



## Policy Amendment Proposal GN-08 Contracting

This policy amendment proposal relating to contracting will reflect the issues consulted on during the engagement for the *Workers' Safety and Compensation Act* (the 'Act') and will align the amendments made in the new legislation.

The new Act comes into force July 1, 2022. The intended effective date of the proposed policy amendments will be July 1, 2022.

The proposed amended Contracting policy will reflect minor changes to ensure consistency with the provisions of the Act.

A five-year policy review plan will be developed later in 2022. After July 1, 2022, all amended policies to align with the new Act will be prioritized for a more detailed review.

The purpose of this policy is to provide information on how contracting and procurement activities are carried out in compliance with the *Financial Administration Act* and regulations.

### Relevant sections of the Act

The following sections of the Act are relevant:

- N/A

**Proposed minor changes to this policy** are highlighted in yellow

- changes to section references, language and definitions

### Board Orders/Regulations

N/A

### Current policy

[GN-08 Contracting](#)

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The board of directors is providing this policy amendment proposal to stakeholders seeking their input, comments, questions and suggestions.

Some questions for consideration:

1. Are there any general comments about this policy proposal?
2. Are there any gaps in this policy proposal?
3. Additional comments?

The views of our stakeholders are important to us. All feedback will be considered prior to the board of directors approving any amendments.

Engagement on this policy proposal closes on **March 31, 2022**. Please provide your feedback by:

1. Downloading a [fillable form](#) on our website and sending it as an attachment to [Policy.Feedback@wcb.yk.ca](mailto:Policy.Feedback@wcb.yk.ca)
2. Emailing comments directly to [Policy.Feedback@wcb.yk.ca](mailto:Policy.Feedback@wcb.yk.ca)
3. Receipt in our building by March 31, 2022, by mail or drop off at  
*Yukon Workers' Compensation Health and Safety Board*  
*401 Strickland Street*  
*Whitehorse, Yukon Y1A 5N8*

By the end of April a summary of all feedback on this policy amendment proposal will be published on our website at [www.wcb.yk.ca](http://www.wcb.yk.ca)

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**Preventing** work-related injuries is the most important job in any workplace. The *Workers' Safety and Compensation Act* establishes the responsibilities of all workplace parties to work together to ensure the physical and psychological health and safety of workers. When injuries do occur, workers and employers must continue to work together to facilitate an injured worker's early and safe return to health and work.

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### **Purpose**

This policy provides information on how contracting and procurement activities are carried out.

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### **Definitions**

**anticipated change order** means a document issued by the board to effect a change in the contract that was foreseen and explicitly included in the request for bids or proposals and in the resulting contract

**award of contract or standing offer agreement** means the communication of the selection of a bidder or proponent to enter into a contract or standing offer agreement as a result of a successful bid or proposal

**best practice** means the methods and techniques that have consistently shown results which are superior to those achieved by other means and which are used as benchmarks

**bid** means an offer, submitted in response to a request for bids, to supply the board, or purchase from it, under stated terms and conditions and at a stated price or a price determined by a stated formula

**bidder** means a person who submits a bid

**board** means the Workers' Safety and Compensation Board

**closing time** means the time and date by which bids or proposals must be received at the designated place

**construction** means the building, erection, maintenance, repair, renovation, alteration and demolition work on building and civil engineering works, including land clearing, earth moving and site preparation work

**contract** means an agreement between the board and a person in which the person agrees they will supply the board or purchase from it

**contractor** means a person who makes a contract with the board

**contract price** means the price or price formula stipulated in a contract



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**direct award** means procurement without competition

**employment contract** means a contract of service which establishes an employer - employee relationship

**estimated contract value** mean the total estimated value of the contract or standing offer agreement prior to issuing the request for bids or proposals

**evaluation criteria** means the criteria (which for greater certainty may include the effectiveness of the proposed solution and the experience, qualifications and financial capabilities of the proponents, and need not be price alone) against which bids and proposals are evaluated for the purposes of determining:

- a. which bids and proposals qualify for consideration; and
- b. how to rank bids and 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 Workplace Health and Safety, rather than on price alone.

Evaluation criteria will include a requirement for proponents to submit evidence of a working safety program, when required under the Occupational Health & Safety Regulations

**expression of interest** means a publicly advertised precursor to procurement, seeking an indication of interest in, and any required information about, the particular category of work or anticipated project. No evaluation of responses is done

**factual evidence** means material facts sufficient for independent examination and verification. Evidence may consist of written documents, records, supporting data, affidavits, or other information proving the findings of fact are true and accurate

**formal solicitation methods** means the competitive methods which require a higher level of effort commensurate with the larger size and increased complexity of the procurement. Examples include requests for bids and requests for proposals

**goods** means the articles, commodities, equipment, goods, material or supplies, which may include installation, warranty and maintenance agreements

**informal solicitation methods** means the competitive or non-competitive methods which are suitable for lower cost, lower risk procurement. Examples are: Quote request, direct award.

