



YUKON WORKERS'  
COMPENSATION  
HEALTH AND  
SAFETY BOARD

SUBJECT: **GENERAL AND CORPORATE** Policy No.: GC-11

BOARD APPROVAL: \_\_\_\_\_

APPROVAL DATE: **July 12, 2005**

BOARD ORDER NO.: \_\_\_\_\_

EFFECTIVE DATE: **July 12, 2005**

## POLICY STATEMENT

**POLICY:**    **CONTRACTING POLICY**

### **PART I - GENERAL**

#### **OBJECTIVES**

1. The objectives of the policy are to ensure that the Workers' Compensation Health and Safety Board's ("the Corporation") contracting activities are carried out in a fair, fiscally responsible, accountable, open and competitive manner.

#### **SCOPE**

2. This policy applies to all contracts except:
  - (a) employment contracts;
  - (b) contracts relating to projects funded by the Corporation and carried out by another party under a contribution agreement for its own use; and
  - (c) contracts for the practice of law as defined in the *Legal Professions Act*.

#### **CONTRACTS OF EMPLOYMENT NOT AUTHORIZED**

3. Nothing in this policy authorizes the appointment or employment of any person as an employee of the Corporation.

#### **OVERPAYMENT NOT AUTHORIZED**

4. Nothing in this policy authorizes the making of a payment in excess of the amount payable under the terms of the contract.

**INCENTIVES**

5. Nothing in this policy prohibits the Corporation from offering incentives to prospective bidders or proponents, provided that:
- (a) the availability of such incentives is clearly identified in the request for bids or proposals; and
  - (b) the incentives do not arbitrarily or unnecessarily limit the number of bidders or proponents.

**DEEMED DELIVERY**

6. Notification of any matter pursuant to this policy will be deemed to be delivered at the time transmitted by facsimile, or at the time delivered to a courier, or at the time delivered to Canada Post, as the case may be.

**CONTRACTS AND STANDING OFFER AGREEMENTS IN EXCESS OF THREE YEARS**

7. No contract or standing offer agreement will be entered into by the Corporation without the approval of the Board of Directors if the contract or standing offer agreement contains:
- (a) a stated initial term in excess of three (3) years; or
  - (b) a stated initial term of three (3) years or less, but containing provision for renewal so that the aggregate of the initial term and the renewals may exceed three (3) years; or
  - (c) a probable time of performance in excess of three (3) years.
8. Contracts or standing offer agreements entered into pursuant to section (7) will be identified in the contract registry maintained pursuant to sections (39) and (40).

**TENDERING FORECAST**

9. The administration will, before the end of each quarter, provide to the President, or delegate, a listing of contracts and standing offer agreements in excess of \$25,000 contemplated to be awarded in the following quarter.
10. The President or delegate will make available to the public the information provided by the administration in section (9).

**PART II – DEFINITIONS**

11. The following definitions apply in this policy.
- (a) **AWARD OF CONTRACT OR STANDING OFFER AGREEMENT**  
Refers to the decision to award the contract or the standing offer agreement to the selected bidder or proponent.
  - (b) **BID**  
An offer, submitted in response to a request for bids, to supply goods or services or to purchase assets at a specific price or price formula, under stated terms and conditions.

- (c) **BIDDER**  
A person, partnership or corporation who submits a bid.
- (d) **BID SECURITY**  
Security given by a bidder or proponent to guarantee entry into a contract.
- (e) **CHANGE ORDER**  
A document issued by the Corporation to change a contract.
- (f) **CLOSING TIME**  
The time and date on which bids or proposals must be received at the designated place.
- (g) **CONTRACT**  
An agreement between the Corporation and a contractor to provide goods, perform a service, or to lease real property, for consideration.
- (h) **CONTRACTOR**  
Any person, partnership, association or corporation which supplies goods or services under a contract with the Corporation.
- (i) **CONTRACT PRICE**  
The price or price formula stipulated in a contract.
- (j) **CONTRACT SECURITY**  
A deposit of securities by the contractor which the Corporation may convert to carry out the contractor's obligations under the contract.
- (k) **CONTRIBUTION AGREEMENT**  
An agreement between a donor and a recipient of a contribution which describes the obligations of each party and the conditions of payment.
- (l) **CORPORATION**  
Means the Workers' Compensation Health and Safety Board.
- (m) **EMPLOYMENT CONTRACT**  
A contract of service which establishes an employer – employee relationship.
- (n) **ESTIMATED CONTRACT VALUE**  
The total estimated value of the contract or standing offer agreement prior to issuing the request for bids or proposals.
- (o) **EVALUATION CRITERIA**  
Criteria against which proposals are evaluated for purposes of determining:

- i) which proposals qualify for consideration; and
- ii) how to rank valid proposals.

The selection of the successful proposal is based on factors which may include the effectiveness of the proposed solution, the experience, qualifications and financial capabilities of the proponents and the experience and qualifications related to Workers' Compensation and Occupational Health and Safety, rather than on price alone.

The Corporation reserves the right to reject a proposal of a proponent where there has been deficient performance under a prior contract with the Corporation. Evaluation criteria will include a requirement for employers to submit evidence of a working safety program, when such a program is required under the Occupational Health & Safety Regulations.

- (p) **EXPRESSION OF INTEREST**  
A publicly advertised invitation to respond with identification and qualifications, to a particular category of work or anticipated project, for the establishment of a specific source list category.
- (q) **GOODS CONTRACT**  
A contract for the purchase of articles, commodities, equipment, goods, materials or supplies, which may include installation.
- (r) **INVITATIONAL TENDER**  
A request for bids or proposals on a contract or standing offer agreement given to a number of identified bidders or proponents.
- (s) **OPEN SOURCE LIST**  
A list of persons, partnerships, associations and/or companies which have indicated their willingness to respond to requests for bids or proposals. The Corporation may choose to use the open source list prepared by the Yukon Government or may use its own.
- (t) **PRICE-DRIVEN CONTRACT**  
A contract entered into as the result of a bid.
- (u) **PROPOSAL**  
An offer, either unsolicited or in response to a request for proposals, to propose a solution to a problem, need or objective, under stated terms and conditions, or to establish a qualified source list.
- (v) **PROPONENT**  
A person, partnership, association, or corporation who submits a proposal.
- (w) **PUBLIC TENDER**  
A request for bids or proposals made by public advertisement.

- (x) **QUALIFIED SOURCE LIST**  
A list of bidders or proponents who meet the evaluation criteria specified for the award of a proposed contract.
- (y) **REAL PROPERTY LEASE**  
A lease or agreement whereby the Corporation acquires a leasehold interest in or a license to occupy real property.
- (z) **REJECTION OF BID OR PROPOSAL**  
The determination that a bid or proposal will not be evaluated on the basis that it does not meet the requirements specified in the request for bids or proposals.
- (aa) **REQUEST FOR BIDS**  
A document defining the requirements of the contract and the minimum standards to be met by bidders so as to permit the evaluation of bids on the basis of price.
- (bb) **REQUEST FOR PROPOSALS**  
A document inviting a supplier(s) to propose a solution to a problem, need or objective.
- (cc) **STANDING OFFER AGREEMENT**  
A method of supply used to provide direct access to sources of supply for goods and/or services, on an as-required basis, for specific periods of time, at prearranged prices and delivery conditions.
- (dd) **SUBCONTRACTOR**  
A corporation, partnership, association or individual who has been awarded a contract by a contractor of the Corporation, and under that contract, supplies goods or services for which the contractor was engaged.
- (ee) **UNIT PRICE**  
A method of pricing in which the total amount payable is calculated by multiplying the number of identical units of work or items delivered by a fixed price per unit or item.
- (ff) **VALID BID OR PROPOSAL**  
A bid or proposal which has not been rejected for failing to meet the requirements set out in the request for bids or proposals.
- (gg) **VALUE-DRIVEN CONTRACT**  
A contract entered into as the result of a proposal.
- (hh) **YUKON BUSINESS**  
A business that meets two or more of the following criteria:

- the business employs Yukon resident(s);
- the business owns, for purposes directly related to the operation of the business, real property in the Yukon;
- the business operates a year-round, locally staffed office in the Yukon;
- the business is owned, or is a corporation that is owned, fifty percent (50%) or more by Yukon residents.

