

## NUNAVUMMI NANGMINIQAQTUNIK IKAJUUTI (NNI POLICY) REVISIONS

### **To All Proponents:**

**The First Comprehensive Review of the NNI Policy was completed in the fall of 2003. Cabinet has approved the report and the recommendations of the NNI Review Committee. The administrative changes outlined herein came into effect on April 1<sup>st</sup>, 2004.**

#### **.1 Reference: Section 7.0 – Policy Objectives**

Instruction: Insert the following paragraph at the end of Section 7.1: “These objectives are not listed in order of importance and should not be interpreted as such.”

#### **.2 Reference: Section 11.0 – Evaluation Process and Bid Adjustment**

.1 Instruction: Sub-section 11.1 (b) is hereby revised as follows:

all Tenders meeting the requirements of 11.1.a and the cost criteria of relevant Proposals shall then be adjusted based upon the Nunavut Business status, Inuit Firm status, and Local status of the proponent, general contractor, subcontractors, and suppliers;

.2 Instruction: Sub-section 11.1. (b) (i) is hereby revised as follows:

the adjustment for the labour component shall be based on estimates of payroll expenditures made by the general contractor, subcontractors and suppliers, for Nunavut, Inuit, and Local payroll expenditures that form part of the bid; but no bid adjustment shall be given for estimates of Inuit payroll expenditures over and above the minimum required.

<p><b>For greater clarity and certainty, the interpretation of 11.1. (b) (i) above means that no bid adjustment will be given for Inuit Labour, over and above the minimum requirement set out in Appendix “K”.</b></p>
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#### **Example: Application of Bid Adjustment – Inuit Labour**

On a total payroll estimate of \$350,000 where the Inuit payroll estimate is \$200,000 and the minimum Inuit payroll requirement is 45%, the bidder will only receive bid adjustments on the first \$157,500 of Inuit payroll (45%), even though the estimated Inuit payroll is approximately 67%.

.3 Instruction: Sub-section 11.1. (c) – Bid Adjustment Values is revised as follows:

- i. the bid adjustment values shall be as follows:
  - (i) Nunavut firm status, an adjustment of 7%;
  - (ii) Inuit firm status, an adjustment of 7%;
  - (iii) Local status, an adjustment of 7%.

**.3 Reference: Section 12.0 - Bonuses and Penalties**

Instruction: Replace sub-section 12.3 with the following language:

Where applicable, in the area of employment, a bonus or penalty shall be calculated as follows:

- (a) a bonus shall be calculated as 1% of the total labour content of the contract for each 1% of the amount by which employment exceeds the mandatory requirement; or
- (b) a penalty shall be calculated as 2% of the total labour content of the contract for each 1% of the amount by which employment does not meet the mandatory requirement.

**For greater clarity and certainty, s.12.3 (a) means a Bonus of 1% of the Total Payroll when the Contractor exceeds the minimum Inuit Labour requirement, and s.12.3 (b) means a Penalty of 2% of the Total Payroll when the Contractor fails to meet the minimum Inuit Labour requirement.**

**Example 1: Inuit Labour Bonus**

Where the minimum requirement for Inuit Labour is 45%, and the Contractor, at Final Completion of the Work, has actually spent 67% of his payroll dollars on Inuit Labour, the Inuit Labour Bonus is calculated as follows:

Total Payroll x Percent Exceeded\* or  $\$350,000 \times 22\% = \$77,000$ .

\*Percent Exceeded = Percent Achieved - Percent Required

**Example 2: Inuit Labour Penalty**

Where the minimum requirement for Inuit Labour is 45%, and the Contractor, at Final Completion of the Work, has actually spent 37% of his payroll dollars on Inuit Labour, the Inuit Labour Penalty is calculated as follows:

Total Payroll x Percent Not Met\* or  $\$350,000 \times 8\% \times 2 = \$56,000$ .