**invitational tender** means a request for bids or proposals for a contract or standing offer agreement given to a limited number of identified bidders or proponents



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**low-cost procurement** means a procurement for services or construction that does not exceed an aggregate amount of \$50,000, or goods not exceeding an aggregate amount of \$20,000

**open** means a procurement opportunity available to all

**Person** means an individual, a corporation or other corporate body or partnership

**pre-qualified source list** means a list of bidders or proponents who meet the evaluation criteria specified for planned contracts

**procurement** means board acquisition, by any means, of goods, leaseholds, licenses, services or construction

**proponent** means a person who submits a proposal

**proposal** means a proposed solution to a problem, need or objective, which may be in response to a request for proposals or may be unsolicited

**purchase** means the acquisition, for consideration, of any property other than real property and interests in real property.

**qualified** means the determination of a response from a bidder or proponent or respondent that has met the specified evaluation criteria set out in the procurement documents in order to be considered further

**quote request** means the informal process used in soliciting price and delivery quotations that meet minimum quality specifications for a stated quantity of specific goods and/or services

**real property lease** means a lease or agreement whereby the board acquires a leasehold interest in or a license to occupy real property

**reasonable and adequate procedures** means procedures ensuring fairness for and a level of competition commensurate with the type of procurement, considering price, requirements, available competition, risk and complexity of terms and conditions

**rejection of bid or proposal** means the determination a bid or proposal will not be considered on the basis that it does not meet the requirements specified in the request for bids or proposals

**request** means, as the context requires, a request for bids, a request for proposals or both

**request for bids** means a document setting out the minimum standards to be met by bidders in respect of a contract and the requirements of the contract

**request for proposals** means a document inviting persons to propose solutions to a stated problem, need or objective



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**Scope** means the work that needs to be performed to deliver a product, service, or result with the specified features and functions

**screened qualified source list** means a list of bidders or proponents who meet the evaluation criteria specified for potential contracts. Such a list would include potential contractors for a general type of recurring work

**security** means anything (including any bond and any money or other property) provided to the board by or on behalf of a person:

- a. in respect of a bid, to guarantee the person's entry into a contract if the contract is awarded to the person, or
- b. In respect of a contract, to make good on any default by the person under the contract or to guarantee the person's performance of the contract

**services** means the furnishing of labour, time or effort by a contractor that does not produce goods

**solicitation method** means a quote request, a request for bid or proposals, or any other method of soliciting bids, proposals, or quotes to perform a board contract

**standing offer agreement** means an agreement under which a person agrees they will, when required by the board and at the price and subject to the conditions specified in the agreement, supply to the board

**subcontractor** means a person who, under an agreement with a contractor, provides goods, or performs services or work on a public work for which the contractor was engaged under a contract

**supply** means the carrying out, for consideration, of any of the following:

- a. the provision of a good, a leasehold or a license;
- b. the performance of a service;
- c. the construction of a public work; or
- d. the sale, letting or licensing of real property or an interest in real property

**supplier** means a person who supplies goods or services or performs work on a public work

**unanticipated change order** means a document issued by the board to effect a change in the contract that was unforeseen at the time of the request for bids or proposals and was not included in the original contract



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**unit price** means 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

**valid bid or proposal** means a bid or proposal which meets the requirements set out in the procurement documents

**Yukon business** means a business meeting two or more of the following criteria:

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

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### Policy Statement

#### 1. General

The *Financial Administration Act* applies to the board's contracting and procurement activities. In particular, regulation OIC 2013/19-Contract and Procurement regulation applies setting out the guideline that procurement authorities must use fully competitive processes, except where a management board directive authorizes otherwise.

If no Government of Yukon management board applies to the board, a relevant policy of the board of directors will apply. If the board does not have a policy in place then the Government of Yukon directive will apply.

#### PART I - OVERVIEW

##### 1. Principles

The following principles apply to procurement by **the board**:

- (1) Fairness: to observe procedural policies as expressly laid out in this policy free of bias, personal interest and conflict of interest.
- (2) Openness and transparency: where possible to create the maximum number of competitive procurement opportunities, and to be transparent in the way



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business is conducted.

