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**2012 NNI  
COMPREHENSIVE  
REVIEW**

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**NNI REVIEW COMMITTEE**  
August 2013

# NNI COMPREHENSIVE REVIEW

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## **BACKGROUND**

The Government of Nunavut's contracting preference policy, the *Nunavummi Nangminiqaqtunik Ikajuuti* (NNI Policy) came into effect on April 1, 2000. The Policy was established by the new Government of Nunavut (GN) in close cooperation with Nunavut Tunngavik Inc. (NTI).

The NNI Policy came into being from the immediate need for the new government to respond to its obligations under Article 24 ("Government Contracting") of the Nunavut Land Claims Agreement (NLCA). To an important extent it was adapted from the Business Incentive Policy, which the GN inherited from the Government of the Northwest Territories (GNWT).

The main objective of the NNI Policy was to establish incentives for Nunavut businesses (including Inuit firms) through a preferential government contracting policy, in order to foster regional and local business, and promote a more diverse economy in Nunavut. The people who established the original NNI Policy - the GN / NTI Contracting Working Group - placed a great deal of emphasis on providing incentives for Nunavut and Inuit ownership, as the first order of benefit from business activity.

When the NNI Policy was being developed little systematic information was available on the effectiveness of the GNWT's Business Incentive Policy. The NNI Policy was therefore developed with the recognition that it would need adapting, depending on the type of results it was achieving. In particular, it was recognized that:

- The NNI Policy would require periodic reviews;
- The bid adjustment percentages awarded to Nunavut, local, and Inuit firms may need to change;
- The amounts assessed for bonuses and penalties may need to change; and
- An appeal and arbitration function was required.

The Policy provided for a joint NTI-GN Contracting Policy Review Committee, to review the Policy annually, and on a comprehensive basis every five years. The Terms of Reference for the Review Committee were spelled out in a 2004 agreement between NTI and the GN, subsequently annexed to the NNI Policy. Comprehensive reviews were conducted in 2003, 2008-9 and 2012-13.

The bid adjustment percentages on tendered contracts were first established as 14% for Nunavut Businesses, 3% for Inuit Firms, and 3% for local businesses, for a total possible bid adjustment of 20% for any business which qualified under all three criteria. In 2004, the bid adjustments for tenders were changed to 7% for Nunavut Businesses, Inuit Firms and local businesses respectively, for a total possible bid adjustment of 21% for a business which qualified under all three criteria.

Bid adjustment percentages for proposals included the same bid adjustment values as for tenders with regard to the cost component. In addition, Inuit content values were

established as, “at a minimum”, 10% for Inuit employment and 5% for Inuit ownership. The latter bid adjustment percentages have not changes since the Policy was first established.

Bonuses and penalties were introduced into the NNI Policy to provide an incentive to meet Inuit participation rates in employment, project management and training. The bonus or penalty was calculated as 1/3 of 1% of the total labour content of the contract, for each 1% of the amount by which the employment exceeded (bonus) or failed to meet (penalty) the mandatory requirement.

For Inuit management, the bonus or penalty was rated at 2% for an Inuk Project manager, with an additional 1% bonus for a locally employed Inuk Project Manager.

Bonuses during the first three years of the NNI Policy (2000-3) averaged \$250,000-\$300,000 a year, while penalties averaged about \$4500 a year.

When the NNI Policy was revised in 2005, bonuses were raised to 1% of the total labour content of the contract for each 1% of the amount by which Inuit employment exceeds the mandatory requirement. Penalties were increased to 2% of the total labour content of the contract, for each 1% of the amount by which Inuit employment does not meet the mandatory requirement. These rates are currently in force.

An appeal process was provided for in the NNI Policy from its inception, but NTI and GN were in disagreement on how various aspects of the appeal process. In 2003, Brian Crane, Q.C. was retained as a mediator, and NTI and GN eventually reached agreement on the structure and procedures of a Contracting Appeals Board. This was incorporated into the NNI Policy, and the Contracting Appeals Board heard its first appeals in 2004.

## Review of Data from Implementation of the NNI Policy

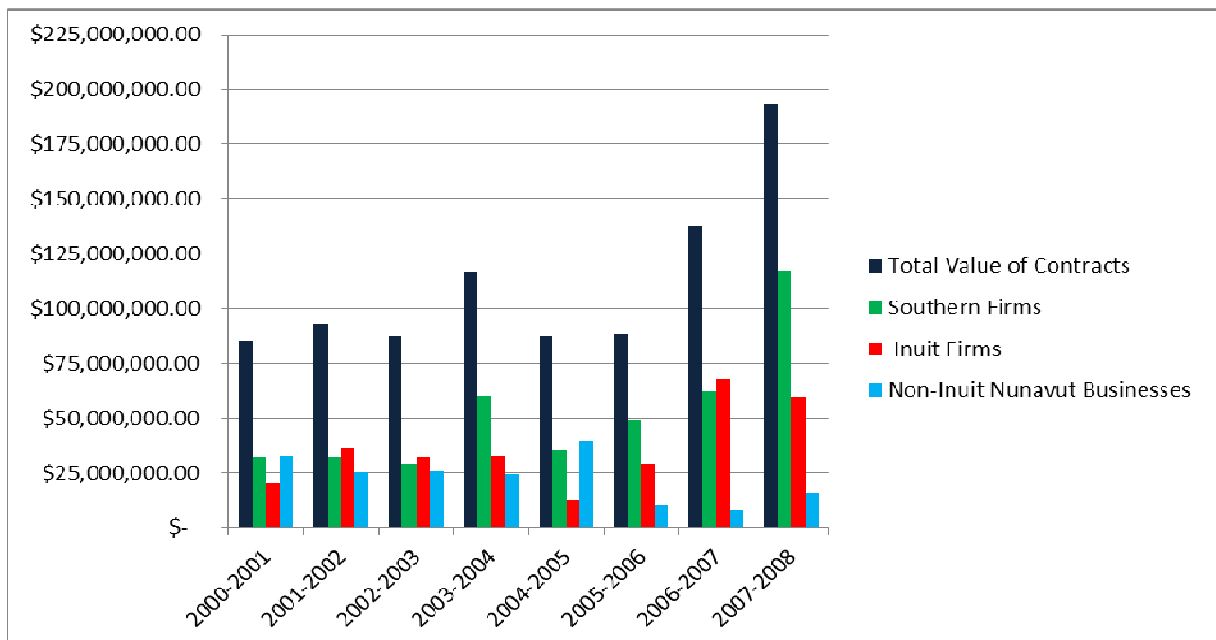
The 2003 Comprehensive Review of the NNI Policy commented that a useful indicator of the progress of the Policy's effectiveness was through examining Annual Contract Data Reports. These remain one of the more effective means of determining the outcome the policy's application.

It must be noted however that the use of the data must be qualified. For example, some contracts, particularly the GN's annual purchase of fuel supplies, have been exempted from the application of the NNI Policy by Cabinet decision. This needs to be taken account of in assessing the impact of the Policy through an examination of the data. In addition, the data collected by Community and Government Services (CGS) does not fully reflect all government activities. This is, in part, a result of inconsistent data collection processes or, alternatively, the lack of data collection. Some departments may undertake procurements without advising CGS and data regarding contracting activity has not included procurement activities undertaken by agencies like the Nunavut Housing Corporation or Qulliq Energy Corporation.

It needs also to be noted that in 2005-6 the criteria used by CGS to collect data changed, so that some information in the data reports may have to be interpreted differently.

Nonetheless, although imperfect, the Contract Data Reports do provide a picture of the GN's contracting activity.

