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Canada

Guide on Government Contracts in the Nunavut Settlement Area

WITHOUT PREJUDICE
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Guide on Government Contracts in the Nunavut Settlement Area.

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To all readers:

Please note that this Guide is still subject to ongoing consultations between Canada and Nunavut Tunngavik Incorporated (NTI), the Designated Inuit Organization (DIO) for the Inuit of Nunavut, and is currently only being provided in draft form. As of the effective date (December 20, 2019), the *Directive* is fully in effect, but the guidance is not yet finalized. However, officials may use the Guide with the understanding that it may evolve as consultations continue.

Because of its draft nature, it is recommended that anyone using this Guide refrain, as much as possible, from generating offline/printed copies and instead rely upon the latest version posted online, available at: <https://buyandsell.gc.ca/for-government/buying-for-the-government-of-canada/plan-the-procurement-strategy#nunavut-directive>

Thank you.

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Executive Summary

Note:

In the text of the *Nunavut Land Claims Agreement (Nunavut Agreement)* and the *Directive on Government Contracts, Including Real Property Leases, in the Nunavut Settlement Area*, the term “solicit” means “to request bids from a limited number of businesses based on some form of prequalification,” and the term “invite” means “to call publicly for bids.” In context of federal procurement, the term “solicit” can carry other meanings, including “to call publicly for bids,” and the term “invite” means to “request bids from a limited number of businesses”. Throughout, this guide uses these terms as they are commonly understood in the context of federal procurement.

Introduction

Canada signed a Comprehensive Land Claims Agreement (CLCA), with the Inuit of Nunavut in 1993, the *Nunavut Land Claims Agreement (Nunavut Agreement)*. The *Nunavut Agreement* includes obligations related to Government Contracts (including Real Property Leases) in the Nunavut Settlement Area (NSA). In support of this objective, the government committed under Article 24 of the *Nunavut Agreement* to provide reasonable support and assistance to Inuit firms to enable them to compete for government contracts, which includes supply of goods and services, construction and real property leases. The new Treasury Board *Directive on Government Contracts, Including Real Property Leases, in the Nunavut Settlement Area* (the *Directive*), prescribes procurement measures designed to provide that support and assistance.

This guide provides federal government Contracting Authorities (CAs) and Business Owners (BOs – formally called Technical Authorities) with advice on how to carry out the obligations of the *Directive*, and will assume a general understanding of Canada’s procurement process, focusing explanations on areas where the *Directive* represents significant departures from the default procurement approach. As a primer, below is a quick description of the approach mandated by the *Directive* and it is hoped this will be helpful in understanding the context for more detailed descriptions later in the guide.

Key Changes to the Procurement Process in the NSA

The *Directive* represents a shift in Canada’s contracting policy for procurements where the deliverables of a contract, or even a portion of them, are to be delivered or performed within the NSA. It is important that BOs and CAs thoroughly understand the *Directive* as it also imposes obligations upon them, with mandatory procedures and documentation requirements that begin to apply very early in the procurement planning process.

The *Directive* prescribes procedures that may be unfamiliar and quite new for many BOs and CAs. For example, federal government contracts in the NSA are to be limited to Inuit firms registered on the Inuit Firm Registry (IFR), also called the Inuit Firm List, maintained by Nunavut Tunngavik Inc. (NTI), limited bidding is mandatory in certain circumstances, and mandatory bid evaluation weighting is prescribed to emphasize Inuit involvement.

For each federal government contract in the NSA, the *Directive* looks to generate competitive bidding opportunities for Inuit firms by, among other things, unbundling the requirement (potentially into several contracts), and taking other steps in an effort to provide reasonable opportunities for Inuit firms to submit bids. In determining the capacity of Inuit firms, additional market research may be required – more on complicated contracts, and less on simpler contracts. Once a determination can be made about how many Inuit firms on the IFR are listed for that commodity or service, that information (along with estimated contract value) is used to determine the procurement process (sole-source, limited to Inuit firms on the IFR, open bidding, etc.) that must be selected.

The *Directive* also includes a mandatory requirement that point-rated bid evaluation criteria be included for all contracts over \$100k. These Inuit Benefits Criteria (IBC) and Nunavut Benefits Criteria (NBC) are used, alongside price and technical criteria, in evaluating bids and selecting a successful prime bidder.



Chapter 1:

Introduction

1.1 Purpose of this Guide

The *Directive* fulfills Canada's commitment to develop, implement and maintain procurement policies respecting Inuit firms for all Government of Canada contracts and real property leases required in support of its activities in the NSA. The purpose of this government-wide guide is to both operationalize the *Directive*, and provide specific guidance on best practices in order to meet its requirements.

1.2 Applicability

Effective Date: December 20, 2019

The *Directive* takes effect on December 20, 2019, and it applies to all federal government contracts where the deliverable(s), *or a portion of the deliverable(s)*, include final delivery or performance in or into the NSA (see section 3.3 of the *Directive*). If it is unclear whether a government contract falls within the area of the NSA, please see guide section 1.6, Aboriginal and Treaty Rights Information System (ATRIS). For additional guidance examples that illustrate various scenarios when the requirements of the *Directive* apply, see [Annex B: Determining Final Delivery Points](#) of this document.

The *Directive* applies to departments and agencies listed in Schedules [I](#), [I.1](#) and [II](#) of the [Financial Administration Act](#) (FAA) with the exception of the Canada Revenue Agency, and to Commissions established pursuant to the [Inquiries Act](#) that are designated as departments for the purposes of the FAA.

The *Directive* does not apply to Crown Corporations. However, the Government of Canada will notify these organizations of the *Directive* and make internal government guidance (including this guide) available to these Crown Corporations.

In the event of a conflict between a requirement in the *Directive* and a requirement in any other Treasury Board or departmental policy instrument, the requirement in the *Directive* will apply. In the event of a conflict between a requirement in the *Directive* and a legal obligation, including an obligation under the *Nunavut Agreement*, the legal obligation will apply (see section 3.4 of the *Directive*).

Canada has various procurement obligations arising from multiple Comprehensive Land Claims Agreements (CLCAs). Procurement requirements which span multiple CLCA areas must be given special consideration to determine how the various CLCAs interact, ensuring that the application of the *Directive* does not conflict with Canada's CLCA obligations.

BOs/CAs should consult their departmental legal services unit for additional advice on how to proceed.

Note: The *Directive* also applies to real property leases in the NSA. Questions regarding real property leasing in the NSA may be directed to: TPSGC.SILocationNunavut-RPSNunavutLeasing.PWGSC@tpsgc-pwgsc.gc.ca.

1.3 Objective and Expected Results

Objective

In accordance with Article 24 of the *Nunavut Agreement*, the objective of the *Directive* is to provide reasonable support and assistance to Inuit firms in order to enable them to compete for government contracts, including real property leases (see section 5.1 of the *Directive*).

Expected Results

The *Directive* and its implementing measures reflect the expected results of Article 24 and are, to the extent possible, as follows:

- Increased participation by Inuit firms in business opportunities in the NSA economy;
- Improved capacity of Inuit firms to compete for government contracts and real property leases in the NSA; and
- Employment of Inuit at a representative level in the NSA workforce (see section 5.2 of the *Directive*).

In the Nunavut Settlement Area, the Government of Canada's contracting activities provide both an important opportunity for Inuit firms to compete for government contracts, including real property leases, and for Inuit to participate in employment, training and business opportunities created by those activities. This is reflected in the requirements related to Inuit Benefits Criteria and Nunavut Benefits Criteria (discussed later in Chapter 4). In short, those requirements fall under the following IBC/NBC components:

IBC

- Inuit Employment;
- Inuit Training and Skills Development; and
- Inuit Ownership (of prime/sub-contractors), or

NBC

- Location in the NSA (Head offices, administrative offices, or other facilities).

The guide provides more detailed instructions and guidance to help CAs and BOs to effectively implement the *Directive*, comply with the procurement obligations of the *Nunavut Agreement* and achieve the expected results of both. It is expected that the procurement obligations from the Nunavut Agreement will be more consistently applied across the federal government by following the provisions of this guide.



1.4 Modern Treaties in Canada

Modern Treaties (also known as Comprehensive Land Claims Agreements) are legally-binding agreements, clarifying rights regarding title to land and resources that are Constitutionally-protected within section 35 of the *Constitution Act, 1982*.

1.5 The Nunavut Agreement and the Directive

The *Nunavut Agreement* was signed on May 25, 1993, and addresses a broad range of aspects such as wildlife management, harvesting rights, land, water and environmental management regimes, etc. [Article 24](#), titled “Government Contracts”, contains the obligations of the *Nunavut Agreement* pertaining to government contracting in the NSA that resulted in the *Directive*.

Area of Coverage

The obligations of the *Nunavut Agreement* and the *Directive* apply in the NSA which falls both north and south of the 60th parallel and includes districts of:

Franklin (central Nunavut), Keewatin (south-central Nunavut, northwest coast of Hudson’s Bay area), Baffin Island (southeast portion of Nunavut) and Ellesmere Island (northern portion of Nunavut). Includes (but is not limited to) Arctic Bay, Arviat, Baker Lake, Bathurst Inlet, Cambridge Bay, Canadian Forces Station (CFS) Alert, Cape Dorset, Chesterfield Inlet, Clyde River, Eureka, Gjoa Haven, Grise Fiord, Hall Beach, Igloolik, Iqaluit, Kimmirut, Kugluktuk, Nanisivik, Pangnirtung, Pelly Bay, Pond Inlet, Qikiqtarjuaq, Rankin Inlet, Repulse Bay, Resolute, Sanikiluaq, Taloyoak, Umingmaktok and Whale Cove.

Figure 1: Map that provides a general idea of the NSA.