- (3) Fiscal responsibility: to justify contracting and procurement decisions and actions to a relevant authority or publicly as appropriate in the circumstance.
- (4) Competition: where possible to open procurement opportunities to the maximum number of respondents.
- (5) Value for money: to focus on efficiency, economy and effectiveness to obtain the maximum benefits with the resources available.
- (6) Accountability: to be willing and able to account for the way contracting and procurement activities have been conducted.

### 2. Objectives

The following objectives for **board** contracting and procurement activities for goods, services and construction are based on the principles above.

- (1) Procurements are managed in a manner consistent with **board** policy.
- (2) **The board** receives the best value for money spent on contracts.
- (3) Suppliers have reasonable access to information on procurement opportunities, processes and results.
- (4) **The board** is accountable for the results of procurement decisions and the appropriateness of the processes followed.
- (5) **The board** uses adequate and reasonable procedures to ensure the cost of the procurement process, to both suppliers and **the board**, is appropriate in relation to the value and complexity of each procurement.

### 3. Scope

This policy applies to all contracts except:

- (1) Employment contracts;
- (2) Contracts for physician services, as defined in the *Health Care Insurance Plan Act*;
- (3) Contracts for the practice of law, as defined in the *Legal Professions Act*; and
- (4) Service providers and health care professionals providing services to injured workers which may be covered by service agreements with **the board**.



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### 4. Contracts of employment not authorized

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

### 5. Roles and Responsibilities

The president of **the board** or delegate is responsible for:

- (1) Managing and administering assignment of authority to procure to individuals in the **board**.
- (2) Ensuring those individuals given authority to procure have the required training to effectively manage the procurement and contracts over which they have authority.
- (3) Managing solicitation and contract award processes in a manner consistent with the objectives in Section 2, including:
  - a) establish, maintain and use standard procurement documents;
  - b) ensuring that contracts for goods, services and construction are designed to provide the best value to **the board**;
  - c) ensuring compliance with **board** policy and applicable legislation;
  - d) making diligent efforts to resolve any complaints with proponents and bidders as a first step in the dispute resolution process;
  - e) issuing solicitations for bids or proposals and for receiving responses for all open, competitive procurement;
  - f) identifying, planning, negotiating, establishing, managing and fully documenting **board** supply arrangements and screened qualified source lists that will provide best value to **the board**; and
- (4) Monitoring and reporting to the board of directors for compliance with procurement policy, including providing a complete list of sole source contracts awarded.
- (5) Supporting constructive relations with suppliers, proponents and bidders including:
  - a) establishing and maintaining mechanisms to coordinate and support development and communications with suppliers, proponents and



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bidders; and

- b) establishing and managing guidelines and procedures for a formal dispute resolution process.

### **6. Overpayment not authorized**

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

### **7. Honoraria**

Nothing in this policy prohibits **the board** from offering honoraria to prospective bidders or proponents provided:

- (1) The availability of such incentives is clearly identified in the request for bids or proposals;
- (2) The availability of the honorarium is provided equally to all prospective bidders and proponents; and
- (3) The honoraria do not arbitrarily or unnecessarily limit the number of bidders or proponents.

### **8. Request for bids or proposals required**

Except as provided in Sections 12 (Exceptions) and 15 (Analysis of Procurement), **the board** will invite bids or proposals in accordance with this policy prior to entering into any contract or standing offer agreement.

## **PART II – PROCUREMENT PLANNING**

### **9. Reasonable and Adequate Procedures**

For low-cost procurement, **the board** will use reasonable and adequate procedures for the type and complexity of the procurement in order to obtain best value. Formal and informal solicitation methods may be used for low-cost procurement according to Section 11 (Solicitation Methods).

### **10. No contract splitting**

**The board** will not issue two or more contracts to the same contractor, or multiple contractors, for the same work in order to maintain contract values under threshold levels.



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### 11. Solicitation Methods

Solicitation methods are classified into two categories: Informal solicitation and Formal solicitation.

(1) Informal solicitation methods are:

- a) Direct Award (also known as a sole-sourced contract) – Direct Award of a contract should only be used, if best practices have been followed, for the procurement of simple, uncomplicated goods, services or construction of standard and firm specifications, where competitive procurement is impractical.
- b) Quote Request – A Quote Request should be used for the competitive procurement of simple, uncomplicated goods, services or construction of standard and firm specifications.

