

Report of Procurement Review Panel

Review of the Government of Northwest Territories Procurement Policies

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Message from the Panel

The Procurement Review Panel would like to thank the Government of the Northwest Territories for its commitment to strengthening procurement policies and practices, and for the opportunity to provide input to help shape support for government and the NWT business community at this important juncture.

The Panel would like to thank the many individuals and organizations that took to time to meet and provide their input during our engagement sessions as well as in writing. Several organizations canvassed their membership and documented comments, concerns and suggestions that provided useful insights and views. Many participants had a high degree of familiarity about government procurement and were able to offer constructive observations. It was instrumental to the Panel's work to hear directly about the procurement experiences and ideas offered by NWT, local and Indigenous businesses and members of the public.

The Panel would also like to express their appreciation for the professional and competent support provided by a team from the Departments of Industry, Tourism and Investment, Finance, and Executive and Indigenous Affairs. It was a pleasure to work with such committed members of the public service.

Throughout our work, the Panel has focused on three main considerations:

- The current state of the NWT economy and the opportunity to improve the economic and social impact of procurement;
- The opportunity to modernize procurement tools and practices in GNWT; and
- The opportunity to support the positive participation of Indigenous people and businesses in the NWT economy.

The Panel has worked as quickly as possible to put this report in the hands of government so that consideration of next steps can begin immediately.

Sincerely,

Leslie Anderson

Darrell Beaulieu

Peter Vician

Executive Summary

The findings and 50 recommendations arising from this review provide GNWT with an historic opportunity to establish a solid foundation for the strategic use of procurement and take full control of the opportunities to leverage public contracting to support economic and social objectives. In addition to enabling GNWT to adapt to social and economic factors that have changed since the last substantive review of procurement policies, the recommendations provided in this Report are intended to shape public procurement for many years to come.

In preparing these recommendations, the Panel engaged with a wide range of organizations and individuals through many hours of discussions across the Territory over the last five months that provided the opportunity for every interested stakeholder to have their say. The input received from businesses and individuals that have experience working with government, as well as from public sector employees with procurement expertise, has played an essential role in identifying opportunities for improvements.

The Panel was charged with undertaking an independent review of GNWT procurement policies and practices to identify opportunities for improvement. The Panel was asked to pay particular attention to identifying ways to keep more contracting dollars in the north. Some participants in the engagement process expressed concern that using procurement to support the NWT economy means paying inflated prices and establishing protectionist practices that can lead to sub-standard suppliers and retaliation from other jurisdictions. The Panel's recommendations, however, chart a clear path forward that strives to avoid those issues and is consistent with the increasing use of procurement around the world to support strategic objectives in the public sector.

GNWT procurement is a key economic activity in the Territory, representing more than 15% of GDP. Over the last 5 years, the average annual value of contracts awarded is \$550M. Currently, businesses located within the Northwest Territories are receiving about 75% of the total number of contracts issued by GNWT annually, and about 51% of the value. If adjustments in procurement policies and processes can be made that enable even 1% more of that annual procurement spending to be directed to NWT-based firms, it would result in the creation of an additional 19.8 Full Time Equivalent jobs and \$7.7M in revenues for NWT businesses.

The Report is divided into four main sections (Key Context, Considerations Supporting Indigenous Participation in Procurement, Foundations, and Current Policy) and the recommendations made there have been grouped into four themes:

1. Establish a strategic approach to procurement;
2. Increase procurement opportunities and impact for NWT residents and businesses;
3. Make it easier to do business with GNWT; and
4. Create greater capacity to support effective and strategic procurement.

Establish a strategic approach to procurement

A key and overarching recommendation is for GNWT to establish a strategic approach to procurement. The current procurement framework is fragmented in terms of policy objectives, governance and organizational design. Creating a coherent and co-ordinated framework is important for ensuring efficiency in the overall conduct of procurement, but it is critical when procurement is intended to be used to support government's strategic objectives.

The Review identified opportunities to adopt new procurement approaches and take advantage of flexibility under the current trade agreements. However, taking full advantage of these opportunities requires having a co-ordinated plan, resources, and leadership in place. Establishing a strategic approach means having clear and consistent policy, objectives and principles supported by specific strategies designed to meet these objectives along with measures to see if they are working.

We are recommending that GNWT establish a strategic procurement plan that identifies procurement objectives and uses a logic model approach to align strategies, resources, outputs, intended outcomes and performance measures and targets. Currently, the absence of such a plan as well as the absence of data and analysis of current procurement spending and its impact are significant barriers to designing procurement to maximize economic benefits.

Establishing a strategic approach also means establishing a co-ordinated organizational structure with appropriate executive support. We are recommending that overall responsibility for procurement policy, including responsibility for development and management of procurement as a strategic tool, be consolidated into one area. This consolidation, coupled with the assignment of a senior responsible executive leader, will help lead the transformation of procurement from a clerical function into one that has the capacity to effectively leverage public spending to achieve government's objectives.

The focus today is on establishing a coherent and integrated procurement framework that will maximize support for the post-pandemic recovery and growth of the NWT economy. Once the foundation of such a framework is in place, it can also be used to support other government objectives if desired, such as mitigating the effects of climate change and advancing reconciliation with Indigenous peoples.

Increase procurement opportunities and impact for NWT residents and businesses

Government procurement has a high strategic value in the NWT economy. In addition to helping government deliver important goods and services to NWT residents, NWT-based suppliers provide good paying jobs and other indirect benefits to communities. Creating more opportunities for local, NWT and Indigenous suppliers is good for government, communities and businesses.

By planning procurement strategically, government can maximize opportunities for local, NWT and Indigenous suppliers. This might include aggregating demand for some contracts, right-sizing contracts and adopting outcome-based specifications to remove unnecessary barriers to competition.

Achieving best value means realizing social, economic and environmental benefits where opportunities exist. Value for money in public procurement will remain focused on securing from suppliers the best mix of quality and effectiveness to deliver contract requirements with the best return on investment. As we heard frequently throughout our engagements, this does not mean requiring contracting authorities to

select the lowest price bid. In setting the procurement strategy, drafting the contract terms and evaluating tenders, contracting authorities can and should take a broad view of value for money that takes social and economic value into account. This includes using evaluation criteria that recognize the importance of northern knowledge, experience and content.

During our engagement with stakeholders, there were three messages consistently delivered about GNWT's policies for supporting NWT-based businesses through procurement:

- The higher cost of doing business in NWT is a significant barrier for firms located in the Territory when competing against outside suppliers (in particular for businesses located in regions of the Territory that are more difficult or costly to access);
- Defining an NWT-business should focus more on whether the business employs NWT residents and less on who owns the business; and
- The current limits on the bid adjustments provided under the Business Incentive Policy render the policy ineffective on bids over \$1M.

GNWT's efforts to support local businesses through procurement is largely anchored in its Business Incentive Policy (BIP), which has approximately 1,200 businesses currently registered from across the Territory. Our review of procurement data indicates that although BIP-registered businesses have received a fairly consistent share of the overall number of contracts (averaging 65% annually), they have been receiving a decreasing proportion of the total value of contract expenditures (averaging 39% of expenditures over the past five years, compared to 64% during the preceding four years). In addition, less than 1% of contracts awarded annually since 2016-2017 have been impacted by the application of a BIP bid adjustment, which is a significant reduction from the previous five years when the average was 2.7%.

The Panel is recommending a series of amendments to BIP rates and eligibility requirements to respond to these issues and to create additional incentives for the use of NWT, local and Indigenous businesses and labour. Maximizing employment opportunities for NWT residents was highlighted through both the Panel's engagement and research as a key mechanism to improve the return on investment from government spending. Employing NWT residents is understood to trigger significant multiplier benefits (for example through the spending undertaken by employees on goods and services, and through the income and corporate taxes that flow back to GNWT) and participants repeatedly emphasized that encouraging the use of NWT resident labour should be the BIP's highest priority. The proposed bid adjustment amendments will result in modest increases in the rate of preferences that may be provided for local and NWT businesses for the vast majority of contracts. The Panel is also proposing a new bid adjustment for businesses located in the three highest-cost regions of NWT to improve their competitiveness in bidding on government contracts, increases to the rates and cap applied to larger contracts, and increased recognition for the employment of NWT and local residents. Several illustrations of how these new rates would affect different bid scenarios are provided in the BIP section on Rates and Caps.

In addition, we are recommending expanding the tools that may be used to engage local, NWT and Indigenous businesses in procurement. For example, we recommend GNWT develop a strategy to use competitions that are limited to NWT, local or Indigenous suppliers when they can be expected to achieve an appropriate value for money outcome. Similarly, we also recommend that GNWT establish

procedures to clarify and expand how negotiated contracts could be used to take advantage of the exceptions and exemptions available under the current trade agreements.

Make it easier to do business with GNWT

Getting best value for taxpayers' money requires that good suppliers are willing to do business with government. We heard that the challenges of finding and responding to government contract opportunities make it difficult for many small businesses to participate in public procurement. Purchasing processes can be time consuming and complex, and there are a variety of factors that can prevent businesses from submitting bids (such as how much time is provided to respond, and whether financing or partners need to be found). We also heard that suppliers are often frustrated when trying to obtain feedback about unsuccessful bids, or responses to complaints and inquiries. Some participants in the engagement process felt that competitions were not always conducted fairly which, coupled with a lack of information about planned procurements and the rationale for decision making, leads to an erosion of trust that procurement is managed with integrity and fairness.

The Panel did not encounter any evidence that procurement processes are not managed with fairness and integrity but recognizes that good communication and information sharing about procurement policies, processes and outcomes is key to effective relationships between buyers and suppliers. The Report contains recommendations aimed at improving information sharing and helping suppliers navigate the procurement system and resolve disputes. There are also recommendations aimed at reducing the administrative burden for GNWT staff to enable their time to be more constructively spent on higher value activities.

In addition, the Report contains recommendations to streamline existing rules and oversight to reduce complexity and confusion for suppliers and contracting authorities. We are proposing replacing the 30 policies and interpretive bulletins that currently govern procurement with a single unified framework. This will make the system more streamlined and consistent and increase emphasis on the key principles of transparency, integrity, and value for money while still upholding fair and open competition.

Create greater capacity to support effective and strategic procurement

An efficient and effective procurement system depends on attracting and maintaining talented and committed staff to deliver both the corporate oversight and operational aspects of contracting. The greatest internal sources of knowledge and expertise about government needs and procurement are the many GNWT staff who regularly undertake and support procurement activities. The Panel recommends that GNWT assess whether additional roles and resources are required to support the proposed strategic procurement functions, and develop and implement training and transition plans to put those skills and positions in place. Ensuring GNWT has the required capacity to deliver strategic procurement is not only key to maximizing the value for money obtained through procurement, it will have positive impacts on transparency, accountability, program effectiveness, staff morale, and public trust.

Maintaining the integrity of the procurement system also includes ensuring there is confidence that suppliers meet their commitments, and that government has the resources to support and ensure compliance. The Panel heard repeated concerns that some suppliers are taking advantage of the fact that some requirements or commitments made in bids are difficult to enforce. We encourage GNWT to complete the design and implementation of a Vendor Performance Management program and are

recommending that clear authority be established to enable the use of penalties and incentives as part of the program. This includes establishing procedures that enable actions to be taken that are commensurate with the scope and frequency of vendor failures to meet those commitments, including potentially both financial penalties and being barred from bidding on future requirements for a period of time.

Moving Forward

Faced with changing economic circumstances arising from COVID-19 and transitions in mining activity, GNWT has signaled its commitment to refreshing its procurement policies and practices to support its ability to respond to the changing environment and maximize benefits for NWT residents.

In addition, the continued strengthening of Indigenous governments and organizations coupled with the increased commitment to reconciliation and the ongoing growth in Indigenous businesses are creating new opportunities for business and partnership initiatives. The Panel heard consistent and widespread support for the idea of developing strategies to support increased participation of Indigenous businesses and governments in GNWT contracting. The Panel heard that ensuring a constructive and respectful approach to discussions with Indigenous governments will be key to establishing meaningful strategies or policies to support Indigenous participation in procurement. The Panel recommends that government-to-government dialogues be undertaken to collaboratively develop and implement an approach to advance Indigenous participation in procurement and to identify opportunities to maximize the benefits from procurement for Indigenous people and businesses within NWT.

The recommendations made in this Report are wide-ranging and, in many cases, inter-connected. Some recommendations could be implemented quickly, and others will take time to bring into full effect. Taken together, we are confident these changes will lead GNWT to more effective and efficient procurement that delivers greater economic and social value to NWT residents. We encourage GNWT to develop and share with suppliers a plan to respond to the recommendations made in this Report.

A summary of the recommendations made in the Report is provided below.

Summary of Recommendations

A summary version of the recommendations made in the report is provided below. The detailed recommendations appear at end of each of the relevant sections. The recommendations are highlighted by different colours to indicate the theme they connect most closely to, according to the following key:

Establish strategic approach to procurement and align policy, processes and resources.

Increase procurement opportunities and impact for NWT residents and businesses.

Make it easier to do business with GNWT.

Create greater capacity to support effective and strategic procurement.

Recommendations re: Procurement Principles and Objectives

1. Establish common objectives and principles that will apply to all procurement.
2. Consolidate existing procurement policies and ensure they are internally consistent and coherent.
3. Incorporate the desired use of procurement for strategic purposes into procurement objectives.

Recommendations re: Using Procurement to Support Strategic Objectives

The Panel recommends that:

1. GNWT assign responsibility and resources to develop a strategic procurement plan.
2. GNWT move quickly to implement simple steps to improve the impact of procurement for local, NWT and Indigenous businesses, such as:
 - Including local knowledge, experience, employment and training in the evaluation criteria; and
 - Developing strategies and procedures for the use of exemptions and exceptions available under the various trade agreements.
3. GNWT augment the processes available to suppliers to support resolution of complaints and concerns.

Recommendations re: Governance and Organization

The Panel recommends that:

1. Overall responsibility for procurement policy, including responsibility for development and management of procurement as a strategic tool, be consolidated into one area.
2. There is a clear assignment of a senior executive responsible for oversight of strategic functions and procurement transformation.
3. The responsibility and accountability for core and strategic procurement functions be assigned to ensure there are no gaps and that any distribution of roles between corporate and line operations is clear.
4. The skills and positions required to support strategic procurement functions are identified and assessed, and training and transition plans are developed and implemented to put those skills and positions in place.
5. GNWT assess whether additional positions are required to support the procurement function to address shortfalls in current services as well as new expectations for strategic oversight and support.

Recommendations On the Business Incentive Policy

A: BIP Purpose

1. The Panel recommends the BIP focus on two key objectives:
 - Offset the higher cost of doing business incurred by NWT and local businesses bidding on government contracts, and
 - Maximize the benefits arising from procurement for NWT residents.

B: BIP Mechanisms

The Panel recommends that:

1. The Government Contracts Regulation and either BIP or a consolidated purchasing policy be amended to clearly enable the use of “set asides” and limited competitions for contracts up to trade agreement thresholds.
2. GNWT establish criteria and procedures for the use of limited competitions and, as part of the spend analysis actions recommended earlier, identify potential procurements that would provide the best return on investment through limited competitions.

3. GNWT establish an evaluation framework for the BIP and:

- Evaluate the effectiveness of bid adjustments on the current success rate of BIP-registered companies in obtaining government contracts (both as prime and sub-contractors).
- Identify and set targets for the percentage of contracts or contract spending to be awarded to NWT and local businesses, potentially as a government-wide measure to begin with and as data and experience grows, by department.
- Report annually on progress towards these targets and the success rates of BIP-registered companies.

C: **BIP Eligibility**

The Panel recommends that:

1. For the purposes of eligibility for the BIP, a NWT business is one that:

a) Meets all the following criteria:

- Maintains a place of business year-round in the NWT with a physical address for the primary purpose of operating the business*;
- Is subject to the NWT Income Tax Act; and
- If a corporation, is registered under the Business Corporations Act (NWT or Canada) or Co-operatives Association Act (NWT), and holds a current business licence issued by a NWT municipal corporation of the GNWT.

b) Meets at least one of the following two criteria:

- is at least 51% owned by NWT residents;
 - if a partnership, is majority owned by NWT residents or one or more entities that meet all of the criteria in part (a),
 - if a sole proprietor, the sole proprietor is an NWT resident, or
- has NWT residents as the majority of employees conducting its operations within NWT, and has a resident manager overseeing its NWT operations.

** this may be a portion of a residential space*

2. The definition of NWT resident be changed to: an individual who is normally resident in the Northwest Territories and when requested can provide documentation supporting residency, such as a valid NWT Healthcare card or NWT driver's licence or other such identification that is deemed acceptable.
3. Schedule 3 be eliminated once all currently listed firms have been advised of requirements to establish eligibility under the new definition and have had a reasonable amount of time to make that transition.

D: BIP Rates and Cap

The Panel recommends that:

1. The BIP bid adjustments remain at their current rates (15% NWT and 5% Local):
 - For clarity, no change is proposed to the definitions of NWT or Local content.
2. A new threshold of \$2M be established for the application of the 15% NWT and 5% local adjustments (increased from the current threshold of \$1M).
3. In procurements that contain a labour component, labour will be scored separately from goods and services and the provision of NWT and local labour will each be adjusted by a further 5% on the first \$2M. For clarity, the 15% and 5% Local adjustments are applied on the total value of NWT and Local content (including Labour) up to \$2M, and an additional 5% NWT Labour and an additional 5% Local labour adjustment are applied to the labour component of a bid up to \$2M.
4. A new category of “Cost of Living Offset” be established for BIP-registered businesses located in the Sahtu, Dehcho and Beaufort Delta regions that applies an additional 5% on all bids on contracts valued below \$1M for goods, services and labour provided by businesses located in those regions (irrespective of where the work will take place or whether the business is a prime or sub-contractor).
5. The total cumulative bid adjustments will not exceed 25%:
 - For reference, this would enable maximum bid adjustments of:
 - \$250,000 on a \$1M bid, and
 - \$1,500,000 on a \$23M bid (compared to the current \$500,000).
6. The BIP adjustments above \$2M be revised to: 2% NWT and 2% local.
7. A BIP cap remain in place, but be increased to \$1,500,000.
8. The BIP be integrated into a consolidated purchasing policy, and that the application of bid adjustments to RFPs be clarified and consistent with the application to tenders.
9. That any adjustments to the current BIP rates and cap only be made once:
 - a. An evaluation framework and benchmark measures are in place to assess whether new bid adjustments are making the desired contribution to the objectives of increasing participation of NWT-based businesses and increasing the success rate of BIP-registered firms, and encouraging increased use of NWT-resident labour and subcontractors; and
 - b. There has been adequate communications, outreach and training provided to contracting authorities and the supplier community to support implementation of the new rate structure.

E: BIP Administration

The Panel recommends that GNWT:

1. Establish the appropriate authority in policy to enable the use of penalties and incentives in vendor performance management, including potentially both financial penalties and bidder disbarment.
2. Increase enforceability of BIP commitments by:
 - Proceeding with the implementation of the planned Vendor Performance Management program and establishing procedures to enable an appropriate range of actions to be taken that are commensurate with the scope and frequency of vendor failures to meet those commitments. GNWT could also consider the use of incentives to support contractors that exceed their BIP commitments.
 - Clarifying roles and responsibilities among GNWT staff with respect to carrying out all aspects of contract monitoring and supporting compliance.
3. Add a requirement to the BIP substantiation sheet for proponents claiming BIP registration to certify that their business continues to meet the eligibility criteria and acknowledging that knowingly submitting false information could lead to a period of disbarment from bidding on GNWT contracts.
4. Develop and implement processes to reduce the need for large scale re-registration efforts, including establishing that BIP-registered businesses have a responsibility to ensure the BIP office is provided accurate and current information pertaining to eligibility, and adopting the use of spot audits. Vendors that neglect to provide accurate information, when it would result in loss of BIP eligibility, may be subject to a period of disbarment from GNWT contracts.
5. The Regional Qualifications Committees provide written confirmation of the criteria met and not met by a business seeking registration that are shared with the BIP Monitoring Office and the applicant.
6. The BIP Monitoring Office establish service targets for turn-around times for eligibility decisions.
7. Ensure adequate training and guidance are provided to contract authorities to understand the spirit, intent and importance of supporting NWT, local and Indigenous businesses through procurement, and to effectively administer bid adjustments.

Recommendations re: Northern Manufactured Products Policy

The Panel recommends that:

1. GNWT continue to develop and expand the category management approach for manufactured goods, as outlined in the “Approaches to Strategic Procurement” section of the report.
2. GNWT place a high priority on implementing the actions already identified in the Manufacturing Strategy, including potentially revising the NMPP to use a bid adjustment approach and establishing a “pathfinder” role to support the planning and communication of procurement opportunities that can engage the NWT manufacturing sector.
3. The NMPP be integrated into a consolidated purchasing policy.

Recommendations re: Negotiated Contracts

The Panel recommends that:

1. The Negotiated Contracts Policy be incorporated into a consolidated purchasing policy.
2. The Negotiated Contracts Policy be revised to:
 - a) Enable and encourage identification of potential negotiated contract initiatives by GNWT staff (as well as by proponents) as early in the planning process as possible; and
 - b) Remove the strict requirement to consider whether MLAs and local governments support a proposed contract.
3. GNWT establish procedures to determine when and how negotiated contracts could be used to take advantage of the exceptions and exemptions available under the current trade agreements.
4. GNWT provide training and clear procedures to GNWT staff to ensure awareness of the policy’s objectives and of how to identify and assess potential negotiated contract initiatives.
5. GNWT develop and publicize clear guidance concerning how proposals for negotiated contracts can be provided to GNWT by contractors or Indigenous governments and businesses, including the required content of these proposals.
6. GNWT produce and make available regular reports on the outcomes and benefits achieved through negotiated contracts.

Recommendations re: Public Private Partnerships (P3s)

The Panel recommends that:

1. The P3 Policy be incorporated into a consolidated Purchasing Policy for GNWT.
2. The P3 Policy's objectives include the intention to consider the opportunity to engage with Indigenous governments on each P3.
3. GNWT review the P3 Management Framework to clarify responsibility for monitoring and managing compliance with subcontracting and local labour provisions in P3 agreements.
4. The value for money assessment reports and regular updates on progress, milestones and benefits achieved be made available on the Department of Finance's P3 website.

Recommendations Re: Increasing Indigenous Participation in Procurement

The Panel recommends that:

1. Government – to – government dialogues are undertaken to collaboratively develop and implement an approach to advance Indigenous participation in procurement and to identify opportunities to maximize the benefits from procurement for Indigenous people and businesses within NWT.
 - The Panel encourages consideration of the approach used in Yukon for the development of the Yukon Government's First Nations Procurement Policy.
2. GNWT develop a data collection plan and begin collecting and analyzing data concerning the participation of Indigenous businesses in procurement.
3. As an interim measure while government-to-government dialogue concerning Indigenous procurement is underway, GNWT consider increased sharing of procurement plans with Indigenous governments to identify potential opportunities for Indigenous participation, including the use of negotiated contracts.

1. Introduction

1.1 Why Procurement Matters

Public procurement is a critical part of delivering government services and in many jurisdictions is a strategic tool for achieving key policy objectives. Around the world, public procurement is used to support objectives such as innovation, environmental protection, job-creation, and the development of small businesses, sustainability, and socially responsible supply chains.

The sheer size of public procurement makes it a key economic activity. GNWT's procurement spending represented more than 30% of its total budget in 2019-20¹, and more than 15% of the GDP in the Northwest Territories². Over the last 5 years, the average annual value of contracts awarded is \$550M. Currently, businesses located within the Northwest Territories are receiving about 75% of the total number of contracts issued by GNWT annually, and about 51% of the value. If adjustments in procurement policies and processes can be made that enable even 1% more of that annual procurement spending to be directed to NWT-based firms, it would result in the creation of an additional 19.8 full time equivalent jobs and \$7.7M in revenues for NWT businesses.

Procurement can also have significant impacts on individual businesses and sectors of the economy. In some industries within NWT, the Territorial government is the largest purchaser of goods and services and, as the Panel heard through its engagement, "the influence of [GNWT's] procurement practices can be enormous in influencing the success or failure of any given businesses."

Good governance of public procurement plays a major role in fostering efficiency in the public sector and citizen's trust in government institutions. It also enables governments to effectively ensure procurement obtains best value for taxpayer money while supporting any broader policy objectives.

1.2 Why Do This Now

The Procurement Review was launched in part because it has been over ten years since GNWT's procurement policies were reviewed, and it is simply time to consider whether revisions should be made. There have been changes in government practices as well as in the NWT and global economies over the course of those 10 years that may impact how procurement policies and practices should be designed and implemented.

The focus on public procurement is often more pronounced during times of economic uncertainty or downturn and NWT's economy is in a period of transition. One obvious consideration is the impact of COVID-19, which is continuing to put pressure on government spending and create uncertainty for residents, communities, and the public and private sectors. Economic activity connected to diamond mining is expected to decline over the foreseeable future, resulting in reduced employment, and the labour force is

1. See the Data section in the report for additional information.
2. NWT GDP for 2019 was \$4,376M ((Source: [GDP - Economy | NWT Bureau of Statistics \(statsnwt.ca\)](#)) and GNWT procurement in 2019-20 was \$681M (Source: [3730 - gnwt finance - contracts infographic final web.pdf \(gov.nt.ca\)](#))

expected to shrink due to low population growth and retirements among current workers³. There will be opportunities that arise from this economic turbulence, and it is important for governments to develop clear plans to leverage their spending power to support those opportunities and mitigate any negative impacts.

There are other important changes in the NWT economic context that also make it relevant to review public procurement policies and practices now. The devolution to GNWT of legislative authority, programs and budgets related to public land and resource management from the Government of Canada marked an important step in the political and economic development of the NWT, and increased the scope of GNWT procurement. In addition, the continued strengthening of Indigenous governments and organizations coupled with the increased commitment to reconciliation and the ongoing growth in Indigenous businesses are creating new opportunities for business and partnership initiatives. Increased awareness of the need to reduce carbon emissions and mitigate climate change are also influencing public and private spending within NWT and across Canada and the world.

Lastly, there have been changes within public procurement over the past 10 years, as well as GNWT's capacity to manage policies and programs. Procurement is becoming increasingly complex, with new procurement and contract tools, new trade agreement commitments, and new technological developments to support procurement design and management. In addition, GNWT staff have gained experience in co-ordinating and managing procurement, and in developing skills in strategic planning and performance measurement.

These factors all suggest that it is a sensible time to refresh the GNWT's procurement policies and practices to ensure it is positioned as well as possible to support government's ability to respond to the changing environment and maximize benefits for NWT residents.

1.3 Purpose of the Review

Background

The Procurement Review Panel was formed in December, 2020 in response to the priorities established by the 19th Legislative Assembly, noting that the GNWT 2019-2023 Mandate commits to:

Strengthen GNWT procurement policy and practices (by) working with NWT businesses to identify recommendations to strengthen GNWT procurement policies and practices, including the Business Incentive Policy (BIP), P3 projects, and the Northern Manufactured Products Policy (NMPP).

The Panel was designed to include three particular roles: a public procurement expert (Leslie Anderson), an NWT-based facilitator (Peter Vician), and an Indigenous business leader (Darrell Beaulieu) (short biographies are provided in Appendix 1).

GNWT prepared a [discussion paper](#) in advance of the review, and provided a project team comprised of staff from the Departments of Finance, Executive, and Industry, Tourism and Investment to support the Panel's work.

3. Conference Board of Canada (2020) Territorial Snapshot [Northwest Territories \(conferenceboard.ca\)](https://www.conferenceboard.ca/northwest-territories)

Objectives of the Review

The objective given to the Panel was to undertake an independent review of GNWT Procurement Policy, focusing on procurement policy advice and recommendations but also including advice on procurement processes, procurement reporting, and needed efforts in building awareness of GNWT contracting opportunities. The panel was asked by the Minister of Finance and ITI to meet with Indigenous representatives and organizations, industry and business communities; as well as residents to discuss GNWT's policies and practices when it comes to public procurement and then identify ways in which they can be improved.

Central themes identified for the review were:

- Defining what constitutes a 'Northwest Territories (NWT) business' that qualifies for bid adjustments through the Business Incentive Program;
- Identifying opportunities to keep more dollars in the north in a manner that complies with trade agreements; and
- Identifying opportunities to continue to support Indigenous governments and businesses.

The Panel was also asked to consider growing the economy, cost of living and ensuring costs are managed to ensure future projects are affordable. The Panel's complete terms of reference are included as Appendix 2.

Two topics arose during the course of the review that warrant comment but are not incorporated into the Report as they are outside the scope of the Panel's work. First, several participants suggested that GNWT should consider using procurement to advance contractor safety (for example by requiring contractors to hold a safety certification in order to submit a bid). Second, it was suggested that lease agreements, which historically have been managed outside of government procurement policies in most jurisdictions, should be incorporated under GNWT's broader procurement policies. The Panel believes there is merit in examining both of these topics.

1.4 Research and Engagement

The Panel held a total of 32 external engagement sessions and met with 103 participants during the course of the review. In addition to four organized public engagement sessions, the Panel held 13 sessions with business or industry organizations, 10 sessions with Indigenous business representatives, and additionally over 35 briefings with public sector staff including GNWT, Yukon, Nunavut and Federal officials. Due to restrictions imposed by the COVID-19 pandemic, all engagements were conducted online. In addition, the Panel received written input from 11 individuals and organizations, as well as comments through an on-line discussion page hosted by GNWT.

The Panel undertook targeted research when necessary or useful to identify the procurement policies and practices used in other jurisdictions or highlighted as best practices.

2. Key Context

There are two key background topics that have significantly influenced the Panel's work and recommendations: the data available to describe and assess procurement activity, and the constraints and opportunities arising from the trade agreements to which GNWT is a signatory.

These two topics are explored in the sections below and are intended to provide reference material and context for the following sections of the report. The Panel draws some conclusions concerning data and trade agreements that inform the thoughts and recommendations provided in the remainder of the report.

2.1 Review of Procurement Data

Key Points:

GNWT has spent between 17% to 55% of its annual budget through procurement over the last 5 years.

The majority of contracts (both in terms of number and value) are issued through a competitive process (ranging between 56% to 93% of expenditures, and 70% to 75% of volume):

- The highest number of contracts issued annually are consistently for services, with an average of approximately 60% of total contracts.

A significant proportion of GNWT's contracts are awarded to NWT-based businesses:

- NWT firms (including BIP-registered businesses) were awarded approximately 75% of all GNWT contracts over the last nine years;
- In terms of value, NWT-based firms were awarded 51% of total contract expenditures over this period, valued at approximately \$2.2 billion;
- Over the past three years, NWT and BIP firms have obtained:
 - 69% of goods contracts and 34% of goods expenditures;
 - 66% of services contracts and 51% of services expenditures; and
 - 80% of construction contracts and 40% of construction expenditures.

Contracts awarded through a competitive process account for the greatest amount of contract spending annually, although there is a significant variation from year to year, ranging from between 66 to 93% of annual contract expenditures.

- The use of negotiated contracts has diminished in recent years.
- A greater proportion of direct award contracts are granted to outside firms, and those contracts are on average of higher value than those awarded to GNWT businesses.

BIP businesses have received a fairly consistent share of the overall number of contracts (averaging 65% annually) but have been receiving a decreasing proportion of the total value of contract expenditures.

- Over the past five years, BIP businesses have received an average of 39% of total contract expenditures, whereas during the preceding four years, that figure was almost 64%.
- Although Schedule 3 companies represent about 5% of the total number of BIP registered firms, they have received on average 17% of the value of all contracts awarded to BIP companies since 2011-2012.
- Less than 1% of contracts awarded annually since 2016-17 have been impacted by the application of a BIP bid adjustment; this is a significant reduction from the previous five years when the average was 2.7%.

Compared with the Government of Nunavut's NNI policy, BIP is impacting significantly fewer contracts, both in terms of contract numbers and their value.

There are some significant shortcomings with the data available, including the absence of information about subcontracting, that seriously affect the ability to determine the impact of procurement on the local economy.

2.1.1 NWT Data

The Panel analyzed summary procurement data that was provided by GNWT for the years 2011-2012 to 2019-2020. There is more detailed information available on the Department of Finance's website for the years 2017-2018, 2018-2019 and 2019-2020, which includes a listing of each the contracts issued and descriptive information such as their value, the supplier's name, their location, and the contracting Department. In addition, the Panel was provided some data concerning awards impacted by BIP and contracts issued under the NMPP. The data reviewed in this report focuses on the information available for the last five years and introduces additional data where a longer-term analysis of trends was considered.

2.1.1.1 Overview of the Basic Data

The data provides an overview of GNWT's contracting activity and indicates that over the past five years (2015-2016 – 2019-2020) over 7,000 contracts have been awarded worth a total value of \$2.7 billion dollars. On average, GNWT spends over a quarter of its budget each year through procurement; issuing over 1,400 contracts valued at over \$300M (years with significant infrastructure investments range between \$670M and \$1 billion) (see [Table 1](#)).

Note that since 2016-2017, the contract reports have captured contracts valued at \$25,000 or greater, whereas prior to that date the reports captured contracts valued at \$5,000 or greater.