1.6 ATRIS

The [Aboriginal and Treaty Rights Information System \(ATRIS\)](#) is used to determine if a government contract, based on the final delivery point(s), is within the NSA. ATRIS is intended to provide up-to-date, site-specific information on the potential or established Indigenous or Treaty rights of Indigenous peoples across Canada.

ATRIS is a web-based information system that locates Indigenous communities and displays information relating to possible Indigenous or treaty rights applicable to those areas. This system can also provide contact information for communities and leadership of Indigenous Peoples in a proposed project area. For the purposes of BOs and CAs, ATRIS is a searchable map that can be used to help determine whether a contractual deliverable falls within the area of the *Nunavut Agreement*.

Step-by-Step Instructions

* Microsoft Edge Browser is preferred; Chrome also works

1. Go to the ATRIS search page
2. On the "Search By:" drop-down list, select "Postal Code" or "Map Coordinates"
3. Type the relevant information into next field, or select the appropriate item from each drop-down list as required
4. This *Directive* applies if the Comprehensive Search Results include "*Nunavut Land Claims Agreement (1993) (Modern Treaty Areas)*"



1.7 Trade Agreements

The *Directive* imposes several mandatory obligations on BOs and CAs which may appear at first glance to conflict with trade obligations in some instances. However, all the Trade Agreements to which Canada is currently a signatory, contain varying language allowing exemptions for measures related to Indigenous businesses or peoples.

1.8 Inuit Firm Registry (“the IFR”)

The Nunavut Tunngavik Inc. (NTI), who is the appointed Designated Inuit Organization (DIO), is responsible for preparing and maintaining a comprehensive list of Inuit Firms in the IFR (see Article 24.7.1 of the *Nunavut Agreement*). Under the *Directive*, the IFR plays a central role, and must be consulted several times. The IFR also includes self-reported information on the types of goods and services IFR firms can provide. The IFR can be found at: <http://inuitfirm.tunngavik.com/>.

Throughout this guide, a distinction is made between whether or not a firm is listed on the IFR – if a firm is listed on the IFR, it is an IFR Firm; and if it is not listed, it is a non-IFR Firm. It is not the role of the CA or BO to determine whether a firm is Inuit.

BOs and CAs will rely on the IFR maintained by NTI to confirm whether a bidder or their subcontractor(s) meet the definition of Inuit firm when limiting bids to Inuit firms on the IFR, or when Inuit benefits criteria are included in a solicitation or invitation to bid. Note that IFR firms may be located within, or outside, the NSA.

For more information on limiting bids to IFR firms, see [Annex F: IFR Decision Tree](#). Indigenous Services Canada (ISC), can liaise with NTI to ensure the IFR is updated and can help expedite the registration of firms onto the IFR.

IFR Checks

BOs and CAs should note that the *Directive* (C.2.2.1.3) requires, for all contracts over \$10,000, that the IFR be checked, and documented on file, at least 4 times:

1. When the procurement strategy is approved;
2. At contract award to an Inuit firm;
3. When the contract is amended and
4. At the end of the contract.

The reason for multiple IFR checks is to ensure that any IFR firms awarded a contract where bids have been limited to Inuit firms on the IFR maintain their standing on the IFR throughout the duration of the contract, as this is a contract condition (similar to security clearance requirements). Or, when Inuit Benefits Criteria are used, the IFR checks serve to ensure that Inuit-owned subcontractors remain on the IFR. Another reason is to document and justify an open procurement strategy in cases where there were no firms listed on the IFR for that commodity or service, at the time the strategy was approved.

In order to document each IFR check, it is recommended that the results of each IFR search be printed out, or a PDF of the results exported, and saved to file. It is not necessary to preserve the entire IFR listing – only the results of the search (e.g. by company name, keyword, or NAICS classification).

The [Government Contracts Regulations](#) (GCRs) require the competitive solicitation of bids unless an exception is justified. An exception to the competitive solicitation of bids is required even when bids have been limited to Inuit firms (for example, the estimated contract value is below \$40k).

The BO should document the rationale for any exception to solicit bids on file, and reference the applicable exception under the GCRs. CAs should ensure the rationale to limit tendering is adequately supported, and if not, consult with the business owner to determine an appropriate procurement strategy. If agreement cannot be reached, the next level of management should be consulted. The approved procurement strategy documented on file should note the GCR exception and the limited tendering justification(s).

1.9 Nunavut Inuit Enrolment List

NTI maintains a list of Inuit firms (IFR) and in accordance with Article 35 of the *Nunavut Agreement*, administers a list of individuals who are Beneficiaries of the *Nunavut Agreement*. All enrolled Nunavut Inuit are entitled to receive a Nunavut Inuit Enrolment Card, providing evidence of their status as a Nunavut Inuk under the *Nunavut Agreement*.

Under the *Directive*, when Inuit benefits criteria related to employment or training/skills development are included in a solicitation or invitation to bid, they must be directed to Inuit of Nunavut. BOs and CAs will rely on the Nunavut Inuit Enrolment List maintained by the NTI to confirm whether employment or training/skills development benefits were provided to Inuit of Nunavut.

The Nunavut Inuit Enrolment List is administered by NTI through the Enrolment Division of the Department of Human Resources, and the Community Enrolment Committees. Contact details and enrolment information can be found on the NTI website: <https://www.tunnngavik.com/programs-and-benefits/download-forms/inuit-enrolment-program/>.

1.10 File Documentation

As standard practice for any procurement, all actions taken on a procurement must be documented on file. This is particularly true for procurements under the Nunavut Agreement and in certain instances the *Directive* requires not just documentation, but justification. Please see [Annex D: Obligations Checklist](#).

For more general information, CAs may also refer to the [Supply Manual Section 8.5 Contract Administration](#).



1.11 Roles and Responsibilities

The *Directive* specifies the responsibilities of BOs and CAs, and in so doing, specifies their roles in most situations. The exact nature of the BO and CA relationship can be dependent upon the circumstances of each procurement. However, this relationship should always be close and collaborative, given that the *Directive* often splits or duplicates responsibilities between the two.

Generally, the BO is responsible for determining the technical requirements including those in the IBC/NBC. Indigenous Services Canada (ISC) can be contacted at aadnc.nunavutprocurement-approvisionnement@canada.ca, and will provide advice on the contents of an IBC/NBC, as requested. The CA is responsible for reviewing the content and structure of the IBC/NBC to ensure alignment with the rest of the solicitation or invitation. The finalized IBC/NBC is then incorporated within the solicitation document.

The BO is responsible for evaluating technical requirements including the IBC/NBC. PSPC, and/or ISC, can be asked to assist with the evaluation of the IBC/NBC.



Chapter 2:

Procurement Planning

The *Directive* imposes obligations throughout the various phases of the procurement process, but most of the major changes of the *Directive* apply, from the earliest steps of procurement planning. However, many of the obligations that arise later in the procurement process actually flow from decisions made earlier, in the planning phase.

BOs have a crucial role in implementing the obligations set out in the *Directive* when planning a federal government contract. For example, the BO must provide the CA with the final delivery point(s) of goods and/or services and/or construction of the requirement. There may be instances where it is impossible to know in advance what the final delivery point will be and those should be handled on a case-by-case basis.

Early collaboration with CAs is encouraged to help ensure the obligations in the *Nunavut Agreement* and the *Directive* are met. Once the CA has received the requisition from the BO, and determined that the *Directive* applies, it is recommended that the BO and CA confer to ensure that both parties share a mutual understanding of the *Directive*, and their obligations which flow from it.

It should be noted that there are special exceptions under the *Directive* where departures from this guidance may be required. Common exceptions are related to procurements conducted in Parks or Conservation areas, or procurement related to Archaeological activities. Before proceeding any further, it is recommended that CAs and BOs conduct a quick scan of [chapter 8.6](#) of the guide early in procurement planning process to ensure that none of those special processes apply.

For guidance examples that illustrate various scenarios when the requirements of the *Directive* apply, see [Annex B: Determining Final Delivery Points](#) of this document.



2.1 Check the IFR

For the purposes of federal government contracting, the IFR (maintained by NTI), lists the firms that meet the definition of Inuit firm and are eligible to be bid when bids are limited to IFR firms. In most cases, the first step of this stage will be to review the IFR to gain an initial understanding of the capacity that exists in the NSA. This step should be done as early as possible once it is known that the procurement will be performed or delivered into the NSA.

This check is always recommended as a best practice to help avoid unexpected situations (e.g. newly-added IFR firms) later in the procurement process. It is recommended that the CA or BO adds that initial check in the note to file.

The outcome of the steps below will ultimately be used to help to determine precisely what the potential is for Inuit firms to submit bids.

2.2 Additional Market Research and Engagement Activities

2.2.1 Additional Market Research

As per 6.1.3 and 6.3.2 of the *Directive*, the level of research (and engagement) conducted should be commensurate with the complexity, duration, value of the contract. Additional market research is likely going to be required on larger, more complex contracts; and needed less for smaller, simpler contracts.

For a high dollar value contract, additional engagement activities may also be taken as required (RFIs, Bidders Conferences, etc.). This process is often iterative, and not always linear, as some steps may need to be repeated several times.

CAs and BOs should note that all information gained from additional market research and engagement activities must, per the *Directive*, also be utilized for the purposes of determining IBC/NBC Criteria (if included). It is recommended that CAs and BOs review [Chapter 4: Inuit Benefits Criteria/Nunavut Benefits Criteria \(IBC/NBC\)](#) of this guide before conducting these activities.

