

# **18<sup>th</sup> Legislative Assembly of the Northwest Territories**

## **Standing Committee on Economic Development and Environment**

Report on the Perceptions Held by  
Northern Businesses Toward the  
Government of the Northwest  
Territories' Procurement Processes

Chair: Mr. Cory Vanthuyne

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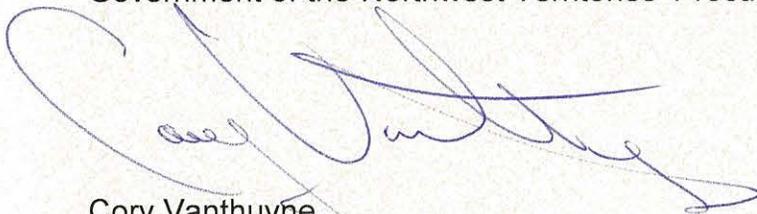
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AUG 15 2019

SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Economic Development and Environment is pleased to provide its Report on the Perception Held by Northern Businesses Toward the Government of the Northwest Territories' Procurement Processes.



Cory Vanthuyne  
Chair, Standing Committee on  
Economic Development and Environment

**STANDING COMMITTEE ON  
ECONOMIC DEVELOPMENT AND ENVIRONMENT**

**REPORT ON THE PERCEPTIONS HELD BY NORTHERN BUSINESSES  
TOWARD THE GOVERNMENT OF THE NORTHWEST TERRITORIES'  
PROCUREMENT PROCESSES**

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PROCUREMENT PROCESSES**

**EXECUTIVE SUMMARY**

The Standing Committee of Economic Development and Environment is pleased to present this report as a contribution to the building and strengthening of a professional public procurement system.

Based on the concerns heard from Northwest Territories (NWT) business owners and operators, Committee undertook a confidential survey asking businesses for their opinion and input on various types of procurement. Committee received responses from businesses of all sizes, representing a wide variety of industry sectors from the Beaufort Delta, North Slave and South Slave regions of the NWT.

Presented in this report are findings and key recommendations from submissions made by 19 companies over a three-week period during August 2018. Ensuring that respondents and their answers remain confidential, feedback has been combined and analysed to produce a clear synopsis of what businesses said about the Government of the Northwest Territories' sourcing and procurement systems. The issues and recommendations made by companies are presented in this report.

The survey results indicate that the current government procurement system would benefit from several improvements to meet the goal of strengthening businesses in the Territories.

Conflicting policies and practices are key concerns of business. The Business Incentive Policy is the government's policy applying to procurement contracts entered into directly with the government. The purpose of this policy is to encourage and support the development of a healthy private sector and to ensure, particularly in the smaller communities, that NWT businesses can be competitive with their southern counterparts.

Businesses note that the government's 'lowest bid' rule and Standing Offer Agreements, may conflict with the intent of the Business Incentive Policy, which is to increase benefit to NWT companies.

Many comments received to the survey, question whether the 'low-bid criteria' is the appropriate criteria to be used by government to find the 'best' bidder. The lowest bidder may not necessarily provide assurance that the project will be completed on time, and it may mean that additional contract amendments, and extra funds, may be required at a later stage in the project.

Collaboration between government and vendors is another key concern of business. Multiple local businesses felt disadvantaged in the competition for contracts with government, because they saw a limited understanding of the unique situation of northern businesses reflected in the government's invitations to tender. Businesses recommend that government communicate with northern companies during the planning stages of procurement to ensure that project specifications, requirements and schedules consider the northern context in which businesses operate in the Northwest Territories.

Committee received considerable feedback to questions on different types of procurement and a large number of recommendations. The responses show that NWT business concerns are focussed on four key themes.

*Theme 1: Increase consistency, clarity and transparency in the procurement system.*

Businesses indicate they have a good understanding of the tendering processes; however, their experience with government and their perception of quality of services varies greatly. Most vendors comment on issues with consistency of service, and clarity and transparency of the process. Businesses recommend that government:

- Increase clarity of information on the e-procurement process.
- Improve reliability of procurement system and online services.
- Ensure procurement authorities are experienced, knowledgeable and have appropriate training.
- Design for a third party monitor, if preferable a non-government employee.
- Provide annual reports on all tender activities.

- Conduct a third party review of all Sole Source contracts on a three-year basis.

*Theme 2: Attract local vendors more effectively.*

Businesses comment that while the government seems willing to support NWT-based businesses, the existing tools do not achieve this goal. Several companies express that they do not receive enough support to be able to compete successfully against larger out-of-territory companies. Smaller businesses indicate they are in a disadvantaged position to compete with larger companies. Businesses recommend that government:

- Include northern hire requirements into Request for Proposals and Public-Private Partnership agreements and contracts.
- Allow businesses to know about opportunities under \$25,000.
- Divide large projects into smaller projects and RFPs to enable smaller companies to compete.
- Allow northern companies to compete by applying additional solutions, such as changes to the list of prerequisites, or for southern firms to have proof of Joint Venture agreements with northern firms.