(ii) **YUKON RESIDENT**

A person who has resided full time in the Yukon for a minimum of the immediately preceding three months. Except where otherwise provided in this policy, proof of residency for the required period will be a valid Yukon Health Care Insurance Plan card.

(jj) **WAGES AND BENEFITS**

Gross wages/salary paid as compensation to an employee or to a fund, insurer or other person for the employee's benefit. Benefits include the employer's contribution to supplementary health, life, and disability insurance and pension plans.

**PART III – SPECIAL ISSUES**

**COMMUNITY CONTRACTING**

12. The Corporation, when contracting for goods and services for use in the communities, will make best efforts to support community-based businesses within the context of existing contracting policy by:
- (a) ensuring that community-based businesses have the opportunity to submit bids or proposals on contracts, and that they are competing on an equitable basis with contractors from outside the community;
  - (b) developing communications channels, where appropriate, with local business organizations and contractors that will enable them to anticipate the Corporation's needs in the community, and to develop their businesses to meet those needs; and
  - (c) taking into account the full cost of contracting outside the community when the goods and services are to be utilized within the community.

**YUKON RESIDENCY**

13. To determine whether or not potential bidders or proponents for the Corporation's contracts meet the three months' residency requirement under the definition of "Yukon resident" in this policy:
- (a) beneficiaries enrolled under the Yukon Indian land claim are deemed to be Yukon residents if they are ordinarily resident in the Yukon. "Ordinarily resident" means they have lived the majority of their lives in the Yukon;
  - (b) temporary absences from the Yukon during the immediately preceding three months for reasons of medical treatment, education, military service, travel or incarceration shall be considered periods of residence if the applicant was ordinarily resident prior to such absences for more than three months;

- (c) where an applicant does not wish to show a Yukon Health Care Insurance Plan card as proof of the required three months' residency, other valid evidence of residency may be accepted.

## **PART IV – COMPETITIVE BIDDING REQUIREMENTS**

### **REQUESTS FOR BIDS OR PROPOSALS REQUIRED**

- 14. Except as provided in section (21), the Corporation will invite bids or proposals in accordance with this policy prior to entering into any contract or standing offer agreement.

### **ISSUING A REQUEST FOR BIDS OR PROPOSALS PACKAGE WHERE OTHER PARTIES HAVE BEEN INVITED TO SUBMIT BIDS OR PROPOSALS**

- 15. Subject to section (20) the Corporation will, without delay, issue a request for bids or proposals to any prospective bidder or proponent.

### **SOURCING THRESHOLDS**

- 16. For price-driven contracts:
  - (a) below \$10,000 estimated contract value, the Corporation may enter into a contract or standing offer agreement directly with a bidder;
  - (b) between \$10,000 and \$50,000, the Corporation will either invite bids from three sources (or fewer if three sources can not be identified), or issue publicly advertised requests for bids; and
  - (c) above \$50,000, the Corporation will issue publicly advertised requests for bids, or invite bids from all sources on an open source list.
  
- 17. For value-driven contracts:
  - (a) below \$25,000 estimated contract value, the Corporation may enter into a contract or standing offer agreement directly with a proponent;
  - (b) between \$25,000 and \$50,000, the Corporation will either invite proposals from three sources (or fewer if three sources can not be identified), or issue publicly advertised requests for proposals; and
  - (c) above \$50,000, the Corporation will issue publicly advertised requests for proposals, or invite proposals from all sources on an open source list.
  