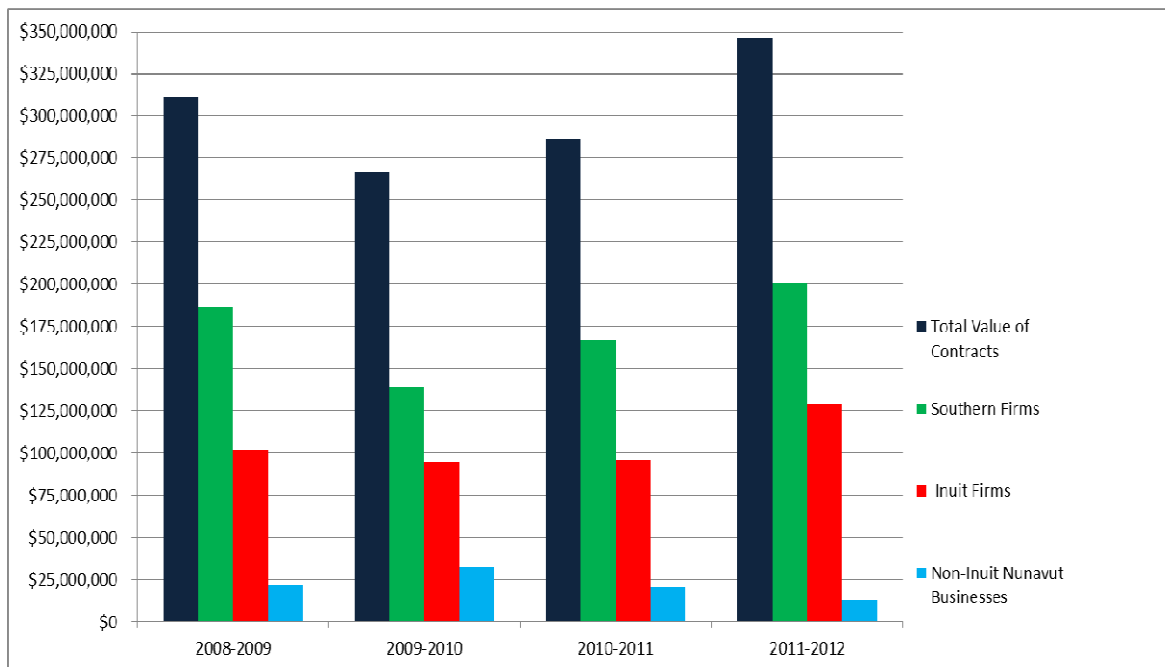
The following graph indicates approximate values for GN procurement activity from 2001-8:



This indicates that Inuit contracting by Inuit firms increased from approximately \$20,154,000 in 2000-1 to \$59,395,000 in 2007-8.

As noted, in 2005-6, the GN made significant changes to the manner in which it records contracting activities. The pre-2005 process captured data as either large or small contracts, defined by \$ value thresholds. This analysis changed to a recording of contract activity as either under \$25,000, \$25,000 - \$100,000, and contracts over \$100,000. Secondly the reporting of contracts after 2005-6 was done by contract size, excluding goods.

The following analysis from 2008-12 does not include Nunavut Housing Corporation (NHC) data or data not supplied to CGS by departments contracting on their own<sup>1</sup>:



Taking into consideration the qualifications stated previously with regard to the data, the available records indicate that in 2000-1 approximately 23.7% of all GN contracts were awarded to Inuit Firms and by 2011-12 the percentage had increased to 37.1%.

An example of contract types using a four year sample period from 2008 to 2012 shows the following breakdown<sup>2</sup>:

<sup>1</sup> “Southern Firms” in these graphs mean firms that are not registered as Inuit Firms or as Nunavut Businesses.

<sup>2</sup> Percentages have been rounded out to the nearest 5%. E.g. 37.1% was rounded to 35%.

Type of Contract	Number of Contracts Awarded to Inuit Firms	Total Number of Contracts Awarded	Inuit Firm Contracts as a % of Total Contracts	Value of Contracts Awarded to Inuit Firms	Total Value of Contracts Awarded	Value of Inuit Firm Contracts as % of Total Value of Contracts
Air Charters	289	481	60%	\$13,228,476	\$151,138,135	10%
Architectural /Engineering	4	116	5%	\$912,098	\$29,494,137	5%
Consulting	34	360	10%	\$23,554,876	\$109,993,278	20%
Major Construction	77	122	65%	\$216,616,953	\$335,122,065	65%
Minor Construction or Services	222	363	60%	\$29,282,149	\$45,948,965	65%
Non-Standard Service Contract	125	412	30%	\$3,292,241	\$58,788,324	5%
Property Lease	2	13	15%	\$1,364,864	\$5,696,673	25%
Purchase Order	1,217	2,178	55%	\$39,131,456	\$87,256,942	45%
Service Contract	553	3,322	15%	\$92,838,223	\$386,764,378	25
Standing Offer Agreement	1	1	100%	\$8,855	\$8,855	100%
<b>TOTAL</b>	<b>2,524</b>	<b>7,368</b>	<b>35%</b>	<b>\$420,230,191</b>	<b>\$1,210,211,752</b>	<b>35%</b>

# Cost Associated with Implementation and Effectiveness

A review by Borden Ladner Gervais (BLG) of the costs to the GN associated with the implementation of the NNI Policy (External Report 96 & 97 on pg. 31) based on data provided by CGS, found that the additional cost to the GN was less than 1% of its total procurement expenditures during the 2008-12 fiscal years. BLG concludes that the cost to the GN (in relation to CGS-tracked contracts) is not excessive and is not preventing the GN from securing goods and services at “good value” as contemplated by section 7.1(a) of the NNI Policy.

The CGS data reveals that the total additional cost for 2008-9 through 2011-12 was \$3,150,498, broken down as follows:

Year	Additional Cost to the GN
2008/2009	\$166,108
2009/2010	\$2,055,354
2010/2011	\$213,421
2011/2012	\$616,615
<b>TOTAL</b>	<b>\$3,150,498</b>

Despite the low contracting cost, BLG also conclude that the data additionally demonstrates that the NNI Policy plays an important role in the awarding of contracts in certain sectors of the Nunavut economy, such as air charters, construction and purchase orders:

“If the NNI Policy was eliminated, these contract sectors would be materially impacted to the detriment of Inuit Firms and Northern businesses.”<sup>3</sup>

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<sup>3</sup> External Report to the NNI Committee, on P. 30.

## Non-Competitive Contracting

The Government of Nunavut may, when appropriate, engage in other types of contracting. *Government Contract Regulations* indicates the allowable circumstances for awarding contracts without a competitive process. Section 10 provides that a contract may be awarded without competition in circumstances where the goods, services or construction are urgently needed, where only one party is available and capable of performing the contract, where the contract is for architectural or engineering services that will not exceed \$25,000 in value, or is any other type of contract that will not exceed \$5,000.

Section 5.2 of the NNI Policy speaks to alternative types of contracts as follows:

“The Policy does not apply to:

- (a) a contract that provides the Government of Nunavut with insurance against liability;
- (b) a Government of Nunavut Employment Contract; or
- (c) a contract for the supply of Emergency Services.”

The 2012 report of the Auditor General addressed the issue of Sole Source contracts and pointed out that in some cases the records did not contain the appropriate documentation to support the sole source contract. The report of the Auditor General also stated that in some cases Sole Source contracts were awarded for reasons other than those permitted by the Government Contract Regulations.

Records from the Government of Nunavut indicate that, besides the annual fuel supply contract, a significant percentage of sole source contracting is related to the provision of specialized and or emergency health care services.

A sample listing of Sole Source Contracts from GN records is as follows:

<b>TYPE</b>	<b>2008/09</b>	<b>2009/10</b>	<b>2010/11</b>
<b>Scheduled Medical Travel</b>	\$32 M	\$29 M	\$32.5M
<b>FUEL (PPD)</b>	\$195 M	\$140M	\$162.5M
<b>Police Services and Lab Work</b>	\$25 M	\$26 M	\$28.3M
<b>Doctor Services</b>	Data not collected	\$16.8 M	\$10.7M

GN records indicate other sectors utilizing Sole Source contracts included:

- Specialized Residential Care, Dept. of Health
- Proprietary Training Courses, including Nunavut Arctic College
- Contracts provided to Hamlets for various work such as Airport Operations
- Dental Care
- Proprietary Software and Maintenance Services and training

- Software, maintenance and training for hospital equipment
- Audiology Services, Department of Health
- GN Information Technology - professional engineering and project management.

