



# TR'ONDËK HWËCH'IN PROCUREMENT POLICY

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### Procurement Policy Revision History

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## **WE ARE DĚNEZHU. WE LIVE TR'ĚHUDÈ.**

We are DĚnezhu, the people of this land We are Tr'ondĕk Hwĕch'in, the people of this river following the ways Tsà' Wĕzhè traveled and remembering his journey and the living inheritance he left us – Tr'ĕhudè, our way of life and our law.

We are DĚnezhu, the people of this land  
salmon people and caribou people  
weather-watchers and story people.

Ours is a constitution of stories and promises – a promise to listen to the land a promise to act humbly and show gratitude for the gifts that sustain us a promise to take care of each other.

The promises Tsà' Wĕzhè made in the long-ago times are the core of our identity as DĚnezhu the source of our wealth, the reason we endure and the root of our kinship with the land and our animal relatives those with fur or fins or feathers leaves or needles or berries or flowers two legs or four legs, more legs or none who taught us how to survive, but also how to live. These promises are happy obligations because when we look after our relatives, they look after us.

Tsà' Wĕzhè used his wits to make the world safe for us so we live Tr'ĕhudè to protect the balance he made still telling the stories that bind us to this land and keeping our promises so the animals keep theirs – for all the generations yet to be born.

That is what we mean when we say we are DĚnezhu, the people of this land  
That is what it means to be Tr'ondĕk Hwĕch'in, the people of this river.

## **PART 1 – INTRODUCTION**

### **1. Enabling Legislation**

The Procurement Policy is enabled and adopted by resolution of Council under the provisions of the *Constitution, the Tr'ondëk Hwëch'in Financial Administration Act* and Regulations enacted pursuant to the Act. In the event of an inconsistency or conflict between the Procurement Policy, the Act, the Regulations or any other law of the Tr'ondëk Hwëch'in, the law will prevail to the extent of the inconsistency or conflict.

### **2. Application**

- 2.1 This policy will apply in respect to all tenders and contracts for the procurement of services, goods and construction.
- 2.2 Where Tr'ondëk Hwëch'in obtains funding for a tendered project from an outside source the procurement provisions provided by that source, if they are different from this policy, will apply if so required.

### **3. Purpose**

The purpose of the Procurement Policy is to outline transparent goods and services procurement procedures for Tr'ondëk Hwëch'in that guarantee the best price and benefit for Tr'ondëk Hwëch'in. The policy ensures

- a) Tr'ondëk Hwëch'in secures the best value for all procurement of goods and services;
- b) Tr'ondëk Hwëch'in receives services and goods of high quality;
- c) the purchase of quality products in the most cost-effective and timely manner to satisfy Tr'ondëk Hwëch'in's requirements for operational bulk purchases and capital assets;
- d) procurement is carried out in a fair, fiscally responsible, accountable, open and competitive manner that benefits citizens and Tr'ondëk Hwëch'in owned businesses, where practical; and
- e) consistency for all contractual agreements.

Policy, in general, states the government's philosophy and approach to an issue and provides the formal guidance to coordinate and execute activities throughout Tr'ondëk Hwëch'in. Sound policy incorporates the key principles by which public officers can judge their actions and help focus attention and resources on high priority issues by aligning and merging efforts to achieve the government's mandate and vision.

Procedure sets out the operational process required to implement policy. While policy and procedure may be specific to a department, program or activity, the Procurement Policy applies both to the operations of the Department of Finance and all procurements by Tr'ondëk Hwëch'in. It will be applied evenly and equally to all.

Policy and procedure are the agreed upon framework for the consistent delivery of good practice. Policy is *what* the government does operationally, and procedure is *how* the government intends to carry out the policy statements.

### **4. Development and approval**

In accordance with the *Constitution*, Council may develop, amend and approve policy.

## **5. Amendment**

Council recognizes that policy will need to change, from time to time, to meet changing operational needs. Council will initiate revisions to the Procurement Policy as may be required to conform to changing operational needs. A Table of Amendments to this Procurement Policy is included.

## **6. Enforcement**

The Procurement Policy will be enforced by the Director of Finance, in accordance with the provisions contained herein.

Copies of the Procurement Policy will be available, at all times, in all government buildings, departments and program offices. It is mandatory that all public officers will familiarize themselves with the *Tr'ondëk Hwëch'in Financial Administration Act* and Regulations enacted pursuant to the Act, and the Procurement Policy. Acknowledgement of this policy will form part of the orientation for all Directors of departments.

If any public officer has concerns about the appropriate application and enforcement of the Procurement Policy, they are strongly encouraged to voice their concerns directly to the Director of Department, or the Director of Finance or the Executive Director. Council believes that clear and open lines of communication are an effective tool for good government.

## **7. Dispute resolution**

In cases of disputes, the Director of a Department is the first, and the Director of Finance is the second, and Council is the final level of interpretation of the provisions contained herein.

## **8. Definitions and abbreviations**

8.1 In this policy, the definitions of the Constitution, the *Governance Act*, the *Financial Administration Act* and the *Financial Administration Regulations* will apply and

“Act” means the *Tr'ondëk Hwëch'in Financial Administration Act*, as amended from time to time, and includes any regulations made under the authority of the Act.

“Conflict of interest” means any situation in which an individual, organization or business entity is in a position to exploit a professional or official capacity in some way for the individual's, organization's or business entity's personal benefit.

“Expression of interest” means that Tr'ondëk Hwëch'in deems a project or contract to be of an extraordinary size or of a very specialized nature and decides to advertise for an expression of interest in the project or contract.

“Financing lease” means a contract that conveys the right to use an asset for a period of time in exchange for consideration. Financial reporting standards govern the treatment as a financing lease. Any lease that does not meet the criteria of an operating lease is treated as a financing lease.

“Goods and services” means the goods (such as merchandise, finished products, supplies or raw materials) and the services (such as tasks and labour) that are produced or performed for and paid by Tr’ondëk Hwëch’in;

“Legal and regulatory measures” means the legal and regulatory measures enacted and made by Tr’ondëk Hwëch’in, including the *Constitution*, statutes, regulations, rules, policies, resolutions and any other measure that can be enforced by a court or a department

“Operating lease” means a contract that conveys the right to use an asset for a period of time in exchange for consideration. Financial reporting standards govern the treatment as an operating lease and typically require a lease period to be less than 12 months or for a low asset value or both.