Table 1: Number and Value of Annual GNWT Contracts and Budgets

Year	# Contracts	Contract Value (\$000)	GNWT Total Budget (\$000)*	Contracts as % of Total Budget
2015-2016	2,228	1,065,653	1,925,432	55.3
2016-2017	1,129	347,064	1,982,482	17.5
2017-2018	1,045	325,951	1,922,649	17.0
2018-2019	1,501	348,840	1,950,075	17.9
2019-2020	1,356	679,163	2,126,776	31.9
Total over 5 years	7,259	2,766,671	9,907,414	--
Average over 5 years	1,451.8	553,334.2	1,981,482.8	27.9

Note: * sum of the Main Estimates and Capital Estimates for each fiscal year

The data identifies how the contracts were awarded (e.g., through a sole source or negotiated contract, by a competitive process such as a tender or RFP, or by using an already established supply arrangement) (see [Table 2](#)), and indicates:

- The majority of contracts are issued through a tender process (averaging around 40% annually) followed by sole source contracts (26%). Contracts awarded as the result of a request for proposals or through standing offer arrangements each accounted for approximately 14% to 18% annually.
- Contracts awarded through a competitive process account for the greatest amount of contract spending annually, although there is a significant variation from year to year, ranging from between 56% to 93% of annual contract expenditures.
 - Direct award contracts account for almost 43% of procurement expenditures in 2018-2019, and 7% in 2019-2020.
- Use of negotiated contracts has diminished in recent years. With the exception of one year (2016-2017), there has been a steady decline in both the number and value of negotiated contracts since 2011-2012 (see [Table 3](#)). The Panel is not aware of any specific decisions or circumstances that have influenced this trend.

Table 2: Annual Contract Numbers and Value By Procurement Method, 2015-2016 to 2019-2020

Year	Sole Source		Tender		RFP		Negotiated		Other*	
	#	\$000	#	\$000	#	\$000	#	\$000	#	\$000
2015-2016	588	43,292	906	136,385	206	839,010	14	26,173	514	20,792
2016-2017	301	58,135	481	165,469	196	70,022	26	40,836	125	12,602
2017-2018	261	81,190	448	105,070	183	124,726	6	781	147	14,184
2018-2019	425	149,670	606	124,094	235	55,273	12	3,782	223	16,021
2019-2020	333	48,819	502	119,428	212	494,720	1	288	308	15,907
Total over 5 years	1,908	381,106	2,943	650,446	1,032	1,583,751	59	71,860	1,317	79,506
Annual Average	382	76,221	589	130,089	206	316,750	12	14,372	263	15,901

Note: * includes procurement to establish or using a supply arrangement

Table 3: Number and Value of Negotiated Contract (NC) Awards, 2011-2012 to 2019-2020*

Year	# NCs	Value of NCs (\$000)	# of NCs as % Total # of Contracts (%)	Value of NCs as % Total Value of Contracts (%)
2011-2012	47	46,131	2.1	17
2012-2013	38	62,118	1.8	19
2013-2014	34	309,767	1.3	49
2014-2015	21	11,940	0.8	3.3
2015-2016	14	26,173	0.6	2.5
2016-2017	26	40,836	2.3	12
2017-2018	6	781	0.5	2.4
2018-2019	12	3,782	0.8	1
2019-2020	1	288	--	--

Note: * data is from the Government Contracts Report, reflecting fiscal year activity (NC Report is based on a calendar year)

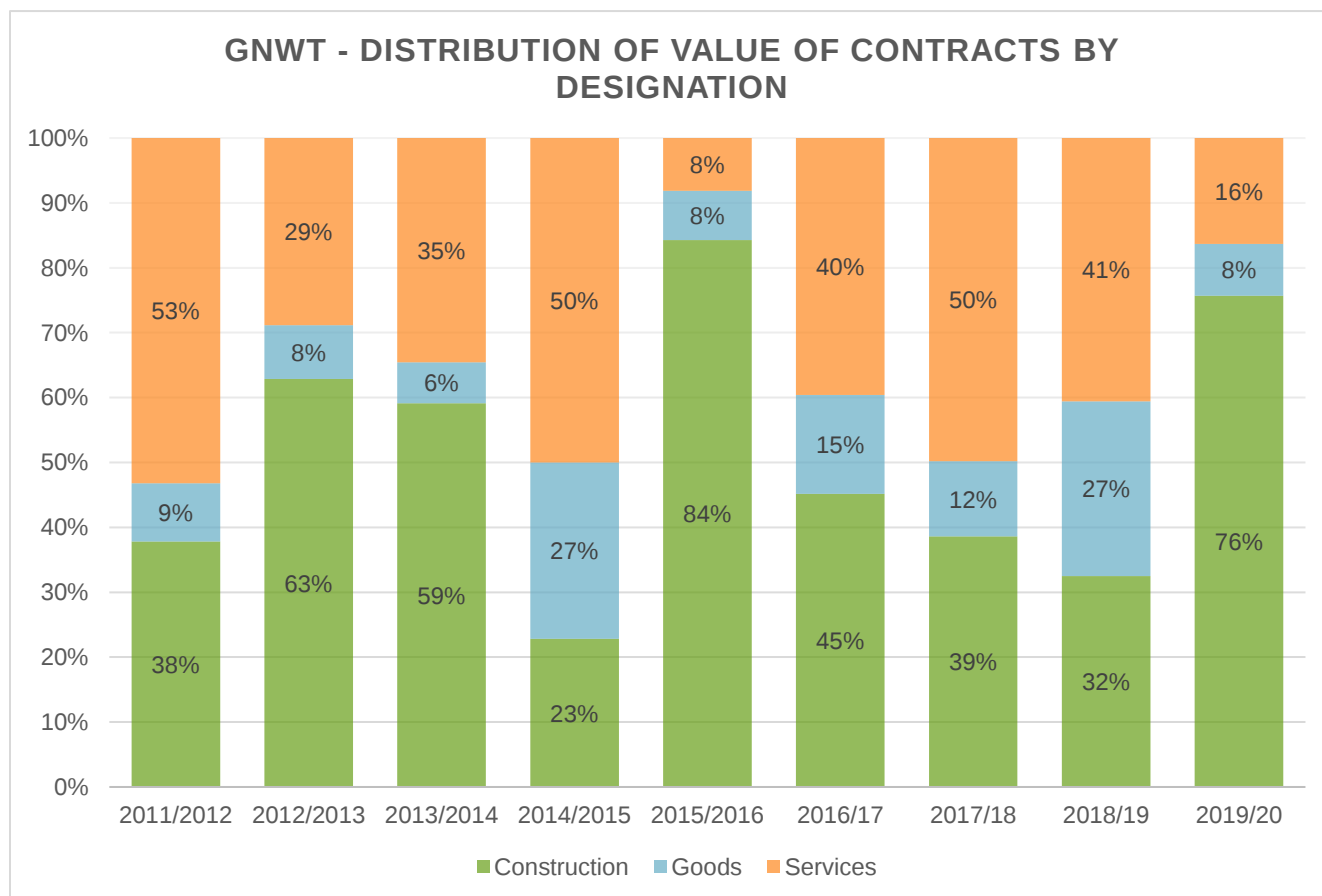
The data also identifies whether contracts were for goods, services or construction (see [Table 4](#) and [Figure 1](#)) and indicates:

- The highest number of contracts issued annually are consistently for services, with an average of approximately 60% of total contracts.
- The highest value of procurement tends to be for construction projects, representing 65% of expenditures over the last five years, although in some years expenditures on services are higher.
- Other than in 2015-2016, contracts for goods make up the smallest proportion of procurement in terms of both numbers of contracts and their value. On average, goods contracts represent about 20% of the total number of contracts issued and 12% of the value.
 - Note: The data for goods, services and construction may have been impacted differently by the changes in contract recording and reporting that began in 2016-2017; if greater numbers of purchases of one type are typically for a lower dollar value, a more significant proportion of the data for that contract type will not be reflected in the figures after 2015-16.

Table 4: Number and Value of Contracts for Goods, Services and Construction

Year	Goods		Services		Construction	
	#	\$	#	\$	#	\$
2015-2016	607	81,258	1299	86,519	322	897,876
2016-2017	223	52,848	586	137,470	320	156,746
2017-2018	226	37,739	589	162,332	230	125,879
2018-2019	230	93,947	987	141,577	284	113,316
2019-2020	216	54,336	876	110,746	264	514,081
Total over 5 years	1,502	320,128	4,337	638,644	1,420	1,807,898
Annual average	300	64,026	867	127,729	284	361,580

Figure 1: Distribution of Value of Contracts by Designation (Construction, Goods, Services)



2.1.1.2 Contract Awards to NWT Businesses

GNWT tracks whether the firms receiving contracts are BIP-registered companies, NWT companies (that are not BIP registered), or from outside of the Territory. We reviewed the data from 2011-2012 to 2019-2020 and found that (see [Table 5](#) and [Table 6](#), and [Figure 2](#) and [Figure 3](#) below):

- NWT firms (including BIP-registered businesses) were awarded approximately 75% of all GNWT contracts over the last nine years
- In terms of value, NWT firms were awarded 51% of total contract expenditures, valued at approximately \$2.2 billion over this period.
- BIP businesses have received a fairly consistent share of the overall number of contracts (averaging 65% annually) but have been receiving a decreasing proportion of the total value of contract expenditures.
 - Over the past five years, BIP businesses have received an average of 39% of total contract expenditures, whereas during the preceding four years, BIP businesses received an average of almost 64% of contract expenditures.

- Firms from outside the NWT have received on average 49% of total expenditures; however, the average over the past 5 years is 54%, whereas over the previous four years it is 24%.
- It is possible that the apparent decrease in the proportion of contracts going to BIP and NWT businesses is in part a product of the change in data capture that occurred in 2016-2017. If a greater proportion of contracts under \$25,000 are awarded to local businesses, the removal of contracts below \$25,000 from the reports would have a disproportionate impact on the overall distribution.

Table 5: Annual Number and Value of Contracts by Business Status (2011-2012 to 2019-2020)

Year	BIP-registered		NWT (non-BIP)		Other		Total	
	#	\$000	#	\$000	#	\$000	#	\$000
2011-2012	1,526	181,634	223	18,275	474	60,379	2,223	260,288
2012-2013	1,410	191,218	210	90,947	486	51,841	2,106	334,006
2013-2014	1,434	425,035	261	32,778	546	168,874	2,241	626,686
2014-2015	1,629	220,973	359	33,779	633	108,188	2,621	362,941
2015-2016	1,443	192,808	238	22,882	547	849,962	2,228	1,065,653
2016-2017	702	223,181	78	15,806	349	108,077	1,129	347,064
2017-2018	643	148,057	90	47,388	312	130,505	1,045	325,951
2018-2019	922	168,799	142	16,662	437	161,379	1,501	348,840
2019-2020	905	145,594	115	23,233	336	510,339	1,356	679,163
Total over 9 years	10,614	1,897,299	1,716	301,750	4,120	2,149,544	16,450	4,350,592
Annual Average	1,179.3	210,811	190.7	33527.8	457.8	238,838.2	1827.8	483,399.1

Table 6: Percentage of Annual Contract Numbers and Value by Business Status

Year	BIP-registered		NWT (non-BIP)		Other	
	# as % total	\$ as % of total	# as % total	\$ as % total	# as % total	\$ as % total
2011-2012	68	70	10	7	21	23
2012-2013	67	57	10	27	23	16
2013-2014	64	68	12	5	24	27
2014-2015	62	60	14	9	24	30
2015-2016	65	18	11	2	25	80
2016-2017	62	64	7	5	31	31
2017-2018	62	45	9	15	30	40
2018-2019	61	48	9	5	30	46
2019-2020	67	21	8	3	25	75
Annual Average	65	44	10	7	25	49

Figure 2: Percent of Total Value of Contracts by Business Status (BIP registered, NWT Non-BIP, Not in NWT)

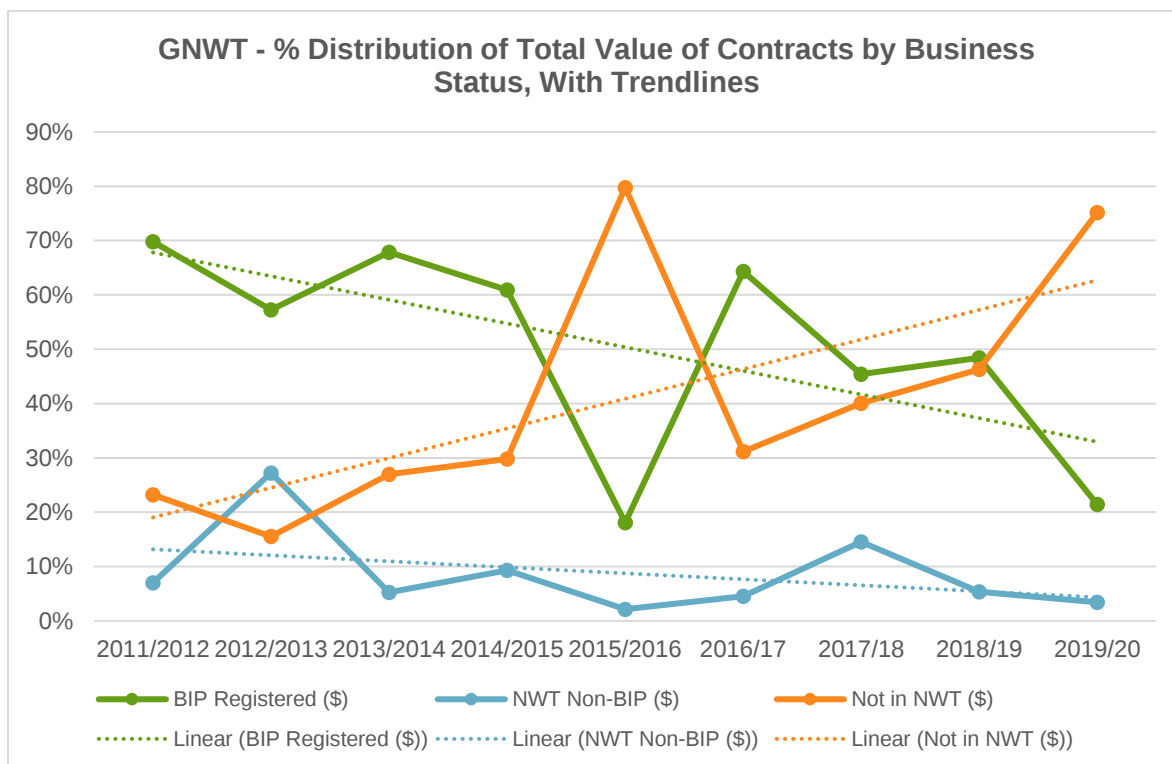
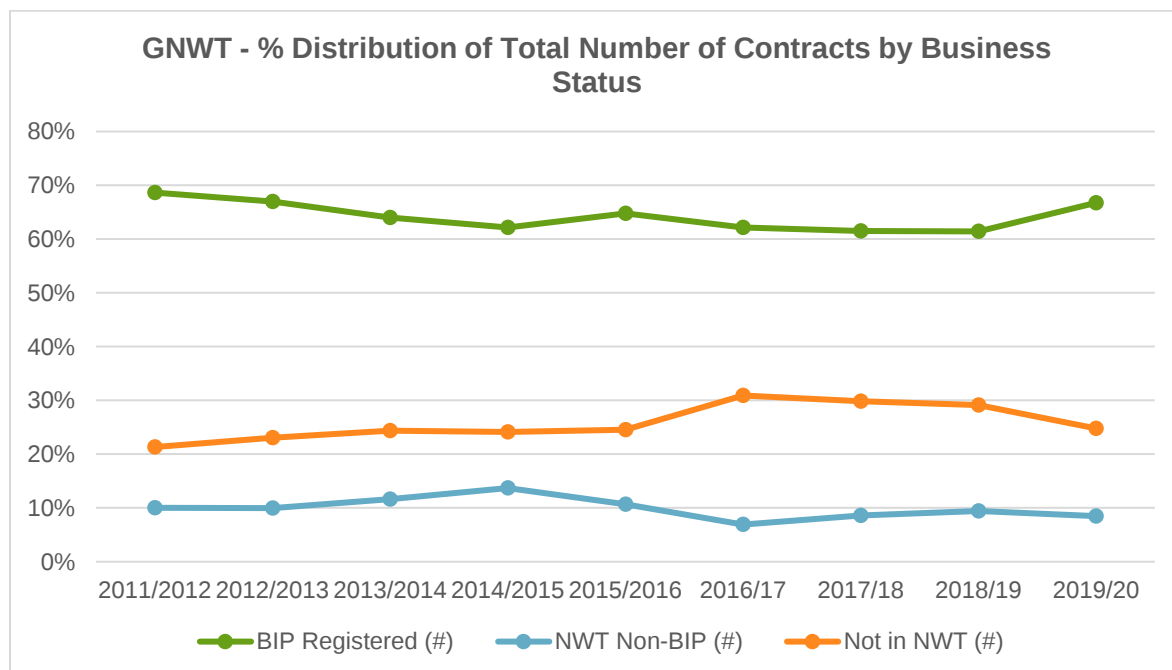


Figure 3: Percent of Total Number of Contracts by Business Status (BIP registered, NWT Non-BIP, Not in NWT)



2.1.1.3 Procurement for Goods, Services and Construction by Business Status

For the three fiscal years between 2017-2018 and 2019-2020, [Table 7](#), [Table 8](#) and [Table 9](#) show that:

- With respect to the **number** of contracts issued, BIP businesses obtained an average of 67% of goods contracts issued, 55% of contracts for services, and 85% of construction contracts.
- With respect to the **value** of contracts issued BIP businesses obtained an average of 34% of expenditures on goods, 37% of expenditures on services, and 55% of expenditures on construction/
- There is more variation in the proportion of the value of contracts won by BIP and NWT firms than in the proportion of numbers of contracts won for goods, services and construction; this may be the result of a few, larger contracts on occasion being awarded to outside firms.
- Over this period firms from outside the territory have obtained:
 - 31% of goods contracts and 66% of goods expenditures
 - 34% of services contracts and 49% of services expenditures
 - 20% of construction contracts and 60% of construction expenditures
 - if the Tłıchq road contract is removed from the 2019-2020 figures, the data would show outside firms receiving about 15% of total construction expenditures in each of the three years

Table 7: Number and Value of Goods Contracts by Business Status, 2017-2018 to 2019-2020

Year	BIP		NWT		Other		Total	
	#	\$000	#	\$000	#	\$000	#	\$000
2017-2018	143	15,807	3	361	80	21,571	226	37,739
2018-2019	152	19,492	4	521	74	73,935	230	93,947
2019-2020	156	20,638	2	91	58	33,606	216	54,336
Average	150	18,646	3	324	71	43,037	224	62,007

Table 8: Number and Value of Construction Contracts by Business Status, 2017-2018 to 2019-2020

Year	BIP		NWT		Other		Total	
	#	\$000	#	\$000	#	\$000	#	\$000
2017-2018	192	87,493	21	21,864	17	16,522	230	125,879
2018-2019	247	88,094	22	5,452	15	19,770	284	113,316
2019-2020	226	80,549	11	4,732	27	428,800	264	514,081
Average	221.7	85,379	18	10,682.7	19.7	155,030	259.3	251,092

Table 9: Number and Value of Services Contracts by Business Status, 2017-18 to 2019-20

Year	BIP		NWT		Other		Total	
	#	\$000	#	\$000	#	\$000	#	\$000
2017-2018	308	44,756	66	25,263	215	92,413	589	162,332
2018-2019	523	61,213	116	12,689	348	67,674	987	141,577
2019-2020	523	44,404	102	18,410	251	47,932	876	110,746
Average	451	50,124	95	18,787	271	69,340	817	138,218

2.1.1.4 BIP Premiums

We analyzed the data to determine the number and value of contracts where the application of the BIP impacted the awarding of the contract; in other words, where the application of the BIP bid adjustments (the 15% NWT and 5% local preferences) resulted in the contract being awarded to a different firm than would have won the contract as the result of having either the lowest bid or the highest score (see [Table 10](#) and [Figure 4](#), [Figure 5](#) and [Figure 6](#) below). Our analysis revealed that:

- The award of less than 1% of contracts have been impacted annually by the application of BIP bid adjustments since 2016-2017.
- Between 2011-2012 and 2015-2016, a greater proportion of contract awards were impacted by BIP bid adjustments (on average 2.7%)
- Note in 2016 the requirement for GNWT to formally tender goods and apply the BIP adjustments was raised from \$5,000 to 25,000. This would have reduced the number of contracts eligible for BIP adjustments and may account for some of the reduction in the number of contracts receiving BIP adjustments since 2016; however, the Panel does not have the data to determine the reasons for the change.

Table 10: Number and Value of Contract Awards Impacted by BIP Bid Value Reductions

Year	# Contracts Awarded BIP Premium	Total Value of BIP Premium (\$)	# of Contracts Awarded BIP Premium as % Total Contracts
2011-2012	64	245,100	2.9%
2012-2013	51	323,346	2.4%
2013-2014	76	392,686	3.4%
2014-2015	59	370,488	2.3%
2015-2016	54	411,503	2.4%
2016-2017	8	90,827	0.7%
2017-2018	7	40,340	0.7%
2018-2019	11	80,455	0.7%
2019-2020	12	81,696	0.9%
Total over 9 years	342	2,036,441	

As the value of the BIP premium is 15% to 20% of the contract price,

- Contract expenditures with a total value between about \$366,000 and \$489,000 were awarded to BIP firms in each of the last four years that would otherwise have gone to non-BIP firms (which may have been NWT or outside firms):
 - BIP preferences resulted in approximately an additional 0.06% to 0.6% of annual contract expenditures remaining with BIP-registered firms during this period.
- Contract expenditures with a total value between about \$1.7M and \$2.3M were awarded to BIP-registered firms in the five years prior to 2016-2017 that would otherwise have gone to non-BIP firms:
 - BIP preferences resulted in approximately an additional 0.2% to 0.8% of annual contract expenditures remaining with BIP firms during this period.

Figure 4: Number of Contracts on which a BIP Premium was Incurred

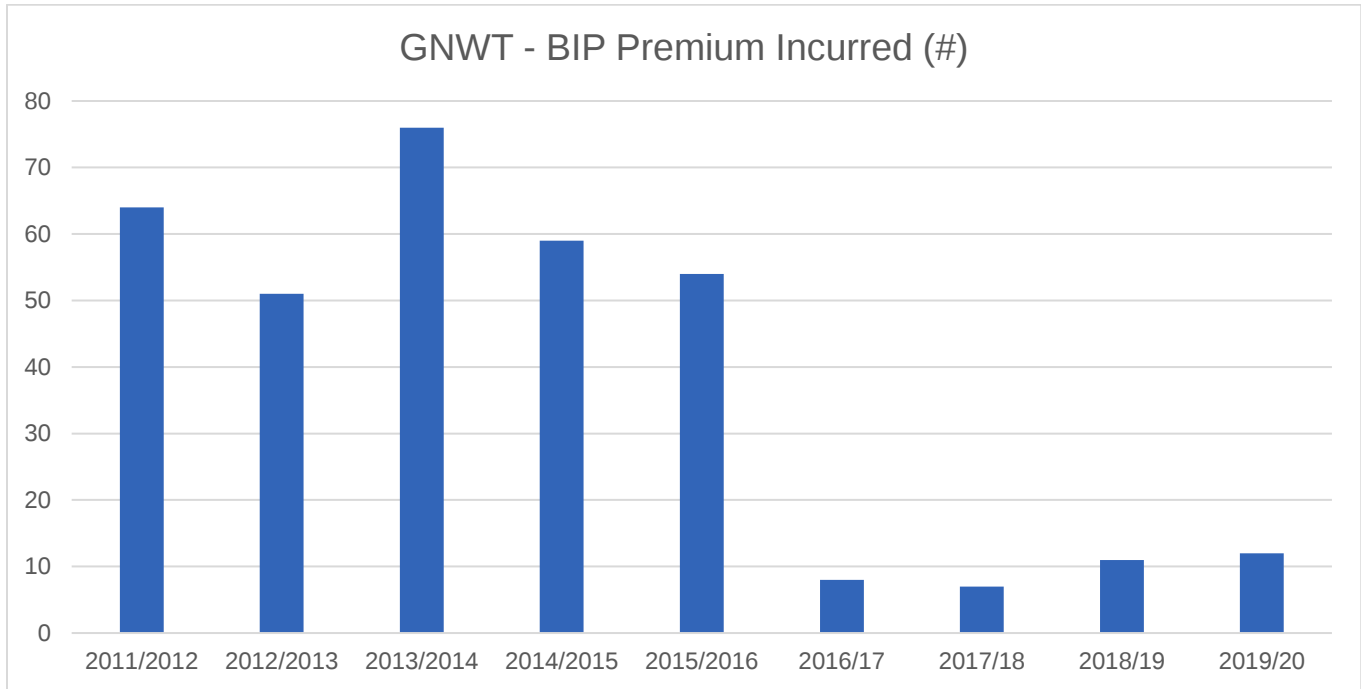


Figure 5: Value of BIP Premiums Incurred

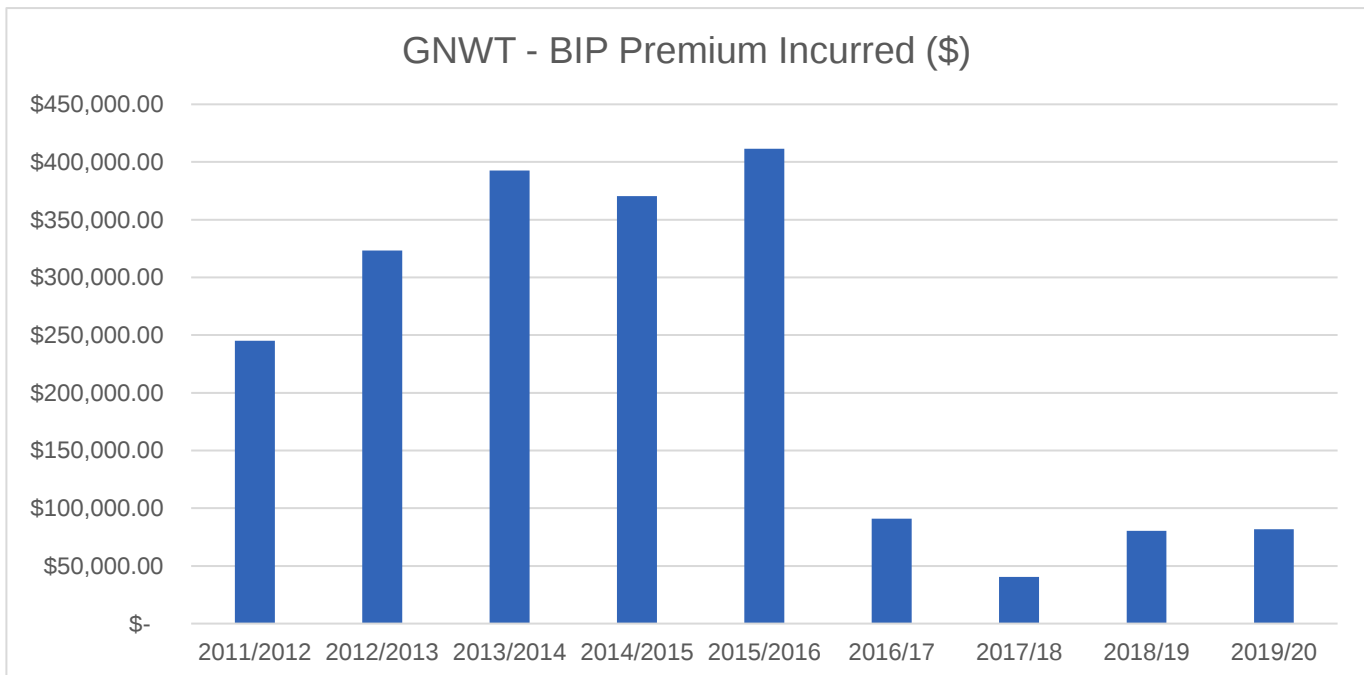
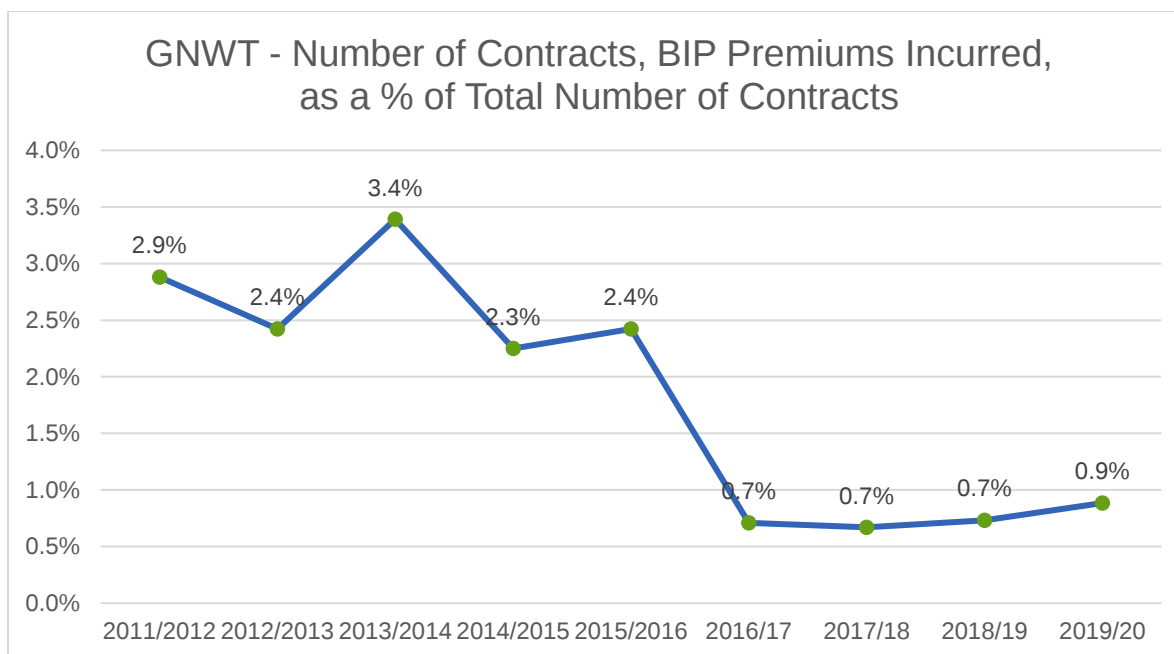


Figure 6: % Contracts Awarded BIP Premiums

2.1.1.5 Direct Awards by Business Status

Over each the past three years, BIP companies received approximately 30% of direct award contracts, accounting for 18% of the value of contracts awarded using this method (see [Table 11](#) below). Firms located outside the NWT receive on average 55% of direct award contracts but between 62% to 74% of the value of contracts awarded this way. This suggests that on average the value of contracts awarded directly to outside firms is higher than those that remain with NWT businesses.

Table 11: Distribution of Direct Award Contracts by Business Status

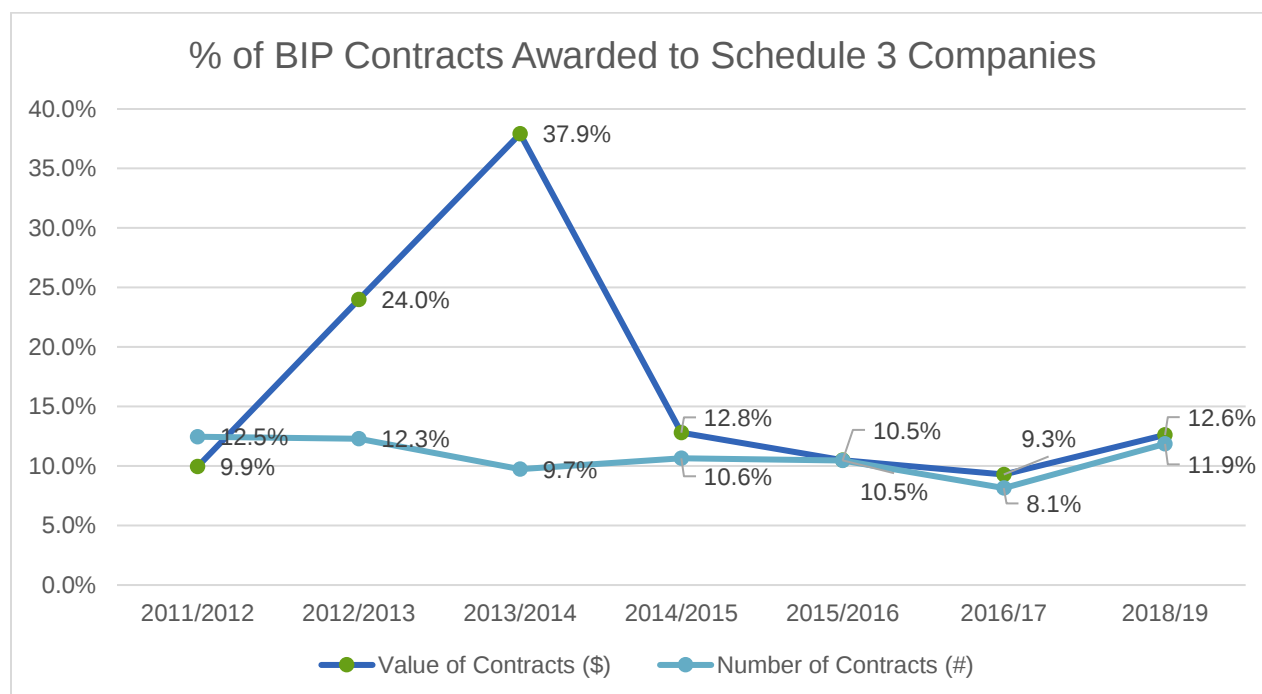
Year	Total Direct Awards		Direct Awards to BIP Firms		Direct Awards to NWT Firms		Direct Awards to OTHER	
	#	\$000	#	\$000	#	\$000	#	\$000
2017-2018	261	81,190	83	8,620	32	22,503	146	50,068
2018-2019	425	149,670	119	32,362	66	6,710	240	110,598
2019-2020	333	48,819	98	9,660	51	7,345	184	31,815
Total over 3 years	1,019	279,679	300	50,642	149	36,558	570	192,481
Average over 3 years	340	93,226	100	16,881	50	12,186	190	64,160

2.1.1.6 Schedule 3 Companies

There are currently approximately 1,188 BIP registered firms and 60 non-resident firms 'grandfathered' as BIP companies. In 2010-2011, there were 75 schedule 3 businesses registered. In 2014-2015, 15 companies were removed from the list, leaving 60 schedule 3 businesses. Of the 60 registered businesses, an additional 18 have been inactive, receiving 0 contracts during the 8 years for which data are available (2010-2011 to 2018-2019).