(2) Formal solicitation methods may be used on an invitational or open basis. The formal solicitation methods are:

- a) Request for Bids (RFB) – A Request for Bids should be used for the procurement of goods, services or construction of standard and firm specifications, where price is the determining factor in awarding the contract.
- b) Request for Proposals (RFP) – A Request for Proposals should be used for procurement of deliverables that cannot be quantitatively or qualitatively expressed in sufficient detail to allow use of an RFB at the time the solicitation document is issued, such as for professional services or consulting services.
- c) Requests for Qualifications (RFQ) - An RFP may be preceded by an RFQ as an optional first step in the procurement process. RFQs are not solicitation methods on their own but establish a list of pre-qualified proponents who meet the minimum threshold of qualifications required to respond to the subsequent Request for Proposals. An RFQ may also be used to establish a screened qualified source list.

### 12. Exceptions to use of Formal Solicitation Methods (When open competition is not required)

- (1) The board may enter into a contract or standing offer agreement directly with a bidder or proponent as provided in Section 13(1)(a) and 13(2)(a).
- (2) The board may enter into a contract or standing offer agreement directly with a bidder or proponent:



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- a) in the event of an emergency as defined in the Civil Emergency Measures Act or its regulations;
  - b) where immediate action is required to prevent or respond to injury or death to persons or animals or livestock, or damage to property;
  - c) where the contract is to extend the existing occupancy of substantially the same real property leased by the procurement authority;
  - d) where the contract relates to the protection of exclusive rights, such as patents or licenses, or where the existing equipment (which includes technology or software) compels the procurement authority to purchase specific equipment or services for reasons of compatibility;
  - e) where the release of information would compromise the safety, security and/or privacy of **board** staff, registered employers or claimants; and
  - f) where the release of information could compromise the security and continuity of information technology systems.
- (3) **The board** is responsible for documenting in the contract file the rationale or the circumstances supporting the use of one or more of the above exemptions.

### 13. Thresholds

Thresholds are dollar value boundaries above which the options for procurement are reduced. They are set to comply with reasonable procurement practices.

- (1) For goods, **the board**:
- a) may use informal or formal solicitation methods for procurement up to and including a value of \$20,000 (this can be referred to as low-cost procurement);
  - b) must use formal solicitation methods for procurement above \$20,000 and up to and including \$35,000; and
  - c) must use a formal, open solicitation method for procurement over \$35,000.
- (2) For services and construction, **the board**:
- a) may use informal or formal solicitation methods for procurement up to and including a value of \$50,000, (this can be referred to as low-cost procurement);



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- b) must use formal solicitation methods for procurement above \$50,000 and up to and including \$101,100; and
  - c) must use a formal, open solicitation method for procurement over \$101,100.
- (3) 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 (1)(a) and (2)(a) **the board** may enter into contracts directly only with contractors that are Yukon businesses, except as otherwise authorized by the president of **the board** or delegate.

### 14. Invitational tenders

Where, under Sections 13(1)(b) (Thresholds – goods), and 13(2)(b) (Thresholds – services and construction) **the board** invites bids or proposals from a limited number of bidders or proponents, if three or more Yukon businesses who provide the goods, services and construction required can be identified, **the board** may invite bids or proposals solely from Yukon businesses.

### 15. Analysis of Procurement

An Analysis of Procurement is required for any procurement activity which cannot be accommodated by the solicitation methods listed in Section 11, or by exceptions in Section 12, or which exceed the thresholds in Section 13. In these cases, a Request for Analysis of Procurement (RAP) must be written by the director of the requesting branch and sent to the president of **the board** for review.

A RAP must be accompanied by factual evidence to support the request.

A RAP that is recommended by the president for approval will be assessed by the board of directors for compliance with this policy, prior to being sent to the requesting director for implementation.

The president will send a written decision to the requesting director.

Request for Analysis of Procurement (RAP) is required for:

- (1) Direct award of a contract above the thresholds, whether as the original contract price or through a change order;
- (2) The use of formal, invitational solicitation method above the threshold for formal, open solicitation methods;
- (3) The bypassing of a bid or proposal as set out in Section 41(4) (Award of contract or standing offer agreement);



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- (4) The award of a contract when valid bids or proposals received in response to an invitational request for bids or proposals are in excess of the limits specified in Section 16 (Effect of bids higher than estimated contract value for invitational tenders); and
- (5) The use of an alternate procurement method, for example, a co-operative agreement.

### **16. Effect of bids higher than estimated contract value for invitational tenders**

Subject to section 12 (Exceptions), 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.

- (1) **The board** will not award a contract in excess of 10% above the thresholds as provided in section 13 (Thresholds), where the bids or proposals were solicited by inviting only a limited number of sources, without meeting the requirements of subsection 16(2) below.
- (2) 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 10% limit specified in subsection (1), **the board** must comply with the process set out in Sections 15 (Analysis of Procurement).