“Standing offer” means an offer from a business to Tr’ondëk Hwëch’in that allows Tr’ondëk Hwëch’in to repeatedly purchase goods or services, or a combination of goods and services at pre-arranged prices, under set terms and conditions, when required. A standing offer is not a contract and Tr’ondëk Hwëch’in is under no obligation to purchase. A standing offer only becomes a contract once Tr’ondëk Hwëch’in issues a “call-up” against the standing offer.

“Tendering process” means the procedure by which tender documents, or specifications describing the requirements and qualifications necessary under a tendering project, are put in the hands of contractors and, or, suppliers who are interested in preparing and submitting bids to undertake the tendering project.

“Tr’ondëk Hwëch’in business” means a business that meets one of the following criteria:

1. A corporation or not-for-profit corporation where Tr’ondëk Hwëch’in is the direct or beneficial owner of 100% of the shares of the corporation.
2. A sole proprietorship owned by a Tr’ondëk Hwëch’in citizen.
3. A partnership or limited partnership where at least 50% of the partnership is owned by a Tr’ondëk Hwëch’in citizen or an organization described in 1 or 2.
4. A corporation with at least 51 per cent of the corporation’s voting shares owned by a Tr’ondëk Hwëch’in citizen or an organization described in 1 or 2.
5. A not-for-profit organization in good standing under the Societies Act with Tr’ondëk Hwëch’in citizens comprising at least 51% of its membership.

A sole proprietorship owned by a non-Tr’ondëk Hwëch’in citizen, which supports a Tr’ondëk Hwëch’in citizen spouse or common law partner, and/or a Tr’ondëk Hwëch’in citizen family, may, at the sole discretion of Council, be designated as a Tr’ondëk Hwëch’in business for the purpose of this policy.

“Value for money” means paying no more for a good or service than its quality or availability justify, considering the cost, the efficiency and the effectiveness of the good or service procured.

## **PART 2 – ORGANIZATION AND ADMINISTRATION**

### **9. Contract administration**



- 9.1 All procurements will be in writing and will list any requirements needed to enter into the final contract execution and signing stage.
- 9.2 Only subsequent to the final contract execution and signing stage, any unsuccessful bidders in a tender process will be notified in writing of the successful bidder and the winning bid amount. All bidders are entitled to obtain information on how their proposal was evaluated but only information directly related to their own bid may be released to them.
- 9.3 All contracts will be in writing and in a standard contract format to ensure that the following provisions are included:
- a) the terms and conditions of the contract;
  - b) insurance and security requirements;
  - c) conflict of interest and confidentiality clauses;
  - d) the starting and ending date of contract;
  - e) the maximum payable for the total contract;
  - f) the payment schedule including holdback details;
  - g) the statement of work; and
  - h) the deliverables.
- 9.4 Prior to being signed, the Department of Finance will review all contracts for
- a) completeness;
  - b) verification of availability of budget; and
  - c) determination, by the criteria established by Canada Revenue Agency and pertinent court rulings, of whether the contractor is considered a contractor or an employee of Tr'ondëk Hwëch'in.
- The contractor-employee review will be revisited as required during the term of the contract.
- 9.5 No work will begin on a contract until the contract is duly signed and executed.
- 9.6 The Department of Finance will establish a register of contracts that will contain the original copy of each current contract.
- 9.7 All amendments to a contract will be made in writing.
- 9.8 Contractors will perform all their work in compliance with the Tr'ondëk Hwëch'in Occupational Health and Safety Manual.
- 9.9 The Director of the department responsible for the work will ensure that all work related to a contract is completed in accordance with the statement of work and the deliverables.
- 9.10 The Department of Finance is responsible for ensuring a ten (10) percent holdback is retained on all contracts and not paid until
- a) the Director of the department responsible for the work has verified satisfactory completion; and
  - b) the contractor has verified payment of all subcontracts by completion of a *Statutory Declaration*.

## **10. Procurement principles**

- 10.1 The key principles and mechanisms applied by the government in procurement, while allowing for opportunities to incorporate Tr'ondëk Hwëch'in community socio-economic benefits, will include
- a) dealing with all potential bidders on an equitable basis;
  - b) establishing specific criteria within which an open tendering process will be adhered to based on good contracting principles that take into consideration the dollar value, the complexity of the work to be undertaken, and the number of goods and services providers within the area of competition who are able to meet the level of expertise and qualifications necessary;
  - c) treating all tender documents confidentially;
  - d) assessing all tenders on the basis of clear, consistent, predefined evaluation criteria;
  - e) maximizing the use and development of available Tr'ondëk Hwëch'in citizens and local resources or skills; and
  - f) developing and reviewing a source list, to be updated annually, of qualified Tr'ondëk Hwëch'in and local suppliers from which to invite bids for tendering projects.

## **11. Insurance and security**

- 11.1 Prior to the signing of any contract for work in the Yukon, all contractors will provide evidence, satisfactory to the Department of Finance, that the contractor
- a) Is in compliance with the requirements of the Yukon Workers' Compensation Health and Safety Board with respect to all their employees. and the owner if applicable, that will work on the contract in the Yukon; and
  - b) Is in good standing.
- 11.2 All contractors will have adequate insurance coverage for the liability arising out of, or resulting from, the ownership, existence, maintenance or use of premises by the contractor and operations necessary or incidental to the performance of a given contract.
- 11.3 Prior to the signing of any contract, all contractors will provide evidence, satisfactory to the Department of Finance, of adequate and valid insurance coverage, with Tr'ondëk Hwëch'in named as additional assured, for
- a) commercial general liability (minimum \$2,000,000);
  - b) professional errors and omissions (minimum \$1,000,000), if applicable; and
  - c) automobile and, or aircraft, and, or boat (minimum \$2,000,000), if applicable.
- 11.4 Notwithstanding subsections (11.2) and (11.3), the Director of Finance, at their sole discretion, may waive the requirements for commercial general liability and, or professional errors and omissions insurance based on their determination of the potential of the work to pose a risk to Tr'ondëk Hwëch'in. This determination will be made using Appendix A as risk management guidelines.
- 11.5 Notwithstanding the guidelines and the determination, Tr'ondëk Hwëch'in reserves the right to ask

any contractor for satisfactory evidence of the validity of any required insurance.