Although the 60 Schedule 3 companies represent about 5% of the total number of BIP registered firms the available data indicates they generally represent a larger percentage of BIP contracts both in terms of value (average = 17%), and total number of contracts (11%) (see [Figure 7](#)).

Figure 7: Percentage of BIP Contracts Awarded to Schedule 3 Companies



2.1.1.7 Manufacturing

Since 2004, a total of 18 suppliers have had products registered on the Manufactured Products Registry. On average, five suppliers have sales recorded under the policy in any given year and the average annual total value of those sales is \$2.13M. The largest share of annual expenditures over the past three years have been directed to one firm, which has accounted for just over half of the \$9M expended under the policy during this period.

Annual expenditures under the policy are quite varied, ranging from \$675,000 to \$5.7M over the last five years (see [Table 12](#) below).

Table 12: Annual Northern Manufactured Product Policy Expenditures

Year	NMPP Expenditures (\$)
2015-2016	2,519,953
2016-2017	675,458
2017-2018	1,602,871
2018-2019	5,707,367
2019-2020	1,693,766

2.1.1.8 Data Gaps and Shortcomings

There are some significant shortcomings with the data available that should be kept in mind when attempting to draw conclusions from the data and analysis above.

First, the data does not capture the volume or value of work that is completed by sub-contractors. Work done by subcontractors could both increase and decrease the value of contracts that is being captured locally by existing practices. Local firms may be subcontractors carrying out significant amounts of a contracted awarded to an outside firm, or alternatively local firms may subcontract work to non-NWT workers.

This is a critical issue to address if there is a desire to assess with any accuracy what impact procurement is having on local firms and workers, and to determine the performance and success of any policies designed to maximize this impact. Ideally data would be collected that identifies the employment arising from contracts, and whether the labour provided is local or from inside or outside of NWT. However, the Panel recognizes that the practical ability to efficiently collect this data is currently unclear.

Second, the lack of data concerning procurement below the direct award thresholds presents challenges in determining the overall impact of government's contracting activities.

Third, although it is possible for GNWT to identify contracts for goods or services not available within NWT and procurements for which there were no NWT bidders, this information has to be manually retrieved from a large database. This is a highly labour-intensive exercise that is not part of GNWT's regular preparation of the contract report, so this information is not typically available. This information could be used, however, to support supplier development by ensuring NWT-based suppliers are aware of government's needs.

Fourth, there is no data currently captured concerning the participation of Indigenous firms in procurement. Information concerning the number of Indigenous firms bidding on and receiving contracts would make an important contribution to measuring the success of GNWT's objective of maximizing local benefits. This data will be valuable irrespective of whether or not GNWT establishes a specific Indigenous procurement policy.

2.1.2 Inter-jurisdictional Comparisons

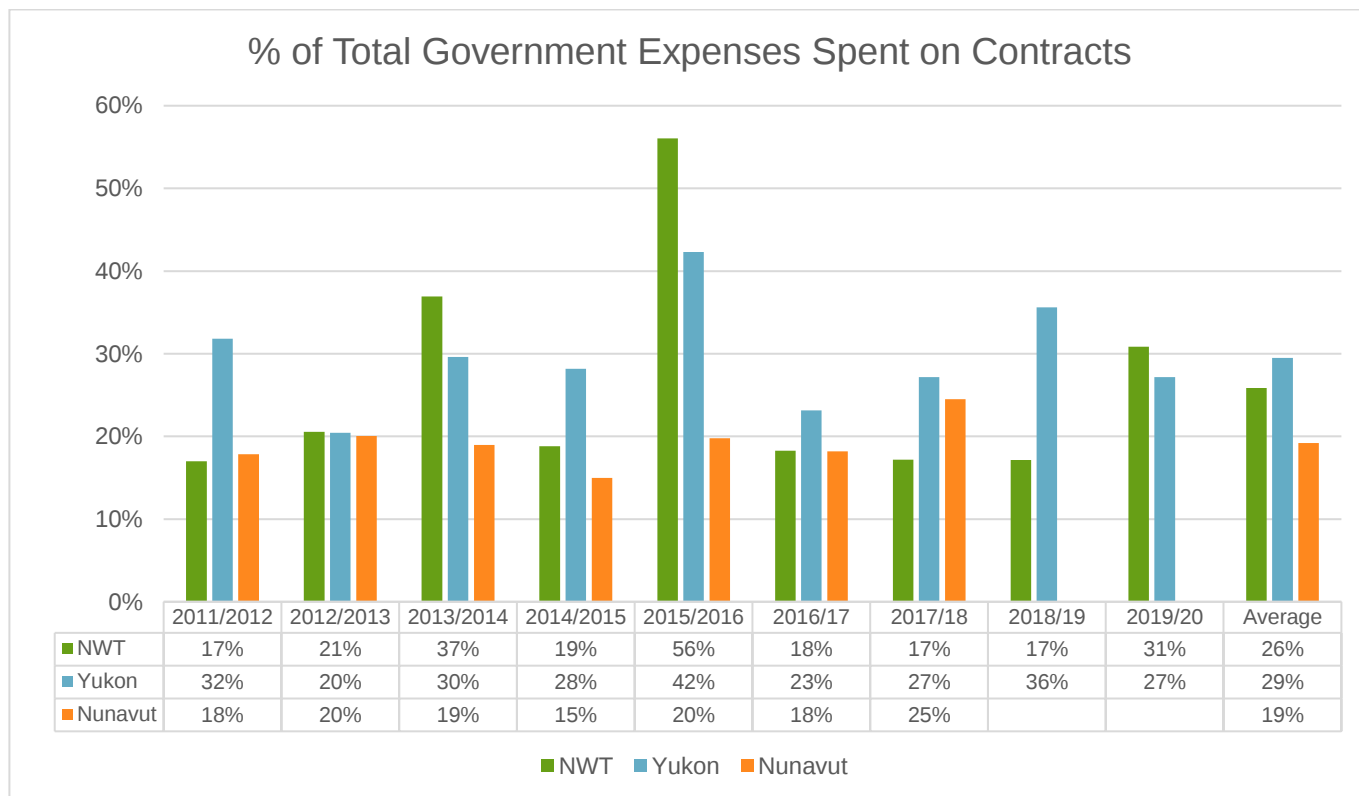
The Panel reviewed data from Yukon and Nunavut to explore whether there are any elements in GNWT's procurement practices that are significantly different from the other Territories or what can be said about how procurement is impacting local firms.

Note the data captured varies somewhat between the three jurisdictions. For example, the government of Nunavut (GN) tracks information on all contracts valued over \$5,000 and the Yukon government (YG) records purchase order information, resulting in both jurisdictions capturing a relatively greater proportion of procurement events than are reflected in GNWT data. In addition, at the time of writing, the most recent data available from GN was for the 2017/18 fiscal year, limiting comparisons for more recent activity.

2.1.2.1 Total Contract Expenditures

The proportion of the total budget that is spent on contracts in GNWT appears to be generally similar to Yukon, and NWT and Yukon spend a higher proportion of their budgets on contracting than the Government of Nunavut (GN) (see [Figure 8](#)).

Figure 8: Percentage of Total Government Expenses Spent on Contracts



However, Nunavut's contracting report notes that several significant contract areas are not included in their report, including: medical travel (\$40M to \$45M/year); fuel (\$130M to \$150M/year) police and laboratory services (\$37M to \$41M) and physician services (\$19M to \$27M/year).

2.1.2.2 Local Preference Policies

Both GN and GNWT have preferential bid policies for local firms. Nunavut's NNI policy establishes what bid adjustments are provided. In Yukon, there is a different approach in which contractors are provided rebates for their use of Yukon-labour and manufactured products.

In looking at the distribution of contracts in Nunavut that were awarded to Inuit, Nunavut and Outside firms (see [Figure 9](#) and [Figure 10](#)), the data indicates that:

- a higher proportion of contracts are typically awarded to outside firms by GN, both in terms of the number and value of contracts, when compared to GNWT:
 - Nunavut and Inuit firms have typically been awarded between 30% to 50% of the total value of contract expenditures annually, whereas NWT firms have typically been awarded greater than 50% of total contract values annually, other than in years where a significant contract event such as a major construction initiative creates a spike in the values awarded to outside firms
- The proportion of contracts awarded to Nunavut and Inuit firms has been slowly but steadily increasing over the past 10 years, whereas the trend in NWT appears to show a decrease in numbers of awards to local firms over the same period.
- The value of contracts awarded to Nunavut and Inuit firms has also been steadily increasing over the past 10 years, whereas the trend in NWT appears to show a decrease in the value of awards to local firms over the same period

Figure 9: Nunavut – Percentage Distribution of Total Value of Contracts by Business Status

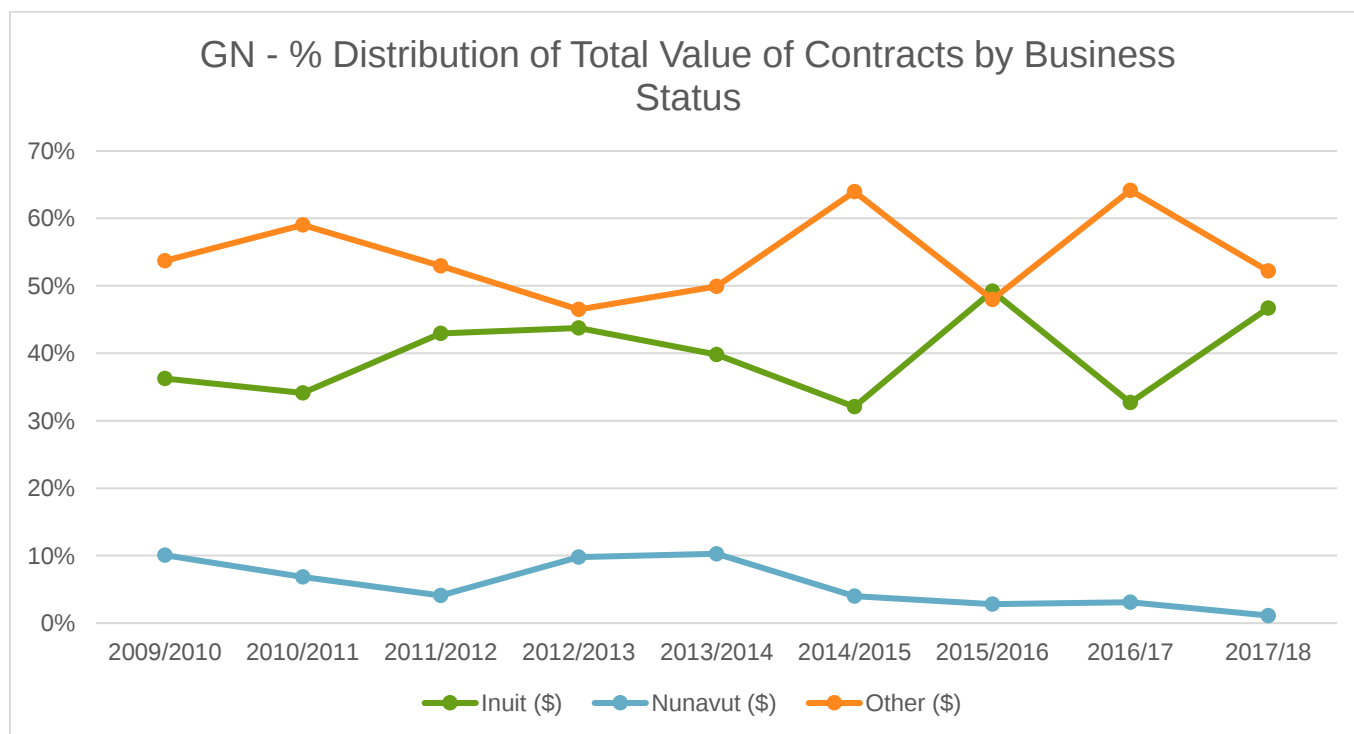
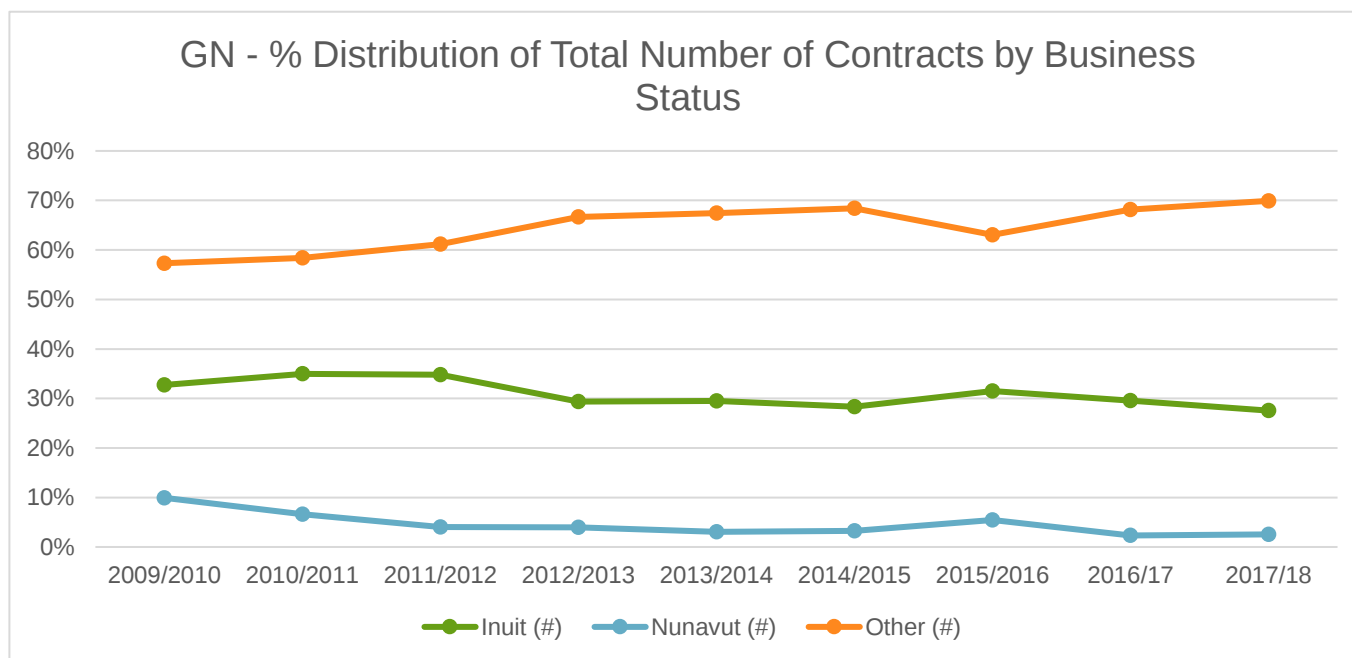


Figure 10: Nunavut – Percentage Distribution of Total Number of Contracts by Business Status

2.1.2.3 Impact of NNI Policy in Nunavut

Table 13 below indicates that in the fiscal year 2017-2018, there were 71 contracts that were affected by the NNI Regulations. This means that 71 contracts would have been awarded to non-NNI registered contractors if not for the NNI Regulations. The additional cost of the policy to the GN in 2017-2018 was \$250,931, which represents the additional cost to the GN given that contracts are not awarded to the lowest bid but to the lowest bid after bid adjustments and other NNI Regulations outcomes are applied. This investment enabled an additional \$2.9M of contract expenditures to remain with NNI firms in 2017-2018 (note GN data does not include any information concerning subcontracting, which could have a significant impact on this analysis).

Table 13: Overview of the Impact of NNI Policy on GN Contracts

Fiscal Year	# of NNI Impacted Contracts	% of Total #	Value of NNI Impacted Contracts	Additional Cost to GN
2017-2018	71	2.8	\$2,938,957	250,931
2016-2017	78	3.2	\$37,483,480	\$2,979,282
2015-2016	64	3.2	\$5,779,608	\$388,914
2014-2015	55	2.8	\$6,832,142	\$183,438
2013-2014	41	2.1	\$2,302,040	\$76,958
2012-2013	41	2.3	\$2,180,163	89,505
2011-2012	68	3.6	22,919,133	\$616,615
2010-2011	57	3.1	\$11,028,315	\$166,108
2009-2010	59	3.3	\$23,976,383	\$2,055,354
Average	59	2.9	\$12,826,691	\$756,345

In 2009-2010 and in 2016-2017, there were large construction contracts that fell into this category. When construction contracts are awarded due to the NNI Regulations, the additional cost to the GN is higher by comparison. Note that as April 1, 2017, the new NNI Regulations increased the total possible bid adjustments from 21% to 25%. This included an increase from 7% to 15% for 100% Inuit-owned firms.

Based on data in GN's Contracting Activity Report, a review of contracts including goods and contracts awarded due to the bid adjustments of the NNI Policy indicate a greater number of contracts issued by GN are impacted by the NNI policy (see also [Figure 11](#), [Figure 12](#) and [Figure 13](#) below). More specifically:

- Between 41 and 78 contracts over each of the years between 2009-2010 and 2017-2018 were awarded to NNI-registered firms that would not have been awarded without the application of one of more of the NNI price preferences.
- On average, over the last nine years that data are available, 2.9% of GN's contracts annually are impacted by NNI, compared with 1.5% of GNWT contracts over the same period.
- Over the past 4 years, 3% of GN contracts have been awarded to NNI firms as a result of the NNI policy, whereas the BIP policy has impacted less than 1% of contracts over the same period.

Figure 11: Number of GN Contracts Awarded NNI Premiums

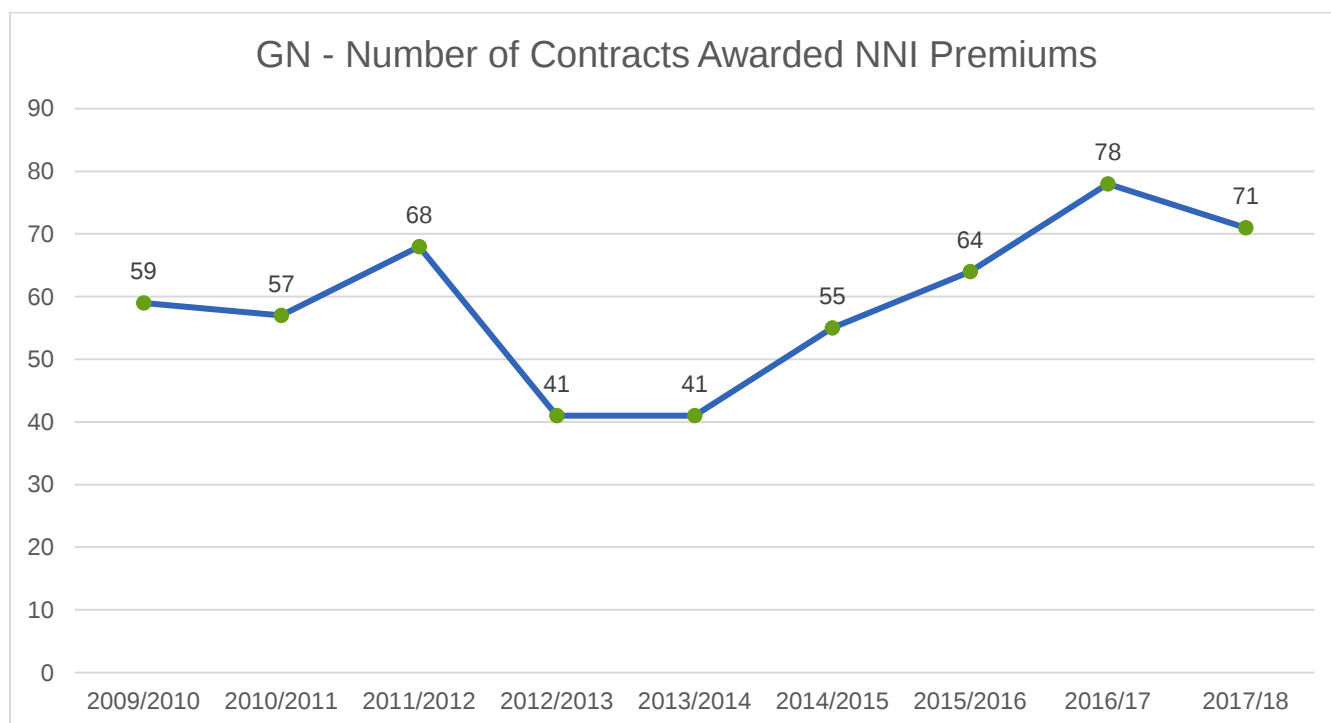


Figure 12: Number of Contracts Awarded NNI Premiums as a Percentage of Total Contracts

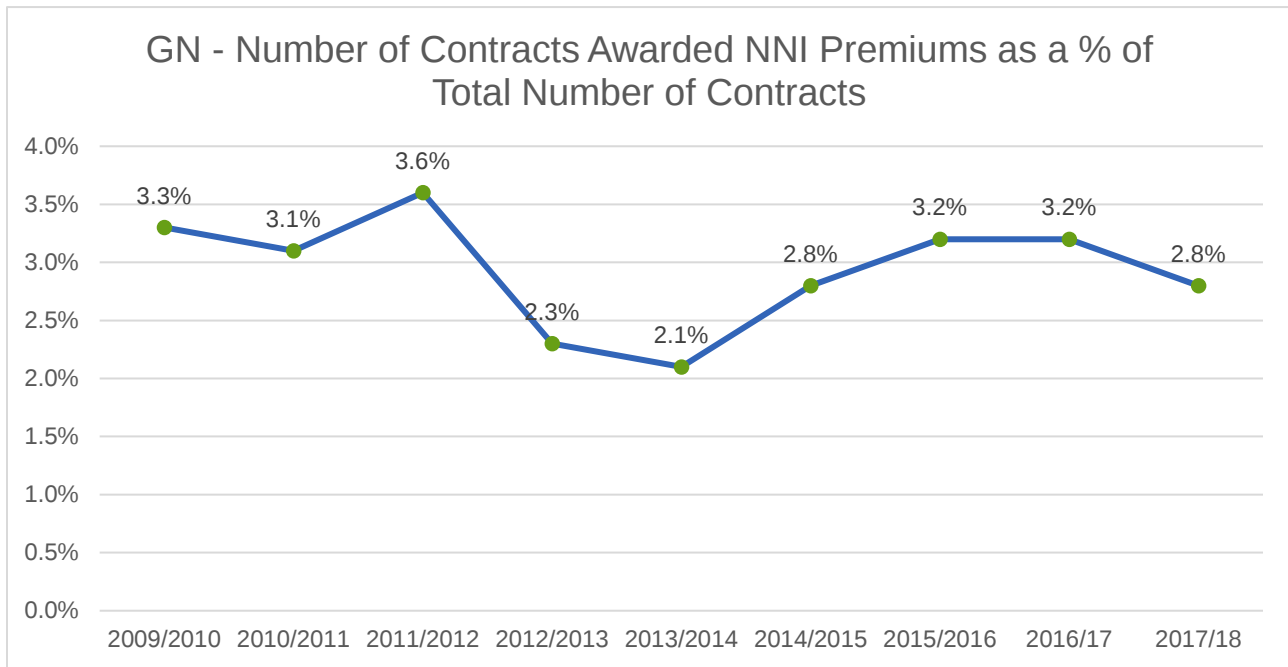
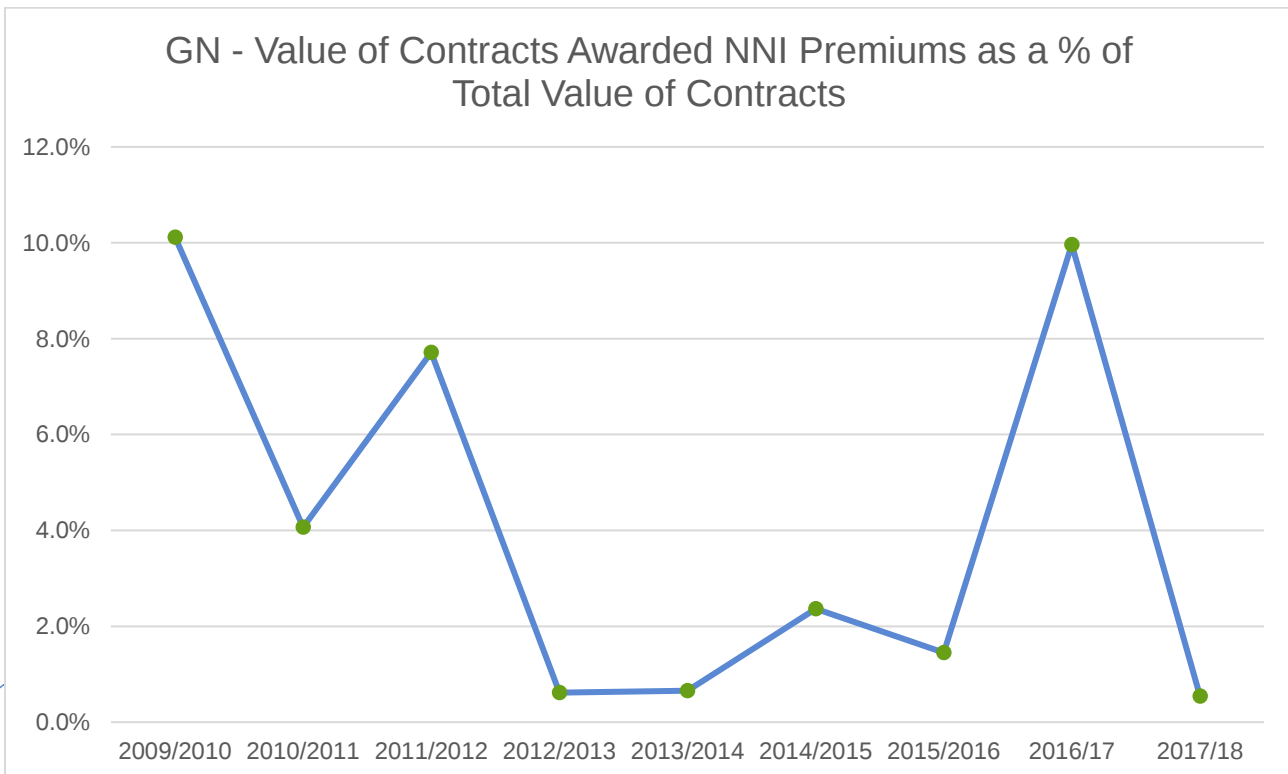


Figure 13: Total Value of Contracts Awarded NNI Premiums as a Percentage of Total Contract Value Annually



The value of NNI impacted contracts is also greater than the value of BIP impacted contracts.

- The total value of NNI impacted contracts over the last 9 years of available data has ranged between \$2.1M and \$37M each year, with an average of \$12.8M
- The total value of BIP impacted contracts is not provided in GNWT data, but can be approximated based on the value of the BIP premium. This assessment indicates that an average of under \$1.5M of contracts have been impacted annually by BIP since 2011-2012; that number falls to below \$500,000 a year when looking at each of the past four years.

2.1.2.4 Conclusions

The analysis above leads the Panel to question whether the Business Incentive Policy is achieving its objectives. The data demonstrates that in over 99% of reported contracts over the past four years, the BIP is not directly impacting who is awarded the contract. Although the Panel did not attempt to identify the costs of administering the BIP for GNWT or the costs incurred by businesses to apply for and maintain their BIP-registered status, there is good reason to question whether the current approach is achieving value for money. BIP has less of an impact on contracts than the Government of Nunavut's NNI policy, both in terms of the numbers of contracts affected and their value.

We did not have the data to assess whether the contracts impacted by BIP premiums were for goods, services or construction, or for specific sectors within the economy. Even though the current impact is very small, it may play a relatively greater role with respect to contracts in certain sectors of the NWT economy. In addition, we were not able to assess which component of the bid adjustment (NWT or Local) resulted in enabling the contract to be awarded to the BIP-registered business. In future, it is recommended that both of these data elements are captured and reported in order to better assess the policy impact.

BIP may not play a decisive role in 99% of contracts for a number of reasons, such as:

- No outside firms are bidding for the work;
- BIP businesses cannot compete with other NWT or outside firms notwithstanding the advantage provided by the bid adjustments in the Business Incentive Policy;
- BIP firms are competitive enough that they do not need the advantage of the bid adjustments to win contracts; or
- Only other BIP-registered firms were competing on a contract, and the application of the bid value reductions had no impact.

The lack of data to assess why and where BIP is making a difference in supporting NWT, local and Indigenous businesses means there is a limited data-driven evidence to support changes in the policy's design or implementation to improve its impact on the local economy. As a result, the Panel is relying more heavily on evidence arising from our engagement with suppliers and business organizations as well as on input received from staff working in the governments of NWT, Yukon, Nunavut and Canada.

2.2 Trade Agreements and Government Procurement

Key Points:

The trade agreements applicable to the GNWT leave room for government to use procurement to support social and economic objectives, for example:

- Through procurements that fall below the financial thresholds where the requirements from trade agreements take effect;
- Through procurements that fall into areas where there are exemptions from trade agreement coverage; and
- By using strategies to improve the chances of particular groups of suppliers being successful in competing for contracts.

The threshold where the Canadian Free Trade Agreement (CFTA) applies to procurement is higher for GNWT than any other Canadian jurisdiction (and equal to Nunavut), enabling procurements for goods and services up to \$150,000 and construction up to \$500,000 to be exempt from competition.

GNWT's own procurement rules establish lower thresholds for competition than those required by trade agreements and do not enable the use of limited competitions (where specific suppliers are invited to submit bids or proposals, or where competition is limited to suppliers from a particular group or region).

GNWT currently has no strategy in place to take advantage of an exemption negotiated under the CFTA enabling the use of procurement to promote regional economic development up to 10 times per year for contracts valued up to \$1M.

GNWT has opportunities to support suppliers and design procurements in a manner that maximizes the opportunities for local, NWT and Indigenous suppliers to be successful in competition

2.2.1 Introduction

In the context of procurement, trade agreements are sometimes painted as “barriers” or “constraints” that frustrate a government’s ability to do what it otherwise might like to do. While it is true that these agreements establish some boundaries around how procurement can or must be carried out, it is useful to recognize two key facts:

1. Trade agreements play an important role in increasing the ability for people, goods and services to flow across provincial/territorial and national borders. This helps ensure that individuals and private sector buyers, as well as governments, have access to the workers, materials and services they require. The less self-sufficient a jurisdiction is, the more important this access becomes.
2. The trade agreements applicable to the GNWT leave room for government to use procurement to support social and economic objectives.

The most significant trade agreements that apply to the GNWT are:

- The Canadian Free Trade Agreement (CFTA);
- The Canada-European Union Comprehensive Economic Trade Agreement (CETA);
- The World Trade Organization-Government Procurement Agreement (WTO-GPA); and
- The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

Note: the new North America Free Trade Agreement, now called the Canada-US-Mexico Trade Agreement, does not include procurement obligations.

All governments face pressure to favour suppliers from within their own jurisdiction. Trade agreements counter these protectionist tendencies with ‘reciprocal non-discrimination’ requirements that commit governments to provide the same treatment to suppliers from all signatory jurisdictions. The Panel explored whether there are actions available to GNWT under the existing trade agreements to expand its use of procurement to increase benefits for the Territory’s businesses and citizens.

2.2.2 Allowable Approaches to Supporting Local Business

There are four main ways in which government can support local suppliers and stay within the requirements of the Agreements. A brief overview of these mechanisms is provided below, followed by a more detailed discussion.

2.2.2.1 Below Threshold Procurements

Each of the trade agreements establishes financial values described as “thresholds”; procurements with values below these thresholds are not subject to the rules of the Agreement. Every jurisdiction has the discretion to implement its own rules for procurements valued lower than these thresholds. These thresholds typically vary between the categories of goods, services and construction, and to some extent between agreements. [Table 14](#) below identifies the key thresholds relevant to our review.

Table 14: Overview of Procurement Thresholds in Trade Agreements for Government Departments

Trade Agreement	Goods	Services	Construction
CFTA (for all jurisdictions other than NWT and Nunavut)	\$26,000	\$105,700	\$105,700
CFTA (for NWT and Nunavut)	\$150,000	\$150,000	\$500,000
CETA (has the lowest international thresholds)	\$366,200	\$366,200	\$9,100,000

It is notable that under the CFTA, GNWT negotiated higher thresholds for procurement conducted by government departments than are available in other jurisdictions. GNWT also negotiated higher thresholds for other public sector entities in the Territory (see [Table 15](#) below).

