the Nunavut Land Claims Agreement.

16.3 For the purpose of the NNI Policy, ownership of an Inuit Firm shall be interpreted in a manner consistent with the spirit and intent of the Nunavut Land Claims Agreement and in a manner which is designed to promote economic benefits for Inuit Firms through government contracting activities. Specifically, in determining beneficial Inuit ownership, the following factors may be taken into account by Nunavut Tunngavik Incorporated:

- (a) the extent of ownership of the entity by Inuit;
- (b) the extent of control of the entity by Inuit;

- (c) the extent of management of the entity by Inuit; and
- (d) the retention by Inuit of profits generated by or on behalf of the entity.

17.0 Bid Adjustments

- 17.1 Every Goods Only Bid or other Procurement Process, including Procurement Processes where mandatory minimum Inuit Labour levels are stated and that meet the mandatory conditions and is ranked, shall have its price component adjusted by the following amounts, where applicable:
- (a) 5% upon the establishment of Inuit Firm status, as per the Inuit Firm Registry maintained by Nunavut Tunngavik Incorporated, to be applied in respect of the value of the Goods supplied, work or service attributable to, and to be completed by, an Inuit Firm or Inuit Firms;
 - (b) an additional 5%, upon the establishment of Inuit Firm status with 76% or above Inuit ownership levels, to be applied in respect of the value of the Goods, work or services attributable to, and to be completed by the Inuit Firm or Firms; and
 - (c) an additional 5%, upon the establishment of Inuit Firm status with 100% Inuit ownership level, to be applied in respect of the value of the Goods, work or services attributable to and to be completed by the Inuit Firms or Firms.
- 17.2 An Inuit Firm may qualify for additional adjustments under section 25.1. However, the cumulative bid adjustments under sections 17.1 and 25.1 shall not exceed 25% of the total bid or proposal value.
- 17.3 In a Procurement Process where Inuit Labour is identified, it shall be adjusted by 15%. Labour is evaluated and scored separately from Goods and Services. Cumulative bid adjustments shall not exceed 25% of the value of the bid.
- 17.4 In order for the Government of Nunavut to meet its obligations with respect to the correct application of Inuit status adjustments permitted under section 17.1, Nunavut Tunngavik Incorporated shall assign an Inuit Firm, in the Inuit Firm Registry, to one of the three categories of the Inuit Ownership provided for in subsections 17.1(a) to (c).

18.0 Inuit Labour Level

- 18.1 The Government of Nunavut shall establish the mandatory minimum Inuit Labour level requirement for each Procurement Process, where such Inuit Labour level requirement can be calculated, taking into consideration the following factors:
- (a) the nature of skills required to perform the work at issue;
 - (b) the Inuit Labour available with the necessary skills to perform the work at issue in Nunavut and in the subject community or communities for the Contract, including Inuit apprentices and Inuit students registered in training programs who are or will become available to perform the skilled work;
 - (c) other on-going or anticipated projects in the subject community or communities for the Contract that may impact the availability of necessary Inuit Labour; and
 - (d) any other factors relevant to the work at issue.
- 18.2 For RFPs involving labour, and where an achievable Inuit Labour value is not defined, the RFP shall have in the evaluation criteria, at a minimum, a weight of 20% for Inuit Labour except in such cases where the Contract Authority determines this not applicable.
- 18.3 The Contract Authority shall, where circumstances warrant, confer with representatives of the Nunavut Housing Corporation, the Department of Community and Government Services, Nunavut Tunngavik Incorporated, the Department of Family Services, Nunavut Arctic College, the Department of Economic Development and Transportation and regional business representatives or regional business associations and any other affected stakeholders to discuss considerations relevant to the establishment of the minimum Inuit Labour level of a specific contract.
- 18.4 The Contract Authority may, upon request by the Contractor or on its own initiative, lower the mandatory minimum Inuit Labour level of a Contract during the performance of that contract where the Contract Authority determines circumstances warrant such an adjustment.
- 18.5 Proponents shall be required to commit to meeting the mandatory minimum Inuit Labour level requirement where indicated in each respective procurement process.