11.6 In addition to the requirements of subsections (11.2) and (11.3), for all contracts over \$25,000 and classified as construction by the Department of Finance, general contractors may be required to provide evidence, satisfactory to the Department of Finance, of the valid and adequate value of

- a) course of construction insurance or builder's risk insurance or both;
- b) performance bond;
- c) labour bond; and
- d) material payment bond.

11.7 General contractors will be required to provide performance bonding for all contracts over \$500,000 that are classified as construction by the Department of Finance.

11.8 The adequate value of the requirements of subsection (11.6) will be determined by the Director of Finance and based on the recommendation of the qualified project manager appointed to manage the procurement process for the contract.

## **12. Bid review**

12.1 For all tenders, a Bid Review Panel of three public officers will be formed and authorized by the completion of a *Bid Review Panel Authorization Form* signed by the Executive Director.

12.2 The Bid Review Panel will consist of the Executive Director, the Director of Finance and the Director of the department responsible for the work, or their delegates.

12.3 The Bid Review Panel will review all bids and award contracts based on the following:

- a) bid price; and
- b) review criteria that are stated in the tender documents.

12.4 In reviewing bids and awarding contracts, the Bid Review Panel will

- a) ensure that government departments and contractors are in compliance with the Act, the *Financial Administration Regulations*, this policy and all other legal and regulatory measures;
- b) undertake a minimum of two (2) reference checks for similar work; and
- c) if required, consult an industry expert or seek technical advice.

12.5 The contractor's qualifications serve to establish whether they possess the capacity, skill and integrity to ensure that the work is completed as specified, and within time and budget. If required to be able to verify the ability of the highest-ranking bidder to fulfill the contract requirements, the Bid Review Panel will

- a) review their past performance of contracts for Tr'ondëk Hwëch'in; and
- b) request further information including

- the experience and qualifications of the bidder's assigned project manager;
- the bidders experience in similar work;
- the bidder's financial capability;
- the bidders past performance; and
- the local content if specified in the contract.

Should the Bid Review Panel judge the highest ranked bidder as not able to fulfill the contract requirements, the Bid Review Panel will proceed to review the next highest ranked bidder using the same criteria above. This process will be used until a suitable bidder is judged to be capable of fulfilling the contract requirements.

### **13. Conflict of interest**

13.1 For clarity, the Conflict of Interest Code, attached as Schedule C of the *Governance Act*, applies to all procurement.

13.2 Prior to the award of any contract, the Bid Review Panel will, as necessary

- a) investigate the facts and circumstances surrounding reports and disclosures of conflicts;
- b) resolve conflicts in accordance with the *Governance Act* and the provisions in this policy; and
- c) refer conflicts that involve the Executive Director to Council.

All conflict resolution recommendations or decisions by the Bid Review Panel will be final.

### **14. Contract renewal**

14.1 At the sole discretion of Tr'ondëk Hwëch'in, a contract may be renewed for a further term of one year, upon the same terms and conditions, including a further right to renew, on the part of Tr'ondëk Hwëch'in. There will be no right for renewal beyond a total term of three years.

## PART 3 – CONTRACTING SERVICES

### 15. Requirements

- 15.1 All services will be procured in accordance with the Act, the *Financial Administration Regulations*, the Financial Administration Policy, this policy and all other applicable legal and regulatory measures.
- 15.2 The Tr'ondëk Hwëch'in benefit and regional economic development policies will be applied to the procurement of all services pursuant to Part 8, with the sole exception of auditing services.
- 15.3 This part of the Procurement Policy will apply to the lease of any asset that meets the criteria to be treated as an operating lease.
- 15.4 This part of the Procurement Policy does not apply to procurement for the construction, and, or renovation of capital assets in any scale that is classified as a capital project by the Department of Finance.
- 15.5 No contract for services will establish an employer-employee relationship in accordance with the criteria established by Canada Revenue Agency and pertinent court rulings.

### 16. Process

- 16.1 The following procurement processes may be used to contract services
  - a) Open public tender;
  - b) Invited tender;
  - c) Standing offer call-up; or
  - d) Direct award.
- 16.2 All procurements of services will be by open public tender or invited tender unless the conditions for a standing offer call-up or direct award procurement have been met to the satisfaction of the Department of Finance.
- 16.3 Where a department demonstrates to the Department of Finance that identified services will need to be supplied on a recurring basis for its regular operations, the standing offer procurement process will be preferred.
- 16.4 During the effective period of a standing offer agreement, services up to the maximum value threshold stated in the agreement may be contracted by direct award to the contractor. Notwithstanding this, all contracts for services will still ensure the best value for money is received by Tr'ondëk Hwëch'in.
- 16.5 Direct award procurement of services will only be used on the condition that the Director of the department responsible for the scope of work provides a written justification that it is in the best interests of Tr'ondëk Hwëch'in because
  - a) time is of the essence; or
  - b) a specific service is required that can reasonably be provided by only one qualified contractor.

16.6 Direct award procurement of services will only be used on the condition that the fees paid do not exceed the market rate for the service. The Director of Finance will be the final arbiter of the satisfaction of this condition.

## **17. Roles and responsibilities**

17.1 The department responsible for the scope of work, in conjunction with the Department of Finance, will

- a) develop draft tender documents for the selected procurement process that include the insurance and security requirements to be applied to the contract;
- b) ensure the scope of work clearly describes the work to be carried out, the objectives to be attained, and the time frame for delivery;
- c) participate in the Bid Review Panel if applicable;
- d) monitor work by the contractor and approve the completion of each stage before payments are authorized in accordance with the contract payment schedule; and
- e) ensure the scope of work is completed as per the contract.

17.2 The Department of Finance, in conjunction with the department responsible for the work, will

- a) ensure compliance with the Act, the *Financial Administration Regulations*, the Financial Administration Policy, this policy and all other applicable legal and regulatory measures;
- b) review draft tender documents, amend as required, and approve final tender documents;
- c) participate in the Bid Review Panel if applicable;
- d) ensure an employer-employee relationship will not result from the contract;
- e) ensure a lease meets the criteria to be treated as an operating lease if applicable;
- f) ensure the price paid for services provided under a direct award contract does not exceed the market value;
- g) authorize payments as per the contract payment schedule, but only subsequent to approval of the completion of each stage by the department responsible for the scope of work; and
- h) ensure all subcontractors of the contractor have been paid prior to payment of the final holdback.