Table 15: CFTA Procurement Thresholds for Covered Entities Other than Government Departments

CFTA Coverage	Goods	Services	Construction
For NWT regional, local, district, and municipal government, municipal organizations, school boards, and publicly funded academic, health, and social service entities	\$300,000	\$300,000	\$7,500,000
<i>Threshold for Other Jurisdictions</i>	<i>\$100,000</i>	<i>\$100,000</i>	<i>\$250,000</i>
For NWT Crown corporations, government enterprises, and other entities that are owned or controlled by a Party through ownership interests	\$500,000	\$500,000	\$7,500,000
<i>Threshold for Other Jurisdictions</i>	<i>\$500,000</i>	<i>\$500,000</i>	<i>\$5,000,000</i>

The fact that governments have the ability to treat procurement below these thresholds differently than what is required under the trade rules does not in and of itself suggest what a government “should” do; it does, however, establish the financial limits under which there is discretion. Governments must still establish clear objectives and carefully assess the costs and benefits of implementing any mechanisms that move away from an open and competitive process to establish contracts with suppliers. Nevertheless, the trade agreements do not prevent governments from exploring mechanisms to support their local economies, for example such as the use of direct awards or competition that is limited to local and/or Indigenous businesses under these thresholds.

The fact that GNWT negotiated higher thresholds under the CFTA than other jurisdictions creates additional opportunity for leveraging procurement to generate local benefits.

In 2019-2020, for example, approximately 80% of the total number of contracts issued⁴ by GNWT were valued at \$150,000 or less. The majority of these contracts (about 77%) were awarded to NWT businesses. The Panel did not have the data to assess what proportion of the remaining 22%, if any, was for services or goods not available within NWT but notes that obtaining even 1% more of these contracts would result in approximately \$500,000 of additional spending retained within the Territory⁵, a value comparable to the benefit obtained from the application of BIP premiums in each of the last four years.

In addition to managing procurement under trade agreement requirements, individual governments set their own thresholds and establish specific authorities and processes for managing the procurement they conduct. Three objectives commonly supported by these internal rules are:

- To help ensure value for money by maximizing the use of competitive processes;
- To help balance the cost of conducting procurement with the value of what is being bought; and
- To help ensure the staff conducting procurement have the necessary skills.

Currently, the GNWT’s Government Contract Regulations (s. 8(1)) establish that all contracts must be competed unless:

- Performance of the contract is urgently required, and delay would be injurious to the public interest;
- Only one party is available and capable of performing the contract: or
- The value of the contract will be less than:
 - \$25,000 for General Goods and Services⁶,
 - \$50,000 for Professional Services, and
 - \$100,000 for Architectural and Engineering Services.

4. 1,070 of the 1,356 contracts issued; note these figures include change orders.

5. Based on the average contract value of \$44,562 for all procurements under \$150,000.

6. Note this value has been temporarily lowered to \$10,000 for the period of April 1 – July 31, 2021

Although Cabinet retains the authority to allow contracts to be awarded without competition, seeking Cabinet approval requires a substantial amount of time and effort, and is only likely to be pursued in contracts of high value or strategic importance and not used for more ‘day to day’ business. In addition, GNWT’s Procurement Guidelines do not include provisions enabling limited competitions.⁷ A “limited competition” is where a contract opportunity is not open to all potential bidders, and instead bidders are invited to submit bids or proposals or competitions are set aside for firms of a particular type (e.g., small businesses) or within a particular location (e.g., within NWT or one or more of its regions). Other jurisdictions enable greater use of limited tendering. For example, the Government of Nunavut requires the invitation of Nunavut businesses only on contracts between \$5,000 and \$25,000⁸, and enables the restriction of procurement to local areas if there is sufficient competition, with Deputy Minister’s approval⁹. The Government of Yukon enables the use of limited tendering up to the limits established by trade agreement thresholds in a variety of circumstances, including when “the use of a less competitive process would provide best value for the Government, including the advancement of reconciliation with First Nations”¹⁰.

Within GNWT, the opportunity to direct ‘day to day’ contracts to NWT suppliers is limited to the use of existing supply arrangements and direct award contracts within the limits allowed by the Government Contract Regulations. GNWT’s Procurement Guidelines (s.1.7.1.3) establish a hierarchy that contracting authorities are expected to follow when considering the direct award of a contract under the established thresholds. This hierarchy prioritizes the order that businesses should be sought first to receive the contract, and is as follows:

- Local BIP Registered Businesses (first priority);
- NWT, BIP Registered Business (second priority);
- Local businesses (third priority);
- NWT businesses (fourth priority); and
- Non-NWT based businesses (fifth priority).

A “sole source form” must be completed by a department contracting authority when seeking to direct award a contract for goods and services over \$25,000.

The Panel recognizes that the risks to government can increase with the use of direct award and limited tendering processes, in particular with respect to ensuring value for money and fairness, and is not recommending that GNWT simply increase its current direct award thresholds. As noted elsewhere, the most successful approaches to using procurement to support local businesses focus on planning, co-ordination and a strategic vision. A key observation, however, is that the trade agreements do not prevent GNWT from exploring the use of limited tendering approaches to a much greater extent than current practice.

7. *Invitational processes may be used if there is an existing supply arrangement*

8. *S.2.4.4 Government of Nunavut Contracting Procedures Manual*

9. *S.2.8 Government of Nunavut Contracting Procedures Manual*

10. *S.6.4 Yukon Government Procurement Policy (General Administration Manual, policy 2.6)*

2.2.2.2 Exclusions and Exemptions

Some procurements are explicitly not covered by the agreements. For example, the CFTA does not apply to:

- Certain types of services, such as all legal and notary services, procurements with non-profit agencies, grants and land transactions and certain types of financial services (Article 504.11);
- Entities that parties negotiated exclusions for, such as the Legislative Assembly in the NWT;
- Small business set aside programs (so long as they do not discriminate against suppliers based on their location in Canada) (Article 503.13); and
- Any measures with respect to Aboriginal peoples (Article 800).

GNWT also negotiated several specific exemptions in the CFTA that provide additional tools to support local businesses and communities (the inset box below provides the text from the CFTA describing these exemptions). In particular, the Business Incentive Policy and the Northern Manufactured Products Policy (and any directly related or successor programs) are permitted to continue. This provides GNWT with the ability to continue to provide price preferences for local businesses and manufactured goods, and to make some adjustments to those policies if desired. However, careful scrutiny and potential push-back from other jurisdictions might be expected if changes to these policies are perceived to increase 'protectionist' behaviour in any significant ways.

In addition, GNWT negotiated an exemption enabling the use of procurement to promote regional economic development up to 10 times per year by exempting contracts from the agreement entirely if they are valued at less than \$1M, or by exempting up to \$1M from coverage if the contract is valued at greater than that amount for goods and services, or greater than \$7.5M for construction.

Similar derogations for economic development are also included in the CFTA for Yukon, Newfoundland and Labrador, Nunavut, PEI, New Brunswick, and Nova Scotia. In most of these jurisdiction's exemptions, there is a provision noting the derogation may not be used for procurement if it is funded by the Government of Canada (Yukon is the exception).

Finally, Annex II – Section 7 of the CFTA sets out exceptions that individual jurisdictions have negotiated to enable them to maintain existing measures or adopt new ones that do not conform to one or more requirements of the Agreement. Through this mechanism, GNWT has secured the ability to adopt measures, including the use of procurement, to support socio-economic development objectives in smaller, geographically remote communities that are not served by regular road access.

NWT-Specific Exceptions in the Canadian Free Trade Agreement

Exception B.1.

This Agreement does not cover procurement subject to the Northwest Territories Business Incentive Policy (including the Northwest Territories Manufactured Products Policy and other directly related programs) or successor programs having similar objectives.

Exception B.3.

Procuring entities may derogate from this Chapter in order to promote regional economic development by supporting small enterprises or employment opportunities, without providing undue support to monopolistic activities. Notice of such procurements shall be made publicly available and include information with regard to the procurement and successful supplier.

For procurements of goods or services in excess of \$300,000 and construction in excess of \$7,500,000, the following additional restrictions shall apply to a derogation from this Chapter for the purposes of regional economic development:

(a)

- (i) if the total value of the procurement of goods or services exceeds \$1,000,000 or the total value of the procurement of construction exceeds \$7,500,000, then the value of the part of the contract that would be affected by the derogation must not exceed \$1,000,000; or*
- (ii) if the procurement of goods or services is valued at \$1,000,000 or less, then the entire value of the contract may be affected by the derogation;*

(b) this derogation may not be used more than ten times per year; and

(c) a procurement shall not qualify for a derogation if it is funded by the Government of Canada

Future Measures**Annex II – Section 7:**

Except for Article 203 (Transparency), a measure inconsistent with this Agreement may be adopted or maintained to address the unique circumstances occasioned by extreme climatic conditions, geographic isolation, or socio-economic factors affecting least developed communities in the Northwest Territories; A community is a “least developed community” if it:

(a) is more than 500 km from the border of a Census Metropolitan Area and more than 50 km from the border of a Census Agglomeration, as defined by Statistics Canada;*

(b) does not have any of

- (i) accessibility by an asphalt concrete road for more than six months of the year,*
- (ii) a deep-water port, or*
- (iii) rail access;*

(c) has a population less than 5,000 people; and

(d) has an unemployment rate exceeding 10%.

Similar to considering the flexibility afforded to procurement under the trade agreement thresholds, taking advantage of the exceptions and exemptions from the Agreement’s coverage in a manner that is effective in maximizing local benefits requires governments to develop a clear and co-ordinated strategy to identify appropriate contracts and procurement strategies.

2.2.2.3 Supplier Development and Category Management Initiatives

Governments can undertake a wide range of actions to support the participation of local businesses in procurement, for example by ensuring local firms:

- Are familiar with procurement processes and forms;
- Are alerted about upcoming opportunities;
- Can readily connect with potential prime or sub-contractors;
- Are provided with and connected to training and business development supports; and
- Are connected with those who design and manage the procurements and contracts of interest to their firm.

These types of initiatives can be generally described as “supplier development”, which is about working with suppliers to improve their success in obtaining contracts and their performance while completing them. In order to maximize success, however, the onus is not just on suppliers. Government can play a key role in supporting supplier performance through actions such as:

- Ensuring those who design procurements are aware of local capacity and business strengths;
- Assessing government’s procurement needs and developing sector or industry specific procurement strategies that identify preferred procurement and contract formats, scope and timing;
- Building clear communication networks and strong relationships among buyers, suppliers, and contract managers; and
- Ensuring barriers to participation are identified and addressed, such as prompt payment, and simplifying and streamlining procurement and contract documents and processes.

Governments may choose to focus supplier development or category management initiatives in one or a few specific areas, potentially based on their significance to the local economy or to government’s contracting needs. Identifying these focal areas could be part of establishing a broader strategic procurement plan. These types of supports for local businesses are all permitted under the trade agreements provided they don’t involve creating unfair advantages for specific procurements, for example by providing selective information to local suppliers only, or creating obstacles to register or qualify for non-local firms.

2.2.2.4 Procurement Design

There are steps government can take when designing procurements to maximize the opportunities for local firms to be successful when bidding, although care needs to be taken in this area to not violate trade agreement provisions. For example, as noted above, ensuring government staff have good awareness of the capabilities of local vendors to respond to the potential size, composition and timing of contracts and that they then use this information when designing and scheduling solicitations is acceptable, provided that the requirements are not tailored in such a way as to limit the participation of non-NWT bidders.

It is also possible, when local knowledge and experience will benefit the services to be delivered, to consider evaluating such things as:

- Experience working in the expected climatic and environmental conditions;
- Knowledge of regulatory, by-law and licensing requirements (including any local requirements);
- Knowledge of applicable labour codes, Workers Compensation and safety regulations;
- Knowledge of local market and industrial capacities;
- Knowledge of building codes and local by-laws;
- Knowledge and experience supporting specific public policies and operational objectives;
- Ability to meet professional licensing obligations;
- After sales service; and
- Success in meeting prior contract commitments for engaging local subcontractors or labour.

Note that the CFTA explicitly prohibits a number of related practices such as:

- Limiting participation in a procurement only to suppliers that have previously been awarded one or more contracts by a procuring entity;
- Requiring prior experience if not essential to meet the requirements of the procurement; and
- Requiring prior experience in a particular province or territory.

The Panel heard repeatedly from suppliers throughout our engagement that procurement processes that do not evaluate local knowledge have a high risk of resulting in contract awards to firms whose bids are missing knowledge and materials that are key to success, and that ultimately may result in delays, change orders and higher costs. GNWT's guidance on the criteria that might be used for evaluating consulting proposals (found in FAM 705.09, Appendix B) notes that "related experience of the company" and "local and northern content" may be appropriate but no additional guidance was found aimed at ensuring local knowledge is considered.

GNWT's Procurement Guidelines do recommend the use of "community engagement" as an evaluation criterion, which is different than evaluating local knowledge and experience. Community engagement "... focuses on a proponent's approach for the recruitment of labour, utilization of NWT businesses, training opportunities for NWT residents, and communication and collaboration with local governments. Community Engagement is separate from the Business Incentive Policy, and is available to all proponents whether BIP registered or not. A proponent's geographical location is not a barrier in maximizing credit available under this criterion." (p. 96).

Community engagement can also support local businesses, workers and communities, in particular when the proponent's proposed approach becomes embedded in the terms of the contract, and the contract provisions are enforced.

Some jurisdictions, such as Yukon take advantage of both approaches. Yukon's policy requires contracting authorities to use evaluation criteria to recognize northern experience and knowledge (s. 8(5)) and to include in evaluation criteria the methods used by the supplier to maximize the benefits for Yukoners in carrying out the work (s.8(6)).

2.2.3 Conclusions

Although the trade agreements do establish requirements that impact how government can use procurement to support strategic objectives such as economic development, there are also significant areas of flexibility. Taking advantage of that flexibility requires thoughtful planning to ensure government is achieving the balance it desires between supporting a competitive marketplace, achieving lowest cost solutions and supporting best social and economic value. GNWT currently does not have policies or procedures in place that would readily enable it to take best advantage of procurements that fall outside of trade agreement coverage. In addition, there are a range of practices GNWT could adopt that are not prohibited by trade agreements that would improve the chances of success for local, NWT and Indigenous suppliers when bidding on contracts.

3. Foundations

There are three topics that form the underlying foundation for procurement within GNWT:

- Procurement principles and objectives;
- Approaches to using procurement to support strategic objectives; and
- Procurement governance and organization.

The Panel believes that conducting efficient and effective procurement depends on having a solid foundation in place that specifically enables and guides the procurement strategies that will help government meet its objectives. The report provides an overview of each topic, followed by a summary of the main points raised during the Panel's engagement ("what we heard"), the Panel's own thoughts on the topic and finally our recommendations.

3.1 Procurement Principles and Objectives

3.1.1 Introduction

The discussion paper includes the questions:

"What principles should underpin GNWT procurement policy?", and

"What should the objectives or priorities be for GNWT procurement and its related policies?"

Principles and objectives play a key role in establishing the foundation for a policy area, and serve as reference points for designing:

- a) the policies and procedures that will guide behaviour and support decision making, in particular where there is discretion about how to interpret a policy or apply a rule; and
- b) the strategies that will transform the objectives into measurable activities that can be planned and managed.

There is often some overlap between policy "principles" and "objectives". For example, transparency and competition are sometimes identified as procurement principles and other times as objectives of purchasing policy, or as mechanisms used to achieve other principles and objectives. The Panel considered both the principles and objectives identified in the GNWT procurement policy framework to determine whether they are aligned with and support government's broader procurement objectives.

3.1.2 Principles and Objectives Regulating Procurement

As noted in the discussion paper, principles that commonly underlie public procurement are integrity, value for money, and accountability. Common objectives for public procurement policies include¹¹:

- a) Maximizing economy and efficiency in procurement;
- b) Fostering and encouraging participation in procurement proceedings by suppliers and contractors;
- c) Promoting competition among suppliers and contractors;
- d) Providing for the fair and equitable treatment of all suppliers and contractors;
- e) Promoting the integrity of, and fairness and public confidence in, the procurement process; and
- f) Achieving transparency in the procedures relating to procurement.

Jurisdictions that use procurement to support social and economic goals must also establish clear objectives to support those outcomes and ensure they are well integrated into the policy framework. This integration is required to enable the direction and guidance that flows from those objectives in policies and procedures to be consistent and co-ordinated, and to avoid uncertainty concerning how objectives are intended to be balanced. For example, if government would like to use procurement to support local job creation, it will want to do so while continuing to uphold all of the other objectives as well. The content of policies and the strategies and processes designed to carry them out will have to address the balancing acts that can arise between objectives, for example by establishing that maximizing economy means evaluating anticipated employment benefits when planning and conducting procurement; or that it is appropriate to limit competition in certain circumstances that are expected to favour job creation.

It isn't strictly necessary that all procurement-related policy is consolidated in one document. However, it is necessary for the underlying objectives to be consistent between policies so that it is clear how government is defining and managing that balancing act.

3.1.3 What We Heard

Participants that commented on GNWT's overall procurement framework described it as "fractured" or "fragmented". Policy objectives are distributed across a number of different documents, which presents challenges for suppliers and the public attempting to understand and navigate government contracting activity. Some participants suggested there is a disconnect between the core objectives aimed at procurement and those aimed at supporting economic policy. Several participants advocated for a more holistic approach and proposed that a clear vision and a set of strategic objectives that capture GNWT's goals for procurement would help communicate and manage government's activities in this area. It was also noted that procurement is just one tool to support business development in the Territory, and better integration of procurement with other GNWT economic development activities would lead to better results.

11. See, for example, the [UN Model Law on Procurement of Goods, Construction and Services](#)

Participants that commented on individual principles or objectives centred on three topics:

1. Define and focus on “best value”

There was strong endorsement of the view that the pursuit of “best value for NWT” should be the main objective of procurement. Participants regularly pointed out that ‘best value’ does not necessarily mean ‘lowest cost’, and several participants suggested GNWT’s procurement policies need to clarify how ‘best value’ is defined and operationalized to guide procurement decisions. These comments were not just made in the context of whether the procurement format evaluated more than price; they included recognition of how this definition could impact whether procurement planning and contract management were undertaken with a focus on maximizing local content.

2. Lack of transparency

There were numerous comments that the culture within GNWT did not appear to strive to make information readily available and accessible. Some participants noted they had significant difficulty finding the appropriate contacts within GNWT to discuss questions about policy or process. Others commented on a lack of meaningful reporting, noting that the current practice is to provide a ‘data dump’ concerning the previous year’s contracts with no analysis or performance measurement.

3. Concerns about integrity

Some participants raised concerns about whether staff involved in procurement and contract management are acting with integrity. In many cases these comments were made in the context of questioning how policy is applied or how individual decisions were made concerning contract awards or BIP eligibility. Most participants who raised these questions also noted they believe that issues arose as a result of staff having a lack of information or guidance (e.g., about local suppliers and their capacities), and not due to any intention to violate policies or principles.

A number of participants stated they would like GNWT to establish a new mechanism for complaints and concerns (i.e., some kind of procurement ombudsman or independent dispute resolution function). The objective would be to enable suppliers to raise issues without feeling they were damaging relationships with individual contract managers, increase confidence questions would be objectively addressed, and support continuous improvement in procurement practices. Several participants shared their belief that fears of retaliation against suppliers by contracting authorities for ‘making waves’ has had an important impact on reducing the willingness of bidders to raise concerns or question decisions.

Several participants also identified concerns about integrity related to the perceived involvement of elected officials in decision-making and dispute resolution. Issues identified included unsuccessful bidders seeking (and on occasion achieving) some measure of redress by approaching their MLA or a Minister as opposed to using GNWT’s dispute resolution process. These issues are also linked to concerns about transparency as in the incidents described to the Panel, it wasn’t clear who had the authority to make decisions,

nor who in fact did. These topics are explored further in the Organization and Governance section of the Report.

3.1.4 Panel Thoughts

The Panel reviewed the suite of documents that comprise GNWT's procurement policy framework to identify the principles and objectives. Both the Government Contracts Regulation (GCR) and the Financial Administration Manual (FAM) are established under the authority of the *Financial Administration Act (FAA)*. The Business Incentive Policy (BIP), Negotiated Contracts Policy, and the P3 Policy are issued by Cabinet, and the Northern Manufactured Products Policy (NMPP) is issued by the Minister of ITI under authority granted in the BIP. The Procurement Guidelines are issued by the Procurement Procedures Committee, under authority established in the FAM.

The FAA and the GCR are GNWT's highest order of procurement regulation, and neither of them contain references to procurement objectives or principles. Section 705 of the FAM ("Procurement") includes a purpose statement, and statements of purpose or objectives are also included in the procurement policies established by Cabinet and the Minister of ITI and the Procurement Guidelines. Altogether, there are six policies, 24 interpretive bulletins (14 for FAM, 10 for BIP) and a lengthy procedures guide (the Procurement Guidelines) that provide a total of 20 statements of "objectives" for procurement.

We found (see [Table 16](#) below):

- 10 objectives identified in three of the policies and the guidelines that relate to supporting NWT businesses and local economic development;
- Four objectives in two of the policies and the guidelines that relate to obtaining value for money;
- Three objectives in one policy and the guidelines that relate to fair treatment of vendors;
- One objective in one policy related to encouraging vendor participation in competitive processes;
- Two objectives identified in one policy that relate to encouraging efficient and accountable processes; and
- No objectives related to using procurement to support Indigenous businesses or communities. Although BIP and the Negotiated Contracts policy include statements to the effect that the policies "should not prejudice any present or future self-government, treaty, or land claim-based rights", GCR, FAM, NMPP and P3 say nothing in this regard.

Table 16: Objectives Identified in GNWT Procurement Policies and Guidelines

Objectives/Principles	BIP	NMPP	NC*	P3	FAM	Guidelines
Support Economic Benefits						
Maximize economic benefits accruing to NWT residents & business	X		X			
Supports the creation and growth of competitive businesses	X					
Provide an incentive to Northwest Territories-based businesses in a manner that recognizes the higher cost of operating businesses and manufacturing products in the Northwest Territories	X	X				

Table 16: Objectives Identified in GNWT Procurement Policies and Guidelines

Objectives/Principles	BIP	NMPP	NC*	P3	FAM	Guidelines
Encourages NWT-based businesses to create employment and develop necessary experience and business skills	X					
Maximize opportunities for economic diversification and the training and development of residents and businesses			X			
Enhance business environment for sustained economic growth	X					
Encourage local production		X				
Socio-economic impact – support the involvement of northern and local workers and businesses.						X
Foster and maintain the investment, jobs and income produced by local manufacturing		X				
Contribute to support & development of self-sustaining businesses			X			
Value for Money						
P3 projects should provide best value for money over the life of the agreement with appropriate consideration of risk transfer, innovation, revenue generation & community issues				X		
P3 Agreements should ensure that the GNWT receives value for money while the private sector partner receives a fair return on investment				X		
Competition – complete the contract for the best value, on time, on budget, and meeting the program requirements.						X
Goods and services obtained by GNWT through contracts shall be provided at a reasonable cost			X			
Fair Treatment						
Transparency – ensure vendors have fair access to information regarding procurement opportunities, processes, and results.						X
P3 process should be transparent, accountable and ensure that public control is preserved.				X		
Establish a high level of confidence in the procurement process by ensuring that all public sector procurement is carried out in an open, consistent, efficient and competitive manner						X
Encourage Participation / Opening up Markets						
Shall be conducted in a manner the encourages all qualified suppliers to participate					X	
Efficient and Accountable Procurement Processes						
Procurement to observe the highest standards of efficiency, effectiveness and economy					X	
Demonstrate prudence, probity, accessibility, and management of funds and resources in a consistent, fair, open, transparent and accountable manner that provides value to NWT residents in the procurement process					X	

Note: *NC = Negotiated Contract Policy

The multitude of policies create challenges for consistency and clarity, particularly when it comes to provisions related to maximizing local benefits arising from procurement. For example:

- FAM states that procurement shall be conducted in a manner that encourages all qualified suppliers to participate, while BIP encourages restriction of some procurement to local suppliers and the NMPP contains provisions that exclude the use of competition and the use of outside suppliers;
- The GCR does not contain any statements supporting or setting parameters for the use of procurement to support local businesses or economic development, although this objective is the focus of the BIP, NMPP and Negotiated Contracts policies; and
- FAM requires that procurement “observe the highest standards of efficiency, effectiveness and economy” and “provide value to NWT residents” but does not address whether that value arises from achieving lowest cost solutions or includes, for example, maximizing opportunities for local businesses.

The relationship between the policies is also unclear, which makes it difficult to know whether objectives established in one place are expected to be imported into another. For example:

- Only FAM and the P3 policy make reference to conducting procurement in an accountable manner; given that FAM is intended to have broad application, can we assume the objective covers all procurement?
- Only the P3 policy and Procurement Guidelines refer to supporting transparency in procurement processes; given that it is not mentioned in FAM, does the objective only apply when it is specifically included in a policy?
- While the NMPP is established pursuant to BIP, it isn’t clear whether the objectives established within BIP are intended to apply within the NMPP as well (for example, is the NMPP expected to be supporting the training and development of residents and businesses?) The question of whether the mechanisms established in either of these policies align with their objectives is discussed further in the sections focusing on the individual policies.

The Auditor General noted in 2009 that the procurement direction and guidance required by staff was dispersed throughout many documents, making it difficult for employees to ensure they had the information they need to carry out their procurement roles¹². Since that time, GNWT has created the Procurement Guidelines, which aim to provide comprehensive guidance for staff. Although the Guidelines do consolidate a significant amount of information concerning public procurement, it is not policy, and it cannot retrofit policies with new objectives to rectify inconsistencies.

3.1.5 Recommendations

1. Establish common objectives and principles for procurement.

12. Auditor General of Canada (2009) [*Contracting for Goods and Services in GNWT*](#), p.5

GNWT procurement policy should be built on a common set of objectives and principles that support the core business of procurement and make clear government's interests to use procurement to support strategic objectives. In addition to providing a consistent platform for developing and managing policy, these objectives will be useful in supporting the transition to a culture committed to developing and using more co-ordinated and strategic purchasing practices.

2. Consolidate existing policies and ensure they are internally consistent and coherent.

GNWT should establish a clear 'line of sight' of procurement principles and objectives, flowing consistently from higher order regulatory formats (e.g., the Government Contracts Regulation and Financial Administration Manual) through to policies and guidelines. Ideally, this would include:

- Creating a consolidated purchasing policy, as this would ensure increased alignment of all of the policy components and provide a more readily accessible and coherent picture of government's procurement framework; and
- Revisions to the 'higher order' policy documents to ensure that the use of procurement to support economic objectives, such as strengthening the local and Indigenous business communities, is fully enabled.

3. Incorporate the desired use of procurement for strategic purposes into procurement objectives.

GNWT should ensure all of its objectives for procurement are reflected. GNWT procurement policy objectives and principles could be described as supporting procurement to be conducted in a manner that:

- Enhances access, fairness, and the optimal balance of overall benefits to government and the people of the Northwest Territories;
- Provides vendors fair access to information on procurement opportunities, processes and results;
- Increases the ability of local businesses and Indigenous businesses to secure contracts;
- Promotes integrity and public confidence in procurement;
- Is consistent with government policy and the requirements of trade agreements;
- Ensures contracting authorities are accountable for the results of their procurement decisions and the appropriateness of the processes followed, and that decisions are appropriately justified and documented;
- Leverages government's buying power through demand aggregation and the use of corporate and strategic sourcing arrangements wherever practical;
- Stands the test of public scrutiny in matters of prudence and probity, and reflects fiscal accountability and fairness in the spending of public funds.

At a minimum, GNWT's procurement policy should also ensure procurement is undertaken in accordance with the provisions of land claim, treaty and self-government agreements. Future discussions related to the development of strategies to increase the benefits of procurement for

Indigenous businesses and communities may establish objectives that go further than ‘adherence’ to agreements by seeking to advance reconciliation, renewed relationships and improved economic conditions.

3.2 Approaches to Using Procurement to Support Strategic Objectives

3.2.1 Introduction

Governments are increasingly using public procurement as a strategic lever to enhance different policy objectives. For example, all OECD countries have developed some form of green public procurement policies, and most have policies to support small and medium enterprises to access public procurement¹³. Jurisdictions may focus on using procurement to support different secondary or complementary objectives, and may choose from a wide variety of strategies in their efforts to maximize the support these objectives receive through the procurement process.

When we think about public procurement, we often focus on its most visible component – the release of and responses to a competitive solicitation opportunity. Those activities are really the tip of the iceberg of a more complex system, and it is the less visible elements that will have the largest impact on maximizing the benefits of procurement for local and Indigenous businesses.

This section provides an overview of the main activities involved in procurement and contract management, the tools and mechanisms that can be used to support complementary objectives using procurement, as well as what the Panel heard from its engagement sessions concerning the current procurement system in GNWT.

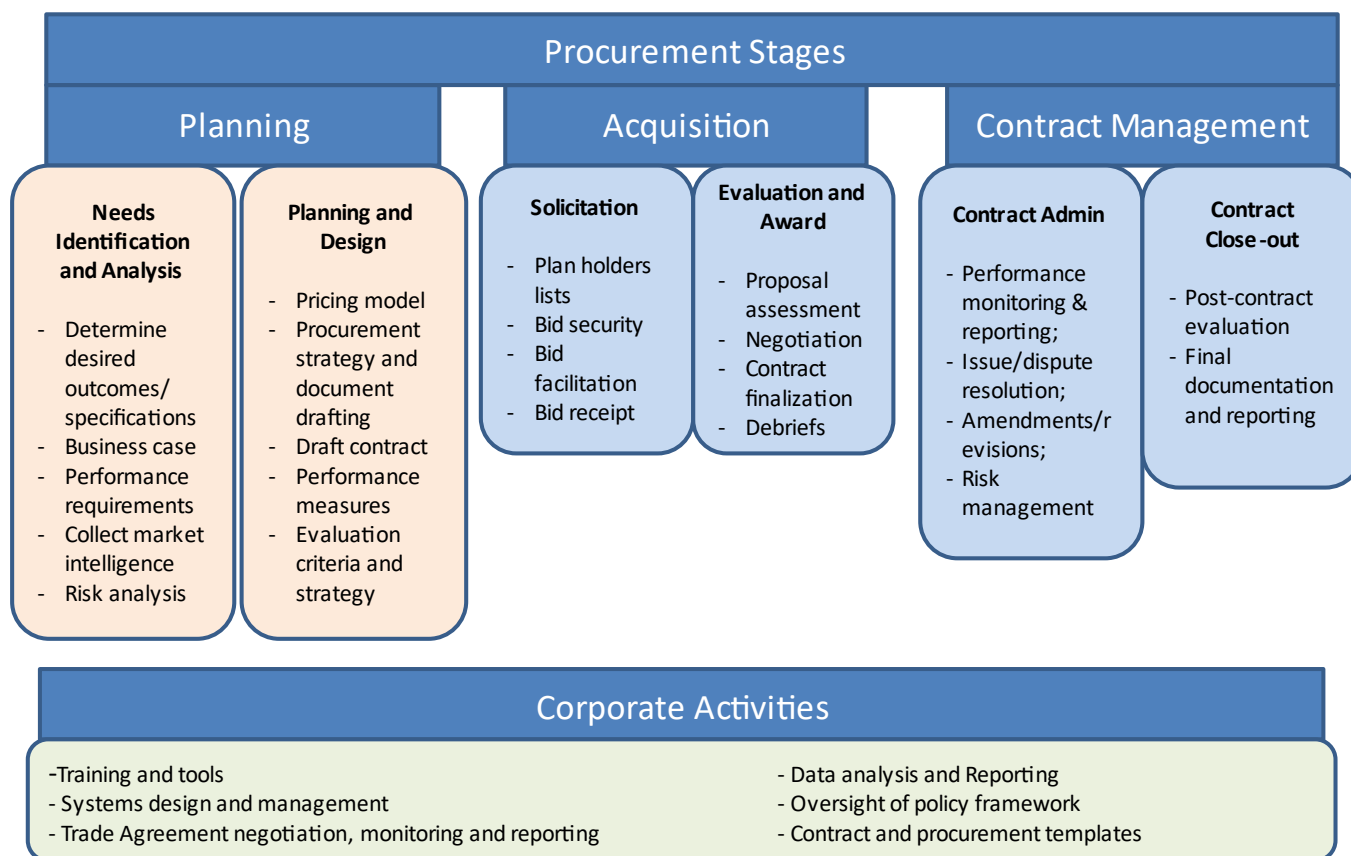
3.2.2 Overview of Key Procurement and Contract Management Activities

There are three main phases in procurement operations (see [Figure 14](#) below):

1. Deciding what goods or services are to be bought and when (procurement planning);
2. Awarding a contract to acquire those goods or services (acquisition); and
3. Administering the contract to ensure effective performance (contract management).

In addition, these procurement operations are supported by corporate activities that develop and manage the underlying policies, systems, training and tools.

13. [OECD \(2019\) Government at a Glance \(Procurement\)](#), pp.135-136

Figure 14: Overview of Key Procurement & Contract Management Activities

The regulation of public procurement tends to focus on the second phase, establishing rules to ensure the processes for soliciting bids and proposals and awarding contracts are managed fairly. However, it is critical to recognize that the three stages and the corporate functions are closely integrated, and actions taken in one area can have significant impacts on all of the others. For example:

- The scope, specifications and timing of what a contractor is expected to deliver (procurement planning) will have a significant impact on who can respond to a contract opportunity (acquisition)
- The speed and fairness of payment and dispute resolution (contract management) will impact whether contractors are willing to bid (acquisition)
- The form of contract and procurement method chosen (procurement planning) will impact the type of relationship between the contractor and contract manager while the contract is delivered (contract management)
- A lack of oversight during contract execution (contract management) will undermine the contract terms and conditions planned and agreed to in procurement planning and acquisition; and
- The information, training and tools provided to procurement staff and contract managers will impact their ability to plan procurements, use different types of procurement and contract formats and to effectively manage performance.

All three phases of procurement, along with the underlying framework and supports, can include actions that contribute to the participation and success of NWT, local and indigenous contractors in procurement.