19.0 Bonuses and Contractor Performance Measures

- 19.1 The provisions of section 19.0 apply to construction Contracts. All other types of Contracts may, at the discretion of the Government of Nunavut, provide for bonuses and contractor performance measures.
- 19.2 A Contract Authority shall award a Contractor a bonus in the event that the Contractor exceeds the mandatory minimum Inuit Labour level requirement of the Contract.
- 19.3 If a Proponent or Bidder submits a Proposal or Bid containing an Inuit Labour level higher than the mandatory minimum established by the Contract Authority, the higher level submitted will be given the appropriate adjustments available. The scored Inuit Labour value as committed to by the Proponent or Bidder will be considered as the new minimum Inuit Labour value for the purpose of determining bonuses.
- 19.4 Where applicable, a bonus shall be calculated as 1% of the total Inuit Labour value of the Contract for each 1% of the amount by which the Inuit Labour level achieved exceeds the mandatory minimum Inuit Labour value requirement of the Contract.
- 19.5 The maximum bonus available on a qualifying Contract shall not exceed 25% of the total Inuit Labour value or \$150,000, whichever is lower.
- 19.6 A Contract Authority shall detail in the Contract the documentation that must be delivered by the Contractor in order to be eligible to receive a bonus. A bonus shall only be paid to a Contractor subsequent to the delivery by the Contractor of documentation requested by the Contract Authority establishing an entitlement thereto and upon verification of the information detailed in the documentation by the Contract Authority.
- 19.7 Subject to 19.3, in the event that the Contract Authority alters, by reducing, the minimum Inuit Labour level of a Contract during the term of the Contract, a Contractor shall not be eligible for a bonus unless the Contractor exceeds the original minimum Inuit Labour level of the Contract.

- 19.8 Bonuses shall not be paid:
- (a) if the work described in the Contract is not completed by the time specified in the Contract or in any amendments to the Contract;
 - (b) if the cost specified in the Contract is exceeded by the contractor without prior authorization of the contract authority; or
 - (c) if the Contractor is unable to provide accounting records and/or other supporting documentation as requested by the Contract Authority.
- 19.9 Where a Contractor fails to meet its minimum mandatory Inuit Labour level requirement the Contract Authority may take whatever contractor performance measures it determines appropriate in accordance with sections 8.5, 8.6 and 8.7.

20.0 Restricted Invitational RFPs and RFTs for Inuit Firms

- 20.1 Subject to Government Contract Regulations, a Contract Authority may restrict Procurement Processes to Inuit Firms where the value of the Contract does not exceed \$100,000 for architectural/engineering or construction or \$25,000 for all other Contracts, where the Contract Authority determines there is sufficient competition (i.e., three or more potentially capable and available Proponents) located in Nunavut.
- 20.2 A Contract Authority may, in determining whether to restrict a Procurement Process in accordance with section 20.1, take into account factors which include, but are not limited to:
- (a) the number of potential Proponents;
 - (b) the extent to which conducting a Procurement Process in this manner will contribute to Inuit community and regional economic development in the community or region where the Contract will be performed;
 - (c) the need to build Inuit Firm capacity in the community or region where the Contract will be performed; and
 - (d) the potential cost implications associated with a restricted Procurement Process.

- 20.3 A Contract Authority may require that, for Contracts where subcontractors are likely to perform part or all of the required work, Contractors engage subcontractors that are Inuit Firms.

21.0 Sole-Source Contract Awards to Inuit Firms

- 21.1 Taking into account the objectives of the Nunavut Land Claims Agreement and subject to the Government Contract Regulations, a Contract Authority may award a Contract to an Inuit Firm without conducting a competitive Procurement Process.
- 21.2 The Government Contract Regulations and the following factors shall be taken into account when deciding to award a sole source Contract:
- (a) the need to build capacity for Inuit Firms in the region where the Contract will be performed;
 - (b) the extent to which a sole-source Contract will contribute to community and regional economic development;
 - (c) the nature and value of the goods or services or construction; and
 - (d) the potential cost implications associated with awarding a Contract without administering a competitive Procurement Process

22.0 Standing Offer Agreement Contracts Awards

- 22.1 Taking into account the objectives of the Nunavut Land Claim Agreement contracts may be awarded under Standing Offer Agreements subject to Government of Nunavut approved procedures and directives.
- 22.2 The Government of Nunavut shall provide Nunavut Tunngavik Incorporated, on an annual basis, with a list of all Contracts under section 22.1. For each contract, the list shall contain, at a minimum, a brief description of the nature of the contract, the name of the selected vendor, and the value of the Contract. Upon written request the Government of Nunavut shall, within thirty (30) days of the request, provide written justification and reasonable supporting information regarding a specific contract. Where the Government of Nunavut is unable to disclose details of certain Contracts due to concerns based on confidentiality or privilege, the existence of the Contracts and a general description of the contracting activities shall be provided.