## **18. Evaluation**

18.1 Evaluation criteria for contracting services will be clearly stated in the tender documents and take into consideration the following

- a) total price inclusive of all travel expenses and other disbursements proposed in the bid;
- b) understanding of scope of work;
- c) qualifications and experience;
- d) methodology and work plan;
- e) environmental sustainability plan, if required; and
- f) Tr'ondëk Hwëch'in benefits and regional economic development.

## **19. Auditing services**

- 19.1 In order to evaluate the market and ensure that Tr'ondëk Hwëch'in continues to receive the best qualified and independent auditing services at a fair market price, the government will conduct an open public tender for auditing services by the Request for Proposal method, at least once every four years.
- 19.2 The initiation of an open public tender for auditing services will be approved by resolution of Council.
- 19.3 The Director of Finance will prepare draft terms of reference for the open public tender for auditing services by Request for Proposal.
- 19.4 The draft terms of reference will be reviewed, amended as required, and further approved by Council, including any special instructions from Council, prior to initiation of the open public tender. Council will be advised by the Executive Director for this process.
- 19.5 The award of a contract for auditing services will be approved by resolution of Council.

## **20. Legal services**

- 20.1 The Executive Director will approve all requests for legal services. Access to the best legal services is critical to protecting Tr'ondëk Hwëch'in interests and the sourcing of legal services should be carefully controlled to minimize conflicts and reduce costs.
- 20.2 Directors of department will submit all requests for legal services to the Executive Director in writing, and identify the law firm, the person associated with that law firm, and the nature of and rationale for the request.
- 20.3 All legal services will be engaged by way of a signed Retainer Letter or other contract.
- 20.4 A retainer fee may be paid under an agreement for the provision of legal services.

## PART 4 – PURCHASING GOODS

### 21. Requirements

- 21.1 All goods will be procured in accordance with the Act, the *Financial Administration Regulations*, the Financial Administration Policy, this policy and all other applicable legal and regulatory measures.
- 21.2 This part of the Procurement Policy will apply to the lease of any asset that will be treated as a financing lease.
- 21.3 The Tr'ondëk Hwëch'in benefit and regional economic development policies will be applied to the procurement of all goods, pursuant to Part 8.

### 22. Process

- 22.1 The following procurement processes may be used to purchase goods
- a) Open public tender;
  - b) Invited tender;
  - c) Standing offer call-up; or
  - d) Direct award.
- 22.2 All procurements of goods will be by open public tender or invited tender unless the conditions for a standing offer call-up or direct award procurement have been met to the satisfaction of the Department of Finance.
- 22.3 Where a department demonstrates to the Department of Finance that identified goods, or an identified class of goods, will need to be supplied on a recurring basis for its regular operations, the standing offer procurement process will be preferred.
- 22.4 During the effective period of a standing offer agreement, purchases up to the maximum value threshold stated in the agreement with the supplier may be made by direct award. Notwithstanding this, all purchases will still ensure the best value for money is received by Tr'ondëk Hwëch'in.
- 22.5 Direct award procurement of goods will only be used on the condition that the Director of the department responsible for the purchase provides a written justification that it is in the best interests of Tr'ondëk Hwëch'in because
- a) time is of the essence; or
  - b) a specific good is required that can reasonably be provided by only one qualified supplier.
- 22.6 Direct award procurement of goods will only be used on the condition that the price paid does not exceed the market price for the goods. The Director of Finance will be the final arbiter of the satisfaction of this condition.



## **23. Roles and responsibilities**

- 23.1 The Department of Housing and Infrastructure will procure all capital assets.
- 23.2 General office supplies that are used by multiple departments as required will be procured by the Department of Executive, Governance and Operations.
- 23.3 Goods that are classified as supplies that are used by one department only in the normal operations of the department will be procured by that department.
- 23.4 The department responsible for the purchase, in conjunction with the Department of Finance, will
- a) where the purchase is a capital asset, notify all government departments of the forthcoming purchase to identify if there is an opportunity for a bulk purchase;
  - b) develop draft tender documents for the selected procurement process including the evaluation criteria;
  - c) ensure the requirements description clearly describes the goods to be supplied and the time frame for delivery, including at a minimum
    - description of items to be purchased;
    - manufacturer, if applicable;
    - supply model number, colour, style and size, if applicable;
    - quantity or volume of items to be purchased;
    - warranty details;
    - freight details, if applicable; and
    - delivery information;
  - d) participate in the Bid Review Panel if applicable;
  - e) supply the contract and required attached documentation of the purchase to the Department of Finance immediately after the purchase is made; and
  - f) ensure the goods are supplied per the contract and their receipt documented as required.
- 23.5 The Department of Finance, in conjunction with the department responsible for the purchase, will
- a) ensure compliance with the Act, the *Financial Administration Regulations*, the Financial Administration Policy, this policy and all other applicable legal and regulatory measures;
  - b) review draft tender documents, amend as required, and approve final tender documents;
  - c) participate in the Bid Review Panel if applicable;
  - d) ensure a lease meets the criteria to be treated as a financing lease if applicable;
  - e) ensure the price paid for goods supplied under a direct award contract does not exceed the market value; and
  - f) authorize payments, but only subsequent to approval of the receipt of the goods by the department responsible for the purchase.

## **24. Evaluation**

- 24.1 Evaluation criteria for purchases of goods will be clearly stated in the tender documents and take into consideration the following
- a) total price inclusive of all freight charged for delivery to required location;
  - b) appropriate criteria related to specifications and quality of goods;
  - c) warranty limitations;
  - d) timeline of delivery;
  - e) environmental sustainability plan, if required; and
  - f) Tr'ondëk Hwëch'in benefits and regional economic development.