Through IFR checks, and additional market research, the CA and BO can gather relevant information on market capacity. As applicable to the procurement, the *Directive* requires that the CA and BO identify and document the following, as per B.2.5 of the *Directive*:

- As per the IFR, how many Inuit Firms currently meet some or all of the operational requirements;
- What expertise do the Inuit Firms currently have;
- The volume of business that the Inuit Firms could support;
- Where the Inuit Firms are located;
- What certifications are required to meet the operational requirement, and are there Nunavut Inuit or Inuit Firms who possess them; and
- Are there any activities planned to take place in the NSA that may affect the ability of Inuit Firms or Nunavut Inuit to participate in the procurement opportunity? (e.g., hunting season, etc.)

Note: To ensure that any firms recently added to the IFR are captured, the CA and BO should contact NTI to confirm there are no additional Inuit firms capable of performing the work.

2.2.2 Engagement Activities

As with any other procurement, the appropriate depth and scope of engagement activities is a determination that should be made according to the individual circumstances of each procurement (e.g. complexity, duration, dollar value, etc.), as per section 6.3.4 of the *Directive*. Some procurements could require months of engagement activities, and some procurements could require none at all. Usually, it is the CA's role to coordinate and organize any additional engagement activities.

If it is determined that engagement activities would be worthwhile, the BO and CA should also consider forming an engagement team. This team could include the BO, the CA, a representative from PSPC's [Office of Small and Medium Enterprise](#) (OSME), and/or a representative from Indigenous Services Canada (ISC).

OSME offers free seminars to businesses interested in learning about the procurement process and how to sell goods and services to the Government of Canada. CAs are encouraged to contact OSME early for information and guidance on possible engagement activities.

ISC will also be planning supplier workshops, often in conjunction with OSME, to explain the intricacies of the application of the *Directive*, and where additional training on bid-readiness is available.

During engagement or outreach sessions, it would be a good practice for CAs and BOs to bring to Inuit firms' attention that to be eligible for contracts (under either sole sourcing or limited bidding), the firms must be listed on the IFR, and maintain their eligibility on the list for the duration of the contract. This is also relevant in situations where an IBC/NCB is used and an Inuit firm wishes to be considered for sub-contracting – the prime contractor only receives evaluation points for that Inuit subcontract if the firm is on the IFR.

For more information on engagement see [Annex A: Engagement](#)

2.3 Structuring

The CA and/or the BO have obligations, where practicable and consistent with sound procurement management, to provide all reasonable opportunities for Inuit firms to submit bids. Among other things, this means that the local circumstances of Inuit firms must be considered, and taken into account when structuring contracts. The date, location, and terms and conditions for bidding must all be determined with these considerations in mind. CAs and BOs need to be aware of the unique situation in the north, and understand how small decisions regarding the structuring of the procurement can have a large effect later in the procurement process. Just a few decisions in structuring could make the difference between there being several Inuit firms that can bid, or none.

Contracting in the north generally presents a set of challenges not always found in the south. For example:

- Iqaluit is accessible by air and sea, and ice conditions generally only allow sealifts between late June and late October (dates can vary from year-to-year, and over time);
- Cultural practices can interfere with labour availability (e.g. Caribou season starts in August in many locations, and hunters may return to traditional lands in search of Country/Inuit/Land food);
- Other major projects in the NSA can drain the availability of local labour over the short term;
- High-speed internet is unreliable and can make remote coordination somewhat challenging; and
- Bulletin board posting is more common in the north, as is letter mail correspondence (as opposed to emails), so extra time may be required for deadlines.

Cost of living, reliability of infrastructure, cultural practices, weather, sea ice, labour availability, security requirements, and many other factors are at play. Factors such as these must be considered at the earliest stages of the procurement planning to ensure

Inuit firms are often unfairly burdened by practices and timelines which are common elsewhere. Also, because of the cost associated with putting together a bid, many Inuit firms need to be selective in which contracts they bid upon. From a business perspective, many Inuit firms are often smaller and have less capacity to put together competitive bids quickly.

There may be a greater need for engagement activities, and those activities need to be allowed extra time given the logistical challenges of the north. A higher level of engagement allows for Inuit firms to better determine which contracts they wish to focus their bidding efforts, and allows for more responsive bids.

Many Inuit firms operate in remote communities, which could result in a limited Inuit and local workforce. At any given time, there can be ongoing mining or related business activities, as well as traditional activities such as hunting and fishing, for example. Weather conditions can affect the ability for a potential supplier to travel or deliver in or into the NSA. Procurement activities that occur simultaneously can affect the ability of industry and the local workforce to participate, and this would particularly affect smaller firms.

All contracts should be analyzed to ensure that artificially-inflated employment skills requirements are removed unless they are essential to the fulfillment of the contract. BOs and CAs are encouraged to review and question standard practices and contract requirements to determine whether they are genuine requirements, or a common practice (e.g. "that's how the last contract was done") – this is particularly true, and explicitly required under the *Directive*, for construction contracts.

In cases where IBC/NBC are used, CAs/BOs should also allow appropriate time for prospective bidders to prepare their IBC/NBC Plans.

The BO can contact ISC's regional office in Nunavut and/or NHQ, to determine if there are competing local activities that are likely to occur over the course of the solicitation process or contract period. With all information in hand, the BO and CA can then assess and address the impacts of such activities on the procurement timeline. As BOs and CAs gain information from ongoing additional market research, the process related to each contract may need to be re-evaluated and possibly re-structured (qualifications, certifications, timeframes, schedules, security requirements, etc.)

BOs and CAs are to use all tools that are appropriate in the circumstances (to determine all reasonable opportunities for Inuit firms to bid), and to document these efforts (IFR searches, results, justification, etc.).



2.4 Unbundling

The CA and BO are responsible for determining whether the procurement's operational requirements permit, where practicable and consistent with sound procurement management, the unbundling of a larger contract to permit for smaller and more specialized Inuit firms to submit bids.

Unbundling may affect the procurement strategy, and the result of the process may be that, instead of having one contract, there may now be several smaller contracts. Ideally, the requirement would be unbundled in such a way that each of the unbundled contracts were limited to Inuit firms on the IFR, thereby providing the maximum opportunity for Inuit firms to submit competitive bids. Short of that, there are still many possible options that could result from this process.

Essentially, the goal of this stage is to, wherever reasonable and practicable, design or sever aspects of the requirement so that Inuit firms may bid on them. This may place an additional burden on the BO, as they could potentially be managing several smaller contracts, so this must be balanced with the dollar value and complexity of the contract and the possibility that unbundling will provide the Inuit firms greater opportunities to bid.

Ultimately, the result of this stage needs to be a well-documented analysis about the contract(s) as they relate to the Inuit capacity, and the number of firms on the IFR that are available to submit bids on each contract. With this determination in hand, the BO or CA can move to the next stage.

It is recommended that CAs and BOs make additional efforts when analyzing construction contracts as the *Directive* makes specific reference to them when discussing unbundling.

2.4.1 What is Unbundling?

Many requirements are essentially, a set of smaller requirements, bundled up under a single contract. For example, a goods requirement often contains not only a good's portion, but also a services portion (such as delivery of the goods) – this presents an opportunity to unbundle the one requirement into two separate contracts. Usually, related components such as these are bundled together in the interests of not only cost effectiveness, but also as a best practice. In the context of the *Directive*, unbundling is a process of analyzing the procurement's operational requirements to see if there is an opportunity to invite bids by commodity groupings, or by breaking-off a part of the requirement as a smaller contract package.

For example, if there is a project to construct a series of buildings in the NSA, as part of the project, the roads and foundation platforms will need to be put in place before the buildings are constructed. This project could be unbundled into separate procurements (e.g. roads, foundations, buildings).



2.4.2 A Word on Unbundling (and how it is not ‘Contract Splitting’)

The [TB Contracting Policy](#) describes contract splitting as “the practice of unnecessarily dividing an aggregate requirement into a number of smaller contracts, thereby avoiding controls on the duration of assignments or contract approval authorities.” However, when contracting within the NSA, BOs and CAs are required, in certain circumstances, to unbundle – which is different than contract splitting.

Unbundling at first glance may be misconstrued as contract splitting. Contract splitting occurs when a contract is split to avoid obtaining necessary approvals. Unbundling a contract is permissible if it is for the purposes of meeting the *Directive’s* requirements and not with the intention to avoid obtaining necessary approvals. When unbundling, it should always be conducted in a manner that is practicable and consistent with sound procurement management and decisions should be well documented and justified.

The process of unbundling is not done in consideration of the value of each contract, but rather the content of each contract as it relates to Inuit capacity. Because the objective of unbundling is to provide opportunities for smaller, more specialized Inuit firms to compete, the process requires the BO and CA to partition the requirement in relation to Inuit capacity (through additional market research and additional engagement strategies). The decision to unbundle is made in light of the level of probable benefits delivered to Inuit rather than where the estimated contract value falls in relation to a dollar threshold.

2.4.3 How “far” to go when Unbundling

At first glance, unbundling can appear to be an exercise nearly without end (a goods requirement could, in theory, be broken down to each nut and bolt) but this is not the case. Other considerations must be taken into account, such as whether it is more beneficial to unbundle (resulting in several contracts), or to keep the one contract and include IBC/NBC Bid Evaluation Criteria, allowing that mechanism to generate benefits.

There are also likely going to be situations where unbundling is either not possible, or not advised. Situations involving Low Dollar Value (LDV) requirements, warrantied work, proprietary goods, and so on are less likely to lend themselves to unbundling. In any case, the BO or CA must document their attempts to unbundle and any associated justifications



Chapter 3:

Procurement Process Determination

3.1 Process Determination (i.e., limited bidding among Inuit firms on the IFR, open tender, sole-sourcing, etc.)

Once the procurement has been structured, unbundled, and all the necessary market research and engagement has been done and documented, the number of Inuit firms listed on the IFR for that commodity or service can be estimated. At this stage, the CA needs to select the procurement strategy in accordance with the *Directive*, which specifies the contracting process that must be used. This depends on two factors, taken together: the number of qualified Inuit firms on the IFR for that commodity or service, and the value of the contract. These two pieces of information determine the process to use (Limited to Inuit firms on the IFR firms, open tender, or sole source) and whether “best efforts” are to be made to include IBC/NBC Bid Criteria, or if including them is mandatory.