23.0 Training and Skills Development

- 23.1 For Contracts with an anticipated Labour component valued in excess of \$1,000,000.00 and with duration of twelve (12) months or longer, the following will apply:
- (a) the Contract Authority shall stipulate that, in the case of construction contracts, Inuit shall be offered employment as a part of their training, where practicable, after consultation with the apprenticeship or training program representatives in Nunavut identifies potential employees suitable for on the job training;
 - (b) the Contract Authority shall, in the case of non-construction contracts and where applicable, stipulate other types of training or skills development activities which the contractor will be expected to meet as part of a contract award;
 - (c) all Proponents must commit to meeting mandatory Inuit apprentice and/or training and skills development requirements stipulated in the Procurement Process.
- 23.2 For Contracts that are not covered under section 23.1, the following will apply:
- (a) a Contract Authority shall give consideration to training and skills development opportunities associated with the performance of the Contract and determine whether to impose a requirement for the Contractor to commit to meeting any stated training and skill development requirements;
 - (b) where a Contract Authority determines that such training and skills development requirements are appropriate, they shall be included as a mandatory requirement in the Procurement Process;
 - (c) all Proponents must commit to meeting mandatory training and skills development and/or apprenticeship requirements.
- 23.3 Nothing in these provisions shall prevent a Contract Authority from requiring a Contractor to submit a training plan in a form to be determined by the Contract Authority in circumstances where a Contract Authority deems it appropriate.

Part 3 – Implementation of Preference for Nunavut and Local Businesses

24.0 Objectives of Part 3 of the NNI Policy

- 24.1 The objectives of Part 3 of the NNI Policy are as follows:
- (a) to build the economy of Nunavut and its communities by strengthening business sector capacity and increasing employment of Nunavut Residents;
 - (b) to assist Nunavut Businesses in participating in business opportunities, taking into account the special circumstances and higher costs encountered by businesses operating in Nunavut;
 - (c) to increase the number of trained and skilled Nunavut Residents in all parts of the workforce and business community; and
 - (d) to secure goods, services and construction for the Government of Nunavut at best value.

25.0 Bid Adjustments

- 25.1 Every Goods Only Bid or other Procurement Process, including Procurement Processes where mandatory minimum Inuit Labour levels are stated and that meet the mandatory conditions and is ranked, shall have its price component adjusted by one or more of the following amounts, where applicable:
- (a) 5% upon the establishment of Nunavut Business status, to be applied in respect of the value of the goods or work attributable to, and to be completed by, a Nunavut Business or Nunavut Businesses;
 - (b) 5% upon qualifying under the Local Adjustment.
- 25.2 Cumulative bid adjustments, including Inuit and Nunavut Labour, for Inuit Firms, Nunavut Businesses and local shall not exceed 25%.
- 25.3 In a Procurement Process where Nunavut Labour is identified, it shall be adjusted by 5%. Labour is evaluated and scored separately from Goods and Services.

- 25.4 In a Procurement Process where Local Labour is identified, it shall be adjusted by 5%. Labour is evaluated and scored separately from Goods and Services.
- 25.5 The Local Adjustment shall apply to any Proponent or Bidder that qualifies for the Nunavut Business status adjustment or the Inuit Firm Status adjustment, if the Proponent or Bidder is local to the subject community or communities where the work or services are required.
- 25.6 Where no qualifying Local Business submits a Bid or Proposal, any other qualifying Nunavut Business or Inuit Firm located in Nunavut submitting a Bid or Proposal shall be deemed to be a Local Business and the Local Adjustment shall apply.
- 25.7 A Nunavut Business or an Inuit Firm can only be considered Local if it is located in Nunavut.