*Theme 3: Understand NWT business capabilities better.*

Businesses ask to increase communication between government and vendors and to provide opportunity for collaboration between northern industry and government. Businesses recommend that government:

- Develop Requests for Proposals that reflect the project size.
- Work with northern companies to know what northern business have to offer, before searching the internet for products.
- Encourage procurement officers to work closer with northern industry, obtain input from suppliers or other stakeholders when preparing tenders and set more realistic timeframes for vendor responses.
- Ensure that Standing Offer Agreement practices align with the intent of the Business Incentive Policy.

*Theme 4: Integrate mechanisms and services to contribute to the successful delivery of the contract.*

Businesses expressed concern about the government's departmental contract alignment, in particular when it is about updates to technical and sector-specific information and payment. Businesses recommend that government:

- Offer to staff continued education of government policies relevant to procurement, such as the Business Incentive Policy and the Manufacturing Policy.
- Ensure for integration between departments to ensure timely payment of vendors.

Committee heard many concerns about the future of the NWT economy. A possible lack of future opportunities for government tender is believed to result in negative impacts on the health of NWT companies. With the GNWT being the largest supplier of contracts in the territory, businesses expressed the desire for government to schedule tender releases in such a way, that a steady stream of procurement is made available to NWT businesses. It will be important for GNWT to consider systematic approaches to avoid boom and bust cycles in any of the territories sectors.

Committee believes that the concerns raised by business may indicate the increasing risk of an uncertain business environment in the NWT. Therefore, Committee impresses on the Government of the Northwest Territories to adopt an active, forward looking, and collaborative approach to public procurement.

Committee members suggest that the Department of Infrastructure verify with vendors, clients and other stakeholders the successful implementation of the new e-procurement system. To enable alignment with recently developed policy directives, ongoing departmental restructuring initiatives, and changes in administrative and technological applications, Committee is of the view that a more comprehensive approach is required. Accordingly, Committee makes the following recommendations:

Recommendation 1:

The Standing Committee on Economic Development and Environment recommends that the GNWT establish a procurement advisory panel composed of members of industry, small business, procurement experts and members of the public service. This panel should be guided by a clear terms of reference,

setting out the panel's role in providing regular advice to the government on how to improve procurement processes.

Recommendation 2:

The Standing Committee on Economic Development and Environment recommends that the GNWT undertake a comprehensive public review of all procurement related policies with the explicit direction to modernize government procurement processes, and to ensure that NWT businesses can benefit and a healthy private sector is developed in the NWT, taking into consideration concerns and issues raised in this report, along with Committee's recommendation.

Members of the Committee would like to thank all who participated in the survey, for sharing their experiences and providing substantial recommendations.

## **INTRODUCTION**

The Standing Committee of Economic Development and Environment (Committee) is pleased to present this report as a contribution to building and strengthening a professional public procurement system.

Public procurement is the umbrella term embracing several business functions that involve acquiring goods, services and construction on behalf of government. Processes of purchasing goods and services and selecting vendors for the government are laid out in the Government of the Northwest Territories (GNWT) Business Incentive Policy (BIP), with the purpose to promote economic growth and capacity for NWT businesses and the NWT economy.

Multiple companies and vendors of all business sizes expressed to Committee that in their view, government could do more to allow northern businesses to compete successfully for government contracts. Committee subsequently asked businesses for their opinion and experience with the government bidding process and various types of procurement.

In August 2018, the Standing Committee asked for responses to a confidential survey focussed on procurement-related policies and processes.

## **Approach**

A survey was distributed to a cross-section of companies based in the Northwest Territories (NWT), representing all sizes, business volumes and industry sectors. Committee received 19 responses, presenting a response rate of 41 percent. The survey is attached as Appendix 3.

The survey was designed into two sections; the first asking businesses to describe themselves according to categories provided; the second section contained open-ended questions on experiences with procurement processes.

Information gathered from the first sections of the survey provides an overview of indicators of the characteristics of participating businesses. These responses provide informative background to the findings of this report. However, they do not allow drawing conclusions on possible relationships between business sector, procurement tool, size or location of business.

Committee received comprehensive responses to four open-ended questions on experiences with various procurement types. These allow a summary of concerns, observations and recommendations presented in the “What We Heard” section of this report.

## **Survey Participants**

In the first section of the survey, business was asked to identify skill type categories according to the National Occupation Classification to allow a best match with type of businesses. Respondents were allowed to identify multiple sectors. The majority (36 percent) of responding businesses operate in the trades, transport, equipment operators and related occupancies such as construction. The second most represented occupation was sales and services (29 percent), followed by Management (14 percent), Business, finance and administration (7 percent), Manufacturing and utilities (7 percent), Natural and applied sciences (4 percent) and Art, culture, recreation and sport (4 percent).

There were no responses from businesses in the health; education, law, social, community and government services; and natural resources, agriculture and related sectors.

Companies that responded to the survey operated in three of the five regions identified in the survey. The majority (63 percent) of vendors were located in the

North Slave region, followed by a smaller number (32 percent) of companies operating in the South Slave region. Some businesses were based in the Beaufort Delta (5 percent). No responses were received from vendors based in the Sahtu or the Dehcho regions.

The size of business responding to the survey was nearly evenly distributed among the four categories provided. The smallest companies with one to three employees presented 21 percent, companies with four to 10 employees 32 percent and business with ten to 50 employees 21 percent. Larger businesses with over 50 employees were presented with 26 percent.