General rules:

- As a default, bidding is to be limited to Inuit firms on the IFR listed for that commodity or service, and it is only through exceptions that procurements proceed in any other way (see 6.3.8 of the *Directive*);
- If there are two or more Inuit firms on the IFR for that commodity or service, then initially, bidding must be limited to Inuit firms on the IFR; and
- CAs should note that as per standard contracting procedure, contracts may be entered into without soliciting bids if an exception to competitive bidding under the [Government Contracts Regulations](#) (GCRs) of the [Financial Administration Act](#) (FAA) applies.

If there are No Inuit Firms on the IFR

If there are no Inuit firms on the IFR for the commodity or service, then bids cannot be limited to Inuit firms. The requirement may be sole sourced in accordance with the GCRs, or solicited via open competitive tender. Best efforts are to be made to include IBC/NBC for contracts up to \$100k. Over \$100k, IBC/NBC must be included as bid criteria.

If there is One Inuit Firm on the IFR

If there is only one Inuit firm on the IFR for the commodity or service, and the contract is \$25k and under, then it must either be sole sourced to that one firm, or bidding must be limited to Inuit firms on the IFR. However, if the contract is over \$25k, then it can either be sole-sourced in accordance with the GCRs, or solicited via open competitive tender. Best efforts are to be made to include IBC/NBCs up to \$100k. Over \$100k, IBC/NBC must be included as bid criteria.

If there are Two (or more) Inuit firms on the IFR

If there are two or more Inuit firms on the IFR for the commodity or service, then bidding must be limited among Inuit firms on the IFR. Best efforts must be made to include IBC/NBCs up to \$100k. Over \$100k, IBC/NBC must be included as bid criteria. Although sole sourcing is still possible in limited circumstances, under the GCRs.

Chapter 4:

Inuit Benefits Criteria/ Nunavut Benefits Criteria (IBC/NBC)

It is recommended that this section be read in conjunction with [Annex F: IFR Decision Tree](#) and [Annex G: IBC/NBC Criteria](#).

4.1 What are IBC/NBCs?

Depending on the estimated contract value, certain benefits criteria (against which all bids are to be evaluated) may be included via “best efforts” or may be mandatory. There are two types of these criteria: the Inuit Benefits Criteria (IBC), and Nunavut Benefits Criteria (NBC). These are used to evaluate and score bids in a similar way to price and technical criteria. The IBC and NBC are similar and related, but not entirely the same (see section 6.3.12 of the *Directive*).

When dealing with IBCs/NBCs, there are 3 levels to consider. Each **main criteria** (i.e., IBC/NBC) contains at least one **component** (e.g. Inuit Employment), and each of those components may contain several **sub-criteria** (e.g. Type of work). The IBC is made up of three components: Inuit Employment, Inuit Training and Skills Development, and Inuit Ownership (of prime or sub-contractors), all of which includes various sub-criteria. For the NBC, there is only one component: “Location in the NSA”. This sole component may include various sub-criteria related to whether or not the bidder or subcontractor have an office presence in Nunavut. Unlike the IBC, Inuit Ownership component, it does not matter for the NBC component whether or not a firm is Inuit (or is registered on the IFR) – any prime or subcontractor, Inuit or otherwise, may qualify for points under the NBC.

IBC/NBC bid criteria are included in the solicitation documents to incentivize firms to develop IBC/NBC plans by conducting research similar to what the BO and CA carried out. Each bidder will need to research the capacity that exists in the NSA, and find opportunities to incorporate this capacity into their IBC/NBC plan. The completion of this capacity research is ensured by the fact that the *Directive* requires that the IBC/NBC Bid Criteria be set with a default weighting in the solicitation documents: 30% of total available points when competitive tenders are limited to Inuit firms on the IFR, and 35% of total available points for competitive tenders not limited to Inuit firms on the IFR.

These IBC/NBC plans, created by each bidder and included as part of their bid, will then be evaluated against the assigned weighting scheme. Then, at contract award, the winning bidder’s plan will be imported into the contract and become part of the successful bidder’s deliverables.

4.2 When to Use IBC/NBC Criteria

General rules:

- IBC/NBC criteria can only be used where there is a competitive process; (see section 6.3.13 of the *Directive*)
- IBC/NBC minimum weights will vary depending on whether competitive tenders were limited to Inuit firms on the IFR (30%), or not limited to Inuit firms on the IFR (35%);
- Best efforts must be made to include IBC/NBC if open or limited bidding is used, and the estimated contract value is between \$25k-100k;
- IBC/NBC criteria must be included if the contract is over \$100k; and
- When included in a solicitation, the two criteria must always be used together, but are to be evaluated and scored separately and independently from one another (i.e. each bid must be evaluated against each individual criteria – one at a time).

Best efforts should be made to include all four bid criteria when practicable and in keeping with sound procurement management principles for all competitive tenders.

Best efforts should be made to include all four components when practicable and in keeping with sound procurement management principles for all competitive tenders (see B.2.2 of the *Directive*). A copy of the evidence used to justify the inclusion of IBC/NBC, including best efforts to include, must be documented to file by the BO for all contracts valued above \$10k in accordance with Appendix C of the *Directive* (see section C.2.2.1.4 of the *Directive*).

The meaning of the term “best efforts” should be understood as guidance indicating that efforts must be used to include this element in the procurement strategy. It is not merely enough to state that an aspect was not workable or appropriate – the record/documentation should illustrate the nature of the difficulty/inappropriateness, as well as any efforts made to overcome these challenges. If the final determination is that the element was not practicable or in keeping with sound procurement management principles, that determination must be noted on file.

Note:

the *Directive* allows for some IBC/NBC components to be assigned a 0% weighting in certain circumstances. (see B.2.14.4 of the *Directive*, or [Annex G: IBC/NBC Criteria](#) of the guide).

4.3 Components

The main criteria, and their associated 4 components, are pre-determined by the *Directive*. However, the sub-criteria are determined by the CA and BO. The IBC and NBC sub-criteria should be informed by any earlier market research, and engagement activities. The reasoning and justification for why these sub-criteria were chosen must be documented.

The *Directive* provides general headings and classifications of benefits that must be sought, and contains some sub-criteria as suggestions. But ultimately, it falls to the CA and BO to determine what specific sub-criteria of IBC/NBC benefits are to be demonstrated (and evaluated) in each bid. All sub-criteria must fall under one of the 4 components:

IBC

- Inuit Employment;
- Inuit Training and Skills Development; and
- Inuit Ownership (of prime/sub-contractors), or

NBC

- Location in the NSA (Head offices, administrative offices, or other facilities).

4.4 Weighting

The *Directive* prescribes the weighting of each benefits criteria), but does *not* require a minimum dollar *value* of benefits to be delivered. Because IBC and NBC fundamentally operate via a process of bid evaluation, IBC/NBC can only be used where the contract is tendered competitively.

The *Directive* sets a default weighting for the IBC/NBCs when used with the discretion to weight higher if appropriate. Where bidding is limited to Inuit firms on the IFR, the default weighting is 30%. Where bidding is not limited to Inuit firms on the IFR firms, 35% is the default. Note the weighting can be higher, or can vary within a given range (see guide section 4.4.1 Default Weighting and Permitted Ranges, and guide [Annex G: IBC/NBC Criteria](#)).

4.4.1 Default Weighting and Permitted Ranges

The *Directive* sets a default weighting for each component, but also allows for these to be varied through a range of permitted weightings, depending on the nature of the contract. The default weighting of each component is prescribed in most cases but these can vary for three different reasons:

- 1) Contract Type (Goods, Services or Construction Services);
- 2) Contract Value (Over/Under \$10M); or
- 3) Limited bidding to Inuit firms on the IFR, or Open tendering.

Note that while the range of permitted weighting (if the lowest permissible weighting is always selected) appears to allow for a possible outcome where the total weighting of IBC/NBC falls below the minimum, this is not the case - the total weighting must always respect the minimum total weight.

For procurements of **Goods**, the range of permitted weighting allows for the possibility for either, or both of, "Inuit Employment" or "Inuit Training and Skills Development" components to receive a 0% weighting. In a case where such weighting is selected, the

component(s) is/are simply not included, but the minimum total overall weight must still be respected. See guide [Annex G](#).

For **Services (and Construction Services)**, the range of permitted weighting allows for the possibility for “Inuit Training and Skills Development” component to receive a 0% weighting. In a case where such a weighting is selected, the component is simply not included, but the minimum total overall weight must still be respected. See guide Annex G.

For **procurements over \$10M**, the weighting is defined and cannot be varied within any range. See guide [Annex G](#).

The permitted ranges are illustrated in [Annex G: IBC/NBC Criteria](#).

4.5 The Sub-Criteria

The *Directive* also contains several suggested sub-criteria to further specify distribution of evaluation points. The BO and CA may choose to use these, or define other sub-criteria, as long as they reasonably fall within the 4 components (see sections B.2.9., B.2.10, B.2.11 and B.2.12 of the *Directive*). Which sub-criteria to include for each component is determined with the knowledge gained via the earlier additional market research and engagement activities.

In general, the sub-criteria selected must not only be relevant to the component (i.e. Inuit Employment, Inuit Training and Skills Development, Inuit Ownership, or Location in the NSA) but the criteria and the benefits sought should also be realistic and achievable. However, criteria should also be flexible enough to allow for the possibility that bidders may be able to propose additional opportunities for benefits.