### **17. Opportunity to compete for **Board** contracts**

**The board** must not use standards, specifications, evaluation criteria, time limits to respond to requests for bids or proposals, standing offer agreements, or other practices or procedures to unfairly limit competition.

## **PART III – COMMUNICATION**

### **18. Transparent communication during competitions**

All information provided to one bidder or proponent related to a procurement will be provided to all bidders or proponents.

### **19. Expression of Interest**

**The board** may issue a publicly advertised Expression of Interest for the purpose of gathering information on interest, capabilities or to help with the development of a future solicitation. An Expression of Interest does not pre-qualify potential contractors, nor lead directly to a contract. An Expression of Interest is not a solicitation method.



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### 20. Tendering forecast

- (1) The president will, before the end of each fiscal year or portion thereof, provide to the board of directors a listing of contracts and standing offer agreements in excess of \$101,100 contemplated to be tendered in the following fiscal year, or portion thereof.
- (2) The president will make available to the public the information in subsection (1).

### 21. Contract registry

The board will provide accurate contract award information in a public contract registry. The president will provide public access to the registry.

### 22. Community Business Development

The board, when procuring goods, services or construction for use or for performance in the communities outside of Whitehorse, should make reasonable efforts to support community-based businesses within the context of existing procurement policy:

- (1) 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;
- (2) Encouraging community-based employees to make community-related procurement decisions to the extent possible;
- (3) Developing communications channels with local business organizations and contractors that will enable them to anticipate the board needs in the community and to develop their businesses to meet those needs; and
- (4) Taking into account the full cost of procurement from outside the community when the goods, services and construction are to be utilized or performed within the community.

## PART IV – PROCUREMENT TOOLS

### 23. Contracts and standing offer agreements in excess of three years

- (1) No contract or standing offer agreement, including renewals or change orders, will exceed three (3) years without approval of the president of the board. Evidence supporting the requested extension must be provided by the Director of the requesting YWCHSB branch in writing to the president.
- (2) Contracts or standing offer agreements entered into with the president's approval pursuant to subsection (1) will be identified in the contract registry



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maintained pursuant to Section 21 (Contract Registry).

### **24. Screened qualified source lists (for potential contracts)**

The board may access the Government of Yukon's pre-qualified source list or establish and maintain its own supply arrangements, including screened qualified source lists, as may be appropriate for implementing the provisions of this policy.

### **25. Pre-qualified source lists (for planned contracts)**

Where the board pre-qualifies bidders or proponents before issuing a request for bids or proposals for contracts, it may establish a pre-qualified source list pursuant to this policy, which will be valid for up to one year and up to three years if an extension is authorized by the president.

- (1) The board will define the scope of each pre-qualified source list in terms of the specific contracts which are contemplated.
- (2) The board will publicly advertise for bidders or proponents to submit their qualifications for pre-qualified source lists.
- (3) Responses to requests for qualifications issued pursuant to Section 25 will be considered proposals as defined by this policy, and will be evaluated accordingly.

Notwithstanding Section 30 (Form of evaluation criteria), for pre-qualifying bidders or proponents, price is not a mandatory criterion.

- (4) The board will not add the name of a bidder or proponent to pre-qualified source lists except through the evaluation and acceptance of the proponent's qualifications submitted in response to the request for bids or proposals.
- (5) If the board proposes to undertake procurement for which there is a valid pre-qualified source list, all persons included in the list will be invited to submit bids or proposals.

### **26. Standing offer agreements**

- (1) The board may create, maintain and use standing offer agreements in accordance with and subject to the provisions of this policy.
- (2) Standing offer agreements will have individual contracts issued against them or any work contemplated under the provisions of the Standing Offer Agreement.
- (3) The aggregate value of all contracts issued against a standing offer agreement will not exceed the sourcing thresholds of the solicitation method used.



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- (4) Where standing offer agreements are competitively procured, contracts issued against them may be direct awarded up to the applicable solicitation method threshold or the maximum value indicated in the standing offer agreement, whichever is less.
- (5) Contracts will be awarded under standing offer agreements as outlined in Section 41 (Award of contract or standing offer agreement).