Vendors were asked to indicate the approximate total value of GNWT contracts awarded to their business in the last five years. The responses showed a very wide distribution with a median of \$300,000, which means half of the values provided were lower, and the other half of total value of contracts was higher.

Businesses indicated the procurement types that had provided them with winning contracts in the past five years (between 2013 and 2018). Requests for Proposals (RFP) was the process that resulted most often (31 percent) in contracts with government. Public Tender was the type used nearly as often (27 percent). Other types presented a lower share among the successful procurement types, such as Sole Source contract (17 percent), Standing Offer Agreement (15 percent), and Negotiated Contract (10 percent).

The majority of respondents indicated that their companies have experience with multiple types of procurement. All respondents had done business with the government during the past five years.

The survey included a satisfaction rating of the tendering processes in place with the Government, providing the six choices of RFP, Standing Offer Agreement, Public Tender, Sole Sourcing, Negotiated Contracts and Other. When asked to rate the experience with different types of procurement, responses were divided and resulted in as many positive as negative ratings for each procurement process. For example, 42 percent of respondents rated the BIP as poor or not good, while 42 percent rated the same policy as excellent or good.

This result did not provide Committee with specific direction. However, the submissions included generous discussion of concerns and recommendations which are presented in this report as a combined experience for each procurement process mentioned.

## **This Report**

This report is organized into four chapters. The Introduction describes the purpose of this report as it aims at providing a contribution to the discussion of good procurement in government. A section on methodology gives background on the survey and the limits in analysis.

The chapter on Key Findings summarizes the comments and recommendations submitted by business in response to questions on types of procurement. Responses to a question asking for each respondent's 'top three' recommendations are also considered here.

The "What We Heard" chapter provides in more detail insight into the experiences companies and vendors shared with us, focused on each particular procurement process. A Conclusion provides final comments by the Committee.

The Standing Committee thanks all individuals and businesses, who took the time and effort to complete the survey, submitted their comments on the government's procurement system, and provided recommendations for improvement.

## **KEY THEMES**

Committee received input from 19 companies over a three-week period during August 2018. Ensuring that respondents and their answers remain confidential, feedback has been combined and analysed to produce a clear synopsis of what businesses had to say about the GNWT's sourcing and procurement systems and where recommendations were made.

Review of the responses revealed that vendors have four general key concerns:

### **Increase Consistency, Clarity and Transparency**

While businesses indicated they have a good understanding of the tendering processes, their experience with government and their perception of quality of services varied greatly. Vendors were divided in their ratings of procurement processes, however, most commented on issues of consistency of service, and clarity and transparency of the process.

Concerns:

- Processes are not consistently implemented.
- Evaluations of responses to RFPs are inconsistent.
- Lack of expertise to conduct evaluations and project needs among procurement authority.
- Processes are not always well described and vendors indicated that they did not always receive clarifying responses to their inquiries.

Recommendations:

- Ensure that procurement processes are consistency with the Business Incentive Policy. The 'lowest bid' rule, and Standing Offer Agreements, may conflict with the intent of the BIP, which is to increase benefit to NWT companies.
- Increase clarity of information on the e-procurement process; even with information online, the process often remains unclear.
- Improve reliability of access to the procurement system, the web page and online services.
- Increase procurement expertise among procurement authorities.
- Design for a non-GNWT third party monitor for RFP processes, and ensure clarity on that this monitor exists and who it is.
- Provide annual reports on all tender activities.
- Conduct a third party review of all Sole Source contracts on a three-year basis.
- Develop RFPs that reflect the project size.

### **Attract Local Vendors More Effectively**

Vendors most consistently commented that while the government seems willing to support NWT-based businesses, the existing tools do not achieve this goal. While larger companies expressed that they did not receive enough support to be able to compete successfully against larger out-of-territory companies; small companies indicated they were in a disadvantaged position to compete with larger companies.

Concerns:

- Increase efficiency of the public procurement system: The current system may not provide sufficient opportunity for NWT businesses to sell to government.
- Improve implementation of the BIP.

- The bidding process should include a threshold identifying the minimum of project cost to avoid inadequate and unrealistic tenders;
- Limitation for NWT vendors to participate is that below \$25,000 contracts are not listed.
- Some practices, such as Standing Offer Agreements do not always align with the intent of BIP, and exclude, rather than include NWT businesses.

Recommendations:

- Include northern hire requirements into RFPs and Public-Private Partnership agreements and contracts.
- Include into RFP processes the requirement to hire northern suppliers where more than one Northern supplier is available.
- The BIP should link to the ratio of cost of doing business in the Northwest Territories and apply the appropriate percentage as incentive.
- Include in Negotiated Contracts the condition to work with 100 percent northern resources when available.
- Divide large projects into smaller projects and RFPs to enable smaller companies to compete.
- Allow businesses to know about opportunities under \$25,000.
- Ensure that staff and department staff is informed, and all personnel responsible for procurement know about the manufacturers list and the policy for purchasing from those vendors.
- Consult with local suppliers during the planning stages of procurement can help avoid that specifications, requirements or schedules disadvantage local businesses.