For example, an opportunity for an Inuit apprentice to gain hours toward certification would be captured under Inuit Training and Skills Development. Or, a subcontract awarded to an IFR firm would qualify for evaluation points under Ownership of Prime/Sub Contractors whereas a subcontract awarded to a non-IFR firm is permissible, but would not qualify for points toward the evaluation.

In terms of weighting these sub-criteria, the BO and CA should build into the solicitation documents, criteria that speak to capacity and opportunities that exist in the NSA, but also take into account the objective achievability or feasibility of submitted IBC/NBC plans. Requirements that IBC/NBC plans contain sufficient detail for the above assessment must be included in the solicitation documents, and not only the bidder’s instructions.

In assigning specific weightings, the BO and CA should take into account all the factors (e.g. the nature of the requirement, the IFR capacity, etc.).

4.5.1 The Bidder’s IBC/NBC Plan

The IBC/NBC plan is a plan, created by each bidder, and details how they will satisfy the IBC/NBC criteria as set in the solicitation documents by the BO and/or CA. The commitments proposed in the successful bidder’s IBC/NBC plan become contractual obligations at contract award. The plan can be as simple or as comprehensive as appropriate to the operational requirement, and the capacity and availability of IFR firms and Inuit of Nunavut to participate in the procurement.



Chapter 5:

The Solicitation Documents

5.1 The Importance of IBC/NBC

In many respects, the solicitation will follow standard procurement processes but if IBCs/NBCs are included among the selection criteria, there are particular aspects that must be considered when drafting the solicitation documents.

In most cases, the quality of IBC/NBC plans received will be determined by the quality of the solicitation documents and bidder's Instructions, so it is important that BOs and CAs keep in mind that there are two potential uses for a bidder's IBC/NBC plan. First, it is used as a selection/evaluation criteria to award points and determine who the successful bidder is. Secondly, if successful, it is used to define deliverables of the contract.

Care must be used, and direction provided, to ensure that bidders have enough guidance to draft IBC/NBC plans which are fit for both of those purposes.

5.2 General Guidance

The onus falls to the BO and CA to generate a set of bidder's instructions and solicitation documents that clearly illustrates what is sought from bidders in terms of IBC/NBC Plans. When drafting solicitation documents and bidders instructions, BOs and CAs should remember that all terms to be relied upon later (e.g. reporting timelines) must be included in the solicitation documents and not only the bidder's instructions. In order to avoid confusion, it is recommended that all IBC/NBC aspects be discussed on their own, separate from other aspects of the procurement, if possible.

5.3 Principles Related to Evaluation and Scoring

In drafting the solicitation documents and bidders instructions, the BO and CA must include sufficiently-detailed guidance so that the resulting submissions will be able to:

- Speak directly to the evaluation criteria;
- Demonstrate the bidders' ability to fulfil the elements of the plan;
- Include information which can be substantiated; and
- Make it clear for which component each aspect of the plan is submitted.

The submissions received must allow Canada to award a score which can be justified and defended, and also allow Canada to differentiate between bidders, especially where bidding has been limited among Inuit firms on the IFR.

5.4 Principles Related to Reporting

In drafting the solicitation documents and bidders instructions, the BO and CA must be sure to include requirements such that a successful IBC/NBC Plan, at the reporting stage would:

- Be detailed enough to know exactly what benefit was to be delivered;
- Be detailed enough to know when the benefit was delivered/achieved; and
- Be supported by enough documentation/evidence to be relied-upon.

For additional guidance on reporting requirements, see [Chapter 7: Monitoring and Reporting](#) of this guide.



Chapter 6:

The Procurement

6.1 Building the Solicitation Document

6.1.1 Clauses

The following standard procurement templates contain new clauses related to the *Directive* and can be found here:

https://www.gcpeia.gc.ca/wiki/Standard_Procurement_Templates

- High Complexity Bid Solicitation and Resulting Contract Template (HC)
- Medium Complexity Bid Solicitation and Resulting Contract Template (MC)
- Low Dollar Value Bid Solicitation and Resulting Contract Template (Simple)
- Request for Standing Offers (RFSO) Template
- Request for Supply Arrangements (RFSa) Template
- Request for Standing Offers Template for Canadian Collaborative Procurement Initiative (CCPI)

Departments other than PSPC, can obtain the standard procurement templates by contacting: TPSGC.PAOutilsdAchats-APPProcurementTools.PWGSC@tpsgc-pwgsc.gc.ca.

The clauses related to the *Directive* are:

Solicitation clauses:

1. Nunavut Land Claims Agreement (NLCA)
2. Good standing on the Inuit Firm Registry (IFR) – Solicitation
3. Limited Bidding
4. No impediments to trade agreements

Contract clauses:

1. Nunavut Land Claims Agreements (NLCA)
2. Good standing on the Inuit Firm Registry (IFR) – Contract
3. Inuit Enrollment List
4. Reporting
 - a. Third Party Independent Professional
5. Holdback

For advice and guidance on specific solicitations requiring clauses related to the *Directive*, please contact:

TPSGC.PAContratsNunavut-APNunavutContracts.PWGSC@tpsgc-pwgsc.gc.ca

6.1.2 Establishing the bidding period

The decision to issue a solicitation for a longer period of time than required or to extend the solicitation period beyond the initially established closing date is a business decision that can be made by the CA, on a case-by-case basis, taking all factors into consideration, including the impact on meeting operational requirements.

If the solicitation will not permit the submission of bids by facsimile or electronically, as a best practice, the CA should set a bidding period of sufficient duration to allow for the remoteness of the NSA and poor weather conditions which may slow down the submission of bids by mail or courier. Contracting authorities should also review section [2.3 Structuring](#) of this document when establishing both the method of submission and the bidding period.

6.2 Notices and Methods of Solicitations

Contracting authorities may use the [Government Electronic Tendering Service](#) (GETS), telephone-buys, facsimile distribution, newspapers, or a combination of methods based on the procurement strategy.

Increased consideration should be given to advertising the procurement opportunity in local newspapers and/or other public venues due to the remoteness of some of the areas. If the solicitation will not permit the submission of bids by facsimile or electronically, as a best practice, the contracting authority should set a bidding period of sufficient duration to allow for the remoteness of the NSA and poor weather conditions which may slow down the submission of bids by mail or courier.

Notices

When bidding is limited only to Inuit firms on the IFR, the CA must ensure that the tender notice published on [GETS](#) makes this clear.

The *Directive* (6.3.5) requires that Inuit firms are included on the list of firms invited to bid when soliciting bids for government contracts.

Note that the *Directive* (6.3.6) states that “where an Inuit firm has previously been awarded a government contract, and have successfully carried out the contract, that Inuit firm must be included in the solicitation to bid for contracts of a similar nature.”

Other Forms of Notification

The *Directive* also requires that all reasonable measures be taken to notify Inuit firms of bidding opportunities (see 6.3.4, and 6.3.5 of the *Directive*). So, wherever feasible, and if the BO can provide the funding, consideration should be given to posting notices of the procurement in public places, and placing advertisements in local media such as radio and community newspapers.

For all competitive tenders, the CA should send NTI a notice, containing the same information that a Notice of Proposed Procurement (NPP), Advance Contract Award Notices (ACAN), Letter of Interest (LOI), or a Price and Availability (P&A) enquiry would have contained.

For a sample notice see [Annex E: Notice of Proposed Procurement](#)



6.3 Contract Development

6.3.1 Monetary Incentives and Liquidated Damages

Under the *Directive*, the only requirement with regard to contract performance incentives and liquidated damages is that the contract include a holdback clause whenever IBC/NBC criteria are included as part of the solicitation. The *Directive* does not limit other such options a CA may wish include in the contract. It is recommended that CAs follow existing guidance in the [Supply Manual Section 4.70.25](#) on when and how to use contract performance incentives.

6.3.2 Holdbacks

Contracting authorities must include contractual provisions for a holdback (see *Directive* B.2.17.3), whereby an amount is withheld under a contract, to ensure the performance of the contract, including providing benefits at the level identified in bidder's IBC/NBC plan. Holdbacks also help avoid overpayments in relation to the progress of work. If the holdback method were used, once the supplier meets its obligations with respect to the work and the IBC/NBC benefits, the holdback would be released. It would be up to the CA to make the decision whether to invoke the holdback provisions or not.

6.3.3 Taxes Payable by the Supplier when Nunavut Agreement Applies

Inuit firms like other suppliers, are required to charge HST or GST if they meet the necessary threshold. As such, they may be required to include various taxes in their invoices. It is a best practice for contracting authorities to accept any amount an Inuit firm includes for a tax that is to be remitted to Revenue Canada.

6.3.4 Reporting on Contracts Subject to the Nunavut Agreement

As outlined in Appendix D of the *Directive* there are specific reporting requirements for government contracts. For more detailed guidance, see standard procurement templates in section [6.1 Building the Solicitation Document](#) of this guide.

CAs using the Automated Buying Environment (ABE) must code all procurements subject to the Nunavut Agreement in accordance with the steps outlined in [Supply Manual Section 7.70.30 CLCA Coding](#).

GETS: Important to enter the information correctly as these entries are used for statistical purposes.