## NNI Contracting Appeals Board

The NNI Contracting Appeals Board is provided for in Section 18 of the NNI Policy. The Board is made up of three Commissioners and three alternate Commissioners, all of whom are appointed by the Minister responsible for the NNI Policy and of whom two are nominated by NTI and two by the Nunavut regional Chambers of Commerce.

The following is a summary list of appeals which the Board has heard since its establishment in 2004. All of the appeals were for the alleged reason that the contracting authority erred in the application of the NNI Policy.

Appeal Number and Timeframe	Decision
<b>2004-5</b>	
<b>Appeal 1</b> <i>Received: May 27, 2004</i> <i>Hearing: June 25, 2004</i>	Dismissed under Section 18.21(a)
<b>Appeal 2</b> <i>Received: August 13, 2004</i> <i>Hearing: October 14, 2004</i> (delay due to set up of the NNI Secretariat)	Dismissed under Section 18.21(a) with a recommendation to the GN under Section 18.21(b)(v).
<b>Appeal 3</b> <i>Received: July 21, 2004 &amp; November 14, 2004</i> <i>Hearing: August 3, 2004 &amp; December 14, 2004.</i> <i>Appellant: Ledcore Construction</i>	Originally dismissed under Section 18.21(a), the Board was notified that the Appellant was not using the newest Contracting Appeals. In order to ensure fairness, the Appellant was allowed to resubmit an intent to Appeal following the NNI Contracting Appeals procedures. The Appellant resubmitted an Appeal in November of 2004 and it was again dismissed under Section 18.21(a).
<b>Appeal 4</b> <i>Received: October 29, 2004</i> <i>Hearing: November 25, 2004</i> <i>Appellant: 953731 NWT Ltd.</i>	When the appeal was heard, the Board posed questions to the Contracting Authority regarding the evaluation process. A written request was submitted to the Contracting Authority by the Board. The Board was not satisfied with the reply and requested further information. No further activity occurred. At this point the appeal was classified as 'decision pending'.
<b>2006-7</b>	
<b>Appeal 1</b> <i>Received: June 19, 2006</i> <i>Hearing: June 29, 2006</i> <i>Appellant: Attilu Real Estate &amp; Property Management</i>	Dismissed under Section 18.21(a) with two recommendations for the Contracting Authority.
<b>Appeal 2</b> <i>Received: May 1, 2006</i> <i>Hearing: August 31, 2006</i> <i>Appellant: Nunavut Eastern Arctic Shipping</i>	Dismissed with no hearing under Section 18.14. Four administrative recommendations provided to GN.
<b>Appeal 3</b> <i>Received: September 28, 2006</i>	Appeal allowed under Section 18.21(b) and eight recommendations provided to the Contracting Authority and the Government of Nunavut.

<i>Hearing:</i> October 10-12, 2006 <i>Appellant:</i> Air Nunavut Ltd.	
<b>2008-9</b>	
<b>Appeal 1</b> <i>Received:</i> November 12, 2008 <i>Hearing:</i> December 17 and 22, 2008 <i>Plaintiff:</i> Qikiqtaaluk Corporation	The Board dismissed the appeal, which was appealed to the Nunavut Court of Justice, which found that the rules of natural justice and procedural fairness had not been followed by the Board.
<b>2009-10</b>	
<b>Appeal 1</b> <i>Received:</i> May 20, 2009 <i>Appellant:</i> GC-North Inc.	The Board dismissed the appeal as outside of the jurisdiction of the Board.
<b>Appeal 2</b> <i>Received:</i> June 4, 2009 <i>Appellant:</i> Arctic Circle Construction & Development Ltd.	The Board dismissed the appeal as outside of its jurisdiction.
<b>Appeal 3</b> <i>Received:</i> June 9, 2009 <i>Appellant:</i> Nunavut Eastern Arctic Shipping	The Board dismissed the appeal as it was back-dated and no longer within its jurisdiction.
<b>2011-12</b>	
<b>Appeal 1</b> <i>Received:</i> May 26, 2011 June 7 <i>Appellant:</i> NCC Dowland Construction	The Board concluded that no NNI Policy error was made in the acceptance and award of the contract.
<b>Appeal 2</b> <i>Received:</i> August 26, 2011 <i>Appellant:</i> Adlair Aviation	The Board determined that no error was made in awarding the contract.
<b>Appeal 3</b> <i>Received:</i> September 25, 2011 <i>Appellant:</i>	The Board concluded (1) that NNI Incentive forms must be standardized in all GN contracting, (2) that GN evaluation committees should keep detailed evaluation notes, and (3) that the award of the contract should be terminated and the bid redone.

## Report of the Auditor General, 2012

The 2012 *Report of the Auditor General of Canada to the Legislative Assembly of Nunavut* focused on the procurement of goods and services, and examined the procurement practices of the Department of Community and Government Services, the Nunavut Housing Corporation and the Qulliq Energy Corporation. Contracts were reviewed from 2008-11.

The Auditor General summarized his findings as follows:

“The Government of Nunavut has an appropriate procurement framework in place. It contains the key elements required to procure goods and services in an open and fair manner and to administer contracts in accordance with applicable contracting rules. This includes, for example, clearly defining situations where sole-source (non-competitive) contracting is permitted as well as contract monitoring. *However, there is a need for clearer direction and timely training on applying the NNI Policy consistently.* In addition, Qulliq Energy Corporation has not formalized the procurement framework that it applies.”<sup>4</sup>

Specifically on the NNI Policy, the Auditor General found:

“For the majority of these contracts eligible to have an NNI favourable bid adjustment in Nunavut Housing Corporation and in Community and Government Services, we found little evidence on file of verification that the businesses were listed in the required registries. Officials informed us that this verification is completed but not always documented.

“. . . for the majority of contracts in all three entities, we did not find the required labour training plan, where applicable. Officials told us that one reason this requirement is not enforced is the lack of guidance on what constitutes an acceptable training plan.

“. . . the NNI Policy is not applied consistently across the entities and even within the entities. There are various reasons for this inconsistency—for example, variation in the acceptance and use of information supplied to the entities by the bidders. Further, we found that training was not consistently provided to officials.

“In some instances, we found that the policy was applied incorrectly or incompletely. . . . Qulliq Energy Corporation does not monitor bonuses for meeting Inuit labour threshold requirements or penalties for not meeting the

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<sup>4</sup> *Report of the Auditor General of Canada to the Legislative Assembly of Nunavut – 2012: Procurement of Goods and Services*, P.2. Emphasis added.

requirements. Without ensuring that applicable bonuses and penalties are paid, there is little incentive for contractors to meet these requirements.”<sup>5</sup>

In this context, the Auditor-General recommended:

“The Department of Economic Development and Transportation, in collaboration with the entities, should ensure that the NNI Policy is applied consistently by providing clear direction on how bidders’ information is to be used in the bid adjustment and by providing timely training to those who apply the policy.”<sup>6</sup>

Among the reasons cited for non-compliance with procurement rules were misinterpretation of the rules, capacity, lack of training, staff taking extra duties outside the scope of their job descriptions, and the absence of sufficient dedicated procurement positions in departments and agencies.

Specifically on training, the Report stated:

“While training is offered to departments and territorial corporations, we found that there is no mandatory training related to awarding and administering contracts. The level of training in the three entities varies considerably. In our view, while on-the-job training is an option, formal mandatory training would be more appropriate in an environment where entities are understaffed.”<sup>7</sup>

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<sup>5</sup> *Report of the Auditor General of Canada to the Legislative Assembly of Nunavut – 2012: Procurement of Goods and Services*, P.23-4.

<sup>6</sup> *Report of the Auditor General of Canada to the Legislative Assembly of Nunavut – 2012: Procurement of Goods and Services*, P.24.