26.0 Restricted Invitational RFPs and RFTs for Nunavut Business

- 26.1 Subject to section 20.1, a Contract Authority may restrict Procurement Processes to Nunavut Business where the value of the contract does not exceed \$100,000 for architectural/engineering or construction or \$25,000 for all other contracts, where the Contract Authority determines there is sufficient competition (i.e. three or more potentially capable and available Proponents) located in Nunavut.
- 26.2 A Contract Authority may require that, for Contracts where subcontractors are likely to perform part or all of the required work, Contractors engage subcontractors that are Inuit Firms.

Approval and Signature:

Signed on this _____ day of _____, 20____ at Iqaluit, Nunavut upon the approval and direction of the Executive Council:

Hon. Peter Taptuna

Premier

Appendix A: Definitions

Bid – a tender or an offer to sell or provide goods, services or construction that is submitted to a Contract Authority in response to a Procurement Process such as a request for bids or tenders.

Bid Adjustment – the amount by which the face value of a procurement process is reduced in accordance with the NNI Policy.

Bid Adjustment Cap – the maximum dollar value for the cumulative bid adjustments for a procurement process. The Bid Adjustment Cap for a Goods Only Bid is 25% of the first \$125,000 of the bid value. The Bid Adjustment for a mixed Goods and Services contract shall not exceed \$125,000.

Bidder – a party that submits a Bid.

Business Day – any day in which normal business is conducted by the Government of Nunavut. This is generally considered to be Monday through Friday from 8:30am to 5:00pm local time, and excludes weekends and public holidays. Exceptions may be considered in the event of factors such as blizzards or interruptions beyond the control of the Government of Nunavut.

Complainant – an unsuccessful Bidder or Proponent who wishes to challenge an award of a tender or a request for proposals.

Construction – includes both Major Construction and Minor Construction.

Major Construction – a construction contract with a value in excess of \$250,000.

Minor Construction – a construction contract with a value of not more than \$250,000.

Contract – a written agreement between a Contract Authority and another party to provide goods, perform services, construct public works, or lease real property, for consideration.

Contract Authority – the Minister of the contracting department, the Deputy Minister of the contracting department or a public officer who is authorized to enter into Contracts under section 4 of the *Government Contract Regulations*, Nu Reg. 002-2011.

Contractor - a corporation, partnership, co-operative or sole proprietor that has been awarded a Contract for the execution of work or services under the terms of a Contract.

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.

Goods and Services – some Procurement Processes are designed to procure both Goods and Services.

Goods Only Bid – a procurement process, typically a request for tenders, seeking for the supply of goods only.

Government of Nunavut - all territorial government departments, territorial corporations, and all public agencies listed in Schedule B of the *Financial Administration Act*, R.S.N.W.T. (Nu) 1988, c.F-4. The NNI Policy, under section 4.3(d), provides a limited set of circumstances where the policy applies to municipalities. In situations in which the municipality is a party to a contract covered by the NNI Policy, and where appropriate and depending on the context, the municipality shall be subject to the same obligations as if it formed part of the Government of Nunavut.

Inuit (singular: Inuk) – a person enrolled under Article 35 of the *Nunavut Land Claims Agreement*.

Inuit Firm – an entity which:

- (a) complies with the legal requirements to carry on business in the Nunavut Settlement Area,
- (b) is:
 - (i) a limited company with at least 51% of the company's voting shares beneficially owned by Inuit;
 - (ii) a cooperative controlled by Inuit; or
 - (iii) an Inuk sole proprietorship or partnership;

and

- (c) is able to present evidence of inclusion on Nunavut Tunngavik Incorporated's Inuit Firms Registry as compiled in accordance with Article 24 of the *Nunavut Land Claims Agreement*.

Labour – work or services which are specific to the scope and nature of a Contract performed by individuals in the performance of a Contract;

- (a) **Inuit Labour** – Labour provided in any capacity by an Inuk or Inuit where such labour is a specific task or tasks which is/are part of and specific to the scope and nature of work described in a contract for which an Inuk or Inuit were hired to perform.
- (b) **Local Labour** – Labour provided by an individual who is resident in the Subject Community.
- (c) **Nunavut Labour** – Labour provided by an individual who is a Nunavut Resident.

Local Adjustment – Applies to a Nunavut Business or an Inuit Firm that complies with the following criteria:

- (a) maintains an approved place of business by leasing or owning office, commercial or industrial space in the community on a year-round basis for the primary purpose of operating the subject business;
- (b) maintains a local resident manager that resides in the Subject Community and has final decision-making authority over the day-to-day operations for the subject business in the Subject Community; and
- (c) undertakes in the Subject Community or Communities the majority of its management and administrative functions relating to its overall operations.