## **PART 5 – CONSTRUCTION**

### **25. Requirements**

- 25.1 All construction will be procured in accordance with the Act, the *Financial Administration Regulations*, the Financial Administration Policy, this policy and all other applicable legal and regulatory measures.
- 25.2 The Tr'ondëk Hwëch'in benefit and regional economic development policies will be applied to the procurement of all construction, pursuant to Part 8.
- 25.3 This part of the Procurement Policy applies to procurement for the construction, and, or renovation of capital assets in any scale that is classified as a capital project by the Department of Finance.
- 25.4 No contract for construction will establish an employer-employee relationship in accordance with the criteria established by Canada Revenue Agency and pertinent court rulings.

### **26. Process**

- 26.1 The following procurement processes may be used for construction
- a) Open public tender;
  - b) Invited tender; or
  - c) Direct award.
- 26.2 All procurement for construction will be by open public tender or invited tender unless the conditions for a direct award procurement have been met to the satisfaction of the Director of Finance.
- 26.3 The procurement method for construction over the value of \$150,000 may be any method that is recommended by the qualified project manager contracted under subsection (26.2) that is in accordance with industry standards and the best interests of Tr'ondëk Hwëch'in.
- 26.4 Direct award procurement for construction will only be used on the condition that the Director of the department responsible for the scope of work provides a written justification that it is in the best interests of Tr'ondëk Hwëch'in because

- a) time is of the essence; or
- b) specific construction is required that can reasonably be provided by only one qualified contractor.

26.5 Direct award procurement for construction will only be used on the condition that the cost paid does not exceed the market rate for the construction. The Director of Finance will be the final arbiter of the satisfaction of this condition.

## **27. Roles and responsibilities**

27.1 The Department of Housing and Infrastructure will be responsible for the procurement of all construction.

27.2 The Department of Housing and Infrastructure will contract an eligible qualified professional to manage the procurement of all construction over the value of \$500,000 on its behalf, in accordance with industry standards and the best interests of Tr'ondëk Hwëch'in.

27.3 Subject to the nature and value of the construction, an eligible qualified professional includes

- a) a Project Management Professional (PMP) certified by the Project Management Institute; or
- b) an architect or engineer licensed to undertake work in Yukon.

27.4 The Director of Housing and Infrastructure may manage the procurement of all construction projects up to the value of \$500,000 and may delegate this responsibility to a public officer within the department.

27.5 The Department of Housing and Infrastructure, in conjunction with the Department of Finance and the qualified project manager if required under subsection (26.2), will

- a) develop draft tender documents for the selected procurement process and format including the evaluation criteria;
- b) ensure the requirements description clearly describes the scope of work;
- c) participate in the Bid Review Panel if applicable;
- d) participate in completion of the contract and required documentation; and
- e) ensure the construction is completed per the contract and documented as required.

27.6 The Department of Finance, in conjunction with the department responsible for the construction, will

- a) ensure compliance with the Act, the *Financial Administration Regulations*, the Financial Administration Policy, this policy and all other applicable legal and regulatory measures;
- b) review draft tender documents, amend as required, and approve final tender documents;
- c) participate in the Bid Review Panel if applicable;
- d) ensure the price paid for construction under a direct award contract does not exceed the market value; and
- e) authorize payments, but only subsequent to approval of each stage of construction per the contract.

## **28. Evaluation**

- 28.1 Evaluation criteria for construction will be clearly stated in the tender documents and take into consideration the following
- a) total price;
  - b) contractor qualifications, experience and capacity to complete the work;
  - c) warranty limitations;
  - d) timeline of completion;
  - e) environmental sustainability plan, if required; and
  - f) Tr'ondëk Hwëch'in benefits and regional economic development.

## **PART 6 – PROCUREMENT PROCESSES**

### **29. Contractor pre-qualification**

- 29.1 A pre-qualification process may be used to select qualified bidders that will be eligible to submit a complete bid for a subsequent invited tender.
- 29.2 All pre-qualification processes will include public notification.
- 29.3 A pre-qualification process will follow the Request for Proposal format and all the qualifications of all bids will be evaluated against a set of criteria established in the tender documents.

### **30. Open public tender**

- 30.1 The Department of Finance will ensure all open public tenders are widely advertised including at a minimum
- a) posting at the government offices;
  - b) posting on the government website and social media accounts;
  - c) email notification to any source list of eligible Tr'ondëk Hwëch'in and local businesses;
  - d) posting at the Dawson City post office; and
  - e) two times over two weeks in any newspapers distributed widely in the City of Dawson;
- 30.2 Tender documents for open public tenders will only be provided directly to persons that request them but will be made available to all persons that do request them.
- 30.3 The Department of Finance will maintain a register of all persons that have received the tender documents.
- 30.4 Addenda issued during the tender will be provided to all persons which that have received the tender documents.
- 30.5 The Department of Finance will receive all bids.

### **31. Invited tender**

- 31.1 Tender documents for invited tenders will also be provided to all persons that request them irrespective of if the person was originally invited, unless a pre-qualification process has been used.
- 31.2 The Department of Finance will maintain a register of all persons that have received the tender documents.
- 31.3 Addenda issued during the tender will be provided to all persons which that have received the tender documents.
- 31.4 The Department of Finance will receive all bids.

### **32. Standing offer agreement lists**

- 32.1 All standing offer agreement lists will be formed by the open public tender process.
- 32.2 Depending on the type of service or purchase of goods, either the Request for Quotation or Request for Proposal format may be used to form the respective standing offer agreement list. A maximum contract value threshold for the standing offer agreement list will be established in the tender documents.
- 32.3 The qualifications of all bids will be evaluated against a set of criteria established in the tender documents. A standing offer agreement list of qualified contractors or suppliers and the applicable maximum contract value threshold may then be developed from the bids received.
- 32.4 Subsequent to the tender, a standing offer agreement will be completed with the contractor or supplier prior to the procurement of services or goods under the authority of this process.
- 32.5 A standing offer agreement list may be effective for a period of up to three (3) years from the effective date.
- 32.6 The Department of Finance will receive all bids.

### **33. Direct award**

- 33.1 The department responsible for a direct award procurement will provide the contractor or supplier with the same tender documents as for an open public tender or invited tender, to ensure they have all the information required to submit a bid that meets the requirements of the direct award process.

