

# Plain Language Guide to NNI

This guide provides a general overview of the Government of Nunavut's Nunavummi Nangminiqatunik Ikajuuti or NNI. This guide does not under any circumstances supersede or replace the NNI Regulations, and should not be considered to be legal advice.

What are the objectives of NNI? They are:

- a) Compliance with Article 24 of the Nunavut Agreement;
- b) Good value and fair competition in the procurement process;
- c) Strengthening Nunavut's economy; and
- d) Increasing Inuit participation as well as education and training in Nunavut.

For details, please refer to the NNI Regulations. The current version is available at [www.nni.gov.nu.ca](http://www.nni.gov.nu.ca).

## Introduction

The Nunavummi Nangminiqatunik Ikajuuti, or NNI, is a set of rules providing for preferential treatment in public procurement of Inuit firms, Nunavut businesses and contractors employing Inuit, local or Nunavut labour as set out in the Nunavummi Nangminiqatunik Ikajuuti Regulations, R-023-2017.

The Government of Nunavut, (GN) and Nunavut Tunngavik Incorporated (NTI) worked together to develop the NNI Regulations, which came into effect on April 1, 2017. These Regulations replace the previous 2006 NNI Policy.

Cabinet may choose to depart from the NNI in exceptional circumstances. The GN will consult with NTI on the reasons for departing from the NNI and how the GN will achieve the objectives of Article 24 of the Nunavut Agreement.

## New Structure to the NNI

The NNI is divided into three parts:

- **Part One:** Provisions of General Implementation. ....**Sections 7 to 15**
- **Part Two:** Implementation of Article 24. ....**Sections 16 to 23**
- **Part Three:** Preference for Nunavut and Local Businesses.....**Sections 24 to 26**

## Application to Procurement

The NNI, with certain exceptions, applies to any procurement process and the award of any contract where the contracting authority is a GN department or territorial corporation and where;

- a) The GN provides more than 51% of the individual contract funds, or
- b) The GN provides more than 51% of the annual operating funds for a party to the contract.

The NNI applies to all GN territorial corporations including:

- a) Nunavut Arctic College,
- b) Qulliq Energy Corporation,
- c) Nunavut Housing Corporation,
- d) Nunavut Business Credit Corporation, and
- e) Any territorial corporations which are subject to Schedule B of the Financial Administration Act.

The NNI does not apply to:

- a) Contracts which provide the GN with liability insurance,
- b) Contracts which establish employer-employee relationships with the GN
- c) Sole-sourced contracts where:
  - i. The contract authority reasonably believes that the contract must be started urgently, and a delay could be harmful to the public interest, or
  - ii. Only one party is able to perform the contract, or
  - iii. The value of the contract is under \$25,000 for architectural or engineering contracts, or under \$5,000 for any other type of contract,
- d) Contracts issued by municipalities except as provided for by the NNI, or
- e) Contracts with any other government or government agency

## Definitions

A complete list of definitions is available in Appendix A of the NNI.

Bid Adjustment – the amount by which a bid's face value, or total price, in a procurement process is reduced based on Inuit Firm status and Nunavut Business registration.

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.

Contract – is 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 –

- a) With respect to a contract to which the *Government Contract Regulations* apply, has the same meaning as in those regulations; or
- b) With respect to any other contract to which the NNI applies, means a person authorized to enter into the contract for the purchaser.

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.

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;
- c) Is able to present evidence of inclusion on NTI Inuit Firms Registry as compiled in accordance with Article 24 of the 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 such compliance and 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 of the following:
  - i. A Nunavut Resident,
  - ii. A Nunavut Business,
  - iii. Nunavut Tunngavik Incorporated,
  - iv. The Nunavut Trust
  - v. Regional Inuit Organizations, as defined in the Agreement;
- b) Is a co-operative controlled by one or more of the following:
  - i. A Nunavut Resident,
  - ii. A Nunavut Business;
- c) Is a sole proprietorship, the proprietor of which is a Nunavut Resident;
- d) Is a partnership of which all partners are Nunavut Residents or Nunavut Businesses.

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

Procurement Process – the process by which the contract authority acquires goods, services, or goods and services required for construction or property leases.

Proposal – the submission made by a proponent in response to a procurement process.

RFP (Request for Proposals) – this is a solicitation of a proposal by public advertisement or private invitation.

RFT (Request for Tenders) – this is a solicitation of 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.

Subject Community or Communities – the community or communities in or adjacent to which the contract performance is required. For Nunavut-wide procurement processes, all Nunavut communities are Subject Communities. Where the work is required outside the legal boundaries of a community, the contract authority 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.