Nunavut Business – a business which complies with the legal requirements to carry on business in Nunavut, and on a biennial basis demonstrates that it meets the following criteria:

- (a) is a for profit limited company with 100% percent of the company's shares beneficially owned by one or more Nunavut Residents and or one or more Nunavut Businesses which complies with the legal requirements to carry on business in Nunavut;
- (b) is a co-operative controlled by Nunavut Residents and or businesses which complies with the legal requirements to carry on business in Nunavut;
- (c) is a sole proprietorship, the proprietor of which is a Nunavut Resident; or
- (d) is a partnership of which all partners are Nunavut Residents and/or Nunavut Businesses which complies with the legal requirements to carry on business in Nunavut.

And the following (i) through (v) applies to the above (a) through (d):

- (i) maintains a registered office in Nunavut by leasing or owning office, commercial or industrial space or in the case of service oriented businesses, residential space, in Nunavut on an annual basis for the primary purpose of operating the subject business;
- (ii) maintains a resident manager that resides in Nunavut and has final decision-making authority over the day-to-day operations for the subject business in Nunavut;
- (iii) conducts the majority of its operations in Nunavut, including its management and administrative functions;
- (iv) has been registered on the NNI Nunavut Business registry prior to the closing of a Procurement Process; and
- (v) where applicable, is in a position to furnish goods as are listed on its Nunavut Business registration application and is subject to inspection by the responsible department.

Nunavut Business Registry – the list, maintained by the NNI Secretariat, of Nunavut Businesses that have applied for and met the requirements to be a Nunavut Business.

Nunavut Resident – a person who has spent the last twelve (12) months ordinarily residing in Nunavut, maintains a physical residence in Nunavut, and when requested can provide documentation supporting the residency. Proof of residency include, without limitations, a valid Nunavut Healthcare Card and/or other accepted proof such as a Nunavut General Hunting License, a Nunavut Driver's License and a lease or rental receipt.

Nunavut Settlement Area – the area defined in Article 3 of the Nunavut Land Claims Agreement.

Principal – a person who exercises management control over the affairs of a business or who has a substantial direct or indirect ownership interest in a business.

Procurement Process – the process by which the Government of Nunavut acquires goods, services, or goods and services required for construction or property leases.

Proponent – an individual, partnership, corporation or cooperative who submits a Proposal.

Proposal – the submission made by a Proponent in response to a Procurement Process.

RFP (Request for Proposals) - the solicitation of a proposal by public advertisement or private invitation.

RFT (Request for Tenders) - the solicitation for a bid in respect of a proposed contract by public advertisement or private invitation.

Standing Offer Agreement - Price agreement between the Government and a supplier, wherein the supplier agrees to provide, on demand, specified goods or services under specified conditions during a set period at a defined price or discount structure.

Subcontractor – includes any party that does not have a direct contract with the Bidder, Proponent or Contractor or has entered into a Contract with the Contractor to supply goods or services that will be incorporated into the entire project covered by the Contract.

Subject Community or Communities - the community or communities in or adjacent to which the contract performance is required. Where the work is required outside the legal boundaries of a community, the Government of Nunavut may:

- (a) define “community” to include that adjacent community in any case;
- (b) define “community” to include both or all adjacent communities, where two or more communities, such as Hall Beach/Igloolik and Arctic Bay/Nanisivik, are both close to the work site; or
- (c) define the name(s) of the Subject Community or Communities to be included in the term “Subject Community” for the purpose of receiving a local preference as specified in all Tender documents and Contracts.

Appendix B: NNI Review Committee Terms of Reference

Background

The Government of Nunavut's preferential contracting policy, the Nunavummi Nangminiqatunik Ikajuuti (NNI Policy), came into effect April 1, 2000 and as a result of periodic reviews, has been amended over time.

The use of incentives and preferences for Inuit and Nunavut businesses is intended to promote the growth of the economic base of the territory and ensure Inuit participation in it.

Periodic reviews will be conducted over time to ensure that the NNI Policy continues to meet its objectives.