- 18. For goods procurement:
  - (a) below \$10,000 estimated contract value, the Corporation may enter into a contract or standing offer agreement directly with a bidder or proponent;
  - (b) between \$10,000 and \$25,000, the Corporation will either invite bids or proposals from three sources (or fewer if three sources can not be identified), or issue publicly advertised requests for bids or proposals; and
  - (c) above \$25,000, the Corporation will issue publicly advertised requests for bids or proposals, or invite bids or proposals from all sources on an open source list.

19. For goods or services related to work to be carried out primarily in the Yukon and where the estimated value of the good or service is more than \$1,000 and within the limits specified in sections (16)(a), (17)(a), and (18)(a), the Corporation may enter into contracts directly only with contractors that are Yukon businesses, except as otherwise authorized by the President of the Corporation for specific contracts.

### **INVITATIONAL TENDERS**

20. Where the Corporation invites bids or proposals, if three or more Yukon businesses who provide the goods and service required can be identified on an open or qualified Yukon government source list or one maintained by the Corporation, the Corporation shall invite bids or proposals only from Yukon businesses, except as otherwise authorized by the President of the Corporation.

### **WHEN REQUEST FOR BIDS OR PROPOSALS NOT REQUIRED**

21. The Corporation may enter into a contract or standing offer agreement directly with a bidder or proponent:
- (a) as provided in sections (16)(a), (17)(a), and (18)(a), subject to section (19);
  - (b) in the event of an emergency as defined in the *Civil Emergency Measures Act* or its regulations;
  - (c) where immediate action is required to prevent or respond to injury or death to persons, or damage to property;
  - (d) where the contract is to extend the existing occupancy of substantially the same real property leased by the Corporation;
  - (e) in special cases authorized by the Board of Directors;
  - (f) where the contract relates to the protection of exclusive rights, such as patents, or where the existing equipment compels the Corporation to purchase specific equipment from a specific supplier for reasons of compatibility; or
  - (g) where the contract will be awarded pursuant to a standing offer agreement entered into pursuant to this policy.

### **PUBLICLY ADVERTISED REQUESTS FOR BIDS OR PROPOSALS THROUGH THE PRESIDENT OF THE CORPORATION OR DELEGATE**

22. Publicly advertised requests for bids or proposals for the supply of goods and services and responses to these solicitations will be issued and received by the President of the Corporation, or delegate.

### **EFFECT OF BIDS HIGHER THAN ESTIMATED CONTRACT VALUE**

23. Subject to section (24), where all bids or proposals submitted in response to a request for bids or proposals are higher than the estimated contract value, the request for bids or proposals will not necessarily be invalidated for this reason.
24. (1) Except in the case of a goods contract, the Corporation will not award a contract in excess of \$55,000 where the bids or proposals were solicited by inviting only a limited number of sources on an open source list.
- (2) In the case of a goods contract, the Corporation will not award a contract in

excess of \$27,500 where the bids or proposals were solicited by inviting only a limited number of sources on an open source list.

- (3) In the event that all valid bids or proposals received in response to an invitational request for bids or proposals are in excess of the dollar limits specified in subsections (1) and (2), the Corporation will cancel the request for bids or proposals and may only reissue the request for bids or proposals by issuing a publicly advertised request for bids or proposals, or by inviting all sources on an open source list.

### **NON-DISCLOSURE OF ESTIMATED CONTRACT VALUE**

25. Subject to section (74), the Corporation may refuse to disclose the estimated contract value.

### **OPEN SOURCE LISTS**

26. The Corporation may use the Yukon Government open source list. As the alternative, the Corporation may maintain any number of open source lists for use in implementing the provisions of this policy.
27. If the Corporation uses its own source list, it will define the scope of each open source list in terms of types of goods and services, and will use the open source list only for request for bids or proposals within the defined scope.
28. The President of the Corporation, or delegate, will issue public invitations to register on open source lists in April and October each year or at other times, if required by the Corporation.
29. The President of the Corporation, or delegate, will establish, maintain and make available a current register of all open and qualified source lists.
30. Upon request, the name of a prospective bidder or proponent will be added to open source lists at any time.
31. Subject to section (15), the Corporation may decide the method by which names are selected from the open source list for any given request for bids or proposals.
32. The Corporation may remove from open source lists the names of prospective bidders and proponents who, within the 12 month period immediately preceding, have not responded to a publicly advertised invitation to confirm or renew their listing on the open source list.