3.2.3 Overview of Actions to Maximize the Benefits of Procurement for Local and Indigenous Businesses

3.2.3.1 Procurement Planning Tools

The Planning phase contains most of the key decisions that determine which businesses will be potential bidders for a contract. During this phase, project management and procurement staff determine:

- The size, scope, and timing of contract deliverables;
- The policy and contract provisions that will apply;
- Any specific qualifications or bonding required to carry out the work;
- The procurement format (e.g., direct award, RFP, Qualified Source List, Invitation to Tender, etc.); and
- Bid evaluation criteria and processes.

Some of the actions that can be taken during this phase to increase the local impacts of procurement include:

- “Right sizing” contracts to fit the delivery capabilities of local businesses;
- Minimizing the use of financial and performance bonds (e.g., using hold-backs where possible);
- Ensuring specifications don’t exclude local suppliers (e.g., use performance-based specifications where possible);
- Employing the use of ‘set asides’ for NWT, local and/or Indigenous firms;
- Enabling contracts to be offered / competed locally first (e.g., BIP has some provisions supporting this);
- Using direct awards and negotiated contracts where appropriate (e.g., GNWT’s Negotiated Contract Policy);
- Including local knowledge, experience, employment and training in the evaluation criteria;
- Using simple, short form solicitation documents (like GNWT’s short form RFP) and supply arrangements (like standing offer agreements and qualified source lists) to reduce the amount of paperwork and time involved in bidding, and to make the process as easy and quick as possible for suppliers, and
- Supporting innovative products and services through “first buy” and unsolicited proposal programs.

The impact of these actions will vary greatly depending on whether they are supported by solid data (e.g., about government’s contracting needs and local supplier capabilities) and how seriously government commits to their use. Many of these actions already occur at least occasionally within GNWT, depending on the knowledge and time available for procurement staff and contracting authorities. Moving away from an ad hoc approach to a concerted effort would require dedicated time and a commitment to develop and manage the tools to support these actions.

3.2.3.2 Acquisition Tools

The acquisition stage of the process includes the steps related to communicating or advertising the contract opportunity, providing information or clarifications to prospective bidders, receiving and evaluating proposals, awarding and executing the contract with the successful proponent and notifying (and potentially providing debriefs to) other proponents.

Actions that can be taken during this phase to increase local impacts of procurement include:

- Providing advance notice of anticipated contract opportunities, so that suppliers can plan and find partners or financing as required;
- Providing adequate time for suppliers to respond;
- Providing easy access to procurement information and support;
- Applying “price preferences” / bid value adjustments (e.g., BIP and NMPP);
- Providing fulsome debriefs and easy access to information about successful bids;
- Supporting potential prime and sub-contractors and joint venture partners to find each other; and
- Not accepting bids from suppliers that have misrepresented their local status or content in a bid, or that have repeatedly failed to meet commitments for local employment or subcontracting.

3.2.3.3 Contract Management Tools

This phase begins once a signed agreement with the successful contractor is in place. The activities involved include ensuring that the deliverables are received in accordance with the terms and conditions of the agreement, that invoices are received and paid, that contract issues are addressed, that government meets any information or performance requirements of its own in the contract, and that contractor performance is monitored.

Actions that can be taken to support local businesses during this phase include:

- Ensuring compliance concerning commitments for local employment or the use of local subcontractors, Applying incentives and penalties for exceeding or missing employment and subcontracting commitments;
- Ensuring prompt payment of invoices; and
- Simplifying invoicing and performance reporting requirements.

3.2.3.4 Corporate Tools / Strategic Procurement Support

There are a wide range of tools or strategies government can employ to support NWT, local and Indigenous businesses that are not connected to individual procurements. These tools are potentially the most critical to the success of the strategic use of procurement because they:

- Signal government’s awareness of and support for the strategic use of procurement;
- Enable the actions that can support a wide range of individual procurements, for example by providing the data required to ‘right size’ contract requirements; and
- Drive performance measurement and management for the entire procurement system.

It is important to note that procurement staff and contract authorities are often under significant pressure to get contracts in place quickly. Extra time for planning and researching specifications and local capabilities for individual procurements may feel unrealistic and inefficient. Providing support for these activities through corporate resources is often more effective, particularly in smaller organizations. Some of the common corporate strategic procurement approaches are described below.

- **Spend Management**

Is the systemic analysis of procurement data to understand government's buying patterns. The information obtained can be used to leverage buying power, reduce costs, provide better management and oversight of suppliers and to develop informed procurement strategies.

- **Category Management**

Describes the use of spend management data to identify particular segments or categories of spending that can be managed as a group to meet a government or procurement objective. For example, government might develop a specific plan to manage its IT-related procurement to lower costs and / or to support development of local suppliers. Actions may include restricting procurement authority for specific types of goods or services to ensure the appropriate knowledge and expertise is applied to the category. For example, many jurisdictions use this approach to manage procurement for goods and construction services. Similarly, government might establish Standing Offer Agreements or arrangements that are mandatory for contracting authorities to use for particular categories of goods or services in order to better control areas of specialized or strategic procurement, or obtain better value through the aggregation of spending.

- **Supplier Relationship Management**

Refers to planning for and managing interactions with current and potential suppliers to identify ways to improve procurement planning and processes. It seeks to improve outcomes for both suppliers and government by getting past the traditional "arms-length" approach to managing contractors in order to work more collaboratively to address areas such as quality, delivery, price, transaction efficiency, value added ideas, innovation and assurance of supply. An example of relationship management used in some jurisdictions is "reverse trade shows", which highlight government's procurement needs for the supplier community and help build contacts and relationships between buyers and suppliers.

- **Supply Chain Management**

Refers to looking at the entire supply system involved in moving a product or service from a supplier to the customer. In many cases, government's assign responsibility for managing the supply chain to the contractor. In some areas, government may manage the supply system more comprehensively with the objective of improving costs, reliability and outcomes for both customers and suppliers.

An additional 'corporate consideration' that has an impact on the overall effectiveness of the procurement framework is a vendor dispute or complaint mechanism. Complaint mechanisms are important because, in addition to helping ensure procurement rules are properly followed, they can support continuous improvement in procurement processes and bring an important measure of accountability to the procurement system overall. The effectiveness of vendor complaint processes will impact supplier confidence and willingness to sell to government.

GNWT currently has a Vendor Complaint Process¹⁴ for bidders who have concerns or disputes related to specific procurement opportunities, and the BIP includes a provision enabling those who have had their registration denied or revoked to appeal¹⁵ (discussed further in the BIP section of the report).

3.2.4 What We Heard

With respect to procurement planning, numerous participants stated that contracting authorities do not have good awareness of the existence and capabilities of NWT, local and Indigenous businesses. In some cases, participants noted this resulted in their products be ineligible for inclusion in bids due to either inadvertent use of narrow or brand-specific specifications or a lack of awareness of local products. Gaps in meaningful reporting of procurement plans and past expenditures were also identified as barriers for firms aiming to gain access to government contracts.

A similar issue was raised repeatedly about the acquisition phase, in that participants felt that direct award contracts were issued to non-local firms when local capacity existed. Other issues raised include that the time required to search for procurement or subcontracting opportunities is a barrier to participation for some businesses, in particular smaller businesses. Appreciation was expressed for GNWT having established a short form RFP; several participants encouraged greater use of this format when possible. A number of participants described unsatisfactory experiences obtaining debriefs when they had been unsuccessful with a bid, and felt that potentially both a poor choice of evaluation criteria and inexperience in conducting evaluations had led to a lack of defensibility of award decisions.

With respect to contract execution and monitoring, the most commonly cited concerns related to a lack of adequate contract monitoring and ensuring compliance with contract commitments, either as a result of a lack of resourcing or skills, or a lack of enforceable contract provisions.

Concerning the overall procurement system, a number of participants suggested that the absence of a vision capturing how procurement is intended to support NWT, local and Indigenous businesses, along with the lack of clear objectives, performance targets, measures and reporting are contributing to both:

- Reduced effectiveness in identifying how individual procurements would keep contract dollars in the local economy; and
- Reduced transparency and accountability in procurement actions and performance.

Participants also remarked on the current mechanisms for raising questions or complaints about procurement. Several commentators suggested there is a lack of objectivity among GNWT staff when issues are raised and a lack of commitment to resolving concerns. The majority of these comments related to processes under the BIP and NMPP, which are discussed further in those sections in the report. With respect to the Vendor Complaint Process, the Panel heard that it has limited value as a result of limitations on who can access the process, the time limits for access, and the time required to obtain any feedback. Several participants commented that contracting authorities, when contacted for debriefs or as a first stage of raising a complaint, are lacking the skills and experience to adequately respond to questions.

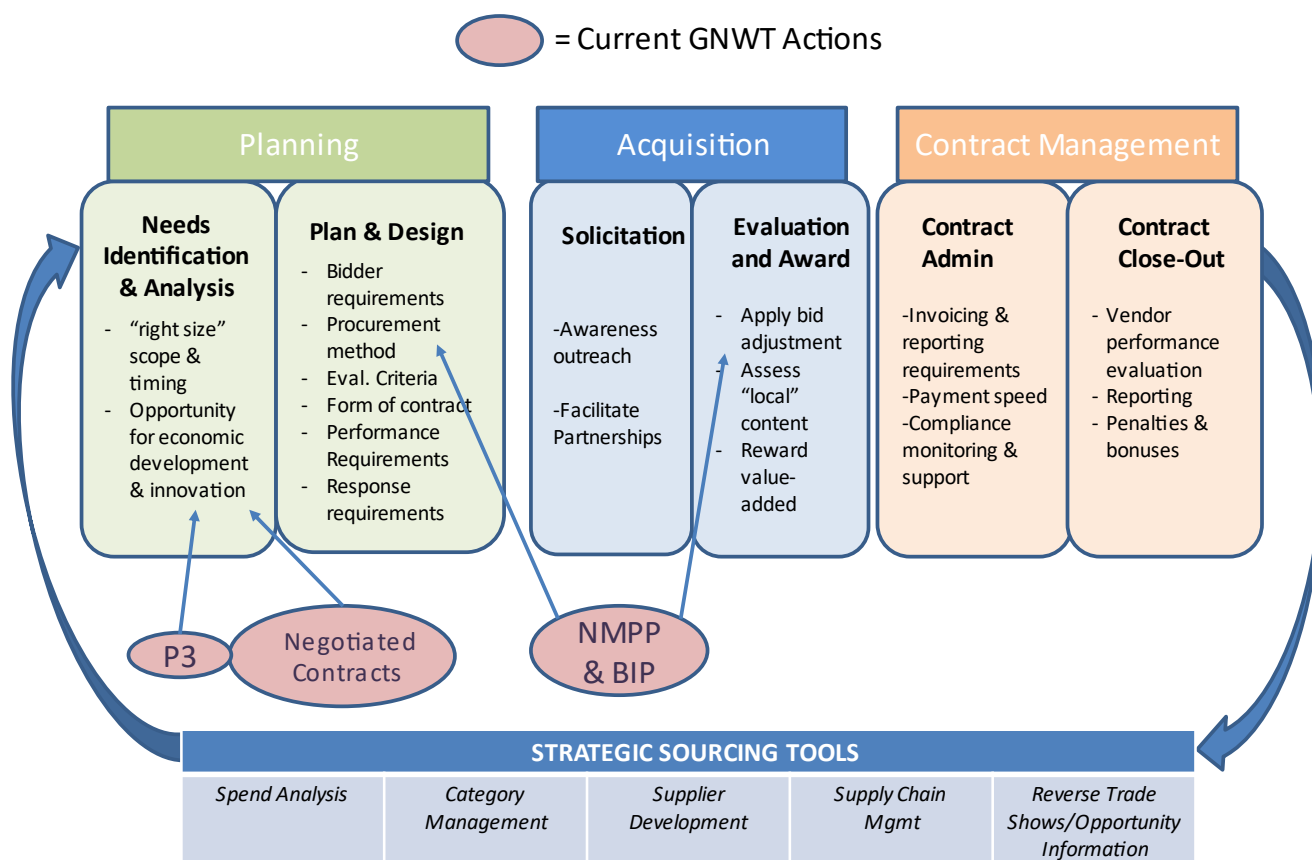
14. [GNWT Vendor Complaint Process](#), 2010

15. *GNWT Business Incentive Policy*, s.6(3)(b)

3.2.5 Panel Thoughts

Currently, GNWT's toolkit for supporting local businesses is comprised mainly of the bid value adjustment and preferential consideration for direct awards and supply arrangement offerings provided for in the Business Incentive Policy and the Northern Manufactured Products Policy (see [Figure 15](#)). There is very little use of any corporate procurement tools such as "category management" (outside of the co-ordination of construction procurement) and the use of mechanisms specific to particular phases of procurement are somewhat ad hoc.

Figure 15: Procurement Strategies That Can Support Local Vendors



Businesses in different sectors of the economy and different locations in NWT face different challenges in winning government contracts. For example, the cost of doing business in some regions is significantly higher than in others, and the importance of bonding requirements or the timing of contracts varies between sectors. It is not realistic for a government, in particular in a smaller jurisdiction, to adopt every possible approach to supporting the strategic use of procurement. However, it is also not realistic to expect to maximize benefits from procurement for NWT, local and Indigenous businesses by applying one or two mechanisms without a co-ordinated plan.

The OECD recommends that jurisdictions (i) use public procurement to pursue complementary policy objectives while balancing them against the primary objectives, (ii) develop an appropriate strategy, and

(iii) employ appropriate impact assessment methodology to measure its effectiveness.¹⁶ GNWT's current procurement framework recognizes the need to balance support for NWT, local, Indigenous suppliers against the primary objectives of ensuring best value, fairness, and integrity, but requires a co-ordinated strategy and impact assessment methodology to maximize success. These components together can be described as a strategic procurement plan.

Developing a strategic procurement plan would help GNWT:

- Identify which of the many possible tools it would like to implement; and
- Develop a foundation to measure outcomes and adapt strategies over time.

Even a modest plan that brings together the core activities of planning, measuring and reporting on procurement outcomes related to impacts on local and Indigenous businesses would generate important benefits. As noted elsewhere in this report, the Panel believes that the greater the interest in using procurement to support strategic objectives, the greater the need for a strategic procurement plan to co-ordinate and support activities intended to meet those objectives.

A strategic procurement plan enables government to:

- Align procurement actions and strategies with the objectives and principles identified;
- Plan, budget, measure and manage its activities;
- Be better positioned to balance and align those resources against current and future requirements; and
- Incorporate procurement into the organization's strategic mindset.

In addition, it can help transform the view of procurement from a primarily clerical function into a strategic instrument and equip procurement practitioners with the tools that allow them to perform at a professional level and set expectations accordingly. This approach to 'operationalizing' the objectives of procurement brings greater value, greater trust and greater success to government leaders and their communities.

3.2.6 Recommendations

The Panel recommends that:

1. GNWT assign responsibility and resources to develop a strategic procurement plan. The initial plan may focus on gathering data, including spend management information, and developing a logic model to outline the expected relationships between policies, strategies, outputs and outcomes – and the resources required to implement them. The plan should include measures and targets to help gauge the effectiveness of the actions taken.

16. OECD (2015) [*Recommendation of the Council on Public Procurement*](#)

The Panel encourages GNWT to develop a strategic procurement plan:

- In a collaborative fashion across government, incorporating input from government departments with responsibility for different policy areas, along with those involved in needs identification, procurement and contract management roles;
 - That includes meaningful performance targets and measures, including socio-economic indicators;
 - That includes identification of opportunities to implement improved category management approaches to leverage increased participation of local, NWT and Indigenous suppliers;
 - That co-ordinates the development of policy and processes to maximize the use of the exemptions and exceptions allowed under the Trade Agreements;
 - That includes steps to improve reporting on contracts under \$25k and direct award decisions; and
 - That includes commitments for increased support for staff to acquire the skills and knowledge needed to effectively support the plan.
2. GNWT move quickly to implement simple steps to improve the impact of procurement for local, NWT and Indigenous businesses, such as:
- Including local knowledge, experience, employment and training in the evaluation criteria; and
 - Developing strategies and procedures for the use of exemptions and exceptions available under the various trade agreements.
3. GNWT augment the processes available to suppliers to support resolution of complaints and concerns. As GNWT will need to make changes to its Vendor Complaint Process in order to be consistent with requirements included in the 2017 Canadian Free Trade Agreement and the Canadian European Trade Agreement, it would be timely to review the complaint process more generally to consider:
- Making the process more widely available (e.g., to suppliers that do not qualify under the current complaint process);
 - Whether a role should be established that can investigate and help resolve procurement and contract disputes, and / or help suppliers find the connections and information they require within GNWT (i.e., “procurement ombuds” and “navigator” type roles), and how this role would be co-ordinated or integrated with the existing appeal mechanisms available under the Business Incentive Policy and Northern Manufactured Products Policy; and
 - Ensuring roles and responsibilities related to providing debriefs and complaint resolution are clear for GNWT staff supporting the processes.

3.3 Governance and Organization of Procurement Functions

3.3.1 Introduction

The way in which the roles and responsibilities for managing and conducting procurement are defined and organized within government is a critical component in designing and delivering procurement to meet government's objectives. This institutional framework is important because:

- Gaps and overlaps in roles and responsibilities can inhibit or erode the efficiency of procurement, as well as its contribution to strategic policy goals and public trust;
- Effective management requires a clear alignment of accountability and responsibility; and
- The allocation and co-ordination of resources should support the priority of the functions.

Governance ensures that an agency has visibility of its procurement activities and assurance that they are achieving their purpose. Given GNWT's interest in using procurement to support strategic policy outcomes, the organizational structure must take into account how the policies, roles and tools supporting these strategic interests are designed and integrated into the core functions of supplying government's needs for goods, services and construction.

The Panel did not conduct a detailed assessment of the organization of the procurement function within GNWT. However, questions and observations that arose during the course of the review made it clear that several issues related to the organizational design and governance of procurement are preventing GNWT from maximizing success in leveraging economic benefits. The key questions considered by the Panel on this topic were:

- What are the functions required to ensure the effective oversight and delivery of procurement?
- Are those functions currently in place in a manner that avoids gaps and overlaps?
- Is there clear accountability for the leadership and strategic success of procurement?

3.3.2 Key Functions

Responsibilities for the core procurement functions can be broadly grouped into two categories: 1) directly carrying out procurement activities (e.g., planning and issuing individual solicitation documents and contracts); and 2) core oversight functions (e.g., setting and enforcing procurement rules and procedures, providing training, monitoring and support). Any jurisdiction interested in using procurement to support broader social, economic and environmental objectives requires a third category of functions – those related to designing and managing the co-ordination of plans, tools and strategies to support those objectives.

The main functions required for the core oversight of procurement include:

- Maintaining and interpreting relevant policy and legislation/regulations;
- Co-ordinating national and international obligations (negotiation of and reporting about participation in trade agreements);

- Monitoring and assessing compliance with procurement policies and procedures (collecting data on public procurement from relevant contracting entities for the purpose of assessing the overall health and performance of the procurement system and identifying systemic problem areas);
- Co-ordinating the management of vendor performance data and practices;
- Reporting on the performance of the procurement system to other parts of government and the public;
- Managing complaints and remedies (oversight of an external dispute resolution body, or directly responding/intervening in disputes);
- Publications and information (ensuring stakeholders have access to procurement rules and requirements);
- Skill building and capacity development (identifying the need for and arranging the provision of training; providing implementation tools and documents);
- Advisory and operations support (advice on the application of procurement laws and policy, and may include legal and professional advice to support purchasers); and
- Management of an e-procurement platform.

The key functions required for the development and oversight of the strategic use of procurement include:

- Strategic planning (identifying the strategic objectives, strategies, tools and measures);
- Performance Management (gathering and analyzing and reporting on performance information); and
- Develop and implement strategic tools (such as spend analysis, category management, supplier development and supply chain management).

The functions required for the strategic use of procurement are associated with organizations that are moving beyond treating procurement as an administrative, transactional process. Public procurement is a complex business, and it takes organizations time to establish a solid foundation for its administration. Numerous entities have developed tools to assess the maturity and capacity of their procurement functions to support their development beyond the more traditional clerical or transactional models¹⁷. It is important in any jurisdiction to continue to invest in developing the capacity and maturity of the overall procurement system in order to maximize its efficiency and effectiveness, but it is critical to do so in jurisdictions that are aiming to use procurement for strategic purposes.

3.3.3 Organization

Establishing a coherent and comprehensive procurement management system requires a thoughtfully planned relationship between the operational purchasing functions and the core and strategic procurement oversight roles. Where the responsibility for different functions is assigned in an organization will depend on number of factors, such as the volume, value and complexity of procurement

17. See, for example, New Zealand's [Procurement Capability Index](#), and BC's [Procurement Competency Model](#)

being conducted and the maturity of organizational processes. While there is no one inherently preferable organizational model or degree of centralization, there are some functions that lend themselves more readily to a centralized or decentralized approach, and some that make more sense to consolidate in smaller organizations.

Factors that favour the centralization or consolidation of procurement functions include:

- Smaller organizations are typically not able to develop procurement expertise in a large number of positions and find it less productive to spread that expertise out too widely;
- Smaller volumes of procurement activity make it more difficult to develop and maintain procurement knowledge and skills;
- Commonly used items are typically more efficiently purchased in a centralized manner;
- High risk, long term or more complex procurements that require specialized skills and expertise are typically best managed in a centralized fashion; and
- A need to ensure consistency in standards or practices or co-ordination among initiatives or systems.

3.3.4 Leadership

The responsibilities for the leadership of procurement within an organization increase as the expectations on outcomes grow. The greater the interest in co-ordinating procurement planning and outcomes to support policy objectives, the greater the visibility and impact required in procurement leadership. Similar to the rationale that has led to the creation of Chief Information Officer positions within organizations, the strategic co-ordination of procurement functions requires one position to hold the responsibilities of a 'chief procurement officer'. The ability to have procurement considerations included in discussions with other executives when planning new policies or programs can make a significant contribution to improving relationships with stakeholders as well as procurement outcomes.

The establishment of a strong focal point for public procurement at a high, central level that is given a wide scope of functions and responsibilities is seen as a vital measure for jurisdictions in the process of building or reforming their public procurement systems¹⁸.

3.3.5 What We Heard

The majority of comments received by the Panel related to the organization and governance of procurement within GNWT identified concerns with:

- Inconsistent interpretation and application of procurement policies and procedures across GNWT;
- A lack of access to complaint resolution support;
- Difficulty finding information, support or guidance concerning how to access procurement information;

¹⁸ See, for example, OECD (2016) [Organizing Central Procurement Functions](#)

- A desire for improved measurement and reporting concerning procurement activities and outcomes; and
- A lack of compliance monitoring both a) within government for adherence to procurement rules and b) within individual contracts for adherence to contract terms and requirements.

3.3.6 Panel Thoughts

The Panel noted some important gaps in the current procurement oversight functions, and that the distribution of some procurement functions is giving rise to inconsistencies or a lack of co-ordination. An overview of the current distribution of procurement functions is provided in [Table 17](#).

Table 17: Current Distribution of Procurement Functions Currently within GNWT

Procurement Function	Responsible Entity					
	Finance	PSS	ITI	EIA	Depts & Agencies	Not Clearly Assigned
Maintaining and interpreting policy & legislation	X	X	X	X		
Co-ordination of national and international obligations			X			
Monitoring and assessing compliance						?
Vendor performance management						X
Performance reporting						X
Managing complaints	X					
Publications and information						?
Skill building and capacity development		X				
Advisory and operations support		X				
e-procurement platform	X					
Designing & conducting procurement		X			X	
Develop & manage strategic plan, objectives and measures						X
Performance management and reporting						X
Develop and manage use of strategic tools						X

For example, although the Department of Finance has responsibility for the P3 Policy and the foundational elements of procurement policy (i.e., the Financial Administration Act, the Government Contracts Regulation, the Financial Administration Manual and the Procurement Guidelines), the Department of Executive and Intergovernmental Affairs manages the Negotiated Contracts policy, and the Department of Industry, Tourism and Investment is responsible for the Business Incentive Policy and the Northern Manufactured Products Policy, as well as for the development and management of trade agreements.

Although there are connections between the subject matter of BIP, NMPP and the Negotiated Contracts policy and the mandates of the Departments currently administering them, they are first and foremost

policies related to the strategic use of procurement. Developing cohesive strategies to implement these policies and ensure they are integrated with the oversight and management of solid procurement practices is much more difficult when responsibility for these policies is shared across multiple agencies.

In addition, no entity has been clearly assigned responsibility for the ongoing development of procurement policy to support government's strategic objectives, or for developing a documented plan for procurement that will be used to deliver the desired outcomes. Similarly, there are gaps with respect to having clearly assigned roles for performance measurement and management, compliance monitoring across government, and the development and use of strategic procurement tools.

Some functions that do have a lead agency are not being performed in a manner that either meets suppliers' expectations or supports the strategic use of procurement. For example:

- Although the Department of Finance is responsible for vendor complaints, a number of participants indicated that:
 - the only mechanism currently in place is for formal complaints;
 - formal complaints can only be made about specific procurements and after a contract is awarded; and
 - the complaint process feels like it is designed to discourage bringing concerns forward.
- Although the Department of Industry, Tourism and Investment is responsible for management of the Business Incentive Program, suppliers indicated that:
 - Reviews of applications and renewal information can be very slow; and
 - The BIP office is not resourced to effectively monitor compliance with eligibility criteria or application of the policy.
- Although the Department of Finance is responsible for contract reporting, there is no clear expectation that this responsibility includes the collection and analysis of information in a manner to support the strategic use of procurement or assesses procurement performance in any manner.

The Panel is aware that GNWT staff are working towards improvements in both reporting contracting information and vendor performance management, however these initiatives are proceeding slowly due to competing priorities.

The fact that both PSS and government departments/agencies are both carrying out direct procurement functions is not necessarily indicating an area of duplication. There can be benefits in terms of efficiency and effectiveness in allowing end-user departments to conduct some procurement, and the input of end users is critical in designing procurements and conducting evaluations. However, the Panel notes that there may be benefit in further consolidating responsibility for purchasing some types of goods or services, for example where spend analysis suggests efficiencies may be gained or where category management opportunities would enable improved economic benefits.

Transforming procurement policies and processes into a strategic tool for government will require clear assignment of responsibility to lead that transition in the immediate term, and to provide oversight of the strategic procurement function in the longer term. There is currently no single senior leadership role that

is accountable for procurement within GNWT, nor an expectation that the responsibilities of the procurement leader would include oversight of the strategic functions. Assigning accountability for the strategic leadership functions is a necessary step in achieving the larger, strategic vision.

To some extent, the role of the Procurement Procedures Committee may be contributing to a fragmentation of accountability for procurement. Although there is a recognition within GNWT that the PCC plays an important role in the corporate co-ordination of procurement, the fact they have no mandate to drive the strategic use of procurement may be overlooked.

Established by the DM of Finance in accordance with FAM 705, the role of the committee is “*to provide oversight and guidance in the administration, development, and maintenance of government-wide procurement procedures and to ensure consistency with corporate procurement regulations, policies, systems, standards and best practices*” (see IB.705.08). The PCC is comprised of the Comptroller General and Assistant Comptroller General, and one person (preferably but not necessarily at the Director level) from each of PSS, Infrastructure; Housing Corporation, ITI, and legal services.

The committee’s mandate focuses on developing and maintaining the operational Procurement Guidelines and resolving issues within Department specific procurement policies and procedures. The PCC has no authority outside of that function, and any suggestions or recommendations arising from their work are delivered to a committee of Deputy Ministers. The PCC is tasked with ensuring consistency between practice and policy, but they are not charged with ensuring consistency *among* the policies nor the advancement of policy to support strategic objectives.

The PCC could potentially make very useful contributions to the transformation of procurement into a more strategic tool. If GNWT takes steps to assign responsibilities for the strategic management of procurement, the mandate of the PCC should be reviewed to ensure it is aligned with those strategic responsibilities and accountabilities.

3.3.7 Recommendations

The Panel recommends that:

1. Overall responsibility for procurement policy, including responsibility for development and management of procurement as a strategic tool, be consolidated into one area.
 - The Department of Finance may be a logical location to consolidate the oversight of procurement policy as it already holds the majority of that responsibility.
 - Responsibility for oversight should include ensuring regular review (e.g., every 5 years) of procurement policy and tools to assess whether they are meeting the needs of government and businesses. This may include establishing a requirement for regular review within the Government Contract Regulation (see inset below for an indication of how this is described in Yukon’s procurement policy).
2. There is a clear assignment of a senior executive responsible for oversight of strategic functions and procurement transformation.

3. The responsibility and accountability for core and strategic procurement functions be assigned to ensure there are no gaps and that any distribution of roles between corporate and line operations is clear.
4. The skills and positions required to support strategic procurement functions are identified and assessed, and training and transition plans are developed and implemented to put those skills and positions in place.
5. GNWT assess whether additional positions are required to support the procurement function to address shortfalls in current services as well as new expectations for strategic oversight and support.

Commitment to Continuous Improvement

Note that Yukon's recent revisions to its Procurement Policy resulted in the inclusion of the following commitment:

12(4) Benchmarking (a) The Government is committed to ensuring that Procurement activities align with its policies, applicable laws, trade agreements, and best practices. The DM of HPW may establish a Procurement Benchmarking Program to identify best practices as well as areas for improvement, and may create requirements for information management and reporting in order to support such a program. (b) Benchmarking must be conducted in accordance with the requirements of this policy and the related operational requirements. (c) To check for consistency, transparency and compliance, HPW will conduct a review of the outcomes of this policy and these procurement practices within 5 years of the policy's approval date.

4. Considerations for Supporting Indigenous Participation in Procurement

4.1 Introduction

On the topic of increasing Indigenous participation in GNWT procurement, the Panel's task was to gather the thoughts and reactions of participants to the idea of an Indigenous procurement policy for GNWT. The Panel did not engage with elected officials and has not undertaken any steps towards the development of such a policy, as those actions belong in a government-to-government process. Instead, we canvassed participants about whether an Indigenous procurement policy might be an appropriate tool to support the NWT economy, and whether they had any suggestions to support the development of such a policy.

In response to these questions, participants were consistently supportive of using procurement as a mechanism to support Indigenous governments and businesses. Although a few participants suggested that there might be some objections to such a policy, the vast majority of those who engaged with the Panel indicated that supporting Indigenous participation in procurement made sense both to improve the economic and social return on investment from GNWT contracts, and as concrete action to support reconciliation. Many participants noted that a significant proportion of the NWT population is Indigenous, and that it would be appropriate for GNWT's procurement activity to be supported by policy and tools that specifically aim to enable Indigenous involvement. Others suggested that increased procurement from Indigenous businesses would drive significant benefits for the NWT economy and, in addition to creating a more competitive and stable market, could lead to improved apprenticeship opportunities, improved outcomes for youth, and greater innovation through new partnerships and service models. The NWT & Nunavut Construction Association noted that the NWT is home to more Indigenous businesses than Nunavut and Yukon combined¹⁹ and yet, unlike in those two jurisdictions, the GNWT has no organized approach to direct more government spending to local Indigenous businesses.

A second message the Panel heard consistently was that it will be critical to determine the specific tools and actions that may form an Indigenous Procurement Policy or strategy through government-to-government dialogue that is not overly encumbered with preconceived ideas. For this reason, the Panel's approach to this portion of the report is to highlight considerations about: how GNWT might approach development of an Indigenous Procurement policy; the strategies that might be considered, and opportunities to strengthen procurement planning and the use of current tools.

4.2 Background

Although GNWT does not have an Indigenous Procurement Policy, there are other measures that have enabled collaboration with Indigenous governments on procurement. In particular, several Memorandums of Understanding (MOUs) between GNWT and Indigenous governments have led to the identification and awarding of contracts to Indigenous businesses (often through the use of the

19. Government of Canada (2021) [Indigenous Business Directory](#)

Negotiated Contracts Policy). For example, a MOU was established in 2012 between GNWT and the Gwich'in Tribal Council that established a process for improving the participation of Gwich'in businesses in GNWT contracting and set a target of 50% of the value of GNWT contracting in the Gwich'in settlement area being awarded to Gwich'in businesses.

More recently, the GNWT and the Tłıchq First Nation established an Infrastructure Co-operation Agreement in which GNWT has committed to directly negotiating contracts with Tłıchq businesses for projects located on Tłıchq lands and in Tłıchq communities. Where direct negotiations are not possible for such projects, GNWT has committed to including minimum Tłıchq labour and contracting requirements in its competitive tenders.

Several comprehensive land claims agreements contain economic measures chapters that also include procurement provisions. However, in most cases these agreements only require that beneficiary-owned companies have a right of first refusal for a contract if the contracted work will take place on their settlement lands, **and** if GNWT is planning to issue the contract as a direct award. Otherwise, GNWT is not strictly required to offer contracts to beneficiary-owned companies nor to consult about the contract itself.

4.3 Approach to Developing an “Indigenous Procurement Policy”

A significant number of participants representing Indigenous businesses or organizations highlighted that a constructive and respectful relationship between GNWT and Indigenous governments will be the key factor in establishing a successful Indigenous procurement policy or strategy. Several participants suggested that working towards an Indigenous procurement policy presents an important opportunity to reinvigorate leaders to collaborate on an initiative that will result in mutual benefits. Several participants suggested that following UNDRIP²⁰ and a government-to-government approach to undertake these discussions would support a constructive dialogue and a more results-oriented outcome. It was also suggested that moving away from a strict interpretation of the economic measures provisions in land claims agreements (i.e., doing only what is specifically required within a few agreements) towards a more collaborative approach with all Indigenous governments to identify opportunities where direct engagement on procurement would be mutually beneficial.