**Understand NWT Business Capabilities Better**

Several recommendations were directed at increasing communication between government and vendors to provide opportunity for collaboration between northern industry and government.

Concerns:

- Procurement staff is not always knowledgeable of technical specifications and a lot of time is spent communicating between the department who is project lead, company and procurement staff.

- Update the definition of manufacturing.

Recommendations:

- Work with northern companies to know what northern business have to offer before searching the internet for products.
- Include input from suppliers or other stakeholders when preparing tenders and set more realistic timeframes for vendor responses.
- Encourage procurement officers to work closer with northern industry, in particular in updating specifications and tenders and that are current and proven in the North.
- Ensure that Standing Offer Agreement practices align with the intent of the GNWT's BIP, which is to encourage and support the development of a healthy private sector and to ensure, particularly in the smaller communities, that NWT businesses can be competitive with their southern counterparts.

### **Integrate Government Mechanisms and Services**

Concern was raised in regards to government internal cooperation and alignment, in particular when it concerned updates to technical and sector-specific information and payment.

Concerns:

- The need for increased integration of public procurement into finance management and services delivery processes to avoid inconsistencies such as late payment to vendors.
- Price seems to be the only determining factor leading to awarding of tenders, not considering reliability, service, safety, or other criteria.

Recommendations:

- Offer continued education of BIP and Manufactured Products Policy (MPP) through to the GNWT departments including shared services.
- Ensure for integration between departments to ensure timely payment of vendors.
- Include interim payment options for large product and manufacturing costs.

## **WHAT WE HEARD**

The survey offered opportunities for commentary and explanations for each of the procurement types, extra space for additional and general comments via many open-ended questions.

Overall, larger companies expressed that they did not receive sufficient consideration to be able to compete successfully against larger out of territory companies; small companies stated that they were in a disadvantages position to compete with larger companies operating within the NWT.

The results have been combined and analysed to produce a clear synopsis of what businesses had to say about the GNWT's source and procurement systems and share the recommendations made with the aim to make the system work better for both, government and private sector in the NWT.

### **Business Incentive Policy (BIP) Process**

Most feedback focussed on the BIP, and most 'top three' recommendations addressed components of the BIP process.

The BIP is the government's policy applying to procurement contracts entered into directly with the government, with the exception of employment contracts. The purpose of BIP is to encourage and support the development of a healthy private sector and to ensure, particularly in the smaller communities, that NWT businesses can be competitive with their southern counterparts.

Many comments focused on the low-bid contract system and questioned whether the lowest bid price is the appropriate criteria to be used by government to find the 'best' bidder. Comments included that the lowest bidder may not necessarily provide assurance that the project will be completed on time or that additional contract amendment, and extra funds, may be required.

To avoid inadequately low bids, it was noted, technical reviews maybe required to identify whether a bid is not in strict accordance with all the requirements and specification. This process relies much on the expertise and experience of GNWT staff, which several businesses believe to not always be as advanced as is necessary to result in fair assessments, in particular when compared to bids originating in other jurisdictions.

A possible conflict with the intent of BIP was noted. It was questioned how the 'lowest bid' rule would align with the intent of the BIP, which is to increase benefit to NWT companies. A bid system that applies the lowest price to be the winning criteria may curtail opportunities for those companies who maintain year-round northern workforces while paying higher freight and operating cost. It was recommended to adjust requirements for BIP applications so businesses based in the NWT have more chances to compete successfully.

Several vendors expressed concern that a low-bid system:

- Creates risk;
- Does not guarantee that the project will stay within agreed price range or that it will be completed; and
- May lead to failed projects, which create costs to governments and business.

Businesses were concerned about procurement authorities having appropriate training. Technical expertise and assessment experience required to fairly assess proposals among NWT-based and non NWT-based businesses was noted to not always be apparent.

Businesses made several recommendations for improvement:

- Ensure that the BIP is reflected in the application of all procurement types.
- Rather than rely on lowest bid only, include other criteria in the bidding process such as performance reports. These are used in other jurisdictions and included with submissions, allowing extra points to be considered in the overall evaluation of the proposal.
- Adjust the requirements for BIP application to ensure that NWT businesses owners and employees actually living in the NWT are paying the higher cost of living, paying higher freight and operating costs, and maintaining a year-round northern workforce can benefit.
- Remove 'grandfathering'. Several respondents asked for removal of the 'grandfathering' of previously registered companies under the BIP, if the company does not meet the ownership requirements for the registry.
- Respondents wondered if there are checks on the performance of approved companies and whether litigation or other legal processes are considered in BIP registration applications.

- BIP should link to the ratio of cost of doing business in the NWT and apply the appropriate percentage as incentive. In other words, if cost is 40 percent higher in the North than it is in the South, the incentive should be able to compensate that additional 40 percent cost. This model could be revised every three years.
- Ensure a fair process when registering companies under the incentive policy.
- Give priority to licenced journeypersons in recognition that certification in a trade provides assurance that the individual has expertise and training in the field, and that work is carried out in compliance with established standards.

### **Request for Proposal Process**

The Request for Proposal (RFP) process is a method used when government is seeking new solutions or approaches to problems or projects. An RFP provides proponents with an overview of a perceived or expected requirement, but does not give a detailed project plan. It is expected that the proponent will develop a project plan in the proposal.

