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Chapter: Control of Expenditures			
Directive Title: GOVERNMENT CONTRACTS - GENERAL			

1. INTRODUCTION

This directive controls the formation and administration of Government contracts other than employment contracts.

The Financial Administration Act (FAA) specifies the conditions for entering into contracts on behalf of the Government. Refer in particular to FAA Sections 44, 45 and 46 and the Government Contract Regulations pursuant to the FAA (see Directive 9904 in this manual). Refer to the Department of Public Works & Services Contracts Administration Manual for further detailed instructions on construction and goods contracts. The Government Business Incentive Policy (as amended from time to time) applies to all contracts.

Under appropriate conditions the Government may contract with its own employees for work to be performed outside and totally separate from regular employment while the employees are off duty. Such contracts are personal services contracts, not employment contracts. For direction and guidance on distinguishing between personal services contracts and regular employment, refer to Directive 808-5, Personal Services Contracts in this manual. Refer to the Human Resource Manual for general direction on employment contracts including restrictions on Government employees being engaged in business outside their regular employment.

Following Government directives and regulations may not necessarily result in a legal and appropriate contract. If there is concern about a proposed contract, obtain advice from the Legal Division of the Department of Justice.

2. DEFINITIONS

2.1 Construction

Construction means work to build, supply, repair, restore, maintain or demolish a structure and the hiring of equipment necessary for that work.



2.2 Contract Authority

Contract authority means a Minister or a Deputy Minister and includes a public officer with powers and duties of contract authority delegated in accordance with the Government Contract Regulations. (See Directive 9904 in this manual.)

2.3 Employment Contract

An employment contract is an employer/employee relationship. Directive 808-5 in this manual provides direction on distinguishing between employment and other contracts.

2.4 Goods

Goods includes materials, goods or equipment, whether in existence or not at the time of the contract.

2.5 Multi-year Contract

A multi-year contract is any contract that requires construction or the supply of goods or services and the related expenditure in more than one fiscal year.

2.6 Procurement

Procurement includes supply source research and the formation and administration of contracts with external sources for the supply of goods and services.

2.7 Services

Services mean services other than the provision of goods and construction. Examples are:

- legal, architectural, engineering, and other consulting services;
- insurance, security, and investigation services;
- repair, custodial and other trade type work; and,
- ordinary rental or lease of equipment.

Services does not include lease-to-purchase agreements. Such agreements are contracts for the purchase of goods and are subject to special regulation and control.



2.8 Service Contract

A service contract exists where the contractor performs the contract independent of the contract authority and not as an employee. (Government employees may enter into service contracts with the Government, separate from and independent of their employment contracts and subject to provisions. See subsection 4.9 in this directive.)

3. DIRECTIVE

3.1 Compliance

Government contracts must comply with the Financial Administration Act (FAA), the Government Contract Regulations (see Directive 9904), the Government's Business Incentive Policy and the directives in this manual.

3.2 Authority to enter into contracts

3.2.1 In accordance with the Government Contract Regulations (see Directive 9904), only a contract authority may enter into a contract on behalf of the Government, except as indicated in Subsection 3.2.2 below.

3.2.2 The Executive Council may enter into or direct a contract authority to enter into a contract, in accordance with the Government Contract Regulations (see Directive 9904).

3.3 Tender and Proposal Requirements

Government contracts must comply with the tender or proposal requirements of the Government Contract Regulations (see Directive 9904) and Directive 808-1.

3.4 Legal Review of Proposed Contracts

3.4.1 Before entering into a non-standardized contract valued greater than \$50,000, the contract authority shall submit the proposed contract to the Legal Division, Department of Justice for review. (Appendix A defines the standardized contract and sets review requirements.)

3.4.2 Before entering into a contract that is an altered or amended version of a standardized contract, the contract authority shall submit proposed alterations or amendments to the Legal Division, Department of Justice for review.