Some participants encouraged the integration of objectives and strategies supporting Indigenous procurement with other GNWT procurement policies and procedures to maximize efficiency. Others, however, advocated for a ‘stand-alone’ approach to Indigenous procurement to ensure discussions were not unintentionally restricted and that the outcomes were not lost within other ‘social procurement’ considerations. In addition, several participants noted that discussions could lead to ideas that may not strictly fit within a procurement policy (such as transferring responsibility to carry out some projects or functions or establishing equity partnerships in capital investments) but should still be considered as potential strategies to meet the same objectives.

A number of participants encouraged a thorough review of developments in other jurisdictions related to Indigenous procurement, with many references to Australia, South Africa, and Yukon. The Yukon policy

20. [United Nations Declaration on the Rights of Indigenous Peoples](#)

was commented on by many as providing a constructive example of how to approach policy development as well as the policy provisions that should be considered. Several participants suggested that a clear commitment from leadership will be key to withstand any pushback that an Indigenous Procurement Policy might receive as a result of disrupting existing practices and relationships, and to ensure focus on the longer-term objectives is maintained.

4.4 What Strategies Could be Considered?

Although there are Indigenous businesses operating within the NWT that are well developed and very competitive, many participants suggested that simply encouraging Indigenous businesses to compete in open competitions would not be an equitable approach, nor would it demonstrate a significant commitment to supporting Indigenous business development.

There were numerous discussions about the kind of mechanisms that could be used to support Indigenous procurement. Some participants acknowledged that a relatively simple step would be to provide another category of bid adjustment under the Business Incentive Policy for Indigenous businesses. Many participants, however, noted that this step would not be adequate to address the range of barriers that limit the ability of Indigenous businesses to bid on opportunities, nor to take advantage of larger partnership opportunities. Others noted that there have been successes in the use of negotiated contracts to support Indigenous businesses, and that this mechanism could be used more extensively.

The Panel heard that Indigenous businesses commonly have difficulty getting access to the professional services required to operate their businesses, for example such as auditors to complete year-end financial reviews and provide audited financial statements. In addition, smaller businesses often do not have the resources to watch for government contract opportunities, or to prepare bids or proposals. Turn-around times for submitting responses to opportunities can be too short for businesses that do not regularly prepare responses or that need to find partners to bid, or access to bonding and capital. Several participants felt that capacity development strategies to support these business needs are critical to supporting the growth and sustainability of Indigenous businesses.

Awareness of this range of issues led some participants to suggest that a longer-term plan that includes a shared vision for Indigenous business development and a road map to obtain it is what is required. It was regularly noted that the strategies to support such a plan would need to be much broader than a minor revision of the BIP. Several participants noted that success in developing Indigenous businesses is much more likely to arise from a co-ordinated approach that links businesses to the right networks and supports based on their capabilities and potential for growth, and not from simply providing funding or 'price preferences'. This co-ordinated approach could include capacity building supports provided by both the Territorial and federal governments for such things as training and business plan development.

Indigenous businesses are in varying stages of development and would benefit from having a variety of strategies available to support their participation in public procurement. Some may seek joint venture opportunities to build experience or to bring in specialized skills specific to a particular project; others may need additional time to obtain financing or training. Therefore, policies that restrict these practices will limit business development opportunities.

Some participants favoured the use of set-asides, where competition would be limited to Indigenous businesses. This approach is used in the federal government's Procurement Strategy for Aboriginal Business, which has seen some success. Contracting authorities are sometimes reluctant to use set-asides, as they may require a second round of procurement if not enough bids are submitted. This can delay project start times and create pressures for both contracting authorities and project managers. In discussions with federal staff who administer PSAB, the Panel learned that a high level of awareness among contracting authorities about the use of set-asides and the ability to use 'conditional set asides' (where competition is limited to Indigenous firms provided more than a minimum number of them bid) could be instrumental to the successful use of this approach.

Other potential mechanisms suggested to support Indigenous participation in procurement included:

- Establishing mandatory Indigenous participation requirements on some contracts;
- Providing additional points during proposal evaluation for inclusion of Indigenous businesses, labour or training initiatives;
- Including requirements or opportunities for training plans for Indigenous businesses and workers as part of bids and proposals;
- Providing bonuses for prime contractors that meet their commitments for Indigenous subcontractors and labour; and
- Implementing targets for the number and value of contracts awarded to Indigenous businesses.

Several participants noted that the federal government has recently increased its target for Indigenous contracting from 1% of annual procurement spending to 5%. It was also noted that the Yukon Government's recently established Indigenous Procurement Policy sets a goal of awarding 15% or higher of annual procurement spending to Yukon First Nations Businesses²¹. In addition, the Yukon policy contains commitments for a performance measurement framework that includes a monitoring and review committee, and independent evaluation of the policy every five years²². Some participants advocated for the GNWT to establish a similar co-ordinated and regular approach to performance measurement and evaluation of Indigenous procurement, and many requested that the GNWT at a minimum begin tracking Indigenous participation. The Panel heard numerous references to how GNWT requires mining companies to provide detailed Indigenous employment and contracting information, and yet has no such tracking or measures of its own in place.

Many participants felt that the biggest opportunities to improve Indigenous participation in government contracting relate to those steps that are undertaken before a procurement opportunity is issued. Early joint discussion of upcoming opportunities was regularly identified as a key step towards shaping procurements so that Indigenous businesses have a better chance at success. Reviewing annual capital plans and forecasted procurement opportunities before contracts are packaged into specific requirements can enable projects to be 'right sized' to match the capabilities of Indigenous businesses and allow adequate time for training or acquiring equipment and partners. Some participants noted that

21. [Yukon Government Procurement Policy](#), s 11(11)(d)

22. *Ibid.*, ss11(11)-11(12)

GNWT contracting authorities currently do not have a good awareness of the Indigenous businesses that exist or their capacities and are lacking tools to help them fill that knowledge gap.

A number of participants suggested these procurement planning discussions should occur on a Government-to-Government basis, at least with respect to work that will be undertaken within an Indigenous government's traditional territory. Some further suggested GNWT should transfer responsibility to manage the procurement and contracts for these works to the Indigenous governments, similar to how the federal government transfers funds and responsibility to GNWT for specific projects.

4.5 Considerations for the Path Forward

Several Indigenous business representatives noted the importance of GNWT determining whether its intention is to improve Indigenous participation in procurement by working directly with Indigenous businesses as suppliers, or by working directly with Indigenous governments so that they are empowered to structure procurement and contracting themselves (or both). Some participants noted that Indigenous businesses that are sponsored or owned by Indigenous governments may have an unfair advantage competing against businesses run by Indigenous entrepreneurs who are independent from Indigenous governments and development corporations. Others suggested that GNWT's mandate is to work on a government-to-government basis and should be looking to contract exclusively with Indigenous governments.

When discussing potential definitions of "Indigenous business" that might be included in a policy, some participants discouraged following the approach taken in Nunavut's NNI policy as it is seen as fairly cumbersome. Several participants suggested the approach followed in the federal Procurement Strategy for Aboriginal Business had merit because it had a greater focus on supporting Indigenous employment, while others felt those employment requirements can make it difficult for even a 100% owned Indigenous firm to qualify. Many participants noted that Indigenous governments typically retain a list of businesses operated by their citizens, and it may be more appropriate to rely on those lists than to establish a separate definition.

Several participants offered suggestions along the lines of providing different rates of support or a sliding scale to recognize criteria such as whether an Indigenous business was community-owned, was majority owned by Indigenous peoples, or had Indigenous employees as the majority of its work force. Others acknowledged that while these issues raise questions, their hope was that an Indigenous procurement policy would be agile enough to respond appropriately to different opportunities and would not create barriers to different approaches.

Although the Panel has no recommendations concerning the specific content of an Indigenous Procurement Policy or strategies, we note that a number of recommendations in our Report may be useful to augment Indigenous participation in GNWT contracts. The addition of a bid adjustment for businesses located in the Beaufort Delta, Sahtu, and Dehcho regions where populations are largely Indigenous, the expended use of negotiated contracts, and recommendations related to establishing better monitoring, tracking and reporting have the potential to increase the flow of GNWT contract dollars to Indigenous businesses and workers, and lay the groundwork to support new initiatives.

4.6 Key Themes

- ◆ There is a very high level of support for developing a policy and / or tools to support increased participation of Indigenous people and businesses in GNWT procurement.
- ◆ It is critical that the process for developing an Indigenous procurement policy or strategies reflect a government-to-government relationship.
- ◆ Measuring progress and success matters – developing performance measures, targets, and evaluation frameworks are strongly encouraged as early as possible in conjunction with developing strategies and objectives for Indigenous procurement, and GNWT is encouraged to begin measuring Indigenous participation now.

4.7 Recommendations

The Panel recommends that:

1. Government – to – government dialogues are undertaken to collaboratively develop and implement an approach to advance Indigenous participation in procurement and to identify opportunities to maximize the benefits from procurement for Indigenous people and businesses within NWT.
 - The Panel encourages consideration of the approach used in Yukon for the development of the Yukon Government's First Nations Procurement Policy, which included supporting a working group made up of Indigenous business leaders as identified by Indigenous Governments from across the Territory to work with the Territorial government to develop the policy, with adequate human and financial resources as needed.
2. GNWT develop a data collection plan and begin collecting and analyzing data concerning the participation of Indigenous businesses in procurement.
3. As an interim measure while government-to-government dialogue concerning Indigenous procurement is underway, GNWT consider increased sharing of procurement plans with Indigenous governments to identify potential opportunities for Indigenous participation, including the use of negotiated contracts.

5. Current Policies

The Panel examined four specific policies that GNWT identified as key to this review: the Business Incentive Policy, the Northern Manufactured Products Policy, the Negotiated Contracts Policy and the Public-Private Partnership Policy. The report presents a brief description of each policy, followed by a summary of what we heard, the Panel's thoughts and finally the Panel's recommendations. The BIP is the most complex of the group, and follows the same format but is separated into its key components (purpose, mechanisms, eligibility, rates and cap, and administration).

5.1 Business Incentive Policy

The cornerstone in GNWT's efforts to support local businesses through procurement is its Business Incentive Policy (BIP). The BIP has significant uptake across the Territory, with approximately 1,200 businesses currently registered. A BIP-like policy was first recommended in 1974 and initially took shape as a northern price preference for capital construction projects in 1976. The price preference was incorporated into a more general procurement policy in 1981. The policy has undergone numerous amendments and revisions, primarily adjusting eligibility criteria and the rate of preference provided. The current version of the policy has been in place since 2010, with an amendment in 2016 to raise the threshold to tender goods and apply the BIP adjustment was raised from \$5,000 to \$25,000.

BIP was consistently the centre of attention during the Panel's discussions with NWT businesses, Indigenous representatives, and members of the public. Many participants felt that the BIP is fundamental to supporting the NWT business sector and economy. Although virtually everyone indicated that they felt changes were required, some felt the current policy has all the right components and needs only some fine-tuning to carry on effectively, while others suggested it was such a flawed instrument that it wasn't performing any useful function and requires major revisions.

In spite of the fact that a Business Incentive Policy has been in place for 40+ years, and that previous reviews of the BIP have been quite in-depth and often rooted in concerns about its effectiveness, to date no framework for measuring its impact has been established. The Panel's ability to propose improvements to BIP to maximize its benefits for NWT residents and businesses is hampered somewhat by a lack of management information concerning its current performance. As a result, the Panel is relying more heavily on the experiences and knowledge of those who participated in the engagement along with the briefings provided by government staff from NWT, Yukon, Nunavut and Canada.

The BIP currently operates through two mechanisms: providing a bid adjustment for NWT and local content, and encouraging staff to provide preference to NWT and local firms when issuing direct award contracts or calling up firms in supply arrangements. The bid adjustment is applied differently to tenders and Requests for Proposals, and there are restrictions to the amount of an adjustment available on tenders greater than \$1M, while no such restrictions are applied to RFPs. These differences are described further in the section on "BIP Mechanisms" below.

Although there is some data available to assess the use of the bid adjustment, there are significant gaps as no data are collated, analyzed or reported concerning the use of local labour or the goods and services

contributed by BIP-registered companies as subcontracts. In addition, no data are collected or reported concerning contracts valued under \$25,000, so we do not have information concerning how many contracts are issued or how the 'hierarchy of preferences' is impacting BIP-registered and NWT companies.

We do know that BIP-registered firms are successful in obtaining the majority of the number GNWT contracts that are valued above \$25,000, winning about 65% annually over each of the last five years and that these contracts represent a smaller proportion of the total value of GNWT's contracting activity (about 40% annually over the past five years)²³. We also know we cannot demonstrate that BIP's main mechanism (bid adjustments) is playing a role in the current success rates, as less than 1% of contracts awarded annually have been impacted by the application of a BIP bid adjustment since 2016-2017 (see inset below).

Table 18: Number & Value of Contract Awards Impacted by BIP Bid Adjustments

Year	# Contracts Awarded BIP Premium	Total Value of BIP Premium (\$)	# of Contracts Awarded BIP Premium as % Total Contracts
2011-2012	64	245,100	2.9%
2012-2013	51	323,346	2.4%
2013-2014	76	392,686	3.4%
2014-2015	59	370,488	2.3%
2015-2016	54	411,503	2.4%
2016-2017	8	90,827	0.7%
2017-2018	7	40,340	0.7%
2018-2019	11	80,455	0.7%
2019-2020	12	81,696	0.9%
Total over 9 years	342	2,036,441	

We also don't know whether:

- The current success rate is above or below what might be expected (i.e., a set benchmark or target);
- BIP companies are being successful because they are outcompeting their non-NWT based counterparts, or because only BIP-registered firms bid on an opportunity; and
- The success of BIP companies in competitive tendering is higher as a result of benefits gained through the application of the BIP 'hierarchy of preferences' on other contracts, or having received subcontracting opportunities.

The key issues identified for consideration in this current review were:

- What should the main purpose of this policy be?
- In what manner should the support be provided (i.e., what mechanisms should be used)?
- How much support should be provided (i.e., rates and caps)?
- What businesses should be eligible to receive it? and
- Can the administration of the policy be more efficient?

23. See the Data section in this report for further information

Each of these questions is explored below.

5.1.1 BIP Purpose

Understanding the purpose of a policy is important in part to ensure it also establishes mechanisms to support its objectives. The purpose of a policy will also influence how it is applied, for example by guiding decisions about who should receive any benefits it provides. The current BIP describes its purpose in a policy statement and a set of principles (see inset below).

GNWT Business Incentive Policy (63.02)

Policy Statement:

The Government of the Northwest Territories supports the creation and growth of competitive businesses as a foundation for the Northwest Territories economy and will, when purchasing goods, services or construction, provide an incentive to Northwest Territories based businesses in a manner that recognizes the higher cost of operating businesses and manufacturing products in the Northwest Territories, encourages Northwest Territories-based businesses to create employment and develop necessary experience and business skills, and complies with any intergovernmental agreements to which the Government of the Northwest Territories must adhere.

Principles

1. Government procurement practices should maximize benefits for residents of the Northwest Territories.
2. Government policies and practices should enhance the Northwest Territories business environment to ensure sustained economic growth.
3. This Policy should not prejudice any present or future self-government, treaty or land claim-based right.

BIP therefore has four objectives related to the economic impact of procurement:

- Maximize benefits for NWT residents;
- Support the creation and growth of competitive businesses;
- Offset the higher costs of doing business in NWT; and
- Encourage GNWT businesses to create employment and develop necessary experience and business skills.

5.1.1.1 What We Heard about BIP Purpose

One of the most consistent and emphatic messages the Panel heard was that GNWT's preferential procurement policy should be based on maximizing the overall return on investment in the Territory that can result from procurement spending. Although some criticized the effectiveness of the policy, none of the participants suggested it should be scrapped. There is a strong sense that the policy could have a positive impact on the NWT economy.

Most participants felt strongly that accepting at least a somewhat higher price to buy from an NWT business made economic good sense because of the benefits that arise to individuals and the community through:

- Helping sustain the existence of local businesses;
- The income and satisfaction that employees obtain from employment;
- The spending and investments undertaken by employees and owners on the goods and services they consume; and
- The income and corporate taxes that flow back to GNWT as a result of this employment and spending.

Some participants pointed out that an additional benefit of employment is reduced demand for income and social support programs.

The majority of participants supported using BIP to attract or keep businesses that would not otherwise remain or locate in NWT, and that hire local workers and buy local goods and services. Several participants cautioned against creating an overly protectionist policy that would deter investment.

Numerous comments were made noting that NWT businesses pay some of the highest rates in the country for key inputs like labour, power, heat, transportation and workers' compensation and safety, and that these costs create an uneven playing field for competing against outside businesses. Participants from more remote regions pointed out that they face even higher costs of goods and services, and that businesses in those areas can have significant difficulty bidding against firms located in or near Yellowknife, let alone from outside of the Territory. Some commentators felt that government should be doing more to help all NWT-based businesses offset these higher costs, and not just those that provide goods, services and construction to the GNWT.

Several participants suggested that the effectiveness of the current policy is compromised by its lack of focus, and that the policy should concentrate on one of:

- Supporting existing small businesses;
- Generating employment; or
- Attracting new business investment.

5.1.1.2 Panel Thoughts on Purpose

Spend analysis information and performance outcome measures gauging the impact of BIP could identify, for example, whether a bigger return on investment from procurement arises from some sectors over others, from different types of employment, or from smaller or larger contracts. In the absence of that information, the Panel adopted two basic assumptions to work towards ensuring BIP is maximizing the benefits of government contract spending on the NWT economy:

1. Having more NWT firms and workers participate in GNWT contracts is better than fewer;
2. BIP should focus on creating incentives for activities that contribute the most to a return on investment.

While it isn't possible to assess the potential return on investment arising in every contract, we do know that if NWT businesses and labour are not involved at all, the benefit to the NWT economy from government contracting is lost. There is no doubt that NWT businesses face higher costs than their counterparts based outside of the Territory. The willingness of NWT and local firms to bid, as well as their chances of success, will be reduced as a result of that barrier. Enabling NWT-based businesses to more effectively compete by finding ways to address this imbalance is a reasonable objective for a policy like the BIP. Although all NWT businesses face these higher costs, it is also appropriate for government to use its purchasing policy to focus on the impact of this issue on procurement, and to aim to help those that are bidders on government contracts to overcome this direct disadvantage.

Similarly, if the cost differentials experienced by NWT businesses are significantly driven by the costs of labour, heat, transportation, and utilities, it would follow that a focus of BIP would be to support those businesses that are incurring those costs, i.e. those with employees and facilities (offices, retail or wholesale services, manufacturing, etc.). In addition, the use of local labour and products will have higher benefit to the local economy than using imports, and expenditures on wages tend to have a relatively high economic return on investment because of the combination of direct, indirect and induced effects described earlier. These considerations suggest that an appropriate objective of the BIP would be to maximize support for firms investing in local labour, facilities and services, in particular those maintaining or increasing their presence in areas where current employment levels are relatively low.

Lastly, the Panel believes it is important the BIP aims to avoid establishing preferences that inadvertently foster the development of businesses that are not sustainable.

5.1.1.3 Recommendations On BIP's Purpose

The Panel recommends BIP focus on two key objectives:

- Offset the higher cost of doing business incurred by NWT and local businesses bidding on government contracts; and
- Maximize the benefits arising from procurement for NWT residents.

The second objective should be understood to particularly refer to the benefits arising from employment of NWT residents.

This does not mean the other objectives currently identified in the policy need to be removed, but rather that they be recognized as secondary or less direct objectives. For example, the objectives of supporting the creation and growth of competitive businesses may influence how much of a preference should be given. However, unless BIP is revised to include mechanisms aimed directly at supporting business start-up or growth, or developing business skills and experience, those objectives may be seen as longer-term outcomes the policy aims to support.

5.1.2 BIP Mechanisms

The BIP establishes two mechanisms to increase the likelihood of qualifying firms to obtain government contracts. These are:

1. Providing for a bid adjustment²⁴ for BIP-registered companies, enabling them to be more competitive against non-BIP bidders (s. 8(b) and (c)); and
2. Encouraging GNWT staff to give first consideration to BIP-registered companies when entering into contracts under \$25,000²⁵ that will be a direct award or a release under a Supply Services Arrangement, but no bid adjustment is applied (s. 8(a)).

The Procurement Guidelines advise that this second mechanism is to be applied as a 'hierarchy of preference' in the following order²⁶:

1. Local, BIP Registered Business (first priority);
2. NWT, BIP Registered Business (second priority);
3. Local businesses (third priority);
4. NWT businesses (fourth priority); and
5. Non-NWT based businesses (fifth priority).

The bid value adjustment may be applied to any bid that includes:

- Goods and services from a BIP-registered company; and
- Labour using NWT residents.

If a non-NWT company is the prime contractor but includes in its bid goods and services from a BIP-registered firm, the adjustment is applied to the portion of the cost related to the contributions from the BIP company. Similarly, the use of NWT-based labour is also credited with the bid value adjustment, irrespective of whether the company submitting the bid is BIP registered or not.

The bid adjustments are applied differently to tenders and requests for proposals. In all cases, proponents are required to identify the dollar value of their labour, goods and services, as well as that of all subcontractors and suppliers proposed.

- For tenders, the BIP adjustments are based on the dollar value of the NWT and local content that is included in the bid price.
- For RFPs, the bid adjustments are not applied to the dollar value of the fees included in the proposal, but instead are applied as weighted criteria based on the percentage of the content that comes from NWT and local goods, services and labour.

24. A "bid adjustment" is the amount by which the price submitted in a tender or proposal is reduced for the purpose of ranking the bid or proposal.

25. This value refers to untendered general goods, services and construction and has been reduced to \$10,000 during the period April 1 – July 31, 2021, the threshold for direct awarding contracts for professional services remains at \$50,000 and for architectural and engineering services remains at \$100,000. see FAQ for Vendors for more information.

26. Guidelines section 1.7.6.4.1 for Release against a SSA, and section 1.7.1.3 for Purchases valued under \$25,000 (or until July 31, \$10,000)

- Design-build proposals are a hybrid of these two forms, with the RFP approach applied to the “design” portion of the proposal, and the “tender” approach applied to the construction or “build” component of the proposal.

The reduced bid adjustment rates on bids over \$1M and the cap of \$500,000 are only applied to tenders (and to the construction portion of a design-build RFP).

5.1.2.1 What We Heard About Mechanisms

A number of participants provided their perspectives on the relative merits of using a bid adjustment as compared to the approaches used by other governments. A few people suggested that the rebate approach used by the Yukon government, in which contractors receive funds to offset costs related to using local labour and goods once proof of the expenditures is provided, would be more successful at ensuring the incremental costs incurred by government were connected to the local economy. A larger number of participants, however, felt a rebate model would be less successful in motivating local companies to bid as it makes it more difficult to estimate the labour costs to include in a bid.

Several participants advocated for an approach more like the one used by the Government of Nunavut, in which procurements for larger contracts include mandatory requirements for a minimum percentage of local labour, and contracts over \$1M require the inclusion of training plans. Others, however, noted that there are challenges in implementing these approaches, as it can be difficult to evaluate training plans, and cumbersome for contractors to submit employment reports in order to receive funds that offset the cost of local labour.

A number of participants advocated for setting targets in contracts for the use of local labour and subcontractors. Several also noted that GNWT is aware of the value of this approach, as it has been used for over 30 years in Socio-Economic Agreements established between GNWT and firms undertaking industrial projects in the Territory²⁷. These agreements require annual reporting on progress towards targets concerning northern residents and local businesses in training, employment and business opportunities, and contain provisions requiring subcontractors to provide similar reports and to explain their results to management. A sample of the employment targets contained in several agreements is provided in [Table 19](#) below.

Table 19: Employment Targets Contained in Socio-Economic Agreements for NWT Industrial Development

Agreement	Target % Local Labour During:	
	Construction	Operations
BHP Ekati	33	72
Rio Tinto Diavik	40	66
Snap Lake DeBeers	40	60
Gah Cho Kue DeBeers	35	55
Prairie Creek NorZinc	30	60

27. Agreements are posted on the Department of Industry, Tourism and Investment website [here](#).

A few participants advocated for the use of set asides, for example as enabled under the federal Procurement Strategy for Aboriginal Business. A “set aside” is a procurement opportunity that restricts participation to a particular group of suppliers, for example to businesses located within a geographic region or to small or Indigenous businesses. Some suggested that set-asides may be preferable to a bid adjustment, in particular if adequate planning time can be provided to prospective bidders to work out any partnership and training plans that may be required. Several participants suggested that other actions government could take in contract planning, such as ensuring contracts are unbundled in a manner that encourages participation of NWT-based businesses and evaluating local content, have the potential to have greater impact than a bid adjustment.

5.1.2.2 Panel Thoughts on Mechanisms

Although bid adjustments do not appear to currently be having a significant effect on contract awards, the Panel believes further evaluation is required before drawing conclusions on their use. The use of bid adjustments is well enshrined in the practices of GNWT and many territorial businesses as well as current trade agreements and should not be abandoned without adequate performance information. It isn't clear, however, whether the differences in how BIP is applied to tenders and RFPs is well understood by NWT businesses.

Similarly, the lack of evidence concerning the success of BIP arising from the ‘hierarchy of preference’ makes it difficult to identify changes to improve its effectiveness. Although this mechanism has a lower profile in the discussion the BIP, for example it was not mentioned in the discussion paper issued in support of the Panel's work, it is possible it is having greater impact than the higher profile bid adjustment mechanism. GNWT issues potentially as many as 1,000 contracts a year valued under \$25,000²⁸. These contracts may be contributing to the sustainability of local businesses and to their success in competitive tendering.

Developing an evaluation framework for GNWT's procurement objectives would establish a co-ordinated approach to support the collection and analysis of data and use of performance information. An evaluation framework typically identifies the resources, strategies and activities that are intended to support specific objectives, and the short and long term outcomes that are expected to be achieved by undertaking those actions. This model becomes the basis for identifying evaluation questions, determining what data are required to answer those questions, and where, when and how that data can be collected.

With respect to the BIP, an evaluation plan could identify how to measure the impact of BIP mechanisms on the employment of NWT residents. It can provide the basis for establishing benchmark and target measures (e.g., for the percentage of contracts obtained by NWT, local and Indigenous businesses, or the proportion of contracted labour carried out by NWT residents) and help determine whether one mechanism is more successful than another and if changes in program delivery are required to maximize the benefits.

28. Prior to 2016, GNWT's annual procurement information identified approximately 2,300 contracts per year valued over \$10,000. Since 2016, contract reports have included only contracts valued over \$25,000, the average annual number of contracts issued has declined to less than 1,300. Although other factors may be involved, the data suggests that a sizable number of contracts are issued annually for less than \$25,000 and therefore subject to the “hierarchy of preference”.

As noted earlier in the report, there are a number of additional mechanisms that can be used to enhance the impact of procurement on the local economy. For example, set asides could be used in a variety of different ways to augment the participation of NWT-based businesses in public procurement. Set asides may be used to limit competition to NWT businesses, or they may be structured to limit competition to communities or regions, or to Indigenous businesses. Set asides are used frequently within NWT by the federal government to support local and Indigenous business participation in mine reclamation and remediation work, as well as contracts under the Procurement Strategy for Aboriginal Business. They can also be a useful tool to take advantage of the exemptions and exceptions that exist within the current trade agreements. Currently, however, the GNWT policy framework does not enable the use of limited competitions.

Briefings with government staff in other jurisdictions, as well as research reviewed by the Panel²⁹, indicate that establishing targets can have a beneficial impact on supporting preferential procurement policies. Targets do not have to be enabled by or included in policy, but are a useful tool to provide guidance and incentive for staff decisions.

5.1.2.3 Recommendations for BIP Mechanisms

The Panel recommends that:

1. The GCR and either BIP or a consolidated purchasing policy be amended to enable the use of “set asides” and limited competitions for contracts up to trade agreement thresholds.
2. GNWT establish criteria and procedures for the use of limited competitions and, as part of the spend analysis actions recommended earlier, identify potential procurements that would provide the best return on investment through limited competitions.
3. GNWT establish an evaluation framework for the BIP.
4. GNWT evaluate the effectiveness of bid adjustments on the current success rate of BIP-registered companies in obtaining government contracts (both as prime and sub-contractors), and:
 - Identify and set targets for the percentage of contracts or contract spending to be awarded to NWT and local businesses, potentially as a government-wide measure to begin with and as data and experience grows, by department; and
 - Report annually on progress towards these targets and the success rates of BIP-registered companies.

5.1.3 Eligibility

The discussion paper posed the question: “*For the purpose of providing preferential procurement, how would you define what constitutes a ‘NWT business?’*” Determining what criteria should be used to establish

29. See, for example, Duffy, R. and Pringle, A. (2013) [Buying Local: Tools for Forward Thinking Institutions](#); and Lavecchia, O. (2015) [Procurement is a powerful tool for local economies. But it Takes more than a policy change to work](#), Institute for Local Self Reliance.

eligibility for BIP benefits is an exercise in identifying both what business attributes matter the most with respect to achieving the policy's objectives, and whether/how they can be assessed and managed.

Under the current requirements to become a BIP-registered company, a business must demonstrate that it:

- a) Meets any necessary legal requirements to do business in the territory (e.g., has a business licence, is properly registered if a corporation or co-operative);
- b) Has at least 51% of voting shares beneficially owned by NWT residents or, in the case of a sole proprietor, the proprietor is and has been a resident of the NWT for the past 12 months;
- c) Operates from a bona fide place of business that is owned or leased from year to year; and
- d) And, if the firm is a supplier of goods, that there is a representative inventory of product available to sale that is accessible to the public.

The registration process is managed by the BIP Management Office, but Regional Qualifications Committees review and approve BIP applications.

As part of the revisions to the policy made in 2010, businesses registered at that time that did not meet the 51% ownership requirement but had been in operation for ten or more years; had a manager that was a resident of NWT; performed the majority of its management and administration functions in the NWT; and could demonstrate that they had a bona fide place of business in the NWT, were “grandfathered” under the revised policy to enable them to retain their eligibility. There are currently 60 such businesses, commonly referred to as “Schedule 3” companies as that is where they are listed in the BIP.

The current criteria and list of eligible companies have led to several challenges, including:

- A lack of clarity concerning what ‘beneficially owned’ means and, consequently, a lack of ability to enforce this criterion;
- A similar issue with respect to defining and enforce the requirement for a “bona fide” place of business;
- The potential for businesses to create a paper trail that enables them to appear to meet the criteria, for example through shell companies, complex ownership and management structures, and the use of nominal business addresses or locations;
- Concerns with the fairness of Schedule 3, as:
 - a) other businesses that would now meet the conditions that were required for ‘grandfathering’ 15 years ago are not able to become registered because they don’t meet the ownership requirement; and
 - b) some feel majority ownership by NWT residents should be a requirement for eligibility.

Other jurisdictions are using different approaches to address the question of how to define the business group that its preferential procurement policy is intending to support. The Yukon government recently changed its definition of a Yukon business to mean a business that meets three of the following criteria³⁰:

- a) Has an office with a physical address in Yukon;
- b) Is subject to the Yukon *Income Tax Act*;
- c) Is registered as per the *Business Corporations Act* or the *Partnership and Business Name Act*, where applicable; and
- d) Has a valid municipal business licence, where applicable.

Nunavut's NNI policy has more rigorous requirements (see inset), some of which bring the same challenges as those faced in NWT concerning clarity and ensuring compliance.

Nunavut's NNI Policy

Nunavut business – a business which complies with the legal requirements to carry on business in Nunavut, and on a biennial basis demonstrates that it meets the following criteria:

- a) Is a for profit limited company with 100% of the company's shares beneficially owned by one or more Nunavut Residents and or one or more Nunavut Businesses which complies with the legal requirements to carry on business in Nunavut;
- b) Is a co-operative controlled by Nunavut Residents and or businesses which complies with the legal requirements to carry on business in Nunavut;
- c) Is a sole proprietorship, the proprietor of which is a Nunavut Resident; or
- d) Is a partnership of which all partners are Nunavut Residents and/or Nunavut Businesses which complies with the legal requirements to carry on business in Nunavut.

And the following (i) through (v) applies to the above (a) through (d):

- (i) Maintains a registered office in Nunavut by leasing or owning office, commercial or industrial space or in the case of service oriented businesses, residential space, in Nunavut on an annual basis for the primary purpose of operating the subject business;
- (ii) Maintains a resident manager that resides in Nunavut and has final decision-making authority over the day-to-day operations for the subject business in Nunavut;
- (iii) Conducts the majority of its operations in Nunavut, including its management and administrative functions;
- (iv) Has been registered on the NNI Nunavut Business registry prior to the closing of a Procurement Process; and
- (v) Where applicable, is in a position to furnish goods as are listed on its Nunavut Business registration application and is subject to inspection by the responsible department.

30. [Yukon Procurement Policy](#), s.1(2)(oo)

A slightly different approach is used in the federal government's Procurement Strategy for Aboriginal Business (PSAB). PSAB defines an Aboriginal Business as a company in which at least 51% of the firm is owned and controlled by Aboriginal people, and if the firm has six or more full-time staff, at least one third of the employees are Aboriginal. The policy also enables joint ventures, and in that circumstance requires at least 51% of the joint venture to be owned and controlled by an Aboriginal business or businesses and the firm must demonstrate, for the duration of the contract, a level of Aboriginal content amounting to 33% of the value of the work performed by the Aboriginal business³¹.