Committee heard that the current RFP process is awkward, lengthy and needs to be simplified. Concerns were raised regarding knowledge and experience of GNWT staff, in particular in the context of the RFP processes. Several respondents commented on inconsistent evaluations, which in their opinion were caused by inexperienced procurement officers. Processes were mentioned to be often unclear, in particular with the changes occurring within the GNWT administration and transition to Procurement Shared Services.

Businesses made recommendations on how to improve the process:

- Develop the current RFP process into a more elaborated process with opportunities for communication between procurement authority and vendors. For federal government contracts, for example, the process is clear and it includes debriefings so that proponents can understand what is needed. Additional lead time would be appreciated.
- Multiple businesses suggested that only experienced senior management should be tasked to evaluate RFP submissions.
- Ensure project officers know the worth of each project tendered.

- Determine a threshold for a lowest possible bid and don't accept bids that are below the set minimum amount.
- Third-party fairness monitors are needed; some requested that the GNWT ensure monitors who are non-GNWT employee to be involved in all RFP evaluations.
- Identify a maximum length for proposals and limit the number of pages or characters. Otherwise, smaller companies will be disadvantaged compared to larger companies who have more capacity to prepare more detailed proposals. A limited number of pages should be sufficient to allow companies to indicate they have the required knowledge and qualifications.
- Develop RFPs to reflect the project size.
- RFP should require hiring northern suppliers where multiple northern suppliers are available.

### **Procurement Shared Services (PSS)**

Procurement Shared Services (PSS) of the GNWT is the government's central place for tendering goods from private sector providers that are estimated to exceed \$25,000 in value, and services estimated to exceed \$10,000 in value. PSS provides support to all GNWT departments and the NWT Housing Corporation to administer the government's corporate procurement policy and updating the procurement guidelines. Tender desks which operate in headquarters and regional centers are responsible for the distribution and receipt of all government tenders and Requests for Proposals.

Respondents listed several concerns and expressed confusion and frustration about the transition of procurement to PSS. Several vendors asked to be allowed to deal directly with purchasing departments and remove contracting from PSS in order to get access to information required to complete the tender process. Some viewed PSS as an additional layer of bureaucracy that interfered in the relationship between department and supplier, the quality of product, and cost and delivery.

Businesses made recommendations on how to improve PSS processes:

- Increase procurement expertise.

- Consider the most efficient and appropriate tender process, for example, when procuring unconfirmed and possible changing services, to stop using the firm tender process and utilize the RFP process.
- Create opportunity for client departments to work with northern industry to the update specifications and tenders.

Timely payments were noted as a challenge by multiple respondents. Government offers an early payment option at the cost of two percent of the invoiced amount, however, respondents noted occasions where payment was not made within the 20 day-period promised. PSS is seen as slowing down all elements in the bidding process, including payment.

Recommendations made included the suggestion that GNWT pay invoices below \$10,000 within a week. Another suggestion was that GNWT should pay a late payment penalty, the same two percent rate that it charges as early payment fee.

### **Sole Source Contracts**

The sole source contracting process occurs when only one firm is available and capable of performing the contract, or the urgency of the situation determines that the competitive process cannot be used.

Several comments indicated that respondents did not see the purpose of this type of tender and expressed that all work should go through a competitive process.

Recommendations included that:

- Sole Source contracts should only be awarded to southern suppliers if as per BIP registry no northern suppliers are available.
- GNWT should conduct a third-party review of all Sole Source Contracts on a three year basis as to whether the policies and procedures were properly followed.
- Other comments suggested specifying conditions for sole source contracts, for example by changing the decision-making authority, others liked to see a specific dollar limit put on sole source contracts (as low as \$10,000), others again suggested that sole source contracts should be limited to instances where timing is a factor.

## **Standing Offer Agreement**

A Standing Offer Agreement (SOA) is an agreement, obligating a vendor to supply on demand specified goods or services at a predetermined price or discount structure, under specific conditions for a set period of time. SOAs are used for services or products commonly used by all departments and agencies of the GNWT. The core purpose of an SOA is to increase the level of cost-effectiveness for government by consolidating volumes, and reducing the time required to receive the goods or services.

SOAs are established through a formal tender process, using the Request for Proposal (RFP) or Request for Tender (RFT) process. SOAs do not contain legal obligations to contract for all or any of the goods or services, they are not considered contracts. The commitment to funds is made in the form of Purchase Orders or Service Contracts.

The survey did not offer a specific question on SOAs, however, comments on SOAs were received in response to questions on sole source contracts and general comments.

Business pointed out that SOAs for goods are very difficult to work within. While the agreements allow for flexibilities in the implementation of the agreement, there are also many variables that make it difficult for a potential vendor to have a clear understanding of what precisely is needed, what could be offered and at what price. Furthermore, Committee heard that businesses believe it to be very difficult to fairly compare and score standing offer submissions.