3.5 Restrictions on Certain Types of Contracts

- 3.5.1 In accordance with the Government Contract Regulations, a legal services contract must be entered into only with the approval of the Executive Council or the Minister of the Department of Justice, except that the Superintendent of Child Welfare may enter into a legal services contract for the benefit of a child in his or her care or custody who has been charged with an offence. (See Directive 9904 in this manual.)
- 3.5.2 An insurance contract must be entered into only with the approval of the Minister or the Deputy Minister of Finance in accordance with the Government Contract Regulations. (See Directive 9904 in this manual.)
- 3.5.3 In accordance with the Government Contract Regulations, the following contract types must be entered into and administered by the Department of Public Works & Services, except as delegated through Directives 808-2 and 808-3 of this manual.
- supply of goods (purchasing)
 - transportation services
 - computer services (as described in Directive 1002)
 - communication services
- See also subsections 4.6 and 4.10 in this directive.
- 3.5.4 In accordance with the Government Contract Regulations, Lease of real property contracts must be entered into and administered by the Department of Public Works & Services, except as delegated.
- 3.5.5 Except as authorized in Directive 808-3, construction contracts must be entered into and administered by either the Department of Public Works & Services or by the Department of Transportation, in accordance with the Government Contract Regulations.
- 3.5.6 Employment contracts must be entered into in accordance with the requirements of the Human Resource Manual. For direction on distinguishing between personal services and employment contracts, refer to Directive 808-5.

3.6 Conflict of Interest

- 3.6.1 A public officer shall not permit to arise any influence, interest or relationship with a contractor that might conflict with the interests of the government or that might endanger or prejudice the Government's reputation for fair and open dealings.



- 3.6.2 A public officer shall not use the Government's contracting relationship with a contractor for personal gain or benefit.

3.7 Insurance Requirements

- 3.7.1 All contracts must contain an indemnity clause in which the contractor indemnifies the Government against any third party claim arising out of the contractor's performance of the contract. Appendix B provides the standard wording to be used.
- 3.7.2 All contracts must contain terms and conditions that ensure adequate insurance coverage by the contractor. Appendix B provides the standard wording.
- 3.7.3 The requirement for insurance coverage by a contractor may be waived by the Department of Finance. Requests for a waiver must be submitted to the Manager, Risk Management & Insurance who will assess the risk in the proposed contract before approving or rejecting a waiver request.

4. PROVISIONS

4.1 Expenditure and Commitment Controls

Before a contract is entered into on behalf of the Government, an expenditure officer and an accounting officer shall provide separate certifications pursuant to section 44(1) of the FAA.

4.2 Standard Contract Clause

Government contracts must contain the following clause, which directly quotes Section 46 of the FAA:

"In compliance with Section 46 of the Northwest Territories Financial Administration Act, it is a statutory condition of this contract that 'an expenditure pursuant to the contract will be incurred only if there is a sufficient uncommitted balance in the appropriated item for the fiscal year in which the expenditure is required under the contract.'"

4.3 Object of Contract

Government contracts must clearly identify the objectives of the contract and the contractor's obligations.

4.4 Contract Price and Change Orders

- 4.4.1 The contract price must be part of the contract and be fixed or else determined by a fixed formula.
- 4.4.2 Where it is appropriate under special circumstances to change a contract price within the duration of a contract, prepare a written Change Order clearly indicating the reasons the changes are necessary. The Change Order must not increase the scope of the contract and the price change must not exceed the monetary limits of the financial signing authority of the responsible financial officer. Refer also to the Department of Public Works & Services Contract Administration Manual.

4.5 Multi-year Contracts

- 4.5.1 Multi-year contracts must clearly state the requirement for an expenditure in a subsequent fiscal year as required by section 44(2) of the FAA.
- 4.5.2 Departments shall maintain adequate records for multi-year contracts to reveal related outstanding commitments at the end of a fiscal year.

4.6 Goods Contracts

- 4.6.1 The department of Public Works & Services has been delegated authority for procurement of goods in accordance with the Government Contract Regulations. (See Directive 9904 in this manual and subsection 4.10 and sub subsection 3.5.3 in this directive.)
- 4.6.2 In the interest of the Government receiving the highest possible value for its expenditures, the Department of Public Works & Services may question the specifications for goods requisitioned by other departments.

4.7 Service Contracts

- 4.7.1 Where applicable, service contract conditions must require that:
 - 1) confidential information and records in the possession of the contractor be returned to the Government immediately upon substantial completion of the contract; and,
 - 2) the contractor use confidential information only for the purpose of the contract unless written permission for another use is given in advance by the Government.