5.1.3.1 What We Heard About Eligibility

A wide range of opinions were heard relating to how to define a NWT business. A substantial majority of participants felt that the current eligibility requirements should be revised to reduce the emphasis on ownership. Some suggested that ownership shouldn't matter at all, and that eligibility should depend on whether a business was employing NWT residents and investing in goods, services and infrastructure within NWT. Most participants, however, felt that ownership could still be important but that it should not be the primary criteria considered. The Panel heard repeatedly that who is doing the work matters more than where the profits go, and that maximizing incentives for the use of NWT resident labour was the highest priority. For example, the Association of Consulting Engineering Companies noted their support for a definition that reflects employment and investment in the NWT, and not one based primarily on ownership.

Several Chambers of Commerce and business organizations also cautioned that if ownership requirements are too restrictive, it reduces the attractiveness for 'outside' buyers to purchase NWT companies, which in turn can restrict investment and reduce opportunities for innovation and partnerships. However, a number of people expressed concerns that loosening ownership requirements might lead to more large retail operations being eligible for BIP, which to most participants seemed well outside the Policy's purpose, even if those organizations are contributing to employment and investment.

The Panel heard a number of suggestions for how eligibility criteria could be revised, including:

- Defining a northern business as one that has at least 50% of its payroll expended within the NWT;
- Using a 'tiered approach' that would vary the bid adjustment rates applied depending on how many criteria a firm met, with the greatest benefit going to businesses that can meet criteria related to ownership, management and workers all being within NWT; and
- Adopting an approach similar to Yukon's, in which a business must meet a minimum number of criteria from a list. The NWT and Nunavut Construction Association along with the Yellowknife Chamber of Commerce endorsed this approach, and suggested that:

"the list of criteria should recognize the different ways NWT businesses are meaningfully contributing to the NWT economy and could include factors like: owning or leasing an office with a physical address, paying payroll tax, income tax and WSCC rates, maintaining permanent employees, duration of being an established business within the NWT, majority ownership residing within the NWT, and Indigenous collaboration".

31. [Procurement Strategy for Aboriginal Business](#)

Participants that commented on the option of adopting a more rigorous set of criteria, such as the ones used in Nunavut, were also aware that documenting and monitoring compliance with a longer list of requirements could make the process unwieldy for both suppliers and government. The Panel heard a lot of frustration expressed about companies believed to be meeting eligibility requirements on paper but not in reality, (e.g., running storefront operations through which work was funneled out of territory, or having the true majority owners located outside the NWT). Several participants suggested that although more rigorous requirements might give the impression of limiting eligibility to firms with greater investment in the territory, they would also likely create more opportunities to take advantage of loopholes and require an even higher level of resourcing to enforce.

The Panel also heard the concern that the 12-month residency requirement for sole proprietors may be discouraging entrepreneurs from locating to NWT, as that first year of start-up for a new business is often the most challenging, and when support through BIP might be most needed.

The majority of participants that commented on Schedule 3 felt it should be eliminated – but not necessarily because they believe the companies listed there should no longer qualify for BIP. Participants were generally seeking a consistently applied set of criteria that would be simpler to administer. Several participants noted that any list of criteria will have its shortcomings, and that no approach is completely protected from gaming.

5.1.3.2 Panel thoughts on Eligibility

The question of how to define a “Northwest Territories business” is one of the most complex components of the procurement review. The Panel heard a wide range of views, and many participants felt quite strongly about how eligibility for preferential procurement should be defined. The definition has important implications for a significant number of businesses, both in terms of whether they will meet the criteria used, and the administrative requirements to prove that they do. Similarly, the definition has implications for the effort required by GNWT staff to administer procurement processes. The Panel approached these challenges by focusing on the key purpose of the review, which is to identify ways to keep more procurement dollars in the Territory and align purchasing policy and practices to better meet that objective.

If the objectives of the BIP are to help offset the higher costs of doing business within NWT and encourage investment in those activities that maximize the return on investment from government procurement, the Panel believes the eligibility criteria should aim to capture the businesses that are making those investments (e.g., paying wages for NWT residents and the costs of maintaining space to conduct business). Companies may establish a significant presence in NWT without being majority-owned by NWT residents, and being too restrictive in requiring northern ownership could inhibit economic development in both the short and longer term.

There is merit in aiming for greater simplicity in the eligibility criteria as well; both businesses and staff expend significant time in preparing or assessing documentation to confirm compliance, in particular related to the ownership requirement. Panel discussions with representatives from the governments of Canada and Nunavut confirmed that those jurisdictions invest significant resources in the management, verification and audit of ownership criteria. The Panel is reluctant to propose eligibility criteria that would substantially increase the required effort for monitoring and compliance (Note there is further discussion about managing eligibility and compliance under the “administration” section below).

5.1.3.3 Recommendations on Eligibility

The Panel recommends that:

1. For the purposes of eligibility for the BIP, a NWT business is one that:
 - a) Meets all the following criteria:
 - Maintains a place of business year-round in the NWT with a physical address for the primary purpose of operating the business*,
 - Is subject to the NWT Income Tax Act, and
 - If a corporation, is registered under the Business Corporations Act (NWT or Canada) or Co-operatives Association Act (NWT), and holds a current business licence issued by a NWT municipal corporation of the GNWT.

** this may be a portion of a residential space*
 - b) Meets at least one of the following two criteria:
 - Is at least 51% owned by NWT residents;
 - if a partnership, is majority owned by NWT residents or one or more entities that meet all of the criteria in part (a),
 - if a sole proprietor, the sole proprietor is an NWT resident, or
 - Has NWT residents as the majority of employees conducting its operations within NWT, and has a resident manager overseeing its NWT operations.
2. The definition of NWT resident be changed to: an individual who is normally resident in the Northwest Territories and when requested can provide documentation supporting residency, such as a valid NWT Healthcare card or NWT driver's licence or other such identification that is deemed acceptable.
3. Schedule 3 be eliminated once all currently listed firms have been advised of requirements to establish eligibility under the new definition and have had a reasonable amount of time to make that transition.

5.1.4 Rates and Caps

The BIP enables eligible firms to receive a bid adjustment of 15% for NWT content³², and 5% for local (community) content³³ for contracts under \$1M. In 2010, changes were made to reduce the rate for tendered contracts over \$1M and to introduce a cap on the maximum amount of a bid adjustment. As a result, the portion of any tender over \$1M now receives an adjustment of 1.5% for NWT content and 0.5% for local content, and the total bid adjustment is limited to \$500,000. As was described in the earlier section on BIP mechanisms, these reduced rates and the \$500,000 maximum do not apply to bids submitted in response to Requests for Proposals.

32. NWT content includes goods and services provided by a BIP-registered business, and NWT resident labour.

33. Local content refers to the portion of the NWT content that is acquired from within the community in which the contract will be performed or will benefit directly from the contract.

The rationale for the changes to the rates in 2010 was that the amount of the bid adjustment was considered excessive on larger contracts. The discussion paper provided two examples as illustration, one of which is reproduced below.

BIP Calculations, Current Method: \$10M Contract

15% NWT content – Bid Adjustment on first million	\$150,000
5% Local content – Bid Adjustment on first million	\$50,000
1.5% NWT content – Bid Adjustment on value over \$1M	\$135,000
0.5% local content – Bid adjustment on value over \$1M	\$45,000
Total Bid Adjustment	\$380,000

Assuming the example describes a tender with 100% local content, applying the rates that were in place prior to 2010 (i.e., with 15% (NWT) and 5% (local) applied to the entire value of the contract) results in a bid adjustment of \$2M. Under the current rate structure, a RFP for a \$10M contract with 100% local content would still obtain a \$2M bid adjustment.

Under the current rate structure, the maximum bid adjustment of \$500,000 can be obtained for a tendered contract with a value of \$16M with 100% local content. For contracts above \$16M, BIP firms would be on equal footing with non-BIP firms.

Although GNWT tends to have relatively few competed contracts valued at greater than \$10M³⁴ and the average BIP premium awarded on contracts issued over the past nine years is under \$6,000, the underlying concern about whether there is a point at which a bid adjustment becomes excessive is still valid. A cap on the total bid adjustment available reduces the risks that firms are receiving more than is necessary to 'level the playing field', and that the adjustment may result in such significant budget impacts that it affects government's ability to undertake some projects. Although it is possible that such large adjustments could also lead to significant economic benefits for the Territory, there are risks of generating unintended consequences (such as encouraging more sophisticated gaming of the system), requiring more intense oversight, and being less effective than a targeted economic development program with the same funding).

The Government of Nunavut (GN) has a bid adjustment policy similar to the BIP that allows a bid adjustment up to 25% on the first \$125,000 of the contract value for a goods-only contract, and a total maximum bid adjustment of \$125,000 for contracts that are a mix of goods and services. These caps are not applied to major or minor construction contracts and do not include allowances for Inuit labour, but in any case, the total cumulative bid adjustments cannot exceed 25% of the contract value. GN is currently exploring whether changes to maximum bid adjustments would be desirable, potentially including the addition of a financial cap on the amounts available for construction contracts.

5.1.4.1 What We Heard About Rates and the Cap

The Panel heard a range of views on the current rates applied under the BIP. Many participants representing businesses outside of Yellowknife stated that the rates should be higher, in particular if the intention of BIP is to address the higher costs of doing business in more remote regions within the NWT.

34. There were three competed contracts valued at greater than \$10M in 2019-2020, not including the P3 for the Tłıchq Road initiative, and two in 2018-2019.

Some participants suggested that the potential benefits of BIP are also higher in smaller communities, as businesses located in more remote areas are likely to have a high impact on supporting community development through employment, training and local spending.

Several participants noted that the rates should not be increased without a clear value-for-money rationale, as higher rates are a deterrent to outside investment and can be punitive to NWT and local firms that are not BIP-registered. GNWT staff also suggested exercising caution in relation to considering potential rate increases, noting that any significant changes could lead to concerns or challenges from trade agreement partners.

A significant number of those who spoke with the Panel indicated that the current rates of 15% and 5% are acceptable. However, quite a few of those participants also felt that the lower rates that take effect above \$1M on tenders were problematic, and that these rates and the cap make BIP essentially irrelevant for larger projects. A few participants advocated for both scrapping the cap and applying the 15% and 5% rates to the entire contract value. The Panel also heard that the lack of benefit from BIP on larger projects was discouraging outside businesses from subcontracting with NWT-based businesses or using NWT resident labour.

Participants noted that the rate required to effectively offset the higher costs of doing business would vary between types of businesses as well as between locations. A number of participants suggested that rates could vary between regions to reflect these differing costs, or could vary by sector, and it was also suggested that a sliding scale could be used to apply a decreasing rate to contracts as their value increases. Several participants proposed using administrative zones to distinguish areas requiring higher adjustment values. Similarly, as noted in the eligibility section above, some participants suggested that the rate be adjusted according to how many 'northern business eligibility criteria' a firm met, with the maximum adjustment awarded to firms that meet the most criteria.

5.1.4.2 Panel thoughts on BIP Rates and Cap

If we consider the objectives of the BIP to be to help level the playing field for NWT-based businesses in bidding on government contracts, and to maximize the return on investment arising from contracting activity, then the mechanisms used as part of BIP can be focused towards supporting those objectives.

For example, to effectively offset the costs of doing business to better enable local, NWT and Indigenous contractors to bid on contract opportunities, the rates of a bid adjustment applied would need to reflect the differences in those costs in different parts of the Territory. Although the Panel recognizes that costs vary across types of businesses, the main concern raised was the higher overhead expenses for businesses in more remote regions, driven primarily by the costs of transporting goods and services into those communities. Cost of living estimates indicate that three regions within NWT – the Beaufort Delta, Sahtu and Dehcho regions – consistently experience price levels that are significantly higher than others (see [Table 20](#) below).

Table 20: Comparison of Cost-of-Living Differentials in NWT Regions as Compared to Edmonton³⁵

Region	Living Cost Differential In NWT Regions (where prices in Edmonton = 100)	
	2018	2013
Beaufort Delta	145-195	145-180
Dehcho	130-150	135-165
Sahtu	160-180	160-185
South Slave	125-160	130-170
Tłıchǫ	125-155	125-155
Yellowknife	120-125	120-125

It is possible that one of the reasons that BIP bid adjustments are having such a low impact is that current rates are not adequate to overcome the high cost of doing business in more remote regions. This may be discouraging these businesses from competing or, if they do submit bids, even with BIP applied those firms are not successful. Establishing a higher bid adjustment for the highest cost regions would be a reasonable step to increase the ability of BIP to address these costs and encourage firms located in those regions to participate in contracting opportunities.

Identifying ways to ensure BIP rates support the second objective, that of maximizing support for the economic benefit arising from government contracts, is less straightforward. The Panel notes that employing NWT residents is accepted as triggering significant multiplier benefits, and that participants repeatedly emphasized that encouraging the use of NWT resident labour should be the BIP's highest priority. BIP could be revised to include an adjustment focused on the employment of NWT residents. For example, in addition to bid adjustment rates for NWT and local content for goods and services, NWT-based labour could be provided a separate adjustment. This change would not create significant new administrative complexity for bidders as labour costs are already separated when completing BIP substantiation forms as part of a bid.

Although the Panel believes there is a need to place limits on the adjustments that can be achieved, the disincentive arising from the current rates for larger tendered contracts is likely reducing opportunities for the use of NWT goods, services and labour within bids for contracts over \$1M. For example, given that the average weekly wage in NWT is approximately 30% higher than the Canadian average³⁶ a non-NWT based bidder may be significantly reducing their competitiveness if they maximize their use of NWT-resident labour in their bid instead of using workers from their home jurisdiction. If a non-NWT contractor's labour costs for a contract would be \$2M using workers from their area, using NWT-based subcontractors could cost \$2.6M and the maximum bid adjustment would amount to \$220,000, leaving the bid price evaluated at \$380,000 higher than the price of using outside labour (i.e., a 20% premium). There are many caveats concerning this simplistic example, including the need to build into the 'outside labour-bid' the costs for travel, accommodation and food, and the questionable assumption that a fully-NWT-based labour force is available to do the work and would only do so for that 30% higher wage rate.

35. The values represent a comparison of the retail prices of a fixed set of goods and services compared to the prices for the same goods and services in Edmonton. For example, a value between 130 and 135 indicates that for the range of products compared, price levels in the region are estimated to be between 30% and 35% higher than those in Edmonton Source: [federal Isolated Post Living Cost Differential Index](#).

36. See GNWT Bureau of Statistics, [Wages and Income](#), February 2021.

Nevertheless, the example illustrates that the current rates on larger contracts are likely having the unintended effect of discouraging the use of NWT, local and Indigenous subcontractors.

GNWT has relatively few contracts over \$1M in any given year (in both 2018-2019 and 2019-2020, approximately 97% of all contracts were valued between \$10,000 and \$1M). A modest increase in the value of the bid adjustments applied to larger contract values would help mitigate the current disincentive to using NWT-based subcontractors, and still provide reasonable assurance of value for money and fiscal responsibility.

5.1.4.3 Recommendations Concerning BIP Rates and Cap

The Panel recommends that:

1. The BIP bid adjustments remain at their current rates (15% NWT and 5% Local).
 - For clarity, no change is proposed to the definitions of NWT or Local content.
2. A new threshold of \$2M be established for the application of the 15% NWT and 5% local adjustments (increased from the current threshold of \$1M).
3. In procurements that contain a labour component, labour will be scored separately from goods and services and the provision of NWT and local labour will each be adjusted by a further 5% on the first \$2M. For clarity, the 15% and 5% Local adjustments are applied on the total value of NWT and Local content (including Labour) up to \$2M, and an additional 5% NWT Labour and an additional 5% Local labour adjustment are applied to the labour component of a bid up to \$2M.
4. A new category of “Cost of Living Offset” be established for BIP-registered businesses located in the Sahtu, Dehcho and Beaufort Delta regions that applies an additional 5% on all bids on contracts valued below \$1M for goods, services and labour provided by businesses located in those regions (irrespective of where the work will take place or whether the business is a prime or sub-contractor).
5. The total cumulative bid adjustments will not exceed 25%.
 - For reference, this would enable maximum bid adjustments of:
 - \$250,000 on a \$1M bid (compared to a current maximum of \$175,000)
 - \$1,250,000 on a \$5M bid (compared to the current \$280,000 on for a bid in response to a tender, and the current \$1M for a bid in response to a RFP)
6. The BIP adjustments above \$2M be revised to: 2% NWT and 2% local
7. A BIP cap remain in place, but be increased to \$1,500,000.
8. The BIP be integrated into a consolidated purchasing policy, and that the application of bid adjustments to RFPs be clarified and made consistent with the application to tenders.
9. That any adjustments to the current BIP rates and cap only be made once:
 - a) An evaluation framework and benchmark measures are in place to assess whether new bid adjustments are making the desired contribution to the

objectives of increasing participation of NWT-based businesses and increasing the success rate of BIP-registered firms, and encouraging increased use of NWT-resident labour and subcontractors; and

- b) There has been adequate communications, outreach and training provided to contracting authorities and the supplier community to support implementation of the new rate structure.

Several examples of how the proposed rate structure compares to the current structure used for tenders are provided below. It is worthwhile to note that for contracts valued at greater than \$1m that are issued through a Request for Proposals, the current BIP adjustments would be significantly larger than those provided on a tender process.

Example 1: A \$1M Bid from an NWT Contractor with 50% NWT and 50% Local Content

Category	Local Content	NWT Content	Non-BIP Content	Totals
Labour	\$200,000	\$200,000		\$400,000
Services	\$150,000	\$150,000		\$300,000
Goods	\$150,000	\$150,000		\$300,000
Total	\$500,000	\$500,000		\$1,000,000

CURRENT BIP ADJUSTMENTS		PROPOSED BIP ADJUSTMENTS	
15% NWT content – Bid Adjustment on first \$1M	\$150,000	15% NWT content – Bid Adjustment on first \$2M	\$150,000
5% Local content – Bid Adjustment on first \$1M	\$25,000	5% Local content – Bid Adjustment on first \$2M	\$25,000
1.5% NWT content – Bid Adjustment on value over \$1M		5% NWT labour content – Bid Adjustment on first \$2M of labour	\$20,000
0.5% local content – Bid adjustment on value over \$1M		5% local labour content – Bid Adjustment on first \$2M of labour	\$10,000
		5% Cost of Living – Bid Adjustment on first \$1M	
		2% NWT content – Bid Adjustment on value over \$2M	
		2% local content – Bid adjustment on value over \$2M	
Subtotal	\$175,000	Subtotal	\$205,000
Maximum Adjustment \$500,000		Maximum Adjustment 25% = \$250,000	
Total Bid Adjustment	\$175,000		\$205,000

Example 2: A \$1M bid from a Sahtu Contractor with 100% Local Content

Category	Local Content	NWT Content	Non-BIP Content	Totals
Labour	\$400,000			\$400,000
Services	\$350,000			\$350,000
Goods	\$250,000			\$250,000
Total	\$1,000,000			\$1,000,000

CURRENT BIP ADJUSTMENTS		PROPOSED BIP ADJUSTMENTS	
15% NWT content – Bid Adjustment on first \$1M	\$150,000	15% NWT content – Bid Adjustment on first \$2M	\$150,000
5% Local content – Bid Adjustment on first \$1M	\$50,000	5% Local content – Bid Adjustment on first \$2M	\$50,000
1.5% NWT content – Bid Adjustment on value over \$1M		5% NWT labour content – Bid Adjustment on first \$2M of labour	\$20,000
0.5% local content – Bid adjustment on value over \$1M		5% local labour content – Bid Adjustment on first \$2M of labour	\$20,000
		5% Cost of Living – Bid Adjustment on first \$1M	\$50,000
		2% NWT content – Bid Adjustment on value over \$2M	
		2% local content – Bid adjustment on value over \$2M	
Subtotal	\$200,000	Subtotal	\$290,000
Maximum Adjustment \$500,000		Maximum Adjustment 25% = \$250,000	
Total Bid Adjustment	\$200,000		\$250,000

Example 3: A \$5M Bid from a Beaufort Delta Contractor with 50% NWT and 50% Local Content

Category	Local Content	NWT Content	Non-BIP Content	Totals
Labour	\$1,000,000	\$1,000,000	\$	\$2,000,000
Services	\$1,000,000	\$1,000,000	\$	\$2,000,000
Goods	\$500,000	\$500,000	\$	\$1,000,000
Total	\$2,500,000	\$2,500,000	\$	5,000,000

CURRENT BIP ADJUSTMENTS for a TENDER		PROPOSED BIP ADJUSTMENTS	
15% NWT content – Bid Adjustment on first \$1M	\$150,000	15% NWT content – Bid Adjustment on first \$2M	\$300,000
5% Local content – Bid Adjustment on first \$1M	\$50,000	5% Local content – Bid Adjustment on first \$2M	\$100,000
1.5% NWT content – Bid Adjustment on value over \$1M	\$60,000	5% NWT labour content – Bid Adjustment on first \$2M	\$100,000
0.5% local content – Bid adjustment on value over \$1M	\$7,500	5% local labour content – Bid Adjustment on first \$2M	\$50,000
		5% Cost of Living – Bid Adjustment on first \$1M	\$50,000
		2% NWT content – Bid Adjustment on value over \$2M	\$60,000
		2% local content – Bid adjustment on value over \$2M	\$10,000
Subtotal	\$267,500	Subtotal	\$670,000
Maximum Adjustment \$500,000		Maximum Adjustment 25% or \$1.5M	1,250,000
Total Bid Adjustment	\$267,500		\$670,000

Example 4: \$5M Bid on a Tender from a NWT Contractor with 50% NWT /25% Local content / 25% non-BIP

Category	Local Content	NWT Content	Non-BIP Content	Totals
Labour	\$500,000	\$1,000,000	\$500,000	\$2,000,000
Services	\$500,000	\$1,000,000	\$500,000	\$2,000,000
Goods	\$250,000	\$500,000	\$250,000	\$1,000,000
Total	\$1,250,000	\$2,500,000	\$1,250,000	5,000,000

CURRENT BIP ADJUSTMENTS for a TENDER		PROPOSED BIP ADJUSTMENTS	
15% NWT content – Bid Adjustment on first \$1M	\$150,000	15% NWT content – Bid Adjustment on first \$2M	\$300,000
5% Local content – Bid Adjustment on first \$1M	\$50,000	5% Local content – Bid Adjustment on first \$2M	\$62,500
1.5% NWT content – Bid Adjustment on value over \$1M	\$41,250	5% NWT labour content – Bid Adjustment on first \$2M	\$75,000
0.5% local content – Bid adjustment on value over \$1M	\$1,250	5% local labour content – Bid Adjustment on first \$2M	\$25,000
		5% Cost of Living – Bid Adjustment on first \$1M	\$
		2% NWT content – Bid Adjustment on value over \$2M	\$35,000
		2% local content – Bid adjustment on value over \$2M	\$
Subtotal	\$242,500	Subtotal	\$497,500
Maximum Adjustment \$500,000		Maximum Adjustment 25% or \$1.5M	1,250,000
Total Bid Adjustment	\$242,500		\$497,500

Example 5: \$10M Bid from a NWT Contractor with 50% NWT /25% Local content / 25% non-BIP

Category	Local Content	NWT Content	Non-BIP Content	Totals
Labour	\$1,000,000	\$2,000,000	\$1,000,000	\$4,000,000
Services	\$1,000,000	\$2,000,000	\$1,000,000	\$4,000,000
Goods	\$500,000	\$1,000,000	\$500,000	\$2,000,000
Total	\$2,500,000	\$5,000,000	\$2,500,000	\$10,000,000

CURRENT BIP ADJUSTMENTS for a TENDER		PROPOSED BIP ADJUSTMENTS	
15% NWT content – Bid Adjustment on first \$1M	\$150,000	15% NWT content – Bid Adjustment on first \$2M	\$300,000
5% Local content – Bid Adjustment on first \$1M	\$50,000	5% Local content – Bid Adjustment on first \$2M	\$100,000
1.5% NWT content – Bid Adjustment on value over \$1M	\$97,500	5% NWT labour content – Bid Adjustment on first \$2M	\$100,000
0.5% local content – Bid adjustment on value over \$1M	\$7,500	5% local labour content – Bid Adjustment on first \$2M	\$50,000
		5% Cost of Living – Bid Adjustment on first \$1M	
		2% NWT content – Bid Adjustment on value over \$2M	\$60,000
		2% local content – Bid adjustment on value over \$2M	10,000
Subtotal	\$305,000	Subtotal	\$620,000
Maximum Adjustment \$500,000		Maximum Adjustment 25% or \$1.5M	
Total Bid Adjustment	\$305,000		\$620,000

5.1.5 Administration (including compliance/enforcement)

The Business Incentive Policy is supported by a small group of staff within the Department of Industry, Tourism and Investment as well as five regional BIP qualification committees comprised of at least four members each, and a BIP senior management committee made up of four senior executives.

As was noted earlier, the BIP office manages the forms and processes related to the registration of companies and the maintenance of the BIP registry. Regional Qualifications Committees review and approve BIP applications, BIP Senior Management Committee of Deputy Ministers considers appeals and policy issues related to the BIP as well as the NMPP. The application of BIP bid adjustments and actions related to the 'hierarchy of preferences' is carried out by contracting authorities.

In recent years the BIP office has worked to update the list of BIP-registered companies, including those on Schedule 3, by verifying eligibility and removing companies that are no longer in existence or no longer meeting the eligibility criteria. As noted in the discussion paper, the BIP office faces challenges in administering the current policy as a result of the complexity of defining "beneficial ownership" and a "bona fide" place of business.

BIP adjustments included in winning proposals are tracked, but there is no co-ordinated monitoring or enforcement of whether the commitments made to use NWT and local labour and subcontractors in those proposals are fulfilled. Individual contract managers may be monitoring these provisions and encouraging compliance but as the commitments are not part of the contract itself, there are no clear mechanisms to require contractors to comply. There are also no mechanisms to monitor or track how contract authorities are applying the required hierarchy of preference.

5.1.5.1 What We Heard About Administration

Most of the engagement sessions held by the Panel as well as virtually every written submission received, included discussion of concerns about ensuring compliance with BIP commitments and requirements. Many participants believe that misrepresentation of local content in bids and proposals occurs all too frequently and that more effort should be invested in identifying violations and ensuring there are meaningful consequences. At least one participant provided an example of their firm being identified as a sub-contractor in a bid without their knowledge. Several suggestions were made about requiring a higher level of proof from contractors concerning their compliance with BIP commitments made in bids, and about creating the ability to issue penalties to repeat offenders.

A number of participants endorsed the idea of establishing a vendor performance management program. Such a program can support continuous improvement in both vendor performance and relationships between contract managers and vendors, and can also be used to document issues and support decisions to penalize firms that repeatedly miss contract commitments or misrepresent their firms in their bids. The Yellowknife Chamber of Commerce was one of the organizations that endorsed this approach and noted a vendor performance management system could also be used to impact the likelihood of winning future contracts (e.g., by awarding points for past performance during bid evaluation).

Many participants also raised concerns about perceived inconsistencies in the interpretation of qualifying criteria and arbitrariness in the approval process for BIP registration. Some believe that favouritism and bias by staff involved in the registration process are affecting BIP applications, and that there is a need to reinforce the understanding about the requirements for fairness and integrity among those who determine BIP status. Several participants indicated they believe revisions are needed to the appeal process to make it more independent.

Staff and vendors noted that the application process can be complex and is cumbersome and time consuming for businesses. In addition, many participants noted that it can take a long time to get responses to questions and applications. Several participants suggested relying more on spot audits of firms to confirm their current eligibility, and less on regular renewal processes.

5.1.5.2 Panel thoughts on Administration

The Panel agrees that GNWT should have increased ability to manage compliance with both BIP commitments and BIP eligibility requirements. Currently, the policy framework does not clearly enable the use of penalties or incentives to support compliance, and this authority may need to be incorporated into the Government Contracts Regulation in order to be enforceable.

As roles and responsibilities for managing compliance with BIP commitments are not currently clear, the Panel believes additional work and potentially resourcing will be required here as well, in particular if the use of penalties and incentives will be adopted. Reducing the time required by staff to maintain the BIP registry may be possible by placing some responsibility on vendors to keep their registration data current, and adopting the use of spot audits. The Panel found no evidence to support claims of staff favouritism or bias.

The Panel is aware that GNWT staff have started work on a Vendor Performance Management program and encourage its continued development and implementation.

5.1.5.3 Recommendations on Administration

1. Establish the appropriate authority in policy to enable the use of penalties and incentives in vendor performance management, including potentially both financial penalties and bidder disbarment.
2. Increase enforceability of BIP commitments by:
 - Proceeding with the implementation of the planned Vendor Performance Management program and establish procedures to enable an appropriate range of actions to be taken that are commensurate with the scope and frequency of vendor failures to meet those commitments. GNWT could also consider the use of incentives to support contractors that exceed their BIP commitments.
 - Clarifying roles and responsibilities among GNWT staff with respect to carrying out all aspects of contract monitoring and supporting compliance
3. Add a requirement to the BIP substantiation sheet for proponents claiming BIP registration to certify that their business continues to meet the eligibility criteria, and acknowledging that knowingly submitting false information could lead to a period of disbarment from bidding on GNWT contracts.
4. Develop and implement processes to reduce the need for large scale re-registration efforts, including establishing that BIP-registered businesses have a responsibility to ensure the BIP office is provided accurate and current information pertaining to eligibility, and adopting the use of spot audits. Vendors that neglect to provide accurate information, when it would result in loss of BIP eligibility, may be subject to a period of disbarment from GNWT contracts.
5. The Regional Qualifications Committees provide written confirmation of the criteria met and not met by a business seeking registration that are shared with the BIP Monitoring Office and the applicant.
6. The BIP Monitoring Office establish service targets for turn-around times for eligibility decisions.
7. Ensure adequate training and guidance are provided to contract authorities to understand the spirit, intent and importance of supporting NWT, local and Indigenous businesses through procurement, and to effectively administer bid adjustments.

5.2 Northern Manufactured Products Policy (NMPP)

5.2.1 Introduction

The Northern Manufactured Products Policy (NMPP) provides incentives to support production within NWT of goods that are purchased by the GNWT. The NMPP was established by the Minister of Industry, Trade and Tourism in 2011 under authority provided in the Business Incentive Policy³⁷. Prior to the current policy, similar provisions were contained in an “interim directive” established in 1996, aiming to increase the effectiveness of the BIP for northern manufacturers.

³⁷. *Business Incentive Policy s.5(2)(b)(iv)*

The objectives of the current NMPP are to:

- a) Encourage local production as a means to diversify the NWT economy, and
- b) Foster and maintain the investment, jobs, and income produced by local manufacturing.

Similar to the BIP, the NMPP also states that its purpose is to provide support in a manner that recognizes the higher costs of doing business in NWT.

In order to qualify to receive this support, businesses must apply to have each product registered as an “approved NWT Manufactured Product”. To qualify, the product must:

- Be made by a BIP-registered business;
- Have at least 25% of its value added in the NWT; and
- Be priced within 20% of a similar product freight on board (FOB) its manufacturing site or within 25% FOB the destination for its final delivery.

In addition, presumably as a result of adopting the definition of “Local Supplier” in the BIP, the product must also be an item that the public can purchase directly from a representative inventory of items offered for sale.

Applications are reviewed by the appropriate BIP Regional Qualification Committee, and recommendations are provided to the BIP Monitoring Office, which then prepares a decision item for the BIP Senior Management Committee.

The mechanisms used to provide support under the policy are direct awards, limited competitions, and mandated use of approved products in contract specifications. More specifically, the policy states³⁸

- If there is only one manufacturer of the item in the NWT, it will be purchased directly from that manufacturer without competition;
- If there are two or more NWT-based manufacturers, only those will be invited to bid; and
- If an approved NWT manufactured product would meet the requirements of a contract, the use of that item will be made a term of the contract.

In the first and third approaches, manufacturers are at least theoretically able to take advantage of the full 25% price increment (above the cost of a similar product from outside the Territory), while the second approach may potentially result in lower prices as a result of competition. Contract Authorities are required to verify that the product’s price is within the range allowed under the policy, and can request a review of a product’s price by the Regional Qualifications and BIP Management Office if there is a concern.

Under the Procurement Guidelines, all requisitions for goods under the NMPP are to be submitted to Procurement Shared Services. Procurements that contain manufactured goods as part of a larger contract, for example for a construction project, are managed by the relevant contracting authorities.

38. [Northern Manufactured Products Policy](#), section 8(1)

In 2019, GNWT issued a Northern Manufacturing Strategy³⁹ that was developed in collaboration with industry and the NWT Manufacturers Association to “expand the manufacturing sector, identify potential areas of growth, promote and market products manufactured in the NWT and aid in the professional and technical development of the industry”. The NMPP is noted as having been a dominant topic of discussion during the Strategy’s development, and several of the Actions identified in the Strategy are directly aimed at improving the efficiency and effectiveness of the policy (see inset).

The questions in the discussion paper related to procuring manufactured products are:

- What mechanisms could be used to encourage NWT manufacturing?
- Would you agree with a bid adjustment premium, in addition to BIP, to support NWT manufacturing while ensuring there is an appropriate level of transparency?

NMPP Actions Identified in the Northern Manufacturing Strategy, 2019-2023

- Action 7: Beginning in 2019-2020, the GNWT will issue interpretive bulletins as required to clarify which products will be covered under the provisions of the NMPP.
- Action 8: The GNWT will work in collaboration with the NWTMA to review the definition of manufacturing, as it pertains to GNWT procurement, for the NMPP (2019-2020).
- Action 9: The GNWT will update the current approved product listings to incorporate the use of categories for directly related product (for example, removing the minimum and maximum size specifications for certain products) and ensure product categories are appropriately defined (2019-2020).
- Action 10: The GNWT will revise the NMPP to indicate that keeping sufficient raw materials on-hand, and maintaining the demonstrated ability to readily manufacture the product, is sufficient to maintain a product listing on the NMPP (2019-2020).
- Action 11: The GNWT will develop a Discussion Paper on the potential impacts and benefits of moving towards a transparent bid adjustment mechanism for products manufactured in the NWT and will ensure the input of the NWTMA is reflected in this analysis. This paper will be presented to the GNWT in early 2020 for further consideration.
- Action 12: In 2019, the GNWT will establish a review and appeal mechanism within the NMPP. (2019-2020).