Recommendations include:

- Allow northern companies to compete by applying additional solutions, such as changes to the list of prerequisites, or for southern firms to have proof of Joint Venture agreements with northern firms.
- Clarify how southern firms competing for NWT business should go about gaining local knowledge, if fulfillment of an agreement depends on it.
- Consider breaking up SOAs and allow departments to sign separate agreements to increase opportunities for NWT businesses to compete.
- Ensure that Standing Offer Agreement practices align with the intent of the GNWT's BIP, which is to encourage and support the development of a healthy private sector and to ensure, particularly in the smaller

communities, that NWT businesses can be competitive with their southern counterparts.

### **Manufactured Products Policy**

The NWT Northern Manufactured Products Policy (MPP) has the purpose to ensure that GNWT procurement provides a benefit to manufacturers in the NWT. The procurement process recognizes the higher production costs for made-in-the-NWT products and gives incentive to production and manufacturing of goods for the use by the GNWT. In order to benefit from the MPP, a product must be recognized as an approved NWT manufactured product. A BIP-registered business may apply to have their NWT-made goods registered under the MPP. Recommendations to improve GNWT procurement policies and practices included the following suggestions for the MPP:

- Continue to support and encourage northern manufacturing because it helps diversify the NWT economic diversity by creating jobs, opportunities for training and capacity building, and spin offs to local suppliers or service providers.
- Ensure that the department and all government personnel responsible for procurement know about the manufacturers list and the policy for purchasing from those vendors.
- Increase GNWT awareness of the role that a northern manufacturing sector could play in the NWT economy and identify the loss that comes with not supporting Northern manufacturers if goods are supplied by out-of-province companies.
- Incorporate interim payment deposits into MPP; consider practices and standards used other jurisdictions and federally throughout the manufacturing sector.
- Increase GNWT awareness of tools that can be used in procurement to encourage northern manufacturing.
- Incorporate investments into the NWT Manufacturing Strategy.
- Review and amend the definition of what a manufactured good is, and preferably broaden it to include more products and vendors.

### **Negotiated Contracts**

GNWT departments are allowed to enter into contracts outside of the competitive process and in compliance with the *Government Contract Regulations*. An eligible contractor may request a negotiated contract to undertake work that

provides opportunities to improve the skills and experience of residents and northern businesses, or realize economic benefits for residents, that would not be realized through a competitive process.

Committee heard that businesses perceive that the GNWT currently does not support this type of non-competitive contracting, however, still at times and ad hoc enters into negotiated contracts. Agreement with this type of procurement was noted only as long as the participants are northern businesses and not 'store fronts' for companies operating out of jurisdictions with lower costs of doing business.

Stakeholders recommended including into Negotiated contracts the condition that 100 percent northern resources must be used, if they are available.

### **Transparency**

A professional public procurement system requires high standards of integrity for all stakeholders in the procurement cycle. The responses indicate that there is room for the development of internal controls because fairness measures that may currently exist are not readily recognizable. Dispute mechanisms need to be made known as the effectiveness of a bid dispute mechanism may impact vendor confidence and willingness to sell to government.

Several comments noted that the tender process could be improved by updating the existing webpage and allow viewing of awarded contracts. There were some sentiments that contracts may be awarded to companies based in southern jurisdictions while NWT companies offer similar if not better resources. It was commented that the overall procurement process should be more accountable. Committee heard that businesses believe it to be very difficult to fairly compare and score SOA submissions. Increased transparency would aid in understanding the government's process for this procurement type.

Some comments referred to ensuring that political interference in contracting practices is problematic while others requested that Cabinet needs to take control of their departments and not let bureaucracy dictate direction. Committee heard at occasion that there is little information that allows reviewing past performance of procurement processes to inform procurement authorities on impacts of local businesses on the local and NWT economy.

## **Working Together**

Procurement planning requires that all potential partners understand what is required and what is available. Adapting to how much of a good or service to buy at different points during a year to take into account differences in availability or pricing, characterizes the ability to design the procurement to maximize best value.

Businesses made several recommendations to increase cooperation between GNWT and potential vendors:

- Include in policy documents and strategies the requirement to seek input from suppliers or other stakeholders, and set more realistic timeframes for vendor responses.
- Consult with local suppliers during the planning stages of a procurement because this can help avoid that specifications, requirements or schedules disadvantage local businesses.
- Vendors need to be granted adequate time to carry out work due to either late release of procurement or slow award of contract or unrealistic schedules.
- Ensure that information requests from vendors are responded to; difficulties in obtaining answers may lead a vendor to the decision to not submit a response.
- Other recommendations included the proposal to provide businesses with advance notice of opportunities for under \$25,000 contracts and allowing GNWT businesses to self-identify if the desired services or goods can be supplied.

## **RECOMMENDATIONS**

The purpose of the survey was for Committee to better understand how businesses interact with procurement process of the territorial government, and to hear what works and what needs improvement. Responding to a confidential survey, companies shared with Committee their experiences with a system that was in place prior to and during 2018. Since the survey was conducted in 2018, the GNWT has improved its procurement capabilities, released procurement guidelines and transitioned to an e-procurement platform.

Committee is of the view that the key issues raised in this survey remain relevant and will be helpful in further improving the GNWT's procurement processes, and identify how to increase opportunities for NWT businesses.