<sup>7</sup> *Report of the Auditor General of Canada to the Legislative Assembly of Nunavut – 2012: Procurement of Goods and Services*, P.25.

## **GN/NTI Response to Auditor General's Report**

On March 1, 2012, following the Auditor General's Report, the Premier issued the following statement:

"...Although it is a year earlier than expected, we have directed our officials to launch a comprehensive review of the Nunavummi Nangminiqagtunik Ikajuuti Policy, or NNI Policy, in collaboration with Nunavut Tunngavik Inc. There is a general agreement with NTI that this review will take place one year earlier than expected.

"This is a requirement under Article 24 of the Nunavut Land Claims Agreement and is an important tool for ensuring that the benefits of economic development in Nunavut stay within the territory and provide opportunities to land claim beneficiaries.

"In conjunction with the NNI review, our officials will conduct a comprehensive internal review of Government of Nunavut public procurement practices...

"Mr. Speaker, public procurement plays a vital role in Nunavut's economy. Mr. Speaker, as we regain our self-reliance, we must be guided by the principle of qanuqtuurniq – being innovative and resourceful so that our government reflects our unique circumstances. The objective of our internal public procurement review, when matched with the joint NNI review, is to ensure that our practices reflect emerging best practices and are effective and efficient."

The President of NTI, Cathy Towtongie, also issued a news release, stating:

"NTI negotiated the NNI Policy in order to implement NLCA Article 24. Failure to apply the policy consistently means the GN is failing to live up to their obligations in the NLCA."<sup>8</sup>

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<sup>8</sup> *News Release*, NTI, 1 March 2012.

## Inuit Small Business Roundtable

As a first step in the larger NNI Comprehensive Review NTI facilitated an Inuit small business roundtable to engage the smaller Inuit Firms and ensure their input into the overall NNI review process. The workshop was held in Iqaluit on June 26-7, 2012.

Past consultation sessions surrounding government procurement has been open to all businesses, but the dialogue has tended to focus on the middle-to-large companies and their perspectives. NTI's intent was to provide a forum for a cross-section of smaller Inuit Firms and gather information relating to their experiences with government procurement.<sup>9</sup>

NTI staff contacted a total of seventy companies including sole proprietors, partnerships and incorporated companies. Of these nineteen eventually were able to attend the workshop. NTI Policy and Planning, and Legal Services Division staff attended the roundtable along with officials from the GN's Department of Community & Government Services, the Department of Economic Development & Transportation, and the NNI Secretariat. Borden Ladner Gervais (BLG) consultants also attended the roundtable.

Concerns raised at the workshop may be summarized as follows:

- It was not obvious that registering as an Inuit Firm with NTI provided tangible benefits in securing GN contracts;
- The NNI Policy was seen as (in some ways) a hybrid document, blending cost of doing business considerations with the Inuit priorities of Article 24 of the NLCA – separating these two components of the Policy would be beneficial;
- The wording of Article 24 is too broad and NTI should seek to reword it to provide additional criteria for the direct operation and management of Inuit Firms by Inuit;
- The current bid incentive adjustments in the NNI Policy should be replaced by a scoring method which would give a higher score and weighting to companies with a higher proportion of Inuit ownership;
- Some registered Inuit Firms are in fact operated by southern shareholders;
- A higher level of transparency is required for GN contracting;
- Firms do not complete training plans required for contracts;
- Larger firms meet Inuit employment criteria by hiring Inuit in entry-level and other lower-level positions;
- The NNI Appeals process should be revamped, to provide it with greater authority in relation to government;
- NTI's annual update requirement for the Inuit Firm Registry should be extended to two years;
- Regional development corporations are forming partnerships which are competing with small companies;
- Municipalities should not be able to bid on territorial contracting opportunities;
- Wholesalers are undercutting local firms.

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<sup>9</sup> By "small business" is meant a company with ten or less full-time staff in any fiscal year.

## Synopsis of the BLG External Report

Following the Premier's announcement of May 1, 2012 the law firm of Borden Ladner Gervais (BLG) was approached to outline the nature of the work that would be involved in reviewing the NNI Policy. In June, a final description of the work involved was produced jointly by GN and NTI and provided to BLG, as the final set of directions for undertaking the NNI Comprehensive Review.

The work involved a Nunavut-wide consultation process that included the communities of Iqaluit, Pond Inlet, Rankin Inlet and Cambridge Bay. The BLG team met with more than one hundred private sector contractors, municipal officials, and representatives from the Nunavut Arctic College, NTI and GN. The review process was completed and a final report was submitted to the GN and NTI in February of 2013. This was entitled *External Report to the NNI Review Committee*.

The following are the main subjects discussed in the BLG Report:

**Policy Organization:** The NNI Policy should be organized into 3 Sections. The current Policy has multiple objectives; from Article 24 implementation to general economic development objectives. Separating the policy into clear objective sections would allow for more transparency and alleviate some common confusion.

**Bid Adjustments:** There is a common desire to see Inuit Firms become more successful. The recommendation from BLG is to revise the current allocation of the total 21% bid differential (7% for Inuit Firms, 7% for Nunavut Businesses and 7% for Local Businesses) to better reflect the overall goals and objectives of the NNI Policy. The proposed revised scoring is; 5% for Nunavut Businesses, 5% for Local Businesses, and between 5% and 11% for Inuit Firms.

**Inuit Firm and Nunavut Business Registry Compliance:** The report discusses the various aspects and complexities surrounding the registration of both Inuit Firms and Nunavut Businesses. BLG heard from some respondents that companies that are not bona fide Inuit Firms or Nunavut Businesses exist on both registries and are a persistent issue. BLG suggests that the GN and NTI develop an improved application process to require all applicants for the certification of the Inuit Firm Registry or the Nunavut Business Directory to certify to the truthfulness of all information provided in their application and supporting documents, and to certify that there is no additional documentation or information, relevant to the assessment of their application, which has not been provided.

BLG also suggests that the NNI Policy should be amended to include provisions to address the consequences of deliberately providing untrue or misleading information, including striking the business from the registry and debarring the business and its principals from applying for registration of any other business for a set period of time.

**NNI Contracting Appeals Board:** It is proposed that the NNI Appeals Board be re-structured as an Appeals Tribunal. This change would promote a more formalized appeals process, with a substantial role for the tribunal to play. The tribunal's decisions would be binding – except where, for compelling public policy reasons, the tribunal's recommendations cannot be implemented. The changes to the appeals body would also require knowledgeable and experienced individuals with knowledge of procurement practices.

**Application of NNI Policy to Qulliq Energy Corporation:** The NNI Policy fully applies to QEC.

**Application to Municipalities:** Municipalities do not currently fall under the general purview of the NNI Policy. The Policy applies to municipal procurement only when more than 51% of a particular contract's funds (individual contract or project) are provided by the GN, as no municipality is currently receiving more than 51% of its annual operating funds from the GN. The GN should consider whether or not it wishes the NNI Policy to apply to all or a portion of local government contracting. If the GN determines that the NNI Policy should apply to municipalities, it should set a minimum contract value threshold and provide training and resources to local governments to cope with the application of the NNI Policy.

**Monitoring and Enforcement:** BLG suggests that the GN focus more time, effort and resources into contract monitoring and enforcement to alleviate concerns with the contracting process and ensure contractor compliance. BLG suggests that the GN create a non-compliant contractor list (similar to the Government of Canada practice), to debar a business and its principals from bidding on GN contracts for a set period of time, if the entity has been found to have violated the NNI Policy or requirements for contract compliance. A non-compliant contractor clause is seen as a potentially greater deterrent to contractor non-compliance than the present bonus and penalty system, which has not been consistently applied.

**Data Availability and Reporting:** BLG highlights inconsistencies with data collection and reporting for the GN's crown corporations and departments. The GN does not collect data on subcontracting levels and various other important data sets. BLG emphasizes that the GN should expand its data variables and data sets and collect a more diverse range of information. The data collection for the various departments and agencies should be made mandatory. The consistency of available information across the GN is critical. Contract authorities must be responsible for consistent data collection.