- 4.7.2 If a proposed service contract is with a person or a person operating under a proprietorship name, Directive 808-5, Personal Service Contracts in this manual and the Human Resources Manual must be reviewed to ensure that the proposed contract is not an employment contract.
- 4.7.3 Service contracts must contain the written condition that the Government is not liable for remitting source deductions (such as income tax, CPP, UIC and Workers Compensation premiums) relating to payments made to the contractor.
- 4.8 Standards
- 4.8.1 The Department of Public Works & Services and the Department of Transportation shall develop and set minimum quality standards for construction procured by the Government.
- 4.8.2 The Department of Public Works & Services shall develop and set minimum quality standards for goods purchased or equipment leased for Government use. The development of standards for goods may be delegated to other departments.
- 4.9 Contracts with Government Employees

A contract (other than an employment contract) may be allowed between the Government and a Government employee or a private company, partnership or proprietorship in which that employee holds an interest only when:

- a) the employee advises their Department Head in writing of their involvement in the contract;
- b) the Minister or Deputy Minister of the department in which the employee is employed approves the contract.
- c) the employee performs the work of the contract only while off duty with the Government;
- d) the contract does not interfere with the contractor's duties and responsibilities as an employee of the Government;
- e) the employee does not use Government facilities, resources or equipment for the contract; and
- f) a review as described under Directive 808-5 has been performed to ensure that the contract does not create an employer/employee relationship in itself.



4.9 Assignment of debt owed by the Government to a contractor

Subject to subsections 69(3 and 4) of the FAA and the Assignment of Government Debt Regulations (see Directive 9902), the Comptroller General may approve in writing the assignment to third parties of debt owed under contract by the Government to the contractor.

4.10 Authority to purchase office equipment

The Department of Public Works and Services maintains standards for most types of office equipment such as photocopiers, fax machines and computers. The authority to procure office equipment by any means such as purchase, lease, rental, rent to buy or lease to buy rests with the Department of Public Works and Services. If office equipment is needed, a Requisition for Services must be submitted to the Department of Public Works and Services.

4.11 Progress payments in contracts

A contract may include progress payments to the contractor in accordance with Directive 803 in this manual. The conditions of a contract may allow an accountable advance to the contractor, to be issued in accordance with Directive 817-5.

4.12 Paramount Authority of the Executive Council

The Executive Council may approve special approaches to entering into contracts pursuant to its authority under the Government Contract Regulations. An example of a special approach is Government practice with respect to negotiated contracts.

5. GUIDELINES

5.1 Service Contract Form

- 5.1.1 The service contract form NWT 2529/0194 should be attached to all contracts for service as a financial commitment document in which the form itself is not the contract document.
- 5.1.2 When used as a commitment document only, the service contract form does not require the contractor's signature or the contract details. The contract authority should ensure that:
 - a) the information on the top of the form is completed;
 - b) "See attached contract" is printed in the body of the form, and;
 - c) the service contract form number (SC...) is written at the top of every page of the contract document.



5.1.3 When the service contract form is the primary contract document, the form NWT 1894/0693 "Service Contract Continued" may be used to extend the form.

5.2 Validity of contract

When entering into a contract with an entity other than a sole person, a contract authority should ensure that:

- a) the contractor is a legal entity, such as a properly registered corporation (A contract is not legally valid if the contractor is not a legal entity);
- b) if the contract is with a not-for-profit organization, the organization charter permits the contract;
- c) when contracting with a corporation, a corporate seal is put on the contract where practical; and
- d) if an agent is signing the contract for the contractor, proof of the agent's authority is obtained and the agent is properly identified on the contract.

APPENDIX A

LEGAL REVIEW OF CONTRACTS

Standardized Contract

A standardized contract is a type of recurring contract approved by the Legal Division of the Department of Justice and used for a similar purpose from time to time. Its terms and conditions:

- a) remain unchanged except for the parties, price, description of property and matters of a like nature, or
- b) are taken from a list of approved contract clauses.

When taking clauses from an approved list, it is important to include all required clauses and exclude inappropriate ones. Consult with the Legal Division, Department of Justice.

Examples of standardized contracts can be found in real estate leases and construction and procurement contract documentation.

Review

This directive requires that certain government contracts must be reviewed and approved by the Legal Division of the Department of Justice. An originating department shall determine and submit the following information for review with the proposed contract:

a) Capacity of Contractor

proof that the contractor is a legal entity capable of contracting

b) Object of Contract

evidence that the purpose of the contract and the obligations of both parties are clearly set out

c) Authority to Contract

the name and position of the person proposed to sign for the Government and evidence that the person is a contract authority pursuant to the Government Contract Regulations (See Directive 9904 in this manual.)

d) Authority of Expenditure Officer and Accounting Officer

the names and positions of these persons and evidence that they are authorized to provide the certifications required by Section 44 of the Financial Administration Act.

e) Compliance with Requirements for Contracting

evidence that required tendering or proposal procedures have been employed pursuant to the Government Contract Regulations and the directives in this manual. See Directives 9904 and 808-1.

f) Grammatical and Typographical Correctness

evidence that the proposed contract has been reviewed and edited for grammatical and typographical correctness.