Committee believes that some of the concerns raised by business may indicate the increasing risk of an uncertain business environment in the NWT. Therefore, Committee impresses on the Government of the Northwest Territories to adopt an active, forward looking, and collaborative approach to public procurement. Committee makes the following recommendation:

**Recommendation 1**

**The Standing Committee on Economic Development and Environment recommends that the GNWT establish a procurement advisory panel composed of members of industry, small business, procurement experts and members of the public service. This panel should be guided by a clear terms of reference, setting out the panel's role in providing regular advice to the government on how to improve procurement processes.**

The need for government to better understand company capabilities and to improve access for local vendors to public sector procurement was expressed by a significant number of respondents. Committee heard about a strong desire to improve mechanisms to support local suppliers. Businesses showed concern that some of the procurement processes may not align with the Business Incentive Policy of the Government of the Northwest Territories, and may even contradict the policy.

These concerns, of how to balance interests and prioritize goals that will support economic activities in the NWT, will remain unless they are addressed. As first steps, Committee members suggest that the Department of Infrastructure verify with vendors, clients and other stakeholders the successful implementation of the new e-procurement system.

To enable alignment with recently developed policy directives, ongoing departmental restructuring initiatives, and changes in administrative and technological applications, Committee is of the view that a more comprehensive approach is required. Accordingly, Committee makes the following recommendation:

## **Recommendation 2**

**The Standing Committee on Economic Development and Environment recommends that the GNWT undertake a comprehensive public review of all procurement related policies with the explicit direction to modernize government procurement processes, and to ensure that NWT businesses can benefit and a healthy private sector is developed in the NWT, taking into consideration concerns and issues raised in this report, along with Committee's recommendation.**

## **CONCLUSION**

Committee heard many concerns about the future of the NWT economy. A possible lack of future opportunities for government tender was believed to result in negative impacts on the health of NWT companies. With the GNWT being the largest supplier of contracts in the territory, businesses indicated the hope for government to schedule tender releases in a way that a steady stream of procurement is made available to NWT businesses. It will be important for GNWT to consider systematic approaches to avoid boom and bust cycles in any of the territories sectors.

The Committee thanks all those who took the time and effort to complete the survey and submit their thoughts on procurement and provide recommendations for improvement.

Rule 100(5) of the *Rules of the Legislative Assembly of the Northwest Territories* requires Cabinet, in response to a motion by Committee, to table a comprehensive response that addresses the Committee report and any related motions adopted by the House. As required by this rule, Committee usually includes a recommendation in each report, which is moved as a motion in the House, requesting a response from government within 120 days. Given that the 18<sup>th</sup> Legislative Assembly will dissolve prior to the conclusion of the 120 day time period allowed by the rules, Committee has opted to forego this recommendation. Committee nonetheless requests, to the extent it is possible before the dissolution of the 18<sup>th</sup> Assembly and for the public record, that government provide a response to this recommendation, even of a preliminary nature, that Committee may publicly disclose.

## **APPENDIX 1: ACRONYMS**

BIP	Business Incentive Policy
CFTA	Canadian Free Trade Agreement
MPP	Manufactured Products Policy
PSS	Procurement Shared Services
RFP	Request for Proposals
RFQ	Request for Qualifications
RFT	Request for Tenders
SOA	Standing Offer Agreement

## APPENDIX 2: GLOSSARY

**Bid Adjustment** The amount by which a tender or proposal bid is reduced for the purpose of ranking bidders or proposers.

**Bid Evaluation** Bid evaluation is the process for evaluating tender bids. The tender review determines the lowest bid by a bidder. The review may disclose error, anomalies and omissions in the bids. The review may also point out weaknesses in the bid or contract documents, or improper tendering practices by bidders.

### **Business Incentive Policy**

The Business Incentive Policy, 63.02, provides preference on government procurements to businesses that are owned and operated within the Northwest Territories. It is designed to promote economic growth and capacity within the territory.

### **BIP Registry**

The registry of BIP Businesses maintained in accordance with provision 6(1) of the Business Incentive Policy. The Department of Finance maintains a Contract Registry and Reporting System for all competitive and non-competitive contracts awarded by the GNWT. This registry allows the Government to collect, monitor, evaluate and report on its procurement activity in accordance with its obligations under the Canadian Free Trade Agreement. Government tender and procurement notices in other Canadian jurisdictions can also be accessed via the website.

### **Contract Authority**

In accordance with the *Government Contract Regulations* a “Contract Authority” means, in respect of a contract,

- (a) the Minister responsible for the department in respect of which a contract is to be made,
- (b) the Deputy Minister of the department in respect of which a contract is to be made, and
- (c) a public officer to whom the powers and duties of a Contract Authority has been designated.

### **Dollar Value Threshold**

The Northwest Territories dollar value thresholds for contracts requiring a competitive, public procurement process are as follows: (1) \$25,000 for general goods and services, (2) \$50,000 for professional services, and (3) \$100,000 for architectural and engineering services.

### **Government Contract Regulations**

These regulations establish rules or orders that have the force of law. They are issued by the executive authority of the GNWT as it pertains to procurement functions.

### **Manufactured Products Policy**

The Northwest Territories Manufactured Products Policy gives incentive to local production and manufacturing of goods for the use of the GNWT under the BIP. BIP-registered businesses may apply to have their NWT-made goods registered as an approved NWT Manufactured Product.