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

#### **27. Request for bids or proposals – all terms and conditions disclosed**

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

#### **28. Information in request for bids or proposals**

A request for bids or proposals will include the following information:

- (1) The essential terms of the contract(s) or standing offer agreement(s) to be awarded, including:
  - a) a full description of the goods or services or construction to be delivered, including estimated quantities where applicable and all performance requirements;
  - b) the form, amount, and terms and conditions of any required performance security, or any performance penalty or performance bonus permitted by law, if any;
  - c) the completion date or any other timing considerations which are to be terms of the contract(s) or standing offer agreement(s);
  - d) provisions relating to the confidentiality of the bids or proposals;
  - e) information relating to post contract completion performance evaluations;
  - f) other terms and conditions which would be relevant in setting a price for the goods or services; and
  - g) indication that the request for bids or proposals is for a screened qualified source list, pre-qualified source list, or a standing offer agreement, if this is the case.
- (2) Terms and conditions for the submission of bids or proposals, including:
  - a) the form in which bids or proposals are to be submitted;



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- b) the information required to be provided in the bid or proposal;
  - c) the place to which bids or proposals must be submitted;
  - d) irrevocability period, if applicable and if not applicable, the irrevocability period may be removed if the process in Section 15 (Request for Analysis of Procurement) has been followed; and
  - e) the closing date and time.
- (3) A full description of the manner in which bids or proposals will be evaluated, including:
- a) the method to be used to evaluate bids or proposals;
  - b) 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 (see Section 30 Form of evaluation criteria);
  - c) the weighting assigned to each evaluation criterion, where the criteria are used for ranking; and
  - d) the process for negotiation with the bidder(s), if a contract has been awarded using the Request for Analysis of Procurement process (see Section 15).
- (4) The tax-exempt status of **the board** under the Goods and Services Tax or Harmonized Sales Tax (GST/HST).
- (5) A provision that bids or proposals do not contain an amount for the GST/HST.
- (6) The name, title and contact information of the designated contact person.
- (7) In the case of publicly advertised requests for bids or proposals, the time and place of tender opening.

### **29. Content of public notice for open procurement**

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 obtain the full request for bids or proposals.



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### 30. Form of evaluation criteria

- (1) In the request for bids or proposals **the board** must be explicit about the evaluation criteria, which must include price, and the weighting of evaluation criteria as applicable.
- (2) Where ranking criteria are used, the **board** may consider:
  - 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, as long as that value is due to Yukon experience, knowledge or culture;
  - c) the qualifications of the bidder or proponent for the contract or standing offer agreement;
  - d) the means proposed by the bidder or proponent to carry out the contract or standing offer agreement;
  - e) the schedule proposed by the bidder or proponent; or
  - f) any other criteria relevant to the particular request for proposals.
- (3) Where ranking criteria are used, **the board** may include 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 experience, knowledge, and culture.
- (4) Where applicable, evaluation criteria will include environmental performance standards as adopted by **the board** from time to time.

### 31. Use of specific product trade names

Requests for bids or proposals may refer to specific product trade names/brands only to establish a standard of 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.

### 32. Availability of requests for bids or proposals

- (1) **The board** will use reasonable efforts 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.



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- (2) No addendum will be issued within 48 hours of the closing date and time, unless it also extends the closing date and time.

### **33. Response period for requests for bids or proposals**

The amount of time permitted for bidders or proponents to respond to a request for bids or proposals must be sufficient to allow all potential bidders or proponents to have a reasonable opportunity to compete, taking into account the time required to disseminate information, the complexity of the procurement, the time required to prepare an appropriate response and the minimums set in any applicable trade agreements.

### **34. Opening of bids or proposals**

Where the value of the contract or standing offer agreement is estimated at more than \$101,100, or in the case of a goods contract is estimated at more than \$35,000, or the request for bids or proposals was publicly advertised, then:

- (1) All bids or proposals will be opened at a designated time and place in the presence of at least one witness;
- (2) Anyone who wishes to be present at the bid or proposal opening will be permitted to attend; and
- (3) Upon opening each bid or proposal, the following will be recorded in a written log and announced to those present:
  - a) the name of the bidder or proponent;
  - b) the amount and form of bid security provided with the bid or proposal, if applicable; and
  - c) in the case of a bid, the amount of the bid, where practicable.

### **35. Late bids or proposals**

- (1) **The board** will reject any bids or proposals received after the closing time.
- (2) Late, sealed bids or proposals will be returned unopened to the bidder or proponent.

### **36. Rejection of timely bids or proposals**

**The board** will only reject a bid or proposal which has been received prior to the closing time where:

- (1) It is not submitted in the required form;



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- (2) There are significant omissions of required information;
- (3) A bid or proposal is not signed if required in the request for bids or proposals;
- (4) The required bid security in the required form is not provided (if it is a requirement of the procurement);
- (5) The bid or proposal has conditions attached which are not authorized by the request for bids or proposals (unless the process in Section 15 (Request for Analysis of Procurement) has been followed); or
- (6) The bid or proposal fails to meet one or more standards specified in the request for bids or proposals.