### **PREQUALIFYING BIDDERS OR PROPONENTS**

33. (1) Where the Corporation pre-qualifies bidders or proponents before issuing a request for bids or proposals for a contract, it will establish a qualified source list pursuant to this policy, which will be valid for up to one year.
- (2) The Corporation will define the scope of each qualified source list in terms of specific contracts which are contemplated.

34. (1) The Corporation will publicly advertise for bidders or proponents to submit their qualifications for qualified source lists.
- (2) Such requests for submissions of qualifications will be considered to be request for proposals as defined by this policy and will be conducted pursuant to this contracting policy.
35. Responses to request for proposals issued pursuant to section (34) will be considered proposals as defined by this policy and will be evaluated accordingly.
36. The Corporation will not add the name of a bidder or proponent to qualified source lists except through the evaluation and acceptance of the proponent's qualifications submitted in response to the request for bids or proposals.

**STANDING OFFER AGREEMENTS**

37. The Corporation may create, maintain and use standing offer agreements in accordance with this policy.

**DISCUSSION OF REQUEST FOR BIDS OR PROPOSALS**

38. Subject to section (15), no information released by the Corporation to one bidder or proponent may be withheld from another bidder or proponent.

**CONTRACT REGISTRY**

39. The President of the Corporation, or delegate, will maintain a registry(ies) of all contracts, contract change orders and standing offer agreements.
40. The registry(ies) maintained pursuant to section (39) will be public document(s).

**CONTRACTING INFORMATION FOR YUKON FIRST NATIONS**

41. Based upon the obligations of the Corporation arising out of the Umbrella Final Agreement, the President of the Corporation, or delegate, will:
  - (a) upon request, provide to Yukon First Nations and First Nations corporations information on:
    - (i) how to compete for contracts and standing offer agreements, and
    - (ii) how to register on open source lists and submit proposals for qualified source lists;
  - (b) inform all Yukon First Nations of invitations to register on open source lists issued under section (28);
  - (c) notify Yukon First Nations which have indicated the wish to be so advised of all publicly advertised request for bids or proposals related to contracts, standing offer agreements, and prequalification of bidders or proponents;
  - (d) inform Yukon First Nations on a regular basis of contracts awarded in excess of \$50,000, or in the case of contracts for goods, in excess of \$25,000, in the First Nations' traditional territories for which requests for bids or proposals were not publicly advertised.

42. Where the Corporation invites bids or proposals from a limited number of prospective bidders or proponents pursuant to sections (16)(b), (17)(b), and (18)(b), the Corporation will give notice of the invitation to all Yukon First Nations which have registered on the Yukon Government's or Corporation's open source lists maintained under this policy.