### **Negotiated Contracts Policy**

The GNWT may directly negotiate contracts with specified parties outside of the competitive contracting process. This type of contract requires approval by Cabinet and is considered in situations where benefits to residents or business are expected that would not be achieved through competitive contracting.

### **Procurement Shared Services**

Procurement Shared Services (PSS) is the government's central place for tendering goods from private sector providers. PSS is responsible for advice, information and training on how to do business with the GNWT, distribution of public procurements for all GNWT departments and the NWT Housing Corporation; procurement of goods over \$25,000, and services over \$10,000 in value. PSS promotes and supports the key principles of the GNWT procurement framework: competition, transparency, and socio-economic impact.

### **Request for Proposals**

Request for Proposals is a procurement tool used when the government wants to review and implement different and new solutions to a problem, project, or business process. Proposals are evaluated based on qualitative merits in addition to price. RFPs are the method most often used for the procurement of complex goods, services and major construction projects.

### **Request for Qualifications**

Request for Qualifications is a procurement tool used by the government to prequalify respondents for participation in invitational procurement processes.

### **Request for Tenders**

Request for Tenders is a procurement tool used when the government knows what it wants and how it should be done, and is looking solely for the best price.

### **Sole Source**

The sole source contracting process occurs when only one firm is available and capable of performing the contract, or the urgency of the situation dictates that the competitive process cannot be used.

*(Sources: GNWT Procurement Guidelines, NWT Business Incentive Policy, Government Contract Regulations)*

## **APPENDIX 3: SURVEY**

### **Procurement Survey**

Thank you for taking the time to participate in this survey. Members of the Legislative Assembly (MLAs) part of the Standing Committee on Economic Development and Environment (Committee) are interested in obtaining public input into various procurement-related policies and processes currently in place by the Government of the Northwest Territories (GNWT).

Please answer the questions below for Committee members to better understand how businesses interact with these processes, what works and what needs improvement.

Your answers will remain confidential.

Questions and concerns please contact Mr. Michael Ball, Committee Clerk at Michael\_Ball@gov.nt.ca.

The Committee is chaired by Mr. Cory Vanthuyne, MLA Yellowknife North.

Information on the Committee, including its business and members, can be found on <https://www.assembly.gov.nt.ca/content/economic-development-environment>.

**Email address** [enter here]

### **DEMOGRAPHICS**

**These questions give us a better idea of what kind of business you represent.**

**Question 1:** Type of business - please choose the options that best match your business, according to the National Occupation

- Management
- Business, finance and administration
- Natural and applied sciences
- Health
- Education, law, social, community and government services

- Art, culture, recreation and sport
- Sales and service
- Trades, transport and equipment operators and related (e.g. construction)
- Natural resources, agriculture and related
- Manufacturing and utilities

**Question 2:** Where is your business based?

- Beaufort Delta
- Dehcho
- North Slave
- South Slave
- Sahtu

**Question 3:** How many people do you employ in the NWT?

- 1 to 3
- 4 to 10
- 10 to 50
- over 50

**Question 4:** Have you done business with the GNWT in the last 5 years?

- Yes
- No

## **VENDOR**

Based on your previous answer that yes you have done business with the GNWT in the past 5 years, these questions will help us characterize what kinds of engagements you've had with the GNWT.

**Question 5.a.:** What is the approximate total value of GNWT contracts awarded to your business in the last 5 years?

- \$ [please enter amount here]

**Question 5.b.:** In the past 5 years, how have you won GNWT contracts? Check all that apply.

- Request for Proposal
- Public Tender
- Negotiated contract
- Standing Offer Agreement
- Sole sourcing
- Other

**Question 5.c.:** Why have you not done business with the GNWT in the last 5 years?

- I own a new business
- I have not had a successful bid
- The GNWT does not require my services
- I have never tried to do business with the GNWT
- Other

### **GNWT PROCUREMENT PROCESSES**

There are a variety of ways in which organizations can engage with the GNWT. In this section we ask about your experience with some of the most prominent ones.

**Question 6.:** Which of the following policies or processes are you familiar with? How would you rate your experiences with them? Rate them from 1 (poor) to 5 (excellent).

Business Incentive Policy	N/A	1(Poor)	2	3	4	5 (Excellent)
Sole source	N/A	1(Poor)	2	3	4	5 (Excellent)
Manufactured						
Products Policy	N/A	1(Poor)	2	3	4	5 (Excellent)
Procurement						
Shared Services						
(e.g. payments)	N/A	1(Poor)	2	3	4	5 (Excellent)
Request for						
Proposals	N/A	1(Poor)	2	3	4	5 (Excellent)
Negotiated						
Contracts	N/A	1(Poor)	2	3	4	5 (Excellent)

## **EXPERIENCES – DETAIL**

Based on your previous answers, please elaborate on those processes you wish to provide further details on.

**Question 7.a.:** Business Incentive Policy

**Question 7.b.:** Sole source

**Question 7.c.:** Manufactured Products Policy

**Question 7.d.:** Procurement Shared Services

**Question 7.e.:** Request for Proposals

**Question 7.f.:** Negotiated Contracts

**Question 8.:** What are your top three recommendations to improve GNWT procurement policies and practices?

**Question 9.:** Is there anything else you would like the Committee to know?