



EXECUTIVE SUMMARY

Public Procurement Policies

*For the GOVERNMENT OF
THE NORTHWEST TERRITORIES*

*“We have set the stage today for an important territory-wide conversation...
The recommendations that come out of this process will shape GNWT
procurement policies in the interest of our economy for decades to come.”*

Hon Caroline Wawzonek
Minister of Industry, Tourism and Investment

JANUARY 2021

Executive Summary

Changing economic and social factors over the past decade have prompted the Government of the Northwest Territories (GNWT) to review its procurement policies. The GNWT's procurement policies have not been substantially updated since 2010.



It is important that GNWT procurement policies strike a balance between generally accepted principles of public procurement: transparent, fair, and competitive while optimizing the value of the taxpayers' dollar. Broader requirements of Canada's free trade agreements must be considered when developing or changing preferential procurement policies (although general and GNWT-negotiated exceptions exist that would allow - for example, for the creation of an NWT Indigenous procurement policy).

The existing GNWT approach to preferential procurement is governed by three key policies: the Business Incentive Policy (BIP), the NWT Manufactured Products Policy (NMPP), and the Negotiated Contracts Policy (NCP). For public infrastructure projects over \$50 million, a fourth policy, the Public-Private-Partnership (P3) can also be applied to share risk with the private sector and encourage innovation while targeting local and Indigenous procurement.

The Business Incentive Policy (BIP)

The BIP is designed to recognize the higher costs of doing business in the North and encourage NWT-based businesses to create employment and develop necessary experience and business skills. It offers preferential bid adjustments to qualifying companies—currently around 1,200—for using NWT and local content. Several BIP-related elements require review. One of the most complex and contentious is the determination of which businesses qualify for BIP status. To qualify, a NWT company must have 51

percent of its voting shares beneficially owned by a NWT resident. This is not always clear; nor is the definition of a company's 'bona fide' place of business. There is an issue of fairness when it comes to the 60 non-resident companies that were grandfathered with BIP eligibility. Further, non-BIP companies can qualify for bid adjustments if they commit to using NWT resident labour, goods, and services; but this has proven difficult to monitor.

The NWT Manufactured Products Policy (NMPP)

The NMPP addresses the challenges of manufacturing in the North. Manufacturing in the North can be challenging, in part because of high input costs, small sales volumes and a lack of economies of scale in production and distribution.

The NMPP provides incentives to support local production and the manufacture of goods for sale

to the GNWT. BIP-registered businesses may apply to have their NWT-made goods registered as an Approved NWT Manufactured Products. Manufacturers have identified concerns with the current NMPP citing: burdensome administrative and compliance requirements; a lack of government support for, or commitment to, the policy; and minimal provisions for appeal and review.

The Negotiated Contracts Policy (NCP)

The NCP allows GNWT to directly negotiate and award contracts in cases where benefits wouldn't be fully realized through a competitive contracting process - or to comply with the Canadian Free Trade Agreement. The negotiation and awarding of contracts under the NCP must be authorized by the GNWT's Executive Council. Most negotiated contracts support Indigenous businesses.

The potential benefits of preferential Indigenous procurement, together with the GNWT's commitment and obligations to support Indigenous governments,

necessitates that an Indigenous procurement policy be strongly considered. Business and employment opportunities generated by growth in local and NWT Indigenous corporations and companies will benefit the broader economy.

Through its procurement review process, with expert advice, and in consultation with Indigenous governments, the GNWT is proposing the creation of an Indigenous procurement policy. Several models exist across Canada which can be considered or adapted for use in the NWT.

The Public Private Partnership (P3)

The P3 policy allows for partnership agreements with the private sector to develop public infrastructure and provide services as an alternative to traditional forms of procurement. The policy applies where costs exceed \$50 million, where an appropriate transfer of risk exists between the GNWT and the private sector, the agreement includes an operating period, and the business case shows a clear net benefit over a traditional procurement approach.

A primary criticism of P3s has been that they often result in relatively little benefit to the NWT in terms of local business opportunities, employment, and training. Through this procurement review process, the GNWT will continue to consider additional opportunities to enhance local benefits. Going deeper, it leads to an important consideration: whether P3s should continue to be an option.

The impacts and processes of government procurement are far reaching and need to be well understood by GNWT employees involved in procurement, the business community, and the public. The GNWT holds numerous workshops on its procurement policies and processes but feedback shows that they need to be more effective. The government's review will also address the transparency of its procurement expenditures. The GNWT publishes an annual, publically-available listing of contracts over \$10,000. It's a comprehensive spreadsheet but lacks summary information that would support meaningful analysis. The GNWT has committed to improvements in this area.

To facilitate and guide its review process, the GNWT has engaged an NWT facilitator and Indigenous business representative, in addition to external expertise, to review: its current policies and consider policies from other jurisdictions; coordinate input from stakeholders through wide-ranging and open public discussion; and provide an independent report including recommendations for action.

While the GNWT mandate commits to the completion of this review in 2022, the Departments of Industry, Tourism and Investment and Finance intend to complete this review by summer.

The review of government procurement policies sets the stage for an important territory-wide discussion about public and preferential procurement in the context of the GNWT's longstanding commitment to support Northwest Territories businesses and grow a strong, diversified economy.

Ultimately, the GNWT wants to see more NWT residents working and advancing their careers; and more businesses thriving and growing in our territory.

As it gets set to consider the policies that are in place to support these goals, the GNWT has outlined 10 questions that will get the conversation started.

1. What principles should underpin a GNWT procurement policy?
2. How can the transparency of GNWT procurement and contracting data be improved?
3. For the purpose of providing preferential procurement, how would you define what constitutes a 'NWT business'? The current approach, with 51 percent of voting shares? All businesses that have made a substantial investment in the NWT and employ NWT residents? Or a hybrid within this range?
4. Should the BIP Schedule 3 (non-resident grandfathered companies) be eliminated? Or should it be expanded to recognize the investment made by other non-resident companies? One method to recognize the investment of non-resident companies could be the amount of capital and operating costs incurred in the NWT. Would you support this, or suggest other methods?
5. Should the GNWT pay more for goods and services if they are provided by a NWT business? If so, how much more? Do you agree with the current approach to bid adjustments or what other options should be considered?
6. What are your thoughts with respect to the key purpose of BIP and preferential procurement? To offset the higher cost of doing business in the NWT? To provide preference for NWT resident-owned businesses? To encourage investment in the NWT and bring jobs to the territory, and assist in reducing the cost of living? Or a blend of these?
7. What preferential procurement mechanisms could be used to encourage NWT manufacturing? What are your thoughts on a bid adjustment premium, in addition to BIP, to support NWT manufacturing while ensuring there is an appropriate level of transparency?
8. What ideas or input do you have with respect to the establishment of a GNWT Indigenous procurement policy?
9. Should P3 projects continue to be used in order to limit GNWT risk and encourage innovation on major infrastructure projects (over \$50 million) as long as there is a commitment to maximize the participation of NWT and Indigenous businesses?
10. In addition to the efforts discussed in this paper, what other ways could the GNWT strengthen the relationship between GNWT procurement and contracting personnel and NWT and Indigenous businesses?