**Bonuses and Penalties:** The current bonuses and penalties provisions in the NNI Policy are flawed. BLG's recommendation is to modify the bonuses and penalties provisions and create a mandatory, weighted Inuit Content section in place of them. This section would be closely tied to the monitoring and enforcement requirements and would apply to the use of a non-compliant contractor clause. The effective monitoring of contractor compliance and performance is critical to the overall success of the NNI Policy in general. The bonuses and penalties sections were directly linked to Inuit

employment achievement. The removal of the bonuses and penalties section of the NNI Policy would therefore require an effective alternative mechanism for achieving the goal of representative Inuit employment through the procurement process.

**Training:** The training component is a major focus of the NNI Policy review. The sections in the Policy dedicated to training provide little direction, other than requiring training plans for larger contracts, and there has been a lack of consistency in exercising this requirement. The general comments were that the current training provisions should be replaced with a well-defined (and mutually agreed upon) training system that would require a mandatory training obligation on contractors to meet the specific training terms detailed in an RFP or tender document.

**Use of Set-Asides for Inuit Firms:** For a certain cross-section of GN procurement, it is recommended that the GN, in conjunction with NTI, develop a set-aside program for eligible Inuit Firms. The set-aside could be structured like the federal Procurement Strategy for Aboriginal Business (PSAB) that “sets-aside” contracts for competition only to Aboriginal companies. The set-aside would restrict identified purchasing opportunities to Inuit Firms. BLG adds that NTI and the business sector could develop the framework for this program and assist in answering some critical questions such as: Inuit ownership levels for set-asides, restriction to Nunavut-based companies, targeting of certain types or value of GN contracts and inclusion of set-asides for Nunavut Businesses as well as Inuit Firms.

**Standardization of Procurement Documents and Processes:** The GN should develop a standardized B2 form for all departments and agencies. The utilization of a standardized form, and an accompanying standardized instruction sheet, by all contracting authorities, could reduce miscommunication and perceptions of inconsistencies.

**Debriefings:** For the creation of a more transparent process, BLG recommends the use of standardized debrief letters to be provided to all losing bidders within a set number of days after the award of the contract. The recommended debrief letters should include the following:

- The names of the bidders;
- The name of the winning bidder,
- The winning bidder’s price,
- The winning bidder’s overall score (RFPs)<sup>10</sup>,
- The bid adjustments of the winning bidder;
- The losing bidder’s B2 form, as adjusted by the contracting authority; and
- The losing bidder’s total score, including the comprehensive breakdown of the total score received.

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<sup>10</sup> Currently the winning proponent’s score on an RFP bid is not disclosed. This leaves the losing bidders unsure as to what their scores were in relation to the winning proposal.

The change to the debrief process would assist firms in better understanding how their proposal did in comparison to the winning proposal.

**Community Education on the NNI Policy and its Implementation:** The GN should provide training in the communities to enable businesses to better understand the meaning and operation of the NNI Policy, with respect to general government procurement practices and specific contracting activities. The GN should also provide appropriate and on-going training to government officials, about the application of the NNI Policy, in the context of any government procurement and contracting activity.

**NNI Revised Policy Draft:** BLG's report on the NNI Policy was discussed by the NNI Review Committee, which provided its comments to BLG. BLG also met with representatives of the NNI Review Committee and on the basis of further discussions drafted a proposed revised NNI Policy, attached to this report. **Within the proposed revised NNI Policy, language was developed that requires the Government of Nunavut to consult NTI on the reasons for departing from the NNI Policy and the requirements for the alternative measures of achieving the objectives under Article 24.**

## Conclusions and Recommendations of the NNI Review Committee

The NNI Review Committee met in Iqaluit on April 17-18, 2013 to review and assess the Borden Ladner Gervais (BLG) *External Report to the NNI Policy Review Committee* and in particular to examine and reach conclusions on the issues and recommendations that start on page 99 of the document.

The Co-Chairs and other members of the Committee agreed that the intent was for the BLG Report to be made public as an accompanying document to the Review Committee's report.

The meeting was attended by staff from Nunavut Tunngavik Inc. and Government of Nunavut departments and agencies: Brad Hickes (NTI - Committee Co-Chair), Ronald Dewar (GN/NNI Secretariat - Committee Co-Chair), Mark McCulloch (GN/Community and Government Services), Bonnie Osborne (GN/Community and Government Services), Alastair Campbell (NTI), Travis Cooper (NTI), Christine Klazinga (Nunavut Housing Corp.), Don Hutton (Nunavut Housing Corp.) and Angus Oqallak (GN/NNI Secretariat - Observer).

The Committee considered and arrived at recommendations on 22 issues highlighted in the BLG report, as summarized below:

<b>Separation of the NLCA and Business Assistance Components of the NNI Policy</b>	
<b>BLG Recommendation</b>	<ol style="list-style-type: none"> <li>1. The GN should restructure the NNI Policy into 3 sections – one responding with the implementation of the Article 24 obligations, one responding to matters intended to assist Nunavut Businesses, and one responding to logistical matters that are common to the other two sections.</li> <li>2. The GN should rename the NNI Policy to more accurately reflect its scope and intent. The new name could be the Nunavut Preferential Procurement Policy as translated into Inuktitut.</li> </ol>
<b>NNI Review Committee Conclusion</b>	<ol style="list-style-type: none"> <li>1. The Committee was in favor of this recommendation and considered it as an issue for implementation as soon as feasible. This would occur during the implementation phase and rewriting/organizing of the NNI Policy.</li> <li>2. The Committee considered that re-naming the NNI Policy was not required.</li> </ol>
<b>Bonuses and Penalties</b>	
<b>BLG Recommendation</b>	<ol style="list-style-type: none"> <li>1. Bonuses and penalties should be eliminated in their entirety.</li> <li>2. Bonuses and penalties should be replaced with:               <ol style="list-style-type: none"> <li>(i) A mandatory requirement in a tender or RFP for a minimum amount of Inuit content. Failure to meet the contractual obligation could, at the discretion of the contracting authority, be a ground for terminating the contract and, more importantly, a ground for preventing the contractor and its principals from receiving future GN contracts for a set period of time; and</li> </ol> </li> </ol>

	<p>(ii) A rated requirement to evaluate contractors on past Inuit content achievement.</p> <p>3. In the alternative to the elimination of bonuses and penalties, the GN should eliminate bonuses and adopt the following streamlined penalty system:</p> <p>(i) Penalties should be applied only in relation to Inuit content. They would be eliminated vis-à-vis project management and training.</p> <p>(ii) Section 12.1(d) of the NNI Policy should be eliminated, such that Inuit labour would be assessed as a whole, rather than assessed separately for Local Inuit labour and Nunavut Inuit labour.</p> <p>(iii) A tiered penalty system should be adopted with graduated penalty levels based on a contractor’s number of historical failures to meet the contractual minimum Inuit content requirements. Penalties should escalate from minor (\$10,000) to debarment of the contractor and its principals from bidding on GN contracts for a set period of time.</p> <p>(iv) Contacting authorities should be vested with the discretion to not apply the tiered penalty system in prescribed circumstances. The prescribed circumstances should be set based in consultation with NTI, CGS, NHC and the business community.</p> <p>4. Contracting authorities should be vested with the express discretion to alter the minimum Inuit content of a particular contract after execution of the contract. Set criteria for the exercise of this discretion should be established in order to ensure consistency among and between contracting authorities when considering requests for alterations.</p> <p>5. In the event that the GN decides to retain bonuses, the NNI Policy should be clarified to provide that in the event that the minimum Inuit content is adjusted mid-contract, a contractor will only be eligible to receive a bonus if the contractor exceeds the original Inuit content requirement.</p> <p>6. Contracting authorities must put in place effective monitoring of Inuit content levels during the performance of the contract, which monitoring should include random site visits.</p> <p>7. Monitoring and enforcement of the minimum Inuit content requirement should be the responsibility of the contracting authority and not the NNI Secretariat.</p> <p>8. GC55 should be eliminated in its entirety.</p>
<p><b>NNI Review Committee Conclusion</b></p>	<p>1– 3. The Committee members stated that option #1 would be acceptable, with regard to the current award of bonuses and penalties however this would only work if effective alternative measures were instituted for failing to meet contractual requirements reflecting NNI Policy directives. It was stated that the contracting authorities do not have sufficient resources to effectively monitor contract compliance with regard to Inuit hiring, amongst other collectable variables. Further discussion led to the idea that the penalties could be eliminated; however there could be a restructuring of the bonuses in order to maintain an incentive for the overarching goal of increased Inuit hiring. One option considered was that the bonus structure could be limited to contracts over a certain \$ threshold. The contract would need to clearly specify the accounting</p>