## **PART 7 – TENDER METHODS**

### **34. Request for Quotation (RFQ)**

- 34.1 A Request for Quotation (RFQ) tender method will be used when the department responsible knows exactly what goods or services it requires and is looking for the lowest price from a qualified supplier or contractor.
- 34.2 The RFQ tender documents will include, at a minimum, the following information
- a) type of work to be done, or goods to be supplied;
  - b) objectives and expected results to be achieved;
  - c) description of work scope, or goods to be supplied;
  - d) types and grades of materials to be used, if applicable;
  - e) responsibilities of the contractor and Tr'ondëk Hwëch'in;
  - f) travel guidelines, if applicable;
  - g) restrictions, if any;
  - h) time schedule and any bonuses for meeting the time schedule;
  - i) payment schedule;
  - j) provision for changing work scopes, if applicable;
  - k) any evaluation criteria established in addition to price, and their weighting; and
  - l) the location, format and closing time and date for delivery of a bid.
- 34.3 The RFQ bid requirements will include, at a minimum, a request for the following
- a) pricing;
  - b) qualifications and experience of personnel who will be working on the project, if applicable;
  - c) list of subcontractors to be used, if applicable;
  - d) references for similar projects;
  - e) environmental sustainability plan, if required;
  - f) statement of capacity and intent to meet stated insurance and security requirements; and
  - g) bid security, if applicable.
- 34.4 A Request for Quotation (RFQ) tender will be evaluated by price criteria alone unless specific additional related criteria are established in the tender documents.
- 34.5 Notwithstanding section (33.4), the Bid Review Panel will, in accordance with section 12, ensure that the lowest price bidder possesses the capacity, skill and integrity to ensure that the work is completed as specified, and within time and budget.

### **35. Request for Proposal (RFP)**

- 35.1 A Request for Proposal (RFP) method will be used when the department responsible is looking for the best value solution to resolve a problem or to deliver goods or provide a service but is not exactly sure how to achieve its objectives.

35.2 The RFP tender documents will include at a minimum, the following information

- a) a summary of the project;
- b) description of the background to the project;
- c) a clear statement of the objectives and expected outcomes;
- d) the scope of work;
- e) details of any mandatory professional services required;
- f) responsibilities of the contractor and Tr'ondëk Hwëch'in;
- g) deliverables;
- h) travel guidelines, if applicable;
- i) restrictions, if any;
- j) provision for changing work scopes, if applicable;
- k) evaluation criteria and their weighting; and
- l) the location, format and closing time and date for delivery of a bid.

35.3 The RFP bid requirements will include, at a minimum, a request for the following

- a) demonstration of project understanding
- b) qualifications and experience of personnel who will be working on the project;
- c) list of subcontractors to be used, if applicable;
- d) references for experience in similar projects;
- e) methodology;
- f) work plan and schedule;
- g) environmental sustainability plan, if required;
- h) pricing and payment schedule;
- i) statement of capacity and intent to meet stated insurance and security requirements; and
- j) bid security, if applicable;

35.4 A Request for Proposal (RFP) tender will be evaluated solely on the information submitted in the proposal and checks of the references provided.

35.5 Notwithstanding section (34.4), the Bid Review Panel will, in accordance with section 12, ensure that the highest-ranked bidder possesses the capacity, skill and integrity to ensure that the work is completed as specified, and within time and budget.

## PART 8 - TR'ONDĚK HWĚCH'IN BENEFITS AND REGIONAL ECONOMIC DEVELOPMENT

### 36. Objective

36.1 To ensure procurement provides Tr'onděk Hwěch'in people and other local residents with opportunities to participate in the regional economy and develop economic self-reliance.

### 37. Principles

37.1 To help guide decision making and to ensure the success of this part, the following principles are established:

- **Community:** We recognize the value of our purchasing power to effect positive social change in the region as part of strengthening the well-being and self-sufficiency of Tr'onděk Hwěch'in people.
- **Opportunity:** Policy measures designed to stimulate growth in Tr'onděk Hwěch'in owned businesses and provide employment opportunities to Tr'onděk Hwěch'in people will lead to job creation, reduce inequalities, and advance socio-economic and other outcomes for Tr'onděk Hwěch'in people.
- **Planning and Early Notification:** We recognize the importance of making information on our capital investments and procurements available to Tr'onděk Hwěch'in people in a timely fashion to assist Tr'onděk Hwěch'in businesses, people and communities to plan for and respond to our procurement opportunities.
- **Local Benefit-Open Access:** Tr'onděk Hwěch'in people derive direct benefits from our procurement.
- **Partnership:** Strengthened relationships between the Tr'onděk Hwěch'in business community and the government will produce more effective partnerships, which will increase the scale and capacity of Tr'onděk Hwěch'in businesses, resulting in a greater share of procurement benefits and a stronger regional economy.
- **Balance:** We remain committed to procurement processes that are competitive, deliver value for money, and contribute direct benefits to the region.

### 38. Business Registry

38.1 A list of Tr'onděk Hwěch'in businesses will be maintained within the Tr'onděk Hwěch'in Business Registry. This list serves as

- a) the verification tool that a Tr'onděk Hwěch'in business meets and maintains the policy definition of a Tr'onděk Hwěch'in business;
- b) a link between these businesses and us; and
- c) a marketing tool for the businesses to promote their goods and services to us and, if the business chooses to join the public directory, other interested organizations.