6.4 When to Not Proceed to Award

Per 6.3.25 of the *Directive*, CAs must consider that an Inuit firm on the IFR is qualified to be awarded a government contract in the NSA unless:

- The Inuit firm is not in good standing, has a demonstrably poor record of performance on similar contracts, or the Inuit firm's bid does not comply with the policies of the Government of Canada, including requirements regarding security, integrity and vendor performance;
- The Inuit firm demonstrably lacks sufficient capacity to meet the technical requirements of the government contract, or the Inuit firm cannot apply or acquire the capacity needed to perform the work required under the contract or to deliver the contract work on a timely basis;
- The Inuit firm's bid does not fulfill all mandatory bid criteria, including, but not limited to, meeting or not readily meeting, the intellectual property, licensing, land ownership or similar requirements associated with the work to be performed;

Per 6.3.26 of the *Directive*, CAs must ensure that the award of a government contract to a supplier will proceed unless:

- The supplier's bid does not fulfill all mandatory bid criteria;
- The supplier's bid does not comply with the policies of the Government of Canada, including, but not limited to, requirements regarding security, integrity and vendor performance;
- The supplier's bid would result in one of the following situations:
 - The Government of Canada exceeding the estimated contract value, which factors in the cost of doing business in Nunavut, and the inclusion of Inuit benefits criteria and Nunavut benefits criteria, as applicable, consistent with this *Directive*; or
 - On reasonable and demonstrable grounds, paying a contract price for the commodity or service that would be excessive and unjustifiable after taking fully into account the benefits associated with the implementation of Article 24 of the *Nunavut Agreement*;
- The contracting authority does not proceed to contract award for reasonable and demonstrable reasons unrelated to this *Directive*, including, but not limited to, changes in requirements.



Chapter 7:

Monitoring and Reporting

7.1 Monitoring IBC/NBC Benefit Delivery

As with any contract, active and ongoing monitoring of supplier performance can help to mitigate common contract risks by identifying issues early in the contract and facilitating their successful resolution.

The BO must monitor compliance with the technical requirements of a contract including any commitments to provide IBC/NBC benefits in a government contract.

If performance is unclear or disputed, CAs may invoke the contractual right (mandatorily included in the contract) to engage an independent professional to confirm that the contractor has met the requirements regarding any work to be performed by an Inuit firm or individuals (see section 6.3.21 of the *Directive*).

Any commitments made by the supplier in their IBC/NBC Plan (to provide benefits to Inuit or Inuit firms) become contractual obligations and therefore a measure of contract performance and a condition of full payment.

For any government contract valued at over \$10k, a contracting authority must collect and retain on file a copy of any evidence provided by the contractors that they have met their contractual obligations for the provision of IBC/NBC Benefits, and any evidence of corrective measures taken if the contractor is unable to provide such benefits, as set out in Appendix C of the *Directive*.

For any government contract in the NSA, BOs and CAs must demonstrate that the Government of Canada is consistently meeting its reporting obligations under the Nunavut Agreement and Appendix D of the *Directive*. To this effect, BOs and CAs must ensure that their reports of government contracts in the NSA are completed and submitted in accordance with Treasury Board guidelines for reporting on contracts in the NSA. Reporting guidelines are found on the TBS website: [TBS Guidelines on Reporting of Procurement Contracts for the Treasury Board Directive on Government Contracts, Including Real Property Leases, in the Nunavut Settlement Area](#).

The supplier must be contractually-obligated to provide periodic reports detailing progress on meeting their contractual obligations with respect to IBC/NBC benefits. It is a best practice to select a reporting schedule that aligns with other reporting opportunities, and takes into account the nature of the benefit. The CA must direct the supplier to advise the CA if there are any deviations between the contract commitments and the actual results achieved by the supplier. To help obtain information from the supplier, consider using the [Supplier IBC/NBC Reporting Templates in Annex C](#) of this guide.

If there are any deviations from contractual commitments, the supplier will be required to justify any deviations in the benefits achieved, providing a detailed explanation as to whether and how the deviations will reduce the benefits in quantity or quality, and how the supplier expects to resolve the deviations. The CA will address any reduction in benefits as any other failure to meet a contractual obligation.

The BO must monitor the supplier's progress against commitments made in the supplier's IBC/NBC Plan and advise the contracting officer should any variance occur. The CA will determine whether to release the incentives or enforce the holdback or liquidated damages in the contract, in consultation with the BO, legal services and taking into consideration any mitigating circumstances and the supplier's best efforts.

7.1.2 Contract Close-Out

In addition to regular contract close-out procedures, the CA must:

- Verify with the BO that the supplier has met all contractual obligations identified under the Inuit and Nunavut Benefits Plan;
- Verify with the BO that the final payment has been made to the supplier;
- Ensure the file is properly documented in accordance with Appendix C of the *Directive* with information on how the contracting obligations and *Directive* requirements were addressed, including justifications where required, for any obligations or requirements that were not implemented; and
- Verify that the supplier is still on the IFR until the expiration of the contract.



Chapter 8:

Special Procurements

8.1 Special Permits and Access to Water of Settlement Lands during Contract Period

[Article 21](#) of the *Nunavut Agreement* is devoted to accessing the NSA. This includes a section indicating conditions and obligations for access by government employees, agents and suppliers. Approval for access may include obtaining licenses, permits and/or conditions such as reporting related to any usage of natural resources (for example, water) by the suppliers. A permit may also be required to conduct a site visit during the solicitation period. The necessary applications and information on the process may be obtained from [NTI](#) by the BO.

The BO should obtain the necessary permits to allow for access/use of the designated NSA lands. The BO should confirm and document that the necessary permits have been obtained prior to tendering the contract. See [Section 1.10 File Documentation](#) of this document. Any permits must be in place before contract award, but preferably before a solicitation document is issued.

If access to water is required, there may be associated costs, and the BO would need to address this in the estimated contract value.

If it is determined that, as an essential part of the requirement, Canada will need to secure an interest (temporary or otherwise), the BO should seek guidance from PSPC and potentially departmental legal counsel.

8.2 Sole Sourcing

The [Government Contracts Regulations \(GCR\)](#) require the competitive solicitation of bids unless an exception is justified. An exception to the competitive solicitation of bids is required even when bids have been limited to Inuit firms.

The BO should document the rationale for any exception to solicit bids on file, and reference the applicable exception under the GCRs. CAs should ensure the rationale to limit tendering is adequately supported, and if not, consult with the BO to determine an appropriate procurement strategy. If agreement cannot be reached, the next level of management should be consulted. The approved procurement strategy documented on file should note the GCR exception and the limited tendering justification(s).

If a government contract must be sole sourced because there is a situation where:

- The need is one of pressing emergency including, but not limited to, an actual or imminent life threatening situation or a disaster endangering the quality of life or safety of Canadians, in which delay would be injurious to the public interest; or
- The nature of the work is such that it would not be in the public interest to invite bids, including, but not limited to, national security circumstances such as procurements indispensable for national security, or the maintenance of international peace and security;

Then Canada will make best efforts, consistent with its operational needs, to sole source to an IFR firm (see section 6.3.8.3.2 of the *Directive*).

8.3 Emergency Procurements

If a contract is to be sole sourced as an emergency under the GCRs, the *Directive* states that Canada must make “best efforts, consistent with its operational needs,” to sole source to an Inuit firm on the IFR (see section 6.3.8.3 of the *Directive*).

Dependent on the nature of the emergency, the CA and/or the BO can still check the IFR to conduct an accelerated assessment of the IFR capacity, and document the results of the research. In all cases, as a best practice, regardless of which firm is awarded the contract, CAs should notify NTI of the contract award.



8.4 Application of Other Indigenous Policies in the NSA

The requirements of the *Directive* take precedence over other Indigenous procurement policies such as the Procurement Strategy for Aboriginal Business (PSAB). Please contact Indigenous Services Canada for additional information:

aadnc.nunavutprocurement-approvisionnement@canada.ca.

8.5 Standing Offers, Supply Arrangements (SO/SA), and Task Authorizations (TA)

When Building an SO/SA/TA to apply in the NSA

This section is still under development. It is recommended that CAs and BOs looking to use these instruments in the NSA seek individualized advice and guidance from TPSGC.PAContratsNunavut-APNunavutContracts.PWGSC@tpsgc-pwgsc.gc.ca.

8.6 Right of first refusal and preference

8.6.1 Contracts in Parks

The *Directive* imposes specific conditions upon government contracts in parks within the NSA. The conditions imposed depend upon the nature of the contracting activity.

Where a contract is related to the **“establishment, operation or maintenance of park facilities,”** and is planned to be competed, CAs are directed to provide preferential treatment for qualified Inuit firms (see section 6.4.1 of the *Directive*).

However, where a contract is related to **the operation of “business opportunities and ventures that are contracted out with respect to parks,”** then the contract must be offered to the DIO as a right of first refusal (see section 6.4.2 of the *Directive*). If the offer is refused, the rest of the guidance contained in this guide (IFR check, Structuring, IBC/NBC, etc.) must be followed.

8.6.2 Contracts Related to Archeological Services

Whenever a contract is for archeological services in the NSA, CAs must follow certain obligations:

- Giving preferential treatment to Inuit firms when soliciting or inviting bids; and
- Ensuring that all contractors give preferential treatment to Inuit (see section 6.4.5 of the *Directive*).

8.6.3 Contracts in Conservation Areas

Whenever a contract in a conservation area, CAs must follow certain obligations (see section 6.4.4 and 6.4.5 of the *Directive*):

- Giving preferential treatment to Inuit firms when soliciting or inviting bids; and
- Ensuring that all contractors give preferential treatment to Inuit.

Chapter 9:

Additional Support and Guidance

9.1 Resources

After reviewing this Guide, contracting authorities may seek assistance for procurements subject to the *Nunavut Agreement* as follow:

- CAs may consult the Strategic Policy Sector (SPS) by sending enquiries to TPSGC.PAContratsNunavut-APNunavutContracts.PWGSC@tpsgc-pwgsc.gc.ca for assistance with determining how the *Nunavut Agreement* may affect the overall procurement strategy. SPS can assist contracting authorities in identifying the *Nunavut Agreement* contracting obligations and in developing methods of meeting them on a case-by-case basis. When requesting assistance from SPS, contracting authorities should provide a copy of their procurement strategy (even in draft form), or equivalent ([see annex 6.1 of the SM](#)):
- As consultation with other subject matter experts may be necessary, contracting authorities should involve the above contacts as early as possible; and
- An online course on [Aboriginal Considerations in Procurement](#) (#C223E) is available by visiting the Canada School of Public Service's GCCampus website.