	<p>records which would have to be provided by the contractor in order to qualify for an Inuit labour bonus. It would be considered critical that contract authorities would be required to sufficiently monitor projects to ensure compliance.</p> <p>4. The Committee felt that the contracting authorities should have the authority to alter minimum Inuit labour levels during the execution of a contract, if the contractor requested a change based on the proven insufficient availability of Inuit labour. Guidelines for this would need to be developed.</p> <p>5. In the event that bonuses are maintained and minimum Inuit labour levels are reduced after a contract has been signed, no bonus should be payable unless the contractor exceeded the original minimum Inuit labour level in the contract.</p> <p>6 and 7. Are accepted but are currently implemented only to the extent that the contracting authority has the resources to do so. Additional resources are required to effectively meet these goals.</p> <p>8. The Committee agreed that GC 55 be eliminated, but that the intent underlying it still needed to be met.</p> <p>The Committee considered that further work will be required to define processes and procedures to clarify implementation of changes in this area.</p> <p>The Committee considered that non-compliant contractors would need to be penalized by being identified as non-complaint and losing the right to bid on GN contracts for a set period of time. The details of this would require further discussions and elaboration.</p>
<b>Minimum Inuit Content</b>	
<b>BLG Recommendation</b>	<p>1. CGS, NHC, NTI and the business community should engage in an annual consultation to discuss current Inuit labour availability and skill set and the planned projects in the community and surrounding communities. The consultation will help to inform the percentages then set by the respective contracting authorities.</p> <p>2. The GN should maintain a complete data set of actual Inuit labour achieved in comparison to the level of minimum Inuit labour required.</p>
<b>NNI Review Committee Conclusion</b>	<p>1. The Committee agreed that data collection and consultation is required through discussions on regional or community-based Inuit labour availability. This should be semi-annually or more frequently.</p> <p>2 This recommendation speaks to what contractors actually achieved and although work is ongoing in this area there is more to do.</p>
<b>NNI Contracting Appeals Board</b>	
<b>BLG Recommendation</b>	<p>1. The name of the Contracting Appeals Board should be changed to the NNI Tribunal to more accurately reflect the scope of its mandate.</p> <p>2. The process for dealing with complaints should be changed to the following:</p>

- (i) If a bidder feels that it has been treated unfairly, the first step should be a debriefing with the relevant contracting authority. The bidder should be required to request a debriefing within five working days of receiving notification of the circumstances underlying the issues in question.
- (ii) The contracting authority should respond to the request for a debriefing in a timely manner and provide the debriefing within two weeks.
- (iii) If the bidder remains dissatisfied after the debriefing, the bidder may file a written complaint together with supporting materials to the NNI Tribunal within 7 working days of receiving the debriefing.
- (iv) The NNI Tribunal should then make a determination as to whether there is a reasonable indication that a breach of the NNI Policy took place. If the NNI Tribunal concludes that no such indication exists, it can reject the complaint at that stage.
- (v) If the NNI Tribunal concludes that a reasonable indication of a breach did occur, it would initiate an inquiry.
- (vi) The contracting authority should be provided with the complaint and supporting materials and be required to provide a response explaining what events transpired that are relevant to the complaint together with all supporting documents within 15 working days.
- (vii) Any commercially sensitive information not belonging to the complainant should be disclosed to only the representative of the complainant and not to the complainant.
- (viii) After the contracting authority's response has been provided, the complainant should be given a brief period of time to comment, such as seven working days.
- (ix) Once the record is then complete, the NNI Tribunal would analyze the issues and render a decision, in writing, within 15 days following the closure of the record.
- (x) Oral hearings should not be held unless it is impossible to adjudicate the complaint in the absence of an oral hearing, such as where there are significant issues of credibility or limitations on the ability of the complainant to present its case in writing.

3. Where a complaint is filed, the contracting authority should refrain from awarding the contract, or if already awarded, no work should be performed, pending the determination of the complaint. For exceptional urgent contracts that cannot wait for a complaint to be disposed of, the GN should be allowed to proceed with the contract and work.

4. The GN should appoint three NNI Tribunal members. The members should have expertise in procurement and administrative law or have considerable experience in government contracting. Members should not need to be resident in Nunavut, although that would be ideal. If the required expertise is not available in Nunavut, the members selected should have significant familiarity with government contracting in Nunavut. Members should be truly independence and not chosen to represent the interests of any group or interest in Nunavut. The appointment process should be changed to ensure that the members appointed owe no allegiance to any particular government, community or business interest.

	<p>5. Complaints should only be heard by one NNI Tribunal member except where the nature and significance of the complaint warrants a three person review panel.</p> <p>6. The NNI Tribunal should have access to legal support and on-going training.</p> <p>7. The NNI Policy should be amended to provide that the recommendations of the NNI Tribunal are binding on the GN, except where, for compelling public policy reasons, the recommendations cannot be implemented.</p> <p>8. The GN should expand the jurisdiction of the Board include complaints related to registration and re-registration decisions made by both the NNI Secretariat and NTI.</p> <p>9. The GN should not currently increase the jurisdiction of the Board to encompass all aspects of a GN procurement process, whether or not the complaint is rooted in NNI Policy issues alone. The GN should re-assess the value of such an expanded jurisdiction once a more viable procurement review process is successfully operating.</p>
<p><b>NNI Review Committee Conclusion</b></p>	<p>The Committee considers that the name could be changed to the NNI Appeal Tribunal</p> <p>The Committee discussed the structure of the existing NNI Contracting Appeals Board. The makeup of the appeals body should be 2 or more individuals with appropriate local knowledge and experience and more specifically a lawyer knowledgeable in procurement law. The GN and NTI could each appoint an individual as a primary member and each appoint an alternate in the event the primary was not available.</p> <p>The persons on the board or tribunal would be guided by, preferably, a lawyer with a background in procurement law.</p> <p>The Committee did not agree with recommendations 5 and 8.</p> <p>All other recommendations would require further consideration and discussion through an implementation phase of re-structuring the NNI Policy.</p> <p>CGS advised that it will not sign finalized contracts where an appeal has been filed, prior to the hearing of the challenge.</p> <p>The Committee considers that the process described for the Appeals Board is to be reviewed during the Implementation phase of the response to the BLG recommendations.</p> <p>BLG recommendations 5, 6, 7, 8 and 9 are to be reviewed during the implementation review.</p>
<p><b>Bid Adjustments</b></p>	