## **PART V – THE COMPETITIVE BIDDING PROCESS**

### **REQUEST FOR BIDS OR PROPOSALS INCLUSIVE**

43. All terms and conditions of the request for bids or proposals must be stated in the request for bids or proposals.

### **INFORMATION IN REQUEST FOR BIDS OR PROPOSALS**

44. A request for bids or proposals will include the following information:
- (a) the essential terms of the contract(s) or standing offer agreement(s) to be awarded, including:
    - (i) a full description of the goods or services to be delivered, including estimated quantities where applicable;
    - (ii) the form, amount, and terms and conditions of any required performance security, or any performance penalty permitted by law, if any;
    - (iii) the completion date or any other timing considerations which are to be terms of the contract(s) or standing offer agreement(s);
    - (iv) other terms and conditions which would be relevant in setting a price for the goods or services; and
    - (v) indication that the request for bids or proposals is for a qualified source list, or a standing offer agreement, if this is the case.
  - (b) terms and conditions for the submission of bids or proposals, including:
    - (i) the form in which bids or proposals are to be submitted;
    - (ii) the information required to be provided in the bid or proposal;
    - (iii) the place to which bids or proposals must be submitted; and
    - (iv) the closing time.
  - (c) a full description of the manner in which bids or proposals will be evaluated, including:
    - (i) the method to be used to evaluate bids or proposals;
    - (ii) the evaluation criteria, stated in such a manner as to clearly identify all the information to be provided by the bidder or proponent which will be used to evaluate the bid or proposal; and
    - (iii) in the case of proposals, the weighting assigned to each evaluation criterion.
  - (d) the tax-exempt status of the Corporation under the Goods and Services Tax (GST);
  - (e) a provision that bids or proposals do not contain an amount for the GST;
  - (f) the name and title of the designated contact person; and
  - (g) in the case of publicly advertised requests for bids or proposals, the time and place of tender opening.

**CONTENT OF PUBLIC NOTICE**

45. When public notice of a request for bids or proposals is given, the public notice need not contain the full request for bids or proposals, but must state where prospective bidders or proponents may pick up the full request for bids or proposals.

**FORM OF EVALUATION CRITERIA**

46. (1) Evaluation criteria will take the form of one or both:
- (a) minimum standards to be met;
  - (b) ranking criteria.
- (2) Where ranking criteria are used, they may include:
- (a) the experience of the bidder or proponent with similar contracts or standing offer agreements;
  - (b) the value of a partnership between an outside firm and a Yukon business for the purpose of carrying out the work under a contract;
  - (c) the dollar amount of the bid or proposal submitted;
  - (d) the qualifications of the bidder or proponent for the contract or standing offer agreement;
  - (e) the means proposed by the bidder or proponent to carry out the contract or standing offer agreement;
  - (f) the schedule proposed by the bidder or proponent; or
  - (g) any other criteria relevant to the particular request for proposals.
- (3) Where ranking criteria are used, they shall include:
- (a) the methods to be used by the proponent to maximize the full value of local community and Yukon content in carrying out the work, which may include local staff, office, knowledge, materials and culture.

**USE OF SPECIFIC PRODUCT TRADE NAMES**

47. Requests for bids or proposals may refer to specific product trade names/brands only to establish a standard or performance expected, except where the requirement for a specific product has been explicitly justified, in which case the request for bids or proposals will clearly stipulate the requirement for the product.

**AVAILABILITY OF REQUESTS FOR BIDS OR PROPOSALS**

48. The Corporation will use its best effort to make requests for bids or proposals, or addenda to requests for bids or proposals, available to all bidders or proponents at the same time.

**OPENING OF BIDS OR PROPOSALS**

49. Where the value of the contract or standing offer agreement is estimated at \$50,000 or greater, or in the case of a goods contract is estimated at \$25,000 or greater, or the request for bids or proposals was publicly advertised, then:
- (a) all bids or proposals will be opened at a designated time and place in the presence of at least one witness;

- (b) anyone who wishes to be present at the bid or proposal opening will be permitted to attend; and
- (c) upon opening each bid or proposal, the following will be recorded in a written log and announced to those present:
  - (i) the name of the bidder or proponent;
  - (ii) the amount and form of bid security provided with the bid or proposal, if applicable; and
  - (iii) in the case of a bid, the amount of the bid, where practicable.

### **LATE BIDS OR PROPOSALS**

50. The Corporation will reject any bids or proposals received after the closing time.

51. Late bids or proposals will be returned to the bidder or proponent. In the case of sealed bids or proposals, they will be returned unopened.

### **REJECTION OF BIDS OR PROPOSALS**

52. The Corporation may reject a bid or proposal which has been received prior to the closing time only where:

- (a) it is not submitted in the required form;
- (b) there are significant omissions of required information;
- (c) a bid or proposal is not signed as required in the request for bids or proposals;
- (d) the required bid security in the required form is not provided;
- (e) the bid or proposal has conditions attached which are not authorized by the request for bids or proposals;
- (f) the bid or proposal fails to meet one or more standards specified in the request for bids or proposals;
- (g) there is substantial evidence that, pursuant to the evaluation criteria contained in the request for bids or proposals, a bidder or proponent would be unable to carry out the contract as specified; or
- (h) the bid or proposal failed to meet the criteria set out at section (11)(o) of this policy.