Questions regarding application of the *Directive* to real property leasing in the NSA may be directed to: TPSGC.SILocationNunavut-RPSNunavutLeasing.PWGSC@tpsgc-pwgsc.gc.ca

9.2 Contact List of Nunavut Agreement Inuit Associations and Corporations

For information on Nunavut Inuit associations, please see associated [Section 9.2 in the Supply Manual](#), under *Nunavut Agreement*.

Annex A:

Engagement

It is a best practice to include the contracting authority (CA), the business owner (BO), and a representative from Indigenous Services Canada (ISC), on an engagement team for planned government contracts with Inuit firms in the NSA. Normally, the CA will coordinate and organize any engagement sessions.

The purpose of engagement sessions with Inuit firms allow for the sharing of broad, high-level information on procurements and feedback can then be considered within the procurement process where practicable. Engagement activities are not to negotiate or obtain consent for the operational requirement, evaluation methodology or procurement strategies being considered. Engagement activities should also be clearly communicated at the outset to ensure that the audience is aware that it is for information sharing purposes only.

Engagement sessions can be used to inform NTI and Inuit firms about large dollar value and complex procurements, and/or to provide information in response for a Request for Information (RFI) or a Letter of Interest (LOI).

A common format would include a presentation by the BO on the specifics of the project, and a presentation by the CA (that may include information provided by the [Office of Small and Medium Enterprises](#)) on the procurement process and a presentation by ISC on the Inuit capacity and how to access information on the *Directive*.

To obtain support from ISC in planning and participating in an engagement session, contact: aadnc.nunavutprocurement-appvisionnementaununavut.aandc@canada.ca.

A.1.1 Determining the Type of Engagement Event

There are various types of events that can be held, such as a meeting in a conference room, focus group discussions, town halls etc. Based on the potential attendees, determine the most effective way the Inuit firms and other stakeholders can be engaged.

Depending on the complexity and risk of the procurement, more than one engagement session can be held. For example, the second engagement activity could be used to ask for more specific feedback, if necessary.

ISC can be consulted and asked to attend these sessions, depending on the complexity of the procurement, to advise on the applicability, evaluation, monitoring and reporting of the procurement.

A.1.2 Organizing the Engagement

a) Identify the target groups

ISC can help to identify the target groups beyond Inuit firms and NTI. The target groups may include the Nunavut Inuit, regional Inuit associations, and other Inuit stakeholders. The engagement coordination team can use this information to estimate the number of potential attendees for budget and venue purposes.



b) Setting a date, time and location

Engagement sessions that are held at a time when there are other significant activities are occurring in the NSA may affect the ability of Inuit firms and other stakeholders to participate, and this would particularly affect smaller firms. The BO may wish to contact NTI, regional Inuit associations, municipal offices and ISC, to assist in determining if there are significant activities that may take place during the timeframe of the proposed engagement activities.

Determine what setting is appropriate for the audience, taking into consideration the travel distance and time commitment required.

c) Creating a budget

The BO must determine all the costs involved (e.g. facilities/room rental, audio-visual equipment, any suppliers for meals or refreshments) and is responsible to obtain the required approvals and funding. Each attendee at the engagement activity should be responsible for any costs to attend the engagement sessions (for example, travel and accommodation).

d) Creating and issuing invitations and public notices

Develop invitations and communications to publicize the event, including contact information on how and when to RSVP. Clearly articulate the overall purpose or goal of the engagement so attendees are aware as to why they are being asked to participate. NTI may be able to provide input on how best to publicize the event.

e) Establishing an agenda

An agenda can be drafted once the scope of the engagement is established. It is important to consider what kind of information is specifically being sought.

For example, is information being sought on market capacity, a specific procurement strategy or both? What type of commodity information is needed? How will the information gathered assist in understanding the operational requirement? Would it be helpful to provide information on the procurement process? It is important to determine what needs to be discussed in order to obtain the required information.

f) Developing speaking points and background information

Using the agenda as a guide, prepare and collect any background material that will be given to participants. This can be sent out to participants in advance, or provided at the engagement activity.

Speaking notes should also be prepared, based on the agenda, and include a timeframe for each topic of discussion. This will help to ensure all material is covered in the allotted time. Prepare a list of questions that can be posed to attendees to ensure input is received in all relevant areas.

It is also helpful to anticipate the types of questions that may be asked by the attendees and have the responses prepared.



g) Best Practices

The following best practices will help ensure the effectiveness of the engagement session(s):

- Begin by clearly articulating the overall purpose or goal of the engagement;
- Explain how the engagement session will work – timeframes, confidentiality, asking questions, etc.;
- Provide logistical information such as washroom locations, refreshments, etc.;
- Keep the discussion on topic. “Park” ideas that are valuable but that may not be relevant to the particular discussion at this time;
- Proactively ask questions, and summarize topics at the beginning and end of each discussion to make sure everyone is on the same page;
- Participants can be asked to fill out a short questionnaire at the end of the engagement to provide specific input on relevant issues;
- Take detailed meeting minutes;
- Advise participants that they will be receiving a summary of the meeting and discuss any next steps; and
- Thank all attendees for their input.

Once the engagement session has concluded, the information gathered can be consolidated and any follow-up action items can be completed and reported on as appropriate. The meeting summary should be finalized and distributed to all participants within a reasonable period of time.



Annex B:

Determining Final Delivery Points

The following examples illustrate various scenarios when the requirements of the *Directive* would and would not apply:

1. A department has an operational requirement for snowmobiles. As per the contract terms, the contractor will deliver them to a location outside of the NSA area. At a later time, Canada will either bring them itself or, through the use of a separate transportation contract, to various locations in the NSA.
 - This is called a “break shipment”, and the requirements of the *Directive* would also **apply** to the initial contract because the snowmobiles would support the department’s activities in the NSA.
2. A department has the requirement for the inventory of specific uniform accessories. These will be purchased and stored in a location outside of the NSA. As required, the accessories will be shipped across Canada to wherever they are needed which may or may not be within the NSA. (Warehouse)
 - The obligations of the *Nunavut Agreement* and the requirements of the *Directive* would **not apply** because the requirement is for the storage of inventory in a location outside of the NSA. It is unknown whether or not the goods will eventually be used within the NSA.
3. A department has a requirement to conduct a survey to assess requirements for health care for people living in the NSA. The requirement will involve contacting people in the NSA by telephone, but there is no operational requirement for the supplier to be physically located in the NSA.
 - The obligations of the *Nunavut Agreement* and the requirements of the *Directive* would **apply** given the activity is performed in Nunavut, although through a phone and despite the fact that there is no operational requirement for a physical presence in the NSA.
4. A department has a requirement for satellite photography of Nunavut. The digital images will be delivered in Ottawa for use in Ottawa.
 - The obligations of the *Nunavut Agreement* and the requirements of the *Directive* would **not apply** as the satellite photography are taken from space, which is outside of the NSA, and delivered outside of the NSA. The images are also not to be used in support of Canada’s activities in Nunavut.
5. A department is contracting for the research, design, production and installation of an exhibit in the NSA. The contract includes travel to the NSA to conduct research and to perform the installation.
 - The obligations of the *Nunavut Agreement* and the requirements of the *Directive* would **apply** because at least a portion of the work will occur in the NSA.

-
6. A department has a requirement for the interpretation and bar coding of previously collected plant specimen DNA. The specimens were originally collected from the NSA, however, the additional work will not be performed within the NSA and the deliverables will not be used to support government activities within the NSA.
- The obligations of the *Nunavut Agreement* and the requirements of the *Directive* would **not apply** because no portion of this current procurement will require a physical presence within the NSA in order to conduct the work nor will it be in support of government activities in the NSA.
7. A department has a requirement for designing and building a federal government building in the NSA.
- The requirements of the *Directive* would **apply** because the activities will be in support of government activities in the NSA.



Annex C:

Supplier IBC/NBC Reporting Template

These templates have been developed to assist CAs and BOs obtain periodic reports from suppliers detailing progress on the delivery of their contractual obligations with respect to IBC/NBC benefits. The templates can be modified to suit specific aspects of an IBC/NBC plan.

C.1 Inuit Benefits Criteria (IBC)

C.1.1 Subcontracting to Inuit Firms on the IFR

Report of subcontracts entered into between the prime contractor and the subcontracted Inuit firms on the IFR to perform work under the government contract during the reportable time period of __date__ to __date__. Fill out the table below and return to Canada by __date__.

	Name of Inuit Firm on IFR	Inuit Firm ID	Total Dollar Value
Total			

Field Definitions

1) Name of Inuit Firm on IFR

- Description: The name of the Inuit firm performing the work under the government contract as it appears on the Inuit Firm Registry.

2) Inuit Firm ID

- Description: The identification number associated to the Inuit firm performing the work under the government contract as it appears on the Inuit Firm Registry (for example IFR1234).

3) Total Dollar Value

- Description: The total dollar value in CAD of subcontracts entered into between the prime contractor and the subcontracted Inuit firms on the Inuit Firm Registry during the reportable time period.

C.1.2 Inuit Employment

Report on employment of Inuit labour under the government contract during the reportable time period of __date__ to __date__. Fill out the table below and return to Canada by __date__.

	Name of Inuit Employee	Beneficiary Number	Employment Type	Total Hours Worked	Total Dollar Value Paid
Total					

Field Definitions

1) Name of Inuit Employee

- Description: The name of the Inuit employee performing work under the government contract during the reportable time period. Provide the name as it appears on the employee's Nunavut Inuit Enrolment Card.