<p><b>BLG Recommendation</b></p>	<ol style="list-style-type: none"> <li>1. The current bid adjustments (7% for Inuit Firms, 7% for Nunavut Businesses and 7% for Local Businesses) should be recalibrated to 5% each.</li> <li>2. A fourth bid adjustment should be added for Enhanced Inuit Firms with an available adjustment of up to an additional 6%. An Enhanced Inuit Firm is an Inuit Firm that is owned, managed and controlled by Inuit, and that has profits that flow directly to the Inuit owners.</li> <li>3. Enhanced Inuit Firms would be eligible for an additional 6% bid adjustment, with the percentage available depending on the level of Inuit ownership, management and control. At 51%, an Inuit Firm would receive 5%. At 52% to 59%, an Enhanced Inuit Firm would receive a 6% adjustment. At 60% to 69%, an Enhanced Inuit Firm would receive a 7% adjustment. At 70% to 79%, an Enhanced Inuit Firm would receive an 8% adjustment. At 80% to 89%, an Enhanced Inuit Firm would receive a 9% adjustment. At 90% to 99%, an Enhanced Inuit Firm would receive a 10% adjustment. At 100%, an Enhanced Inuit Firm would receive an 11% adjustment.</li> <li>4. The Enhanced Inuit Firms Registry should be maintained by NTI in the same manner in which it manages the Inuit Firms Registry, with the addition that the percentage ownership, management and control would be listed on the registry.</li> <li>5. Registrants seeking Enhanced Inuit Firm status should be required to produce a set list of documentation to demonstrate Inuit ownership, management and control.</li> <li>6. NTI and the NNI Secretariat should require all applicants for registration on the NTI Inuit Firms Registry, NTI Enhanced Inuit Firms Registry and the NNI Nunavut Business Directory to certify to the truthfulness of all information provided in their application and supporting documentation and to certify that there is no additional documentation or information relevant to the assessment of their application that has not been provided.</li> <li>7. The NNI Policy should be amended to include provisions to address the consequences of deliberately providing untrue or misleading information in violation of the certification given, including striking the business from the registry and debaring the business and its principals from applying for registration of any other business for a minimum period of time.</li> <li>8. The requirements for Nunavut Business status should be modified to require that a significant portion of the business' operations be conducted in Nunavut.</li> <li>9. The definition of a Nunavut Business should be amended to: <ol style="list-style-type: none"> <li>(i) Clarify that the requirements in subsection (i) through (iv) apply not only in the case of partnerships, but also to limited companies, co-operatives and sole proprietorships; and</li> <li>(ii) Clarify the ownership requirements for a co-operative and align the language with that used for Inuit Firm co-operatives.</li> </ol> </li> <li>10. The definition of a Local Business should be amended to:</li> </ol>
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	<p>(i) Clarify in subsection (iv) that the business has received status as a Nunavut Business (not a Local Business); and</p> <p>(ii) Expand Local Business status to Inuit Firms and not only Nunavut Businesses.</p> <p>11. The GN should review the utility of sections 11.1(f) and 11.1(g) of the NNI Policy, which extent the Local Business bid adjustment to businesses that are do not qualify for Local Business status.</p> <p>12. The GN should implement immediate standardized data tracking procedures to permit the effectiveness of the various bid adjustments to be fully assessed.</p>
<p><b>NNI Review Committee Conclusion</b></p>	<p>The Committee supports restructuring the bid adjustment percentages.</p> <p>The Committee recommends that NNI bid adjustments be set as follows:</p> <p>Nunavut Business 5%</p> <p>Local Business 5%</p> <p>Inuit Firm (NLCA) 5%</p> <p>75% Inuit Owned +3%</p> <p>100% Inuit Owned +3%</p> <p>The total possible bid adjustment would remain at 21%, as at present.</p> <p>One view expressed in the Committee was that the local bid adjustment could be seen to disadvantage smaller companies from the communities, in competing against larger companies in regional centers, on contracts in regional centers.</p> <p>As part of this discussion the Committee agrees that the requirement for maintaining an inventory to qualify as a Nunavut Business is no longer necessary. The inventory requirement should be removed.</p> <p>The Committee believes that a Nunavut Business selling goods must operate a commercial retail operation able to provide goods to the public.</p> <p>Recommendations #4 through #12 to be reviewed during the implementation review.</p>
<p><b>Training</b></p>	
<p><b>BLG Recommendation</b></p>	<ol style="list-style-type: none"> <li>1. The training provisions of the NNI Policy should be fundamentally overhauled.</li> <li>2. The GN should clarify whether the training obligations are aimed as Inuit only, or also Nunavummiut as currently provided in section 7.1(d) of the NNI Policy.</li> <li>3. The current training provisions should be replaced with a training system that would require a mandatory training obligation on contractors to meet the specific training terms detailed in an RFP or tender.</li> <li>4. The categories of contracts to which a training plan obligation would attach should be altered. The monetary threshold should be increased to capture larger projects where long-term training can have a more significant impact.</li> </ol>

Alternatively, or in addition, the threshold should be based on project duration; with a view to requiring training plans only on those projects that are long enough in duration that training would not impede the timely completion of the work.

5. The training component of the NNI Policy should be focused on pre-existing; third-party accredited training programs only. Contractors should not be obligated to create training programs and contracting authorities should not be obligated to assess the adequacy of the training programs.

6. Contracting authorities should be required in each RFP or tender to detail the necessary training based on the type of contract at issue. The training would be limited to the hiring of a designated number of employees who are enrolled in:

- (i) An apprenticeship program administered by the Department of Education and provided by Nunavut Arctic College;
- (ii) A skilled trades program administered by the Department of Education and provided by Nunavut Arctic College;
- (iii) An accredited training on the job program administered by the Department of Education; or
- (iv) Any other third party accredited training program as designated by the contracting authority, such as training programs conducted by bodies in other provinces or territories.

7. The Department of Education should maintain a list of accredited programs available both in and outside of Nunavut from which contracting authorities could select appropriate programs.

8. On larger projects (such as the Iqaluit airport), contracting authorities should meet with potential contractors to discuss the projects and to identify training needs and opportunities prior to establishing the training requirements in the RFP or tender.

9. Critical to the functionality of this new training system is the creation of Liaison Officers, who should be responsible for maintaining the list of available accredited programs, maintaining the list of students enrolled in apprenticeship and skilled trades programs and most importantly, acting as a liaison between contracting authorities, contractors, educational institutions and students to ensure that training requirements imposed in contracts are feasible and that appropriate employees can be located for contractors.

10. The Liaison Officer should play an important role in the enforcement of training obligations by acting as a neutral third party who will be able to confirm to contracting authorities what efforts have been made by a contractor to comply with the training requirements if they are not met and whether the failure to meet the requirements is justifiable in the circumstances.

11. The Liaison Officer should work with the contracting authorities, Nunavut Arctic College and contractors to determine whether additional accredited programs should be offered and added to the list of accredited programs for the purpose of NNI Policy training obligations.

	<p>12. Contracting authorities must engage in proper monitoring and enforcement throughout the completion of the contract to ensure that training obligations are being met.</p> <p>13. Any unjustified failure to meet the training obligations (as determined in consultation with the Liaison Officer) should have a consequence, which consequences should include a lower score on NNI Policy compliance in future contracts, debarment from bidding on future contracts and/or a financial penalty.</p> <p>14. The NNI Policy should be amended to include a provision that obligated contracting authorities to include enhanced training requirements for large projects, such as the Iqaluit airport. For such projects, a committee should be created with representatives from the contracting authority, the Liaison Office, Nunavut Arctic College and the contractor community to develop an appropriate training program that will maximize Inuit training and participation on the project.</p> <p>15. Once the revision training system is successfully implemented, the GN should consider expanding the training obligations beyond primarily construction and large service contracts, keeping in mind that third party accredited programs would have to be available to satisfy the training obligation.</p>
<p><b>NNI Review Committee Conclusion</b></p>	<p>The Committee considers that the current training process described in the NNI Policy is un-workable. This is in part due to the fact that the NNI Policy contains no description or definition of the intended process in scoring the training plans associated with proposals.</p> <p>The Committee considers that a scaled approach based on the size of the contract would be a better approach.</p> <p>Contracts in the \$300,000 - \$2 million range would require that the vendor describe the \$ value to be spent in the contract on training. For contracts over \$2 million the vendor would need to identify the % of the total contract value being spent on training. In this situation the training would have to be a recognizable form of training - for example apprenticeships related to skills required in the contract.</p>
<p><b>Own Forces</b></p>	
<p><b>BLG Recommendation</b></p>	<p>1. The term “own forces” should be removed from the NNI Policy altogether.</p> <p>2. All entities, whether general contractors or sub-contractors, should be required to set out their intended Inuit labour percentages and be evaluated on those intended percentages for the purpose of being scored on Inuit Content.</p>
<p><b>NNI Review Committee Conclusion</b></p>	<p>The Committee agrees.</p> <p>A more appropriate phrase would be “Inuit labour value”. The evaluation criteria will focus on the intended dollar value of Inuit labour payroll instead of the use of estimates of Inuit labour percentages.</p>
<p><b>Sole-Source Contracts</b></p>	