5.2.2 Data

As is the case with much of GNWT’s procurement activity, we do not have performance data to help assess the current impact of the NMPP. Some data are recorded concerning purchases valued over \$25,000, either as a result of a direct award or a limited competition among northern manufacturers. Contracts that include manufactured products as a subcontract are not tracked, nor are contracts valued below \$25,000.

39. [Northwest Territories Manufacturing Strategy, 2019-2024](#)

Since 2004, a total of 18 suppliers have had products registered on the Manufactured Products Registry. On average, five suppliers have sales recorded under the policy in any given year and the average annual total value of those sales is \$2.13M. The largest share of annual expenditures over the past three years have been directed to one firm, which has accounted for just over half of the \$9M expended under the policy during this period.

The manufacturing sector in NWT is fairly small. According to Statistics Canada, the contribution of the manufacturing sector to the Territory's GDP⁴⁰ was \$10.5M in 2018 and \$8.3M in 2019, or under 0.2% of the total GDP in those years. This suggests that GNWT is an important client for northern manufacturers (see [Table 21](#) below).

Table 21: Comparison of Annual NMPP Expenditures and NWT Manufacturing GDP

Year ⁴¹	NWT Manufacturing GDP ⁴² (\$)	NMPP Expenditures (\$)	NMPP Expenditures as a % of NWT Manufacturing GDP
2017	8,300,000	1,602,871	19%
2018	10,500,000	5,707,367	54%
2019	9,900,000	1,693,766	17%

5.2.3 What We Heard

The most commonly raised concerns concerning the NMPP relate to the challenges of administering the policy. Participants noted:

- The policy is difficult to understand, and does not contain clear definitions;
- The steps to have products registered are cumbersome and the process is slow;
- Those who are reviewing applications may not have the appropriate expertise;
- There is a lack of transparency about how decisions are made;
- There is a lack of an appeal mechanism; and
- There is a lack of authority and clarity concerning how to enforce eligibility requirements on an ongoing basis and to address supplier performance issues.

Participants also raised concerns about the lack of tools and resources to respond when prime contractors identify NMPP products in their proposals and obtain the benefits of a bid adjustment under the BIP, but do not follow through with purchases once their contract is awarded.

GNWT staff noted that establishing and confirming pricing for approved products can present significant challenges. Issues relate to the time required to find comparable items and prices, the lack of clear processes for updating prices for approved products and for addressing issues if price verification issues arise. Several suppliers commented that the process for establishing pricing was complex and not transparent.

40. Gross Domestic Product or GDP is a measure of the value of goods and services produced in an economy.

41. Note that as the Statistics Canada GDP data is reported for a calendar year, while GNWT data is reported for a fiscal year, there is not an exact match in the comparisons and the table is intended to illustrate the size of GNWT investment under the NMPP relative to the amount of manufacturing activity in the Territory.

42. Statistics Canada, [NWT GDP by Industry](#) (chained), 1999 to 2020.

The approach taken in the policy to defining eligible products was another area of concern. Creating a list of specific products or product categories can make it difficult for contracting authorities to know the range of products that can be manufactured under that description. Several participants suggested that this lack of understanding may lead to GNWT staff using specifications that may not be able to be manufactured within the Territory.

Several participants noted that procurements involving direct awards and limited competitions under the NMPP tend to proceed fairly smoothly, and there is higher confidence that those managing these processes in Procurement Shared Services have awareness of the NWT manufacturing community and their capabilities. The BIP Monitoring Office was also acknowledged as providing valuable advocacy and outreach across GNWT Departments. However, among manufacturing representatives who provided input to the Panel, there is a widespread concern that opportunities for subcontracting are being missed. Contributing factors identified include:

- Lack of time / personnel in manufacturing businesses to find and review tenders and RFPs to see if they contain subcontracting opportunities;
- Lack of ability for prime contractors to easily identify appropriate local suppliers; and
- Lack of awareness among contracting authorities of the capabilities of NWT manufacturers (which can lead to overlooking the requirement to mandate the use of NWT products or to using specifications that eliminate NWT suppliers).

A number of participants voiced support for the recommendation contained in the Manufacturing Strategy to establish a “Pathfinder” role within GNWT to help manufacturers to identify opportunities and to support quicker and more effective responses to policy questions⁴³. Some participants noted this role would be most valuable if it includes an emphasis on identifying and supporting connections for businesses to the full range of economic development support programs available within NWT. It was suggested that there should be a strategic vision for the development of the manufacturing sector, and the pathfinder role could be instrumental in ensuring co-ordinated support for GNWT’s involvement in that vision.

Manufacturing representatives were familiar with the proposals to amend the NMPP to operate as a bid adjustment like those under the BIP, which would eliminate the need for a product catalogue and pricing comparisons. These proposals are outlined in the discussion paper prepared in advance of the procurement review, and were included in the Manufacturing Strategy and its recommendations. In general, participants indicated there was willingness to consider this approach. Some commentators suggested switching to a bid adjustment could help address a number of the current concerns with the NMP, while others felt it could compromise government’s ability assess value for money if there was no comparison to alternative sources.

5.2.4 Panel Thoughts

The Panel’s discussions with manufacturing representatives reinforced the discussion captured in the Manufacturing Strategy (and the Panel appreciates the willingness of participants to reiterate those messages). The Strategy contains many action items that were intended to be implemented or started in

43. *Northwest Territories Manufacturing Strategy 2019-2024*, p.18

the 2019-20 year. It is unclear what has prevented implementation of the Strategy, as it appears to be a well-constructed plan with significant support from the manufacturing sector. In addition, the Strategy includes a monitoring and evaluation framework that is very much in line with the Panel's recommendations to establish a more strategic approach to procurement.

As was the case with the BIP, the lack of evaluation and performance data for the NMPP makes it harder to identify the policy's current impact and areas of potential improvement. GNWT purchases of goods manufactured by NWT producers are a significant component of that sector's sales. Even without accounting for purchases valued under \$25,000 or goods purchased through sub-contracts, GNWT procurement of NWT manufactured goods accounted for almost one third of that sector's GDP over the past three years. Consolidating procurement responsibility within Procurement Shared Services is likely contributing to the success of the NMPP, as it makes it easier to maintain awareness about NWT-based firms and their capacity. This is a step towards the 'category management' approach recommended by the Panel earlier in the report, and developing it further for this sector through the collection and analysis of appropriate data and incorporation of supplier development strategies would bring benefits to both government and manufacturers.

The administrative challenges identified run the risk of discouraging suppliers from participating in the NMPP and frustrating staff in their efforts to support the policy. The issues fall into two main categories: one related to the lack of clarity about how to apply the policy, and another related to the fairness and accessibility of information related to decisions made under the policy. Both groups of issues need to be addressed in order to improve the NMPP's effectiveness.

With respect to the first group - the proposal identified in the discussion paper and Manufacturing Strategy to revise the NMPP to use a bid adjustment appears to be a reasonable approach that could reduce the administrative burden and eliminate the need to continuously assess product pricing.

With respect to the second group – the perceptions that decision making in the application of the policy is arbitrary, lacking transparency and any appeal mechanisms are of concern. A key requirement for effective procurement is that suppliers and the public trust that processes and decisions have fairness and integrity. Concerns expressed by suppliers and the public about the lack of access to complaint, review or appeal mechanisms extend beyond those raised specifically about the NMPP to decisions related to the application of the BIP as well as general procurement procedures, proposal evaluations and contract awards.

The Panel has made recommendations in the BIP section of the report concerning revisions to the current process for reviewing eligibility decisions, and believes an appeal mechanism for decisions made under the NMPP should be integrated into that revised process.

5.2.5 Recommendations

The Panel recommends that:

1. GNWT continue to develop and expand the category management approach for manufactured goods, as outlined in the "Approaches to Strategic Procurement" section of the report;

2. GNWT place a high priority on implementing the actions already identified in the Manufacturing Strategy, including potentially revising the NMPP to use a bid adjustment approach and establishing a “pathfinder” role to support the planning and communication of procurement opportunities that can engage the NWT manufacturing sector; and
3. The NMPP be integrated into a consolidated purchasing policy.

5.3 Negotiated Contracts Policy

5.3.1 Overview

The [Negotiated Contracts Policy](#) was established in 2007 to enable the award of a contract without a competitive process when it is expected that doing so would:

- Lead to benefits for NWT residents or businesses that would not otherwise be achieved; and
- Contribute to the creation, growth and capacity of NWT-based businesses.

The Policy enables Cabinet to consider proposals to enter into negotiations for a contract, based on a request received from an eligible contractor that has the operational, financial and management capacity to carry out the work.

The policy identifies 12 factors that Cabinet will consider when assessing a proposal for a negotiated contract⁴⁴, most of which relate to the contractor’s ability to do the work; whether there are other potential NWT contractors; and the potential impacts on the NWT economy. Other factors for Cabinet consideration include whether the proposed negotiations are supported by:

- Any regular member or Members of the Legislative Assembly representing the communities affected; and
- The elected leaders of the body responsible for the delivery of public municipal services in the community or communities affected.

Cabinet may then authorize a Minister to negotiate and award a contract, subject to any conditions or limits they establish.

The Negotiated Contracts Policy contains provisions that require:

- Contractors to report on the benefits that were obtained as a result of the contract, and to provide quantitative and qualitative data to support the information provided (s.6(3)); and
- Ministers to report annually to Cabinet on contract status, any estimated premiums, specific benefits analysis, and any subcontracting that has occurred with businesses not eligible under the Policy (s.6(5)(b)).

44. S.6(2)

An [Annual Report](#) is published on the Department of Executive and Indigenous Affairs website that lists basic information about the contracts entered into in each fiscal year, including a high-level description of the benefits expected at the time of contract signing. However, there is no publicly available information about the benefits or outcomes that were achieved.

The Policy has been used to support business capacity development and the generation of economic benefits within NWT. The majority of contracts have been issued to Indigenous businesses and in some cases, the identification of opportunities to use negotiated contracts was guided by Memorandums of Understanding (MOUs) established between GNWT and Indigenous governments or by Economic Measures components of Land Claims treaties (discussed further in the Indigenous Procurement Policy section of this report).

Both the number and value of negotiated contracts issued annually have decreased recent years. During the eight-year period after the policy was initially established, the average number of contracts issued annually was 12, and the average annual value was \$72.5M. Over the period from 2015-2016 to 2019-2020, the average number of contracts has dropped to 4.2 and the average annual value has dropped to \$12M. A summary of the total number and value of negotiated contracts by year is provided in [Table 22](#) below.

Table 22: Number and Value of Negotiated Contracts Issued

Year	# of Contracts	Value of Contracts (\$)
2007-2008	10	40,210,948
2008-2009	21	40,755,000
2009-2010	16	64,712,475
2010-2011	9	25,300,000
2011-2012	8	32,855,000
2012-2013	13	85,992,379
2013-2014	8	254,705,000*
2014-2015	11	35,935,000
2015-2016	4	3,359,715
2016-2017	4	25,100,000
2017-2018	2	4,678,000
2018-2019	7	21,005,000
2019-2020	4	5,800,000
Total	117	640,408,517

*Note: * includes a \$230M contract for the construction of the Inuvik to Tuktoyaktuk Highway*

5.3.2 What We Heard

Although the Panel noted the Negotiated Contracts Policy and related expenditures in each engagement session, relatively few participants had comments about this topic. Those who did comment generally described the Policy as a potentially useful tool to support Indigenous and local inclusion in contracting but also communicated a number of issues that are believed to be reducing the Policy's effectiveness.

A number of participants expressed concerns about how opportunities for using a negotiated contract are identified and how decisions about the content of contracts are made. Both Indigenous and non-Indigenous business representatives commented on a lack of transparency concerning which

opportunities are under consideration and how to propose a potential project. Several participants noted that most NWT and Indigenous businesses are small and do not have the resources to be constantly engaged with a network of GNWT staff that may have information to offer.

Other participants suggested that providing greater time for structuring the contract requirements would lead to greater benefits. Several Indigenous government and business representatives noted their preference to become involved in discussions before it has been determined that a project will become a negotiated contract. It was suggested that the provisions concerning participation of Indigenous governments be strengthened.

GNWT staff noted that moving a project that is ready to tender into consideration for issuing a negotiated contract can add a significant amount of time to the project delivery date, and frequently there is pressure to complete the contract as quickly as possible.

Concerns were also raised regarding a lack of transparency about the outcomes of negotiated contracts. Several participants suggested that greater reporting and communication about the impact of spending and the benefits achieved through negotiated contracts would increase support for the use of this approach. It was suggested that improved monitoring and reporting may also increase pressure on contractors to meet their commitments related to achieving the anticipated benefits, such as the use of NWT and Indigenous sub-contractors and labour.

Several participants suggested GNWT should avoid telling Indigenous governments how the contract deal should be structured, for example by restricting the use of joint ventures or a construction management approach, or by requiring the use of particular sub-contractors. These restrictions may inadvertently reduce the benefits obtained through the contract. In addition, the requirement to consider whether local governments or MLAs support a particular negotiated contract was described as 'antiquated' in the context of modern land claims and relationships with Indigenous governments.

5.3.3 Panel Thoughts

The ability to negotiate contracts instead of competing them is an important tool to have in the public procurement toolkit. Negotiated contracts provide a mechanism to take advantage of the exceptions and exemptions allowed under the current trade agreements and to foster greater collaboration with Indigenous governments and businesses. The effectiveness of the current policy is, however, hindered in several important ways.

First, the lack of clarity about how potential negotiated contracts are identified likely results in missed opportunities. The Policy states that proposals for negotiated contracts are to come from eligible contractors, although it is unclear whether in practice that regularly occurs. Contractors would be more likely to have the information necessary to make effective proposals if they have advance awareness of GNWT's capital and other procurement plans, and a clear process for submitting proposals.

There should be a greater incentive for GNWT staff to identify as early as possible potential candidate projects for negotiated contracts. This could be achieved through providing training to increase awareness of the Policy's objectives, and a clear process for staff to identify, assess and propose potential projects. Departmental or government-wide targets for the use of negotiated contracts could

also be considered. In addition, a clear process should be developed to guide engagement with Indigenous governments about potential projects, preferably prior to finalizing a project's scope and requirements.

Second, the list of factors that Cabinet must consider when reviewing a proposed negotiated contract may generate unintended consequences. For example, assessing whether the local municipal government and MLA are in support of a negotiated contract may, in cases where an Indigenous government may be a party to the contract, undermine government-to-government relationships. In addition, although it is appropriate to assess the potential involvement in a proposal of businesses that are not eligible under the policy, it is important to do so in the context of the policy's overall objective – which is to obtain benefits that might not be achieved through a competitive process. In other words, the fact that outside firms may be proposed to play a significant role in a project does not necessarily mean a negotiated contract should not be pursued.

Third, improving transparency concerning how negotiated contracts are identified and what outcomes they achieve results would improve awareness of, and accountability for, the benefits obtained. The lack of reporting undermines support for the policy and contributes to skepticism or cynicism about its use.

5.3.4 Recommendations

The Panel recommends that:

1. The Negotiated Contracts Policy be incorporated into a consolidated purchasing policy.
2. The Negotiated Contracts Policy be revised to:
 - a) Enable and encourage identification of potential negotiated contract initiatives by GNWT staff (as well as by proponents) as early in the planning process as possible; and
 - b) Remove the strict requirement to consider whether MLAs and local governments support a proposed contract.
3. GNWT establish procedures to determine when and how negotiated contracts could be used to take advantage of the exceptions and exemptions available under the current trade agreements.
4. GNWT provide training and clear procedures to GNWT staff to ensure awareness of the policy's objectives and of how to identify and assess potential negotiated contract initiatives.
5. GNWT develop and publicize clear guidance concerning how proposals for negotiated contracts can be provided to GNWT by contractors or Indigenous governments, including the required content of these proposals.
6. GNWT produce and make available regular reports on the outcomes and benefits achieved through negotiated contracts.

5.4 Public-Private Partnerships (P3) Policy

5.4.1 Introduction

A public-private partnership (PPP or P3) is a contract between a public sector entity and a private sector entity that outlines the provision of assets and the delivery of services. Although P3 agreements can include a wide range of infrastructure and services, the more common P3 projects include hospitals, bridges, highways, new types of technology and new government buildings.

The approach to procuring and managing these contracts is quite different from those used in traditional Requests for Proposals or tenders as P3s involve more complex terms related to defining the different phases of the project (e.g., design, construction, operation, maintenance), the expected outcomes and milestones as well as the terms for payment, financing and risk management.

GNWT established a Public-Private Partnership Policy in 2011 to enable consideration of this approach when:

1. The capital, operating and service costs of the project will exceed \$50M over the life of the agreement;
2. An appropriate risk sharing arrangement is possible;
3. There is an operating period in the agreement past an initial capital construction phase; and
4. A business case shows a clear net benefit over a traditional GNWT procurement approach, including life cycle costs.

The Policy's principles highlight that the P3 process should be transparent, accountable and ensure that public control is preserved, and that projects should provide best value for money over the life of the agreement with appropriate consideration of risk transfer, opportunities for innovation, revenue generation and community issues.

The P3 Policy enables Ministers to propose potential P3 projects to the Financial Management Board (FMB) and requires potential projects to be referred by FMB to Standing Committee and a Deputy Ministers Steering Committee for review. These initial referrals are made in confidence.

In most jurisdictions, including the NWT, potential P3 projects require a value-for-money assessment to ensure that a P3 procurement option delivers value relative to a conventional procurement process. An evaluation is done before the start of the procurement process and the test is finalized after the financial close. The value-for-money assessments are designed to ensure that appropriate projects are selected as P3s, and that the risk transfer is cost-effective to the public sector owner.

The [GNWT P3 Management Framework](#) established by the FMB states that a Value for Money report for each P3 project is to be published immediately following execution of the project agreement. However, it is unclear whether these reports are in fact available (they are not included on the Department of Finance's website where all other P3 related information is made available). The P3 Policy also assigns responsibility to the DMs' Steering Committee for monitoring and evaluating the implementation of approved P3 agreements (s.5.1), although it does not appear that GNWT publishes (or provides links to)

any information about performance and status of activities under the agreement. The Management Framework also assigns lead responsibility to the Department of Finance for advising FMB on the feasibility and value for money assessments of potential projects and provides direction on the structuring and evaluation of financial terms for P3 projects (s.2.1).

There are three GNWT P3 projects in place, and all three have moved into the operating phase of their agreements: the McKenzie Valley Fibre Link (25 years, \$245M); Stanton Territorial Hospital Refurbish (34 years, \$751M); and the Tłıchq All-Season Road (28 years, \$412M).

The question posed in the Procurement Review Discussion Paper is: *Should P3 projects continue to be considered to limit GNWT risk and encourage innovation on major infrastructure projects as long as there is a commitment to maximize the participation of NWT and Indigenous businesses as much as possible?*

5.4.2 What We Heard

Of all the topics discussed during the Panel's engagement session, the use of P3s generated the least amount of input. During discussions about the P3 approach, participants who did comment tended to question whether GNWT is obtaining the desired value and whether enough action is taken to leverage opportunities for NWT, local and Indigenous businesses. As P3 agreements have a long lifespan, some participants were concerned that NWT-based businesses could be shut out of providing goods and services for a long time. Several participants suggested that GNWT should require P3s to incorporate more rigorous requirements for the use of local and Indigenous businesses and labour.

A few participants noted that they were in support of using P3s, indicating that it enables important opportunities for partnerships with Indigenous governments. Several participants suggested that the \$50M baseline to consider a P3 was too low, although others felt that the lower number provided GNWT with more flexibility to decide which projects were suitable for a P3 approach.

Lastly, several participants felt that public acceptance of P3s is hampered by a lack of transparency both about the process for establishing the agreements and with respect to reporting on progress and results achieved.

5.4.3 Panel Thoughts

The Panel believes it is useful for GNWT to retain the ability to use a P3 approach for those circumstances when it can bring the best deal structure to enable innovation, balanced risk management and the greatest value for money outcome. In addition, P3s provide a potentially useful tool when considering collaboration with Indigenous governments on significant projects. The Panel believes the commitment to maximize the participation of NWT, local and Indigenous businesses is a key component of achieving value for money, and GNWT's intention to do so should be clearly highlighted in all aspects of project scoping, assessment and management. The recent P3 agreement with the Tłıchq government provides an example of the commitments for the use of local and Indigenous labour that are possible under this approach.

Some of the skepticism expressed by participants concerning the existing P3 arrangements and their benefits is fuelled by a lack of readily available information concerning the procurement process, the key

terms of the project agreement, and the anticipated and achieved milestones and benefits. Although P3 agreements can contain more elements that are expected to remain confidential than is the case in typical government contracts, there is still an ability to provide basic information on the key components of an agreement as well as the progress and performance achieved. As is the case with other contracts, ensuring there is adequate oversight and monitoring for compliance with respect to meeting commitments for the use of local and Indigenous contractors and labour is key to obtaining the best return on investment.

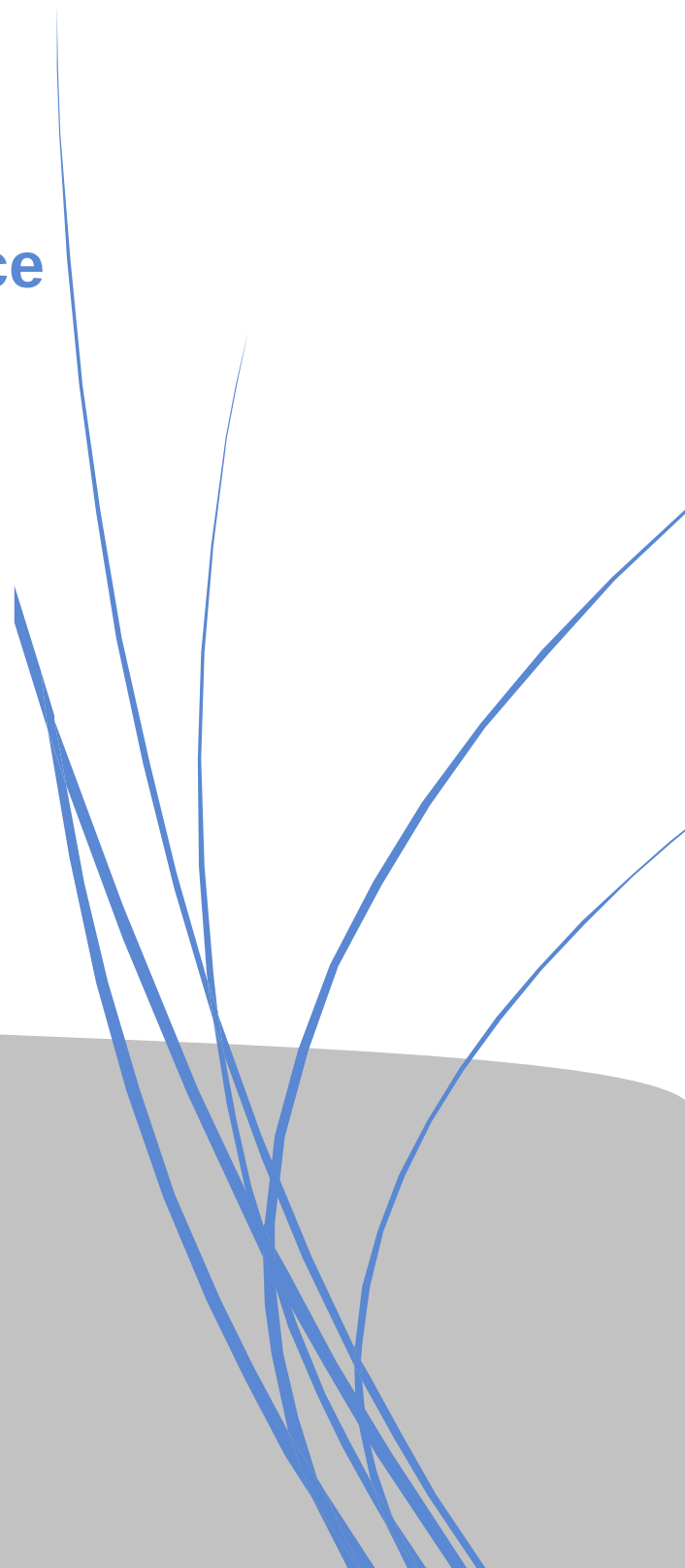
5.4.4 Recommendations

The Panel recommends that:

1. The P3 Policy be incorporated into a consolidated Purchasing Policy for GNWT;
2. The P3 Policy's objectives include the intention to consider the opportunity to engage with Indigenous governments on each P3;
3. Review the P3 Management Framework to clarify responsibility for monitoring and managing compliance with subcontracting and local labour provisions in P3 agreements; and
4. The value for money assessment reports and regular updates on progress, milestones and benefits achieved be made available on the Department of Finance's P3 website.

Appendix 1

Panel Terms of Reference



Appendix 1: Panel Terms of Reference

Purpose

The Government of the Northwest Territories (GNWT) procurement policies have not been substantially updated since 2010 and it is time for a comprehensive review. Defining what constitutes a 'Northwest Territories (NWT) business' that qualifies for bid adjustments through the BIP, identifying opportunities to keep more dollars in the north in a manner that complies with trade agreements, and identifying opportunities to continue to support Indigenous governments will be central themes for this review. Consideration must also be given to growing the economy, cost of living and ensuring costs are managed to ensure future projects are affordable.

Scope

In response to the priorities established by the 19th Legislative Assembly, the GNWT 2019-2023 Mandate commits to:

Strengthen GNWT procurement policy and practices (by) working with NWT businesses to identify recommendations to strengthen GNWT procurement policies and practices, including the Business Incentive Policy (BIP), P3 projects, and the Northern Manufactured Products Policy (NMPP).

The GNWT mandate also commits to reviewing existing policies and procedures to ensure timeliness of payments, increasing awareness of GNWT contracting opportunities, and improving participation in the Business Incentive Policy (BIP) by NWT companies.

The objective for the Panel is to undertake an independent Review of GNWT Procurement Policy. The Panel will be expected to place a focus on procurement policy advice and recommendations but can also include advice on procurement processes, procurement reporting, and needed efforts in building awareness of GNWT contracting opportunities.

The Panel will be supported by Industry, Tourism and Investment (ITI) internal resources. Support will also be provided by the interdepartmental Procurement Procedures Committee (PPC), chaired by the Department of Finance (Finance).

Membership

The Panel will consist of a public procurement expert, NWT based facilitator and an Indigenous business representative. A project lead and support will be provided by ITI.

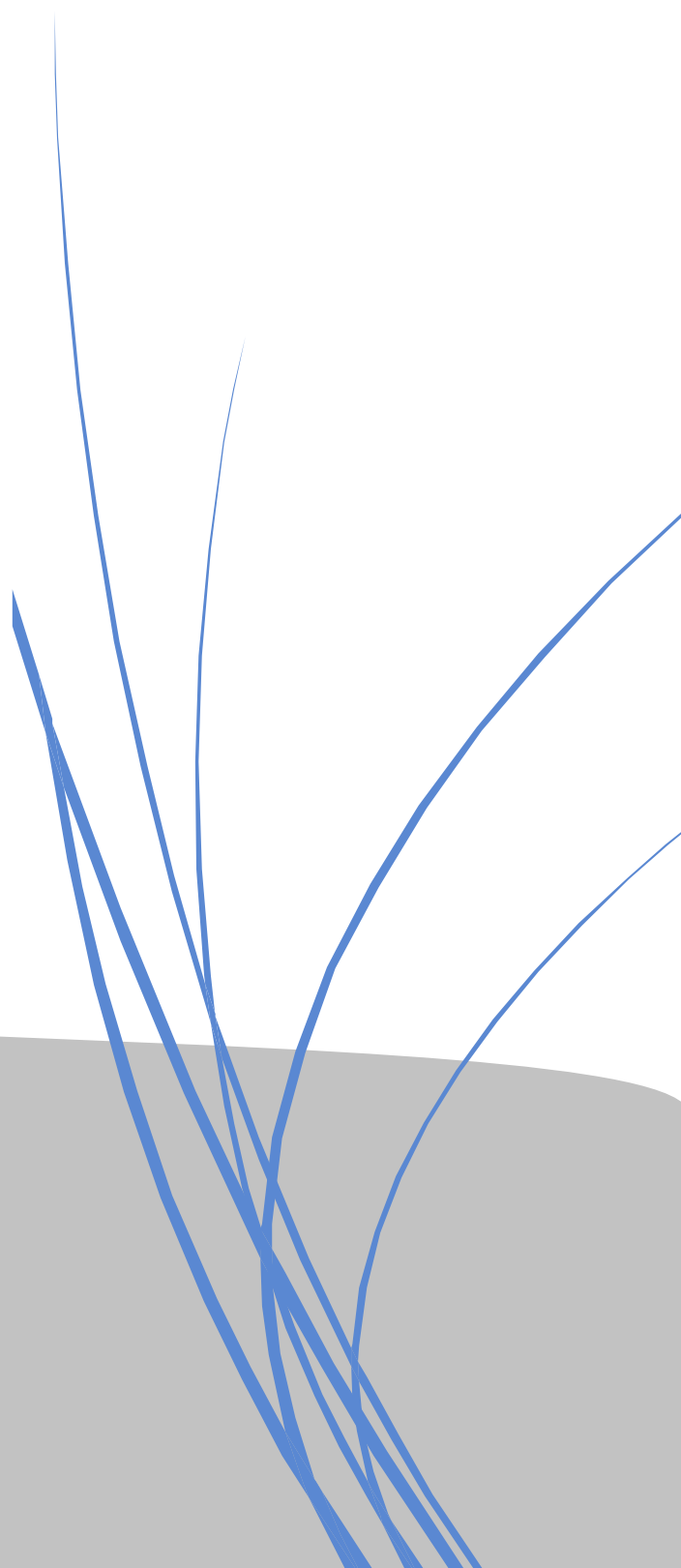
Responsibilities

Specific responsibilities include but are not limited to:

- Document review of GNWT procurement policies and practices as well as material from previous procurement reviews.
- The panel to work closely with ITI support personnel in establishing a detailed schedule for the review, including identification of key stakeholders and the methodology for the review. A draft high-level schedule is below.
- Lead public engagement and key stakeholder sessions in a manner that is consistent with a communications strategy. The approach to public engagement will need to consider virtual sessions due to the COVID-19 pandemic.
- Meet with the GNWT Deputy Ministers and the appropriate Committee of Cabinet as requested.
- Lead the development of public presentations, surveys and other supporting material to assist in engagement sessions and communications with the public and key stakeholders.
- Develop an independent report on the findings of the procurement review and provide recommendations for change for the consideration of the GNWT. This report should include quantitative analysis on the amount of public procurement dollars and contracts that have been awarded to NWT businesses as well as those businesses registered under the BIP and consider the establishment of targets. Please see the GNWT contracts report, (<https://www.fin.gov.nt.ca/en/resources-category/contracts-reporting>) but there will be additional supporting information provided by the PPC.
- Present report with findings and recommendations to the PPC, GNWT Deputy Ministers, and the appropriate Committee of Cabinet.
- One panelist to act as the spokesperson for media and respond to requests for information from journalists.
- Provide a technical briefing for NWT media upon the release of the report.

Appendix 2

Biographies of Panel Members



Appendix 2: Biographies of Panel Members

Leslie Anderson

Ms. Anderson is a Principal with DPRA Canada with over 25 years of public sector employment and consulting experience. She holds Masters Degrees in Law and Public Administration and a Bachelor's degree in Economics. Her career has included a particular focus on public procurement since 1988 when she began work with the BC Purchasing Commission.

For eight years, Ms. Anderson held direct management responsibility for government-wide procurement policy and procedures in both provincial (BC) and territorial (Yukon) jurisdictions. Since 1996, she has designed and conducted procurements for public sector programs and projects; and developed procurement regulations, policy, processes, solicitation formats and contracts, along with guidance and training for their use by a variety of public sector entities.

Peter Vician

With an extensive 34-year public service career in the NWT – Including key executive postings as Deputy Minister in transportation, infrastructure and economic development portfolios, Mr. Vician is well versed with the North's political environment and economic landscape.

As Deputy Minister of Industry, Tourism and Investment, Mr. Vician led the government's management of NWT economic resources including tourism and parks, oil and gas, mining and energy policy and regulation. His portfolio also included oversight of NWT commercial fisheries, agriculture and traditional harvesting. Mr. Vician played a primary role in the process that saw the devolution of administration for land, resource and water rights from the federal government to the NWT in 2014.

Darrell Beaulieu

Mr. Beaulieu's business leadership is recognized and respected throughout the NWT and Canada. He is the President and CEO of Denendeh Investments Incorporated (DII) and the Denendeh group of companies. Mr. Beaulieu also serves as President and CEO of the Denendeh Development Corporation, a not-for-profit corporation whose members are the 27 Chiefs of the Dene Nation.

As an Indigenous business leader, Mr. Beaulieu understands the contributions of Indigenous business to the economy; and to the well-being of the NWT's Indigenous peoples. He serves as spokesperson for the NWT Indigenous Coalition Economic Coalition. He is a champion of Indigenous capacity building and employment and his leadership, demonstrates a strong long-term commitment to the NWT's Indigenous communities.