### **NOTICE OF REJECTION**

53. (1) Where the Corporation rejects a bid or proposal, the Corporation will notify the bidder or proponent, by the quickest means available, that the bid or proposal was rejected. In the case of a written bid or proposal, this will be confirmed in writing.
- (2) The Corporation will, upon request, provide to rejected bidders or proponents a full explanation as to why their bid or proposal has been rejected.

### **TWO STAGE EVALUATIONS OF PROPOSALS**

54. When evaluating proposals, the Corporation will evaluate and score non-price factors before taking price into account.

**THE CORPORATION TO RANK BIDS OR PROPOSALS**

55. The Corporation will evaluate and rank bids or proposals not rejected pursuant to sections (50) or (52) solely on the basis of the evaluation criteria and requirements contained in the request for bids or proposals.

**AWARD OF CONTRACT OR STANDING OFFER AGREEMENT**

56. (1) Subject to subsection (3), when a single contract or standing offer agreement is awarded, it will be awarded to the bidder who submitted the lowest bid or to the proponent who submitted the highest ranking proposal.
- (2) Subject to subsection (3), where more than one contract or standing offer agreement is awarded pursuant to a request for bids or proposals, they will be awarded to:
- (a) bidders in the sequence in which their bids were received, from lowest price bid to highest, or
  - (b) proponents in the sequence in which their proposals were ranked, from highest to lowest.
- (3) Only the Board of Directors may authorize bypassing the lowest price bid or the highest ranking proposal.

**PLACEMENT ON QUALIFIED SOURCE LIST**

57. If the purpose of the request for proposals was to establish a qualified source list, the Corporation will place all bidders or proponents who meet the qualifications on the qualified source list and notify them.

**ERRORS IN CONTRACT VALUE**

58. Where unit prices are requested and the bid proposal contains an error in calculating the estimated contract value, the unit price will prevail.

**PART VI – BID CHALLENGE PROCESS**

**REGISTERING A COMPLAINT**

59. The President of the Corporation will accept a complaint made in writing by a bidder or proponent or prospective bidder or proponent who has reason to believe that the President, or a public servant to whom the President has delegated contracting authority, has treated them unfairly or has not followed the process required by this policy, provided that the complaint is received:
- (a) up to 60 days following the closing time, or up to 15 days following the award of the contract or standing offer agreement, whichever is later, or
  - (b) in the event of an extension of a standing offer agreement, up to 30 days following the date of the extension.

60. The bid challenge process described in this part does not apply to decisions made under section (21) (a) to (g) of this policy.
61. The President of the Corporation may require the complainant to provide full details related to the complaint, including their efforts to resolve the complaint directly with the Corporation.
62. The registration of a complaint pursuant to section (59) will not require the Corporation to delay award of the contract.

**BID CHALLENGE OR COMPLAINT COMMITTEE**

63. A standing bid challenge or complaint committee will be created to act on complaints registered pursuant to this policy.
64. The committee will be made up of a chair appointed by the Board, an alternate chair, who will act in the absence of the chair, two (2) representatives from the Corporation, one (1) employer representative, and one (1) worker representative of the Board.

**CONSIDERING THE COMPLAINT**

65. The Corporation will provide a written report about the circumstances relating to the complaint to the Chair without delay.
66. The bid challenge or complaint committee, without delay, will conduct an initial review of the complaint to determine whether or not there will be an inquiry or hearing.
67. A complaint registered with the committee which is found by the committee to warrant a hearing will be heard by a panel of three (3) members consisting of the chair or alternate chair, and (2) members from the Board of Directors, consisting of one (1) employer representative and one (1) worker representative.
68. Where possible, the qualifications of the members selected by the chair to hear a complaint will be appropriate to the matter under consideration.
69. The panel will hear and consider the complaint within a reasonable time following registration of the complaint.
70. The panel will allow the complainant and the contracting authority against whom the complaint was registered to address the panel in person and in writing.
71. The panel will not cancel, revoke, amend or alter a contract.