### **39. Bid Value Reductions**

- 39.1 For a Tr'ondëk Hwëch'in owned business only, a bid submission that meets the requirements of the tender documents will have its bid value reduced, for the purpose of evaluation only, by one of the following percentages:
- a) if at least 50% Tr'ondëk Hwëch'in owned it will receive a 5% reduction to the value of its bid
  - b) if at least 75% Tr'ondëk Hwëch'in owned it will receive a 10% reduction to the value of its bid
  - c) if 100% Tr'ondëk Hwëch'in owned, it will receive a 15% reduction to the value of its bid
- 39.2 For a non-Tr'ondëk Hwëch'in owned business, a bid submission involving one or more Tr'ondëk Hwëch'in owned businesses serving as a project subcontractor, will qualify for a bid value reduction for the purpose of evaluation only, under the following conditions:
- a) the subcontractor must be identified in the bid submission with a commitment of a minimum value of work to be performed by the subcontractor
  - b) the bid value reduction rate will be pro-rated to reflect the proportional value of the minimum work to be performed by each of the subcontractors
  - c) the bid value reduction rates under section 38.1 will apply according to the ownership level of each of the subcontractors
- 39.3 Where a value-driven tender process involves an evaluation of Tr'ondëk Hwëch'in labour levels:
- a) 20% of the total available points will be allocated towards hiring Tr'ondëk Hwëch'in citizens; and
  - b) any bid committing to employ Tr'ondëk Hwëch'in labour will receive the evaluated reduction to the value of its bid irrespective of the bidder's status as a Tr'ondëk Hwëch'in business.
- 39.4 When carrying out a value-driven procurement, we will evaluate the vendor's
- a) experience working with Tr'ondëk Hwëch'in people;
  - b) commitment and capacity to engage with Tr'ondëk Hwëch'in people; and
  - c) commitment to working with Tr'ondëk Hwëch'in to develop a Worker Development Plan, where one is required.

### **40. Performance Bonding**

- 40.1 For Tr'ondëk Hwëch'in businesses only, in the event that a required performance bond cannot be provided, the Department of Finance may, at its sole discretion, consider accepting a cash deposit as an alternative.
- 40.2 The Department of Finance will ensure any alternative accepted provides an adequate level of risk management for Tr'ondëk Hwëch'in.

### **41. Set Asides**

- 41.1 Set Asides are procurements that are open competitions among Tr'ondëk Hwëch'in businesses only. We will consider the use of Set Asides under the following circumstances:
- a) implementing projects of cultural or heritage importance; or

- b) building Tr'ondëk Hwëch'in business capacity in specific sectors where Tr'ondëk Hwëch'in businesses are underrepresented or have limited capacity.

## **42. Invited Tenders**

- 42.1 Before issuing an invited tender, we will check our business registry for Tr'ondëk Hwëch'in businesses that supply the goods, services or construction required, then:
  - a) If the business registry lists one or more Tr'ondëk Hwëch'in businesses that supply the goods or services, all such listed Tr'ondëk Hwëch'in businesses will be invited to submit a response to the invited tender;
  - b) we can invite a Tr'ondëk Hwëch'in business not listed on the business registry to participate in an invited tender; and
  - c) if we intend to issue invitations to more than 3 vendors, we will endeavour to ensure that at least 50% of the vendors are Tr'ondëk Hwëch'in businesses.

## **43. Project Unbundling**

- 43.1 We shall, where reasonable, make best efforts to structure contracts so that they are of a size manageable by Tr'ondëk Hwëch'in businesses.

## **44. Worker Development Plans**

- 44.1 We seek a measurable increase in the number and quality of employment and training opportunities available to Tr'ondëk Hwëch'in people as a result of our procurement activity.
- 44.2 A procurement has a labour component if the vendor must conduct additional hiring to fulfill the contract.
- 44.3 A procurement that has an estimated labour component of \$50,000 or more and an estimated labour duration of 6 weeks or more, will require a Worker Development Plan for Tr'ondëk Hwëch'in hires as part of the contract requirements. A Worker Development Plan may also be required for a procurement that does not meet this threshold, if required in advance by the tender process.
- 44.4 As part of ongoing human resource development, we will explore options for meeting the objectives of increasing the number and quality of employment and training opportunities for Tr'ondëk Hwëch'in people. The options may include:
  - a) creating and maintaining lists of Tr'ondëk Hwëch'in people seeking employment and training opportunities; and
  - b) avenues for connecting Tr'ondëk Hwëch'in people with training opportunities related to our procurement.

## **45. Procurement Planning and Contract Forecasts**

- 45.1 Sharing capital project plans and forecasting our procurements allows us and Tr'ondëk Hwëch'in businesses to better plan and prepare for maximizing Tr'ondëk Hwëch'in participation.
- 45.2 We will include a list of upcoming anticipated procurements over the value of \$10,000 within our

annual budget. The procurement forecast will be shared annually to Tr'ondëk Hwëch'in businesses by April 30 of each year with an update provided 6 months later. The same information will be shared with all businesses listed in the Tr'ondëk Hwëch'in business registry.

- 45.3 Specifically, we will host a minimum of one open public meeting annually for Tr'ondëk Hwëch'in businesses to:
- a) promote our planned procurements within the next 12 months;
  - b) communicate clearly all our expected future procurement included in any capital project plans; and
  - c) communicate well in advance of project procurement to allow Tr'ondëk Hwëch'in businesses to plan and prepare for the procurement opportunities.

#### **46. Standing Offer Agreement Lists**

- 46.1 Standing Offer Agreement (SOA) lists are subject to this policy.
- 46.2 Annually at an open public meeting for Tr'ondëk Hwëch'in businesses, and prior to commencing any tender process for a Standing Offer Agreement list, we will offer an information session to:
- a) promote awareness and familiarity of our Standing Offer Agreement lists;
  - b) outline our procurement process for a business to be listed;
  - c) identify qualities that contribute to a strong submission;
  - d) outline the call-up method(s); and
  - e) respond to all questions from Tr'ondëk Hwëch'in businesses.
- 46.3 If a Tr'ondëk Hwëch'in business responding to an SOA tender does not qualify for the Standing Offer List, we will offer to meet with the business to review and discuss the submission's deficiencies, identify improvements that could strengthen future submissions, and, where appropriate, highlight business development programs and other resources that could assist with the resolution of deficiencies.

#### **47. Pre-Qualification Source Lists**

- 47.1 We will consider experience working with Tr'ondëk Hwëch'in businesses and people during the pre-qualification stage, including Business Performance scores when they are available. If the business has not been assigned a Business Performance score, businesses will be evaluated on a verifiable description of their previous experiences working with Tr'ondëk Hwëch'in businesses and people. Request For Qualifications documents will encourage bidders to consult the Tr'ondëk Hwëch'in Business Registry when developing a response to a Request For Qualifications.
- 47.2 Following the prequalification stage, Tr'ondëk Hwëch'in participation measures will apply to the second-stage of procurement and for delivery of the commitments.
- 47.3 Annually at an open public meeting for Tr'ondëk Hwëch'in businesses we will offer an information session to:
- a) increase awareness and familiarity of the Request For Qualifications process such as Request For Qualifications tender documents
  - b) identify qualities that contribute to a strong submission; and

c) respond to questions from Tr'ondëk Hwëch'in businesses.