Under section 12.0 of the NNI Policy, a NNI Policy Review Committee (Review Committee) consisting of representatives appointed by the Government of Nunavut and Nunavut Tunngavik Incorporated shall be established to review the implementation of the NNI Policy. This Review Committee is to meet on a quarterly or periodic basis as determined by the co-chairs of the committee to ensure that progress towards the objectives of the NNI Policy is being made.

Cabinet of the Government of Nunavut may depart from the provisions of the NNI Policy consistent with the obligations of the Government of Nunavut under Article 24 of the Nunavut Land Claims Agreement.

Scope of the Review Periodic Reviews

The Review Committee will conduct periodic reviews including, but not limited to the following matters:

- A review of the Government of Nunavut contracting data, subject to or exempted from the NNI Policy annually;
- A review of the substance and application of the NNI Policy to determine the extent to which the NNI Policy meets the objectives set out in Article 24 of the Nunavut Land Claim Agreement and of the objectives of the Nunavut Land Claim Agreement in general;
- A review of the recommendations of the previous review and their implementation;

- A review of the monitoring and enforcement concerns that may have arisen or may arise out of the implementation of the NNI Policy;
- A review of the results of all submissions and input received through written submissions from third parties.

The Review Committee will prepare a report from its periodic reviews that shall include recommendations which, in the opinion of the Review Committee, will ensure that the Government of Nunavut is better able to take meaningful steps toward providing Inuit with the means of participating in economic opportunities in Nunavut by maximizing Inuit employment and business opportunities as well as incorporating proposed changes that will benefit Inuit and all Nunavummiut. The report shall specifically address how the Government of Nunavut can best carry out the terms of Article 24 of the Nunavut Land Claim Agreement through the appropriate application of preferential contracting policies, procedures and approaches.

Without limiting the scope of possible recommendations, the Review Committee may recommend one or more of the following:

- Revisions to the NNI Policy
- Amendments to legislation or regulations
- Changes in administrative or regulatory structures
- Other arrangements

Composition of the Review Committee

- Nunavut Tunngavik Incorporated and the Government of Nunavut shall each appoint executive level representatives to the NNI Review Committee.
- The Review Committee shall be chaired by the representatives jointly.
- The representatives, upon mutual agreement, may invite individuals with particular knowledge or expertise to attend meetings of the Review Committee for the purposes of providing specific support and advice. Nunavut Tunngavik Incorporated and the Government of Nunavut may, where circumstances warrant, notify the representatives, at least three (3) days in advance, of any meeting where such resource people will attend. Each team will limit its invited resource personnel to three (3) persons per meeting, except where exceptional circumstances warrant additional individuals.
- Decisions of the Review Committee will be by agreement of the representatives.

- All public communications on behalf of the Review Committee will be made by the representatives jointly.

Consultation

- The Review Committee shall invite public input and consult with interested parties as required.
- The Review Committee may agree to a process for regional consultations.

Reporting Relationships

- The representative of the Government of Nunavut, for the purposes of the Review Committee, shall report to the department responsible for implementation of the NNI Policy. The representative of Nunavut Tunngavik Incorporated, for the purposes of the Review Committee, shall report to Nunavut Tunngavik Incorporated.

Time Frame

- The Review Committee shall meet quarterly or as deemed necessary by the co-chairs.
- All relevant information or data gathered in advance by either Government of Nunavut or Nunavut Tunngavik Incorporated shall be provided to all committee members in a timely manner before meetings.
- The Review Committee shall consider its deliberations and recommendations and prepare periodic reports to be submitted to Cabinet and to the Nunavut Tunngavik Incorporated Executive Committee for approval.

Costs

- The Government of Nunavut will be responsible for the costs of the participation of its staff.
- Nunavut Tunngavik Incorporated will be responsible for the costs of the participation of its staff.
- The costs of public consultations, including advertising and where applicable, travel costs of all committee members, will be the responsibility of the Government of Nunavut.
- Government of Nunavut will bear the costs of providing secretarial support to the Review Committee.

- The costs of advertising, production, translation and distribution of reports, when required, will be the responsibility of the Government of Nunavut.

Confidentiality

The parties commit to disclose information to the Review Committee as fully as possible. It is recognized that some information provided by firms may be commercially sensitive, personal or provided by third parties in the expectation that it would not be shared with anyone outside the Government of Nunavut. The Review Committee will keep such information strictly confidential and it shall not be disclosed or used by any person in any proceedings or in any manner outside the review process.