**UNFOUNDED COMPLAINTS**

72. The panel may refuse to hear and consider, or may cease to consider a complain on the grounds that:
  - (a) the complaint is unfounded, trivial, frivolous, vexatious or not made in good faith,  
or

(b) the complainant does not have a sufficient personal interest in the subject matter of the complaint.

73. Where the panel refuses to consider or ceases to consider a complaint, the chair will inform the complainant and the contracting authority against whom the complaint was registered and may state reasons therefor.

### **ACCESS TO INFORMATION**

74. Notwithstanding any restrictions on the disclosure of documents in this policy, the panel may examine any documents relating to the complaint.

75. All information used by the panel in its deliberations, and which may be disclosed under policy GC-13 Release of Information, will be disclosed to both parties to the complaint. Releases under this policy are subject to relevant sections of Appendix A of the policy, including:

- Disclosure Harmful to the Financial or Economic Interests of the Board;
- Disclosure Harmful to Business Interests of a Third Party; and,
- Any other relevant sections, dependant on the nature of the request.

Only a party that has responded to a tender released by the Corporation is eligible to receive a log of bid/proposal responses (these shall be available for 60 calendar days after tender closing or within 15 days of award, whichever is later).

Contract information is available on the open registry, as detailed in sections 39 and 40.

### **REDRESS**

76. (1) Where the panel considers that a complaint is valid, it may recommend that the contracting authority pay to the complainant compensation for:
- (a) the complainant's reasonable costs in preparing a bid or proposal; and/or
  - (b) the complainant's reasonable costs for participating in the inquiry or hearing.
- (2) In making its decision, the panel will consider all the circumstances relevant to the complaint, including:
- (a) the seriousness of any deficiency in the procurement process found by the panel;
  - (b) the degree to which the complainant and all other interested parties were prejudiced;
  - (c) the degree to which the integrity and efficiency of the competitive procurement system was prejudiced; and
  - (d) whether the parties acted in good faith.

**PANEL TO REPORT**

77. The panel will make a report of its findings and recommendations, if any, to the President of the Corporation and to the complainant, with a copy to the Board of Directors.

**DUTY TO RESPOND**

78. Where the panel recommends changes to this policy, the President of the Corporation will, within a reasonable period of time, address the recommendations to the Board of Directors.

**DISTRIBUTION OF RESPONSE**

79. The chair will forward a copy of the Corporation's response(s) to the complainant.

**TERMINATION OF CONTRACT**

80. (1) The Corporation reserves the right to terminate any contracts entered into under this policy where it is determined there is improper performance or a material breach of the contract.
- (2) The Corporation reserves the right to continue the contract when there is deficient performance. For every contract of a value over \$50,000, a review will take place to determine if the performance was satisfactory or deficient. Deficient performance will be recorded. The contractor will be notified and the contractor has the right to reply in a reasonable length of time as established by the Corporation. This reply will be added to the record.

**ELIGIBILITY**

81. The Corporation shall not enter into any contract unless the potential contractor: provides proof of 1) valid registration with the Corporation or another Canadian Workers' Compensation Board and is not in default with the Corporation; or, 2) another form of liability protection that is satisfactory to the Corporation.

This eligibility clause may be exempted from the purchase of goods or services where liability exposure is not an issue for the Corporation (i.e. mail-order goods).

**DUTY OF PERSONS DIRECTING WORK**

82. Any contractor that provides services under a contract with the Corporation shall take reasonable steps to prevent bodily harm arising from the work under the contract with the Corporation.

**REFERENCES**

Policy FN-01 Exemption from Management Board Directives

**HISTORY**

Policy GC – 11 Contracting Policy, effective March 11, 2003; revoked July 12, 2005.