A contract review is conducted to ensure that the Terms and Conditions of a contract do not contravene any Acts or other laws. The originating department, in a covering letter for the review, shall identify non-standard aspects of the contract, list specific concerns and indicate the date by which the contract review should be completed. Reasonable time should be given for the review. A contract review will not determine:

- i) whether the Government has been adequately protected by way of copyright, restrictions regarding disbursement of funds, etc.; or
- ii) whether the contract follows good business principles.

APPENDIX B

INDEMNIFICATION AND INSURANCE REQUIREMENTS

Following are the standard indemnification and insurance requirement clauses to be included in contracts. Some of the sub-clauses in Section 1, Insurance Requirements may not be required in certain cases. Contract authorities should obtain advice from the Risk Management & Insurance section of the Department of Finance.

Indemnification

The Contractor shall indemnify and hold harmless the GNWT, its officers, employees, servants and agents from and against all claims, actions, causes of action, demands, costs, losses, damages, expenses, suits or other proceedings by whomever made, brought or prosecuted in any manner based upon or related to the activities of the Contractor under this Agreement.

Insurance Requirements

1. The Contractor shall without limiting his obligations or liabilities hereto, obtain, maintain and pay for during the period of this Agreement, the following insurance with limits not less than those shown:
 - a) Workers' Compensation insurance covering all employees engaged in the work in accordance with the statutory requirements of the Territory or Province having jurisdiction over such employees. If the Contractor is assessed any additional levy, extra assessment or super-assessment by a Workers' Compensation Board as a result of an accident causing injury or death to an employee of the Contractor or subcontractor, or due to unsafe working conditions, then such levy or assessment shall be paid by the Contractor at its sole cost and the Contractor will not be reimbursed by the GNWT.
 - b) Employers' Liability insurance with limits not less than five hundred thousand dollars (\$500,000) for each accidental injury to or death of the Contractor's employee engaged in the work. If Workers' Compensation insurance exists, then in such event, the aforementioned Employers' Liability insurance shall not be required but the Comprehensive General Liability insurance policy referred to in item (e) herein shall contain an endorsement providing for Contingent Employers Liability insurance.
 - c) Motor Vehicle, Watercraft and Snowcraft Standard Liability insurance covering all vehicles and/or craft owned or non-owned, operated and/or licensed by the Contractor and used by the Contractor in the performance of this Agreement in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, death and damage to property; and with respect to buses, limits of not less than one million dollars (\$1,000,000) for vehicle hazards and not less than one million dollars (\$1,000,000) for bodily injury to or death of one or more passengers and loss of or damage to passenger property in one accident. (School Buses shall include relevant School Bus endorsements with limits of not less than two million dollars (\$2,000,000) for bodily injury to

or death of one or more passengers and loss of or damage to passenger property in one accident.)

- d) Aircraft Liability insurance covering all aircraft, owned or non owned, operated and/or licensed by the Contractor and used in operations hereunder with a bodily injury, death and property damage and passenger hazard limit of six million dollars (\$6,000,000) inclusive.
 - e) Comprehensive General Liability insurance with limits of not less than two million dollars (\$2,000,000) inclusive per occurrence for bodily injury, death and damage to or loss of use of property. Such insurance shall include but not be limited to the following terms and conditions:
 - 1) Products And Completed Operations Liability;*
 - 2) Contractor's Protective Liability;*
 - 3) Blanket Contractual Liability;
 - 4) Broad Form Property Damage;
 - 5) Personal Injury Liability;
 - 6) Cross Liability;
 - 7) Medical Payments;
 - 8) Non-owned Automobile Liability;*
 - 9) Contingent Employers Liability;* and
 - 10) Employees As Additional Insureds.*

* where applicable
 - f) Professional Liability insurance with limits of not less than two hundred fifty thousand dollars (\$250,000) per claim and five hundred thousand dollars (\$500,000) in the annual aggregate, to cover claims arising out of the rendering of or failure to render any professional service under this Agreement.
2. All policies shall provide that thirty (30) days written notice be given to the GNWT prior to any material changes or cancellations of any such policies.
 3. The policies shall name the GNWT and all subcontractors as additional insureds only with respect to the terms of this Agreement (except on Workers' Compensation insurance and Professional Liability insurance) and shall extend to cover the employees of the insureds thereunder.
 4. The Contractor shall be responsible for any deductibles, exclusions and/or insufficiencies of coverage relating to such policies.
 5. The Contractor shall deposit with the GNWT, prior to commencing the work, certificate(s) of insurance evidencing the insurance required by this Agreement in a form satisfactory to the GNWT and with insurance companies satisfactory to the GNWT.