\*Percent Not Met = Percent Required - Percent Achieved

**.4 Reference: Section 18.0 – Appeals**

Instruction: Section 18 of the NNI Policy is revised and an Appeals Board has now been established. Pages 3 to 6 below is the new wording for section 18 of the NNI Policy which outlines the process to follow regarding appealing an award of a Tender or RFP.

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### **NUNAVUMMI NANGMINIQAQTUNIK IKAJUUTI (NNI POLICY) APPEALS PROCESS**

- 18.1 Subject to 18.2, an independent Contracting Appeals Board shall be established consisting of three Commissioners and three Alternate Commissioners appointed by the Minister for a term of three years as follows:
- (a) one Commissioner and one Alternate Commissioner from nominees put forward by NTI
  - (b) one Commissioner and one Alternate Commissioner from nominees put forward by the Nunavut regional Chambers of Commerce.
  - (c) one Commissioner and one Alternate Commissioner appointed by the Minister.
- 18.2 In order to provide for continuity, the Minister shall appoint the first members of the Board to staggered terms as follows:
- (1) one Commissioner and one Alternate Commissioner for a term of 2 years;
  - (2) one Commissioner and one Alternate Commissioner for a term of 3 years; and
  - (3) one Commissioner and one Alternate Commissioner for a term of 4 years.
- 18.3 The Minister shall have regard to the importance of regional representation in making appointments to the Board.
- 18.4 If either NTI or the Chambers of Commerce do not submit nominations to the Minister within 45 days of the Minister's request for nominations, the Minister may make the necessary appointment.
- 18.5 (a) A Commissioner or Alternate Commissioner must be a Nunavut Resident as defined in the NNI Policy, that is a person who:
- (i) is on the NTI Inuit Enrolment List or who has spent the last twelve months ordinarily resident in Nunavut; and
  - (ii) has a valid Nunavut healthcare card and/or other accepted proof of residency such as a Nunavut drivers license, a lease or rental receipt, and provides a physical address where residing.
- (b) A Commissioner may not be an employee of, or contractor for:
- i) The GN Department of Public Works and Services or the Contracting Authority of the disputed contract;
  - ii) NTI or a Regional Inuit Association;
  - iii) a Chamber of Commerce in Nunavut.
- 18.6 On appointment, a Commissioner shall certify in writing that he is not an employee as defined in paragraph 18.5 (b), and that to the best of his knowledge he is not in a conflict of interest and will not sit on any appeal if a conflict of interest comes to his attention.
- 18.7 No person may serve as a Commissioner until such person has accepted the position in writing and has executed a confidentiality agreement.
- 18.8 Each year one Commissioner shall be chosen by the Commissioners to serve as Chairperson. The role of the Chairperson is to preside over meetings of the Board and to supervise the operations of the Board.

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18.9 If a Commissioner is unable to act in a particular appeal an Alternate Commissioner shall be selected by the Chairperson to hear the appeal.

18.10 The Minister shall appoint a person to act as Secretary of the Board.

18.11 (a) A contractor who wishes to challenge an award of a tender or RFP must do so in writing within five (5) business days of the award announcement. The appeal must be directed to the Contracting Authority and copied to the GN NNI Policy Advisor, and must set out the following information.

- (i) the name, address, telephone and if available fax number and email address of the party challenging the award;
- (ii) the tender or RFP number and/or title;
- (iii) the issue(s) to be reviewed by the Contracting Authority; and
- (iv) the remedy sought by the contractor.

(b) The Contracting Authority shall have five (5) business days to respond in writing and shall copy the response to the GN NNI Policy Advisor.

18.12 (a) If, after a further 5 business days have elapsed, a contractor is not satisfied with the response of the Contracting Authority, or if no response has been received from the Contracting Authority, the contractor may appeal the award to the Board.

(b) An appeal to the Board must be in writing and directed to the Contracting Authority within 15 business days of the award announcement.