### **37. Other reasons for rejection of bids**

The board reserves the right to reject a proposal of a proponent where there has been deficient performance under a prior contract with the board.

### **38. Notice of rejection**

Where the board rejects a bid or proposal as permitted under Section 36 or 37 the bidder or proponent will be notified by the quickest means available. In the case of a written bid or proposal, this will be confirmed in writing.

### **39. Two stage evaluations of proposals**

Where a two-stage evaluation is used, the board will evaluate and score non-price factors before taking price into account.

### **40. Board to evaluate and rank bids or proposals**

The board will evaluate and rank bids or proposals not rejected pursuant to Sections 35 (Late bids or proposals) or 36 (Rejection of timely bids or proposals) or 37 (Other reasons for rejection of bids) solely on the basis of the evaluation criteria and requirements contained in the request for bids or proposals.

### **41. Award of contract or standing offer agreement**

- (1) Subject to subsection (4), when a single contract or standing offer agreement is awarded, pursuant to a request for bids or proposals, 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 (4), where more than one contract is awarded pursuant to



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- a request for bids or proposals, they will be awarded to:
- a) bidders, from lowest price bid to highest; or
  - b) proponents in the sequence in which their proposals were ranked, from highest to lowest.
- (3) Subject to subsection (4), where more than one standing offer agreement is awarded pursuant to a request for bids or proposals, contracts will be awarded against those standing offer agreements as follows:
- a) bidders, from lowest price(s) bid to highest;
  - b) proponents in the sequence in which their proposals were ranked, from highest to lowest; or
  - c) in the manner specified in the standing offer agreement.
- (4) Only the president of **the board** or delegate may authorize bypassing the lowest price bid or the highest ranking proposal. The RAP procedure set out in Section 15 (Request for Analysis of Procurement) will be followed.
- (5) Pursuant to subsection 4, a bid or proposal may be bypassed if 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.

### **42. Debriefing**

Unsuccessful bidders or proponents must be notified of the results and offered the opportunity for a debriefing on their bid or proposal, which will include a full explanation of why their bid or proposal was not successful. Successful bidders or proponents may also participate in a debriefing.

### **43. Placement on pre-qualified source list**

If the purpose of the request for proposals under section 25 (Pre-qualified source list for planned contracts) was to establish a pre-qualified source list, **the board** will place all bidders or proponents who meet the qualifications on the pre-qualified source list and notify them.



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### PART VI - ADMINISTRATION OF THE CONTRACT

#### 44. Contract insurance

The form and amount of any insurance required will be defined in the request for bids or proposals.

#### 45. Change orders permitted

(1) Anticipated change orders: Subject to Section 15 (Request for Analysis of Procurement) **the board** may issue change orders to accommodate changes in the scope schedule or price of the contract which were foreseen when the request for bids or proposals was issued, provided that the anticipated change was explicitly included in the request for bids or proposals and the resulting contract and provided that the change order would NOT bring the total aggregate contract value above the allowed threshold for the solicitation method used.

Anticipated change orders must be included in the aggregate total value of the proposed contract when choosing the solicitation method. Annual or multi-year contract renewals will include a limit on the number of renewals.

(2) Unanticipated change orders: Subject to Section 12 (Exceptions), **the board** may issue change orders to accommodate changes in the scope, schedule or price of the contract if originally unforeseen when the request for bids or proposals was issued, up to a threshold of 25% value of the contract, or \$100,000.00, whichever is less. Change orders exceeding the thresholds will require a Request for Analysis of Change Order as explained in subsection (3).

(3) Request for Analysis of Change Order (RACO):

- a) A Request for Analysis of Change Order is required only for procurements where the change order exceeds the threshold for unanticipated change orders.
  - b) A Request for Analysis of Change Order will be forwarded to the president who will make the final decision.
  - c) A Request for Analysis of Change Order must be accompanied by factual evidence to support the request.
- (4) The president will identify all change orders under this section to the public in the contract registry maintained pursuant to section 21 (Contract registry).
- (5) Signing and commitment authority approval, when applied, must comply with



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the *Financial Administration Act*.