2) Beneficiary Number

- Description: The Inuit employee's beneficiary number as it appears on their Nunavut Inuit Enrolment Card, providing evidence of their status as a Nunavut Inuk under the NLCA. See NTI website for more details: <https://www.tunngavik.com/programs-and-benefits/download-forms/inuit-enrolment-program/>.

3) Employment Type

- Description: The type of employment provided to the Inuit employee under the government contract during the reportable time period.

4) Total Hours Worked

- Description: The total number of hours of work performed by the Inuit employee under the government contract during the reportable time period. Provide the information in hours and minutes (for example, 45:23).

5) Total Dollar Value Paid

- Description: The total dollar value paid in CAD to the Inuit employee for work performed under the government contract during the reportable time period.



C.1.3 Inuit Training and Skills Development

Report on training (including but not limited to on-the-job training) and skills development of Inuit under the government contract during the reportable time period of __date__ to __date__. Fill out the table below and return to Canada by __date__.

	Name of Inuit Trainee	Beneficiary Number	Training Type	Total Hours Worked	Total Dollar Value Paid
Total					

Field Definitions

1) Name of Inuit Trainee

- Description: The name of the Inuk receiving training (included but not limited to on-the job training) and skills development under the government contract during the reportable time period. Provide the name as it appears on the trainee's Nunavut Inuit Enrolment Card.

2) Beneficiary Number

- Description: The Inuit trainee's beneficiary number as it appears on their Nunavut Inuit Enrolment Card, providing evidence of their status as a Nunavut Inuk under the NLCA. See NTI website: <https://www.tunngavik.com/programs-and-benefits/download-forms/inuit-enrolment-program/>.

3) Training Type

- Description: The type of training (included but not limited to on-the-job training) or skills development provided to the Inuit trainee under the government contract during the reportable time period.

4) Total Hours Worked

- Description: The total number of hours of training (included but not limited to on-the-job training) or skills development provided to Inuit trainees under the government contract during the reportable time period. Provide information in hours and minutes (for example, 45:23).

5) Total Dollar Value Paid

- Description: The total dollar value paid in CAD to provide on-the-job training or skills development to Inuit under the government contract during the reportable time period.

C.2 Nunavut Benefits Criteria (NBC)

This template has been developed to assist procurement officers obtain periodic reports from suppliers detailing the delivery of their contractual obligations with respect to NBC benefits. The templates can be modified to suit specific aspects of an NBC plan.

Report on whether the vendor or subcontractors performing work under the government contract have new or existing head offices, administrative offices or other facilities in the Nunavut Settlement Area for the duration of the reportable time period of __date__ to __date__. Fill out the table below and return to Canada by __date__.

Vendor Name	Vendor Address in the NSA	Nature of Presence in NSA

Subcontractor Name	Subcontractor Address in the NSA	Nature of Presence in NSA



Field Definitions

1) Vendor name:

- Description: The name of the vendor (prime contractor) who was awarded the government contract. Provide the names as it appears on the government contract.

2) Vendor Address in the NSA

- Description: The address of the vendor's (prime contractor) office or facility in the NSA during the reporting time period. Include street address, city, province/territory, postal code.

3) Subcontractor Name

- Description: The name of the firm subcontracted to perform work under the government contract.

4) Subcontractor Address in the NSA

- Description: The address of the office or facility in the NSA of the firm subcontracted to perform work under the government contract during the reporting time period. Include street address, city, province/territory, postal code.

5) Nature of presence in NSA

- Description: Describe the nature of the firm's presence in the NSA and how it demonstrates progress towards, and maintenance of, commitments made in the NBC portion of the bidder's IBC/NBC plan.



Annex D:

Obligations Checklist

This list is not intended to be exhaustive. The CA and BO should add/remove additional tasks as and when required to meet the needs of their specific solicitation.

The CA and the BOs are responsible for documenting all decisions on file.

TASK	RESPONSIBILITY		Complete?
	Contracting Authority	Business Owner	
Confirm final destination points are within the NSA.	✓	✓	
Assess whether any consultation obligations exist in the NSA regarding the requirement and whether there is a legal duty to consult with Inuit peoples regarding the requirement.		✓	
Fulfill any consultation obligations and any legal duties to consult.	✓	✓	
Search the Inuit Firm Registry for capacity.	✓	✓	
Determine if an Inuit firm has been previously awarded a contract for similar solicitations in the past.	✓		
Unbundle solicitation requirements to increase Inuit competition.	✓	✓	
Determine if there are any significant activities that may take place over the solicitation or contract period to take into consideration for timelines.		✓	
Plan engagement sessions.	✓	✓	
Structure procurements to accommodate smaller and more specialized Inuit firms to bid.	✓	✓	
Determine if preferential treatment or a first right of refusal applies to the solicitation.	✓		
Obtain necessary permits to allow for access/use of designated NSA land.		✓	
Include Inuit Benefit Criteria/Plans, or justify why it is not included.	✓	✓	
Notify the NTI and Nunavut Inuit firms the same day it is posted on GETS.	✓		
Evaluate bidders responses to solicitation.	✓	✓	
Notify PSPC of details of contract award.	✓		
Monitoring performance.		✓	
Monitoring Inuit benefits achieved.		✓	
Reporting.	✓	✓	



Annex E:

Notice of Proposed Procurement

Hello,

This is to notify you that the (DEPARTMENT NAME) has a requirement for the procurement of (NAME GOOD, SERVICE, CONSTRUCTION REQUIREMENT) where the deliverable is into the Nunavut Settlement Area.

You can access the solicitation on Buyandsell.gc.ca at the following link: (Provide link to Solicitation)

Please forward this notification of procurement to any Nunavut Inuit businesses that may be interested in submitting a proposal.

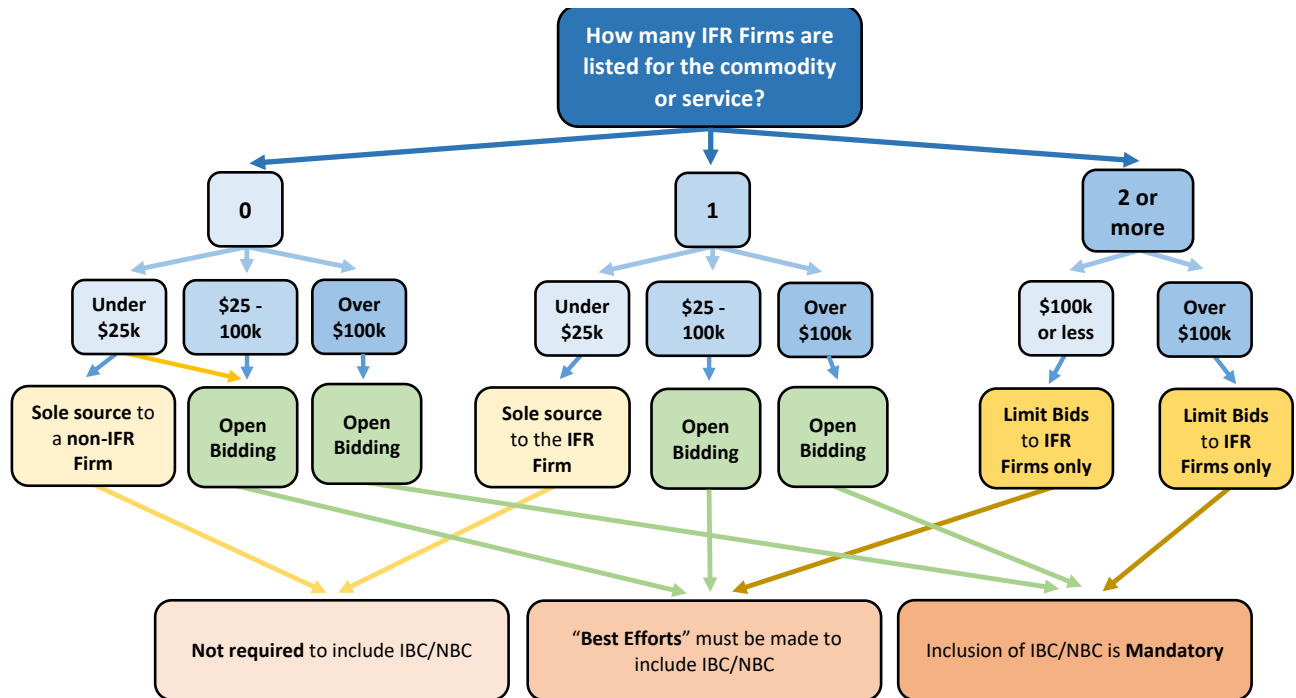
If you have any questions, please contact the Contracting Authority listed on the Solicitation

Thank you



Annex F:

IFR Decision Tree



As per standard contracting procedure, contracts may be entered into without soliciting bids if an exception to competitive bidding under the Government Contracts Regulations (GCRs) of the Financial Administration Act (FAA) applies.

Annex G:

IBC/NBC Criteria

COMPONENT		RANGE OF PERMITTED WEIGHTING							
		Limited to Inuit Firms on the IFR				Open Bidding			
		Contracts over \$10M (Default Weighting)	Services and Construction (Under \$10M)	Goods (Under \$10M)	Real Property Leases	Contracts over \$10M (Default Weighting)	Services and Construction (Under \$10M)	Goods (Under \$10M)	Real Property Leases
IBC	Inuit Employment	10%	10-15%	0-10%	0-30%	10%	10-15%	0-10%	0-30%
	Inuit Training and Skills Development	10%	0-10%	0-10%	0-30%	10%	0-10%	0-10%	0-30%
	Inuit Ownership (of Prime and Sub contractors)	5%	10-15%	10-30%	0-30%	10%	10-15%	10-30%	0-30%
NBC	Location in the NSA	5%	10-15%	5-10%	0-30%	5%	5%	5%	5%
Minimum Total Weighting		30%				35%			