## **Part 1 – Provisions of General Application**

### **Bid Adjustments in Procurement Processes for Tenders and for Mixed Goods and Services**

For tenders of goods only the bid adjustment is applied only to the first \$125,000 of the bid value. This is known as a “Bid Adjustment Cap” for goods only

For procurement processes for mixed “Goods and Services” the maximum value of the bid adjustment shall not exceed \$125,000. This is known as the Bid Adjustment Cap for Goods and Services.

The mixed “Goods and Services” Bid Adjustment Cap does not apply to minor or major construction procurement.

In all cases cumulative Bid Adjustment shall not exceed 25%.

### **Monitoring and Enforcement**

The GN has procurement policies and procedures for the purchase of goods and services. All procurement contracts follow GN regulations and are administered by contract authorities in a

way that promotes the objectives of the NNI; good value, and fair competition. Each procurement process clearly explains how the NNI will affect the selection of a proponent or bidder. Proposals or bids that meet the conditions of the procurement document will have the price adjusted according to the NNI.

The GN will implement monitoring and enforcement procedures to ensure that contractors comply with the NNI, contractor performance is assessed regularly, and the NNI is applied accurately and consistently. Each contracting authority is responsible for monitoring and enforcing the contracts they administer, and will provide monitoring and enforcement information to the NNI Secretariat. The GN will also provide the monitoring and evaluation information to NTI.

If a contractor fails to meet Inuit labour level commitments for a contract they have been awarded, the contract authority may prohibit a contractor from receiving NNI bid adjustments or from receiving another contract temporarily or permanently. The contract authority may further penalize a contractor, or terminate a contract in progress, if; the contractor fails to properly complete the contract, the contractor fails to meet Inuit labour level commitments, the contractor fails to meet training and skills development requirements, or the contractor purposely provides the GN with inaccurate information. The details of this can be found in the NNI Regulations in sections 8.5 to 8.7.

### NNI Tribunal

An independent NNI Tribunal has been created to review and respond to complaints about how the NNI was applied to a GN procurement process.

The Tribunal is made up of 5 members who are each appointed for a three year term. All Tribunal members have knowledge and experience in procurement, government contracting, or administrative law. Two of the members are nominated by NTI and then appointed by the GN. Three members are direct appointed by the GN. The GN will appoint one Tribunal member to act as Chairperson, and another to act as Vice-Chairperson. Additionally, the Tribunal may bring in legal counsel or other experts to help with a review.

The Tribunal can only review aspects of the application of the NNI Regulations to a procurement process. The Tribunal cannot accept complaints regarding the performance of a contract or any issue regarding the contract that is not covered by the NNI Regulations.

For details, relevant timelines, and possible outcomes of filing a complaint regarding the award of a contract, please see the NNI Regulations section 9.0 NNI Tribunal.

### Leases:

The NNI Regulations apply to lease contracts obtained by GN Contract Authorities.

## Review Committee

The NNI Review Committee is composed of a representative of NTI appointed by NTI, a representative of the GN appointed by the Minister, and other representatives of NTI and the GN. The committee will meet at least on a quarterly basis.

The NNI Review Committee will develop and apply methods to assess overall progress toward the objectives of the NNI and methods to recommend adjustments to the NNI. The Review Committee will also assess monitoring and enforcement efforts regarding the implementation of the NNI.

The NNI Review Committee will conduct a comprehensive review of the NNI every five years or sooner if directed by Cabinet, after consultation with NTI.

The terms of reference of the NNI Review Committee are available in Appendix B of the NNI Regulation.

## **Part 2 – Implementation of Article 24 of the Nunavut Agreement**

### Objectives of Part 2 of the NNI

The NNI is interpreted and implemented in a manner consistent with the spirit and intent of the Nunavut Agreement.

In accordance with Article 24 of the Nunavut Agreement, the objectives of Part 2 of the NNI are:

- a) To increase participation of Inuit Firms in business opportunities in Nunavut;
- 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 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 businesses.

### Bid Adjustments

For the purposes of NNI the interpretation of Inuit ownership is consistent with the spirit and intent of the Nunavut Agreement as reflected in the NTI Inuit Firm registry.

Every compliant bid received will have its price component adjusted by the following amounts, where applicable:

- a) A 5% adjustment for an Inuit Firm that meets the 51% ownership requirement, as determined by the Inuit Firm Registry through NTI.
- b) An additional 5% adjustment for an Inuit Firm with 76% or higher demonstrated Inuit ownership as determined by the Inuit Firm Registry.
- c) An additional 5% adjustment for an Inuit Firm with 100% demonstrated Inuit ownership as determined by the Inuit Firm Registry.