(c) The appeal must set out the following:

- (i) the name, address, telephone and if available fax number and email address of the party challenging the award;
- (ii) the name of the Contracting Authority that issued the tender or RFP
- (iii) the tender or RFP number and/or title
- (iv) the issue(s) to be reviewed by the Board including the reasons why the Contractor believes the application of the NNI Policy is incorrect; and
- (v) the remedy sought by the contractor.

18.13 (a) An appeal from an award by a contractor to the Contracting Appeals Board may be made on the ground that the Contracting Authority in making the award has erred in the application of the NNI Policy.

(b) For greater certainty, there shall be no appeal to the Board from an act or omission relating to the performance of a contract that has been awarded.

(c) Notwithstanding (a) and (b) above, the Board has jurisdiction to consider and make recommendations on any matter relating to the application of the NNI Policy that is referred to it in writing by GN and NTI jointly.

18.14 Where the appeal filed with the Board does not fall within the jurisdiction of the Board the appeal may be dismissed by order of the Board without holding a hearing.

18.15 The Secretary of the Board shall immediately give notice of an appeal to the Board to the successful bidder, to NTI and to the Contracting Authority.

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- 18.16 In addition to the appellant, the Contracting Authority, the successful bidder and NTI have the right to participate in proceedings before the Board in a particular appeal. The Board may, in its discretion, permit any other person to participate in the proceedings.
- 18.17 The Board shall hear the appeal as soon as possible and, in any event, shall hold a hearing no later than 10 business days after the appeal has been filed with the Board.
- 18.18 The Board may receive representations and evidence from the parties in writing, by conference call or in person having regard to convenience and economy. If the Board holds a hearing by conference call or by personal appearance the proceedings shall be recorded by the Board.
- 18.19 The Board shall conduct its proceedings in an informal manner and is not required to receive evidence on oath.
- 18.20 Where required in a proceeding, the Board shall provide the services of an interpreter.
- 18.21 After hearing an appeal, the Board may:
- (a) dismiss the appeal; or
  - (b) allow the appeal and recommend to the Contracting Authority that remedial action, consistent with sound procurement policy and practice, be taken by the Contracting Authority, which may include:
    - (i) requiring the contractor to undertaken additional measures,
    - (ii) providing the contractor with specific information as to Inuit or Inuit firms who are available and qualified,
    - (iii) paying compensation to an unsuccessful bidder,
    - (iv) putting the proposed contract in abeyance until the dispute is resolved, except in cases of urgency,
    - (v) changing any procedure or policy followed by contracting authorities,
    - (vi) in exceptional circumstances involving long term contracts, terminating a contract in whole or in part, and a reassessment or re-issue of tenders.
- 18.22 Decisions of the Board shall be by consensus and failing consensus by a majority vote. The Board shall make a decision as soon as possible after a hearing.
- 18.23 The Board shall give written reasons for its decisions signed by the Commissioners. If there is a majority decision, the dissenting Commissioner may give reasons for the dissent.
- 18.24 The Board shall distribute copies of the decision to all parties who participated in the appeal.
- 18.25 Notwithstanding that an appeal is pending, the Contracting Authority, in its discretion, may enter into a contract with the successful bidder.
- 18.26 If the Contracting Authority does not accept the recommendations of the Board for remedial action, in whole or in part, it shall issue reasons for its decision.

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- 18.27 The Board shall be given access by the Contracting Authority to the response to an RFP or tender bid of the appealing contractor and of the successful contractor for the purposes of determining an Appeal.
- 18.28 The record of proceedings before the Board, including its decision, shall be placed on a public file.
- 18.29 The proceedings of the Board shall be conducted in accordance with the language policy of the Government of Nunavut.
- 18.30 An Annual Report, including financial statements, shall be prepared by the Board at the end of each fiscal year. The Annual Report shall include a summary of appeals heard and decisions rendered.
- 18.31 The Annual Report shall be submitted to the Government of Nunavut and to Nunavut Tunngavik Incorporated and made available to the public.
- 18.32 The Government of Nunavut shall be responsible for the costs of the Board in accordance with GN Policies.