47.4 if a Tr'ondëk Hwëch'in business responding to a Request For Qualifications does not qualify for the next stage of the procurement process, we will offer to meet with the business to review and discuss the submission's deficiencies, identify improvements that could strengthen future submissions, and, where appropriate, highlight business development programs and other resources that could assist with the resolution of deficiencies.

## **48. Contract Enforcement**

48.1 To ensure contract compliance with policy provisions, we may use a range of tools from standardized tender language, contractual obligations, increased monitoring and communication with suppliers, and application of contractual and Business Performance Review Program (BPRP) consequences.

48.2 We will:

- a) integrate the bidder's commitments to Tr'ondëk Hwëch'in participation measures into the contract;
- b) include provisions, as appropriate, for payment holdbacks or other related measures with respect to fulfilling Tr'ondëk Hwëch'in participation measures commitments; and
- c) reference the Business Performance Review Program evaluation in contracts where applicable.

48.3 To reduce non-compliance with contractual obligations related to Tr'ondëk Hwëch'in participation measures, we will engage in the following contract management activities:

- a) regularly monitor the progress toward meeting the Tr'ondëk Hwëch'in participation measures;
- b) engage the business early to resolve any issues with meeting Tr'ondëk Hwëch'in participation measures; and
- c) communicate with businesses on a frequent and consistent basis.

48.4 It is recognized that, from time to time, circumstances beyond the control of the business may affect the performance of the Tr'ondëk Hwëch'in participation measures and we will make best efforts to resolve all disputes to mutual satisfaction without recourse to legal action, However, If we and the business cannot reach agreement on whether or not the business is meeting the Tr'ondëk Hwëch'in participation measures commitments, and/or any satisfactory resolution, the dispute may be resolved as per the terms of the contract.

## **49. Business Performance Review Program**

49.1 The Business Performance Review Program (BPRP) will be established to assess and track whether a business is meeting its commitments related to the objectives of the policy. The BPRP will:

- a) evaluate the performance of a business in meeting its commitments to Tr'ondëk Hwëch'in participation measures for each contract and provide a score which will contribute to its overall Business Performance score;
- b) track the Business Performance score of each business;
- c) inform the incorporation of the Business Performance score into any tender evaluation process; and

- d) enable the debarment of a business from future procurements in the event that the Business Performance score falls below the minimum threshold required by that procurement.

## **50. Monitoring and review**

- 50.1 We will monitor and assess the progress of this policy in meeting its objectives.
- 50.2 We will work to awarding 60% of all contracts, measured by number and value, to Tr'ondëk Hwëch'in businesses.
- 50.3 We will collect, collate and report data and information related to the policy targets and other key performance indicators needed to assess policy effectiveness over time.
- 50.4 To advance accountability and transparency, Council will:
  - a) properly consider all recommendations made to it as part of promoting continuous improvements to the policy's effectiveness and desired outcomes;
  - b) adopt in a timely manner policy improvements to address shortcomings in the policy's effectiveness as part of a focus on continuous improvement; and
  - c) provide a response to each recommendation indicating whether it intends to adopt it, along with a decision-making rationale.

## **51. Reporting**

- 51.1 The Tr'ondëk Hwëch'in Annual Report will include a *Tr'ondëk Hwëch'in Benefits and Regional Economic Development Procurement Report* that will
  - a) monitor, examine, and evaluate the data, review the objectives of the policy, and assess the extent to which policy outcomes have been achieved;
  - b) determine whether policy measures are having identifying unintended consequences;
  - c) identify the outcomes of any specific reviews required by this policy;
  - d) provide advice and recommendations to increase the effectiveness of the policy measures in advancing the policy objectives; and
  - e) provide recommendations on revised targets and key performance indicators.

## APPENDIX A – INSURANCE RISK MANAGEMENT GUIDELINES

The following list of activities is not comprehensive and may be administratively updated, as needed.

1. Low Risk – An activity with no apparent liability risk or liability for Tr'ondëk Hwëch'in. The Director of Finance will likely determine no commercial general liability insurance or professional errors and omissions insurance is needed.
2. Medium Risk – An activity that carries some potential of risk or liability for Tr'ondëk Hwëch'in. The Director of Finance will explore the situation and determine if commercial general liability insurance or professional errors and omissions insurance or both is needed.
3. High Risk – An activity with a high probability of risk or liability being assumed by Tr'ondëk Hwëch'in. The Director of Finance will ask that commercial general liability insurance or professional errors and omissions insurance or both be in place.

### **Low Risk**

Audiovisual media editing  
Audio transcription  
Copy editing  
Event production assistance  
Exhibit design and production  
Feasibility studies  
GIS, cartography, map production  
Graphic design  
Heritage planning consultant  
Interpretation and presentation  
Language sharing  
Meeting documentation  
Musicians or music associations  
Needs assessments  
Performing artist/groups/societies  
Photography  
Presenter (e.g., at conferences)  
Printing  
Recording and transcribing oral histories  
Research  
Sharing stories, culture and teachings (including interviews with elders)  
Translation  
Videography  
Visual and performing artists, companies, associations or groups  
Web design  
Website/social media management  
Workshops arts and crafts

**Medium Risk**

Conceptual design  
Construction of minor projects (e.g., display cases and benches)  
Curators  
Drafting  
Geotechnical drilling or studies  
Janitorial  
Landscaping  
Land planning  
Non-invasive, on-the-land contractors and information gatherers  
Soil sampling  
Teacher/instructor  
Training facilitator (e.g., river rescue, chainsaw, first-aid)  
Tutoring

**High Risk**

Architect  
Boat driver  
Boiler and furnace maintenance and installation  
Building repairs and maintenance  
Construction (except minor projects)  
Contract specifications and tender documents  
Cook (e.g., at remote camps, historic sites, or locally)  
Counselling  
Electrical  
Engineering  
Heavy equipment rental, operation and repair/maintenance  
Information technology outsourcing  
Mentor  
Plumbing  
Project Management  
Self-development workshop providers  
Snow removal  
Vehicle driver  
Vehicle repairs  
Welding