In a procurement process where Inuit labour is identified the bid adjustment will be adjusted by 15% for the Inuit labour. Labour is evaluated and scored separately from goods and services. However, the total cumulative bid adjustments shall not exceed 25%.

### Inuit Labour Level

The GN will establish mandatory Inuit labour levels for each procurement process involving a labour component where the Inuit labour levels can be calculated. The following factors will be considered in determining this level:

- a) The skills required to perform the work;
- b) The Inuit labour available, including Inuit apprentices and Inuit students, in Nunavut and in the communities relevant to the contract, with the skills to perform the work;
- c) Other ongoing or anticipated projects in the communities relevant to the contract that may impact the availability of Inuit labour; and
- d) Any other factors relevant to the contract work.

For Requests for Proposals involving labour, 20% of total available points for scoring the proposal are applied to Inuit labour except in cases where the contract authority determines this is not applicable. The contract authority may decide to lower the mandatory Inuit labour level for a contract in progress.

Proponents will be required to commit to meeting the mandatory Inuit labour level for each contract they enter a proposal for.

### Bonuses and Contractor Performance Measures

The provisions in this section apply only to construction contracts. The GN may establish bonuses and contractor performance measures for any other type of contract.

A contract authority will award a bonus to a contractor that exceeds the mandatory Inuit Labour level for their contract. When a bonus is applied, it is calculated as 1% of the total Inuit Labour value of the contract for each 1% of the Inuit Labour level that exceeds the minimum requirement of the contract. The maximum bonus shall not exceed 25% of the total Inuit Labour value or \$150,000, whichever is lower.

Bonuses will not be paid if:

- a) The work required by the contract isn't completed within the time specified in the contract;
- b) The costs specified in the contract are exceeded by the contractor without prior approval by the contracting authority; or
- c) The contractor is not able to provide the contracting authority with accounting records or any other necessary documents.

In the event that a Contract Authority reduces the minimum Inuit Labour level of the contract during the term of the contract the contractor shall not be eligible for a bonus unless the contractor exceeds the original minimum Inuit Labour Level of the contract.

### Restricted Invitational RFPs and RFTs for Inuit Firms

A contract authority may, subject to Government Contract Regulations, decide to issue contracts that are restricted to Inuit Firms, as long as the value of the contract is less than \$100,000 for architecture/engineering and construction contracts, or \$25,000 for all other contracts.

A contract authority may require, for contracts restricted to Inuit Firms, that any sub-contracting work is also performed by Inuit Firms.

### Sole-Source Contract Awards to Inuit Firms

Taking into account the objectives of the Nunavut Agreement and subject to the Government Contract Regulations a contracting authority may award a contract directly to an Inuit Firm without conducting a competition.

### Standing Offer Agreement Contracts Awards

Taking into account the objectives of the Nunavut Agreement and subject to GN policies and procedures, the GN may award contracts under standing offer agreements.

### Training and Skills Development

For contracts which will have a labour component value over \$1 million and a contract length greater than one year, the following will apply:

- a) The contract authority will specify in a construction contract, where applicable, that Inuit will be offered employment as part of their training.
- b) For non-construction contracts, where applicable, the contracting authority will specify other conditions for Inuit training and skill development which the contractor will be required to meet.
- c) All contractors must commit to meeting Inuit apprenticeship, training, and skill development activities as required in the contract.

For contracts which will not have a labour component value over \$1 million and a contract length greater than 1 year, the following will apply:

- a) A contract authority will consider potential Inuit training and skill development opportunities that the contract could provide, and determine whether or not to require any training and skill development activities as part of the contract.
- b) Where a contracting authority does decide that Inuit training and skill development requirements are appropriate, they will be included as mandatory components in the contract.
- c) All contractors must commit to meeting Inuit apprenticeship, training, and skill development activities as required in the contract.

A contract authority may require a contractor to submit a training plan.

### **Part 3 – Implementation of Preference for Nunavut and Local Businesses**

#### **Objectives of Part 3 of the NNI**

The objectives of part 3 of the NNI 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 GN at best value.

#### **Restricted Invitational RFPs and RFTs for Nunavut Business**

A contract authority may decide to issue contracts that are restricted to Nunavut businesses, as long as the value of the contract is less than \$100,000 for architecture/engineering and construction contracts, or \$25,000 for all other contracts.

A contract authority may require, for contracts restricted to Nunavut businesses, that any sub-contracting work is performed by Inuit Firms.