### **46. Contractor Performance monitoring and contract post-completion evaluation**

- (1) Every contract will clearly establish the criteria for contract performance and for the post-completion performance evaluation, if any, as per subsection 28(1) (Information in request for bids or proposals).
- (2) Monitoring of the contractor's performance should be timely and consistent as the contract progresses in accordance with the requirements of the contract.
- (3) A post-completion evaluation is recommended for all contracts, and may be performed on every contract over \$50,000, to provide a record of the contractor's performance and to assist in future procurement activity.

### **PART VII - DISPUTE RESOLUTION PROCESS**

#### **47. Procurement Complaint Resolution Process**

- (1) **The board** will ensure that the procurement complaint resolution process is accessible, fair, consistent, comprehensive, impartial and timely.
- (2) **The board** will maintain complete documentation and records of all activities related to addressing a complaint, including all communications with the complainant.
- (3) For reporting purposes, the president will regularly be provided with statistics relating to the number of complaints received and the disposition of these complaints.

#### **48. Bid challenge committee**

- (1) The p
- (2) resident will appoint a bid challenge committee to act on complaints registered pursuant to this policy.
- (3) The committee will be made up of a chair and three **board** staff members. The chair will be appointed from the Executive branch of **the board**. Persons involved in the procurement process under review will not be appointed to the committee.
- (4) Within the limits of this policy, the committee may establish its own rules of procedure.



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### 49. Registering a complaint

- (1) The president will accept a complaint made in writing by a bidder or proponent who has reason to believe the board 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.
- (2) The bid challenge process described in this Part does not apply to decisions made under Section 12 (Exceptions) of this policy.
- (3) The president may require the complainant to provide full details related to the complaint, including their efforts to resolve the complaint directly with the board.
- (4) The president will, without undue delay, forward the complaint to the bid challenge committee established pursuant to section 48.
- (5) The registration of a complaint pursuant to section 49 will not require the board to delay award of the contract.

### 50. Considering the complaint

- (1) The board will provide a written report about the circumstances relating to the complaint to the chair of the bid challenge committee without delay.
- (2) The chair of the bid challenge committee, without delay, will conduct an initial review of the complaint to determine whether or not there will be an inquiry or hearing.
- (3) A complaint registered with the committee which is found by the chair of the bid challenge committee to warrant a hearing will be heard by a panel of three members consisting of the chair of the bid challenge committee and two members of the bid challenge committee as selected by the chair.
- (4) Where possible, the qualifications of the members selected by the chair of the bid challenge committee to hear a complaint will be appropriate to the matter under consideration.
- (5) The panel will hear and consider the complaint within a reasonable time following



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registration of the complaint.

- (6) The panel will allow the complainant and **the board** to address the panel in person and in writing.
- (7) The chair of the bid challenge committee may call upon such advisors as the panel considers advisable to report to the panel.
- (8) The panel will not cancel, revoke, amend or alter a contract.

### 51. Unfounded complaints

- (1) The panel may refuse to hear and consider, or may cease to consider a complaint on the grounds that:
  - a) the complaint is 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.
- (2) Where the panel refuses to consider or ceases to consider a complaint, the chair will inform the complainant and **the board** of the reasons for the refusal.

### 52. Access to information

- (1) Notwithstanding any restrictions on the disclosure of documents in this policy, the panel may examine any documents relating to the complaint.
- (2) All information used by the panel in its deliberations, and which may be disclosed under the *Access to Information and Protection of Privacy Act*, will be disclosed to both parties to the complaint.

### 53. Redress

- (1) Where the panel considers that a complaint is valid, it may recommend reimbursement to the complainant for costs attributable to **board**'s conduct, as allowed under the *Workers' Safety and Compensation Act*.
- (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



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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.

### **54. Panel to report**

The panel will provide a report of its findings and recommendations to the president and to the complainant.

### **55. Duty to respond**

Where the panel recommends a change to **board** policy or procedure, the president, within a reasonable period of time, will address the recommendation to the board of directors.

### **56. Termination of Contract**

**The board** 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.

**The board** reserves the right to continue the contract when there is deficient performance. For every contract of a value over \$101,100, a review may 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 **board**. This reply will be added to the record.

### **57. Eligibility**

The **board** will not enter into any contract unless the potential contractor provides proof of:

- (1) Valid registration with **the board** or another Canadian Workers' Compensation Board and is not in default with **the board**; or
- (2) Another form of liability protection that is satisfactory to the **board**.

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



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### 58. Duties under **Part 3 of the *Workers' Safety and Compensation Act* (Workplace Health and Safety)**

Any contractor providing services under a contract with the **board** will ensure the requirements of **Part 3 of the Act** are followed to ensure the health and safety of all workers and every other person at or near the workplace..