<b>BLG Recommendation</b>	1. Section 10 of the Government Contract Regulations should be expanded to permit the awarding of sole-sourced contracts where the GN identifies a particular region or industry in Nunavut that warrants special consideration and support to build capacity within the Inuit businesses and among the local Inuit population.
<b>NNI Review Committee Conclusion</b>	The Committee believes that procurement officials within the government of Nunavut need to comply with existing directions and guidelines already in place. Sole sourcing could be a function accommodated by negotiated contracts with Inuit Firms.  A Set Aside policy could work for Inuit Firms and for Nunavut Businesses.
<b>Use of Set-Asides for Inuit Firms</b>	
<b>BLG Recommendation</b>	<p>1. The GN should implement a set-aside program to restrict identified purchasing opportunities to only Inuit Firms.</p> <p>2. The GN should create a committee with government officials, NTI and business sector representatives to develop the framework for this program. A number of factors should be considered, including:</p> <ul style="list-style-type: none"> <li>(i) Whether only Inuit Firms that are Inuit owned and controlled can bid;</li> <li>(ii) Whether the set-aside program should be restricted to Inuit Firms that also qualify as Nunavut Businesses;</li> <li>(iii) Whether the program should be targeted for certain types of government purchases;</li> <li>(iv) Whether the program should be limited to contracts of a certain value; and</li> <li>(v) Whether the program should be developed for Inuit Firms only or Nunavut Businesses as well.</li> </ul> <p>3. If the GN believes that similar assistance is needed for Nunavut Businesses (whether or not Inuit Firms), a set-aside program should be developed to assist those business and/or the current section 11.3 of the NNI Policy should be maintained.</p>
<b>NNI Review Committee Conclusion</b>	The Committee sees this as potentially viable and believes that further work on this topic should be part of the future implementation review.
<b>Standing Offers and “As and When Required” Contracts</b>	
<b>BLG Recommendation</b>	<p>1. The application of the NNI Policy to standing offers and “as and when required” contracts should only be done where practicable and consistent with sound procurement management and where appropriate to the particular contract.</p> <p>2. If there are no clear cost criteria in procurement of this nature, bid adjustments should not be used.</p> <p>3. Alternatively, rather than use a hypothetical price for the purpose of bid adjustments, the GN could develop a point rating system (as it uses for RFPs) and have a category of points awarded for Inuit Firms, Nunavut Businesses and Local Businesses.</p>

	4. Rather than establishing a hypothetical minimum Inuit labour content, bidders should be required to certify that in previous GN contracts they have honoured their commitments to employ the required minimum percentage of Inuit labour and commit to meeting any mandated level of Inuit labour that may be imposed in any call-ups under the standing offer agreement or as required in any “as and when required” contract.
<b>NNI Review Committee Conclusion</b>	The Committee considers this to be a complex issue and was advised that CGS is developing a set of standards for this type of contracting. This will then be brought forward to the Review Committee.
<b>Bid Repair</b>	
<b>BLG Recommendation</b>	<p>1. Errors in procurement documentation submitted by bidders (in particular, errors in B2 forms) should be addressed by the GN in one of two ways:</p> <ul style="list-style-type: none"> <li>(i) The GN can evaluate the bid strictly on the basis of what is submitted. If a bidder fails to complete the bid forms correctly and as a result does not get the benefit of all adjustments they could have received; the bidder would have to accept the consequences of its own error; or</li> <li>(ii) The GN could provide assistance to bidders by verifying and correcting information in respect of the bid adjustments that would apply.</li> </ul> <p>2. If the GN adopts the latter approach, clear language must be inserted into the solicitation documents indicating to all bidders that these corrections will be made.</p> <p>3. If the GN adopts the latter approach, the contracting authority should show the adjustments made to the bidder and ask the bidder to confirm whether the correction is accurate.</p> <p>4. The better way to deal with the volume of errors, however, should be to revise the bid forms and/or provide better training to bidders so that they can more accurately complete the forms.</p>
<b>NNI Review Committee Conclusion</b>	<p>The Committee was advised that CGS is working to ensure that current practices are compliant with procurement law. The work is underway at this time as a result of a legal opinion provided by BLG. BLG provided their opinion after reviewing the NNI Policy and the existing issues faced by CGS in implementing contracting within the context of the NNI Policy and Article 24.</p> <p>The practice of bid repair reflects a lack of capacity in the business community in maintaining accounting records and filling out bid forms.</p>
<b>Standardization of Procurement Documents and Processes</b>	
<b>BLG Recommendation</b>	<p>1. The GN should implement one standardized B2 form for all contracting authorities, which should be accompanied by a standardized instruction sheet provided by all contracting authorities to bidders.</p> <p>2. The GN should develop a standardized set of debrief letters (which include different letters depending on the type of contract at issue) that are sent to all losing bidders within a set number of days after the awarding of the contract. The debriefing letters should disclose the following information:</p>

	<ul style="list-style-type: none"> <li>(i) The names of all bidders;</li> <li>(ii) The name of the winning bidder, the winning bidder’s price and the winning bidder’s overall score;</li> <li>(iii) The bid adjustments received by the winning bidder;</li> <li>(iv) The losing bidder’s B2 form as adjusted by the contracting authority; and</li> <li>(v) The losing bidder’s total score, including the breakdown of the total score received.</li> </ul> <p>3. Procurement processes and contract awards should be centralized in Iqaluit for both CGS and NHC.</p> <p>4. The GN should implement a standardized data collection procedure as noted below.</p>
<p><b>NNI Review Committee Conclusion</b></p>	<p>The Committee was advised that CGS has standardized a B2 for use in all of their contracts. NHC advises they will work with CGS to ensure standardization of the forms between agencies.</p> <p>CGS is currently developing a standardized debrief letter. Items (i) through (v) are being worked on.</p> <p>It was noted and unanimously agreed that the inclusion of the winning score under (ii) will assist in establishing more transparency for the overall procurement process.</p> <p>Item #3: Centralized procurement can only be done if sufficient PYs are provided. Without sufficient human resources this item cannot be implemented.</p> <p>Item #4: CGS has implemented this however NHC has not as they do not have the resources to compile this type of data. NHC would require increased human resources to implement this.</p>
<p><b>Data Availability and Collection</b></p>	
<p><b>BLG Recommendation</b></p>	<ul style="list-style-type: none"> <li>1. The GN should implement mandatory data collection procedures for all contracting authorities on an immediate basis.</li> <li>2. Data collection should be consistent across all contracts and across all contracting authorities through the use of a standardized data collection form.</li> <li>3. The data to be collected should include, at a minimum, the data currently being collected by CGS, and in addition, should include the value of work completed by subcontractors and information regarding the subcontractors, the percentage of Inuit labour achieved on every contract, the cost of implementation of the NNI Policy, and the impact of each bid adjustment on the awarding of contracts.</li> <li>4. The project officer charged with a particular GN contract should be responsible for data collection for that contract in order to ensure accurate data collection.</li> </ul>

	<p>5. The NNI Secretariat should be charged with responsibility for data collection and maintenance of a centralized electronic database.</p>
<p><b>NNI Review Committee Conclusion</b></p>	<p>1: CGS procurement manual contains directions to implement this however NHC does not have the resources in place to fulfill this recommendation.</p> <p>2: The Committee agrees.</p> <p>3: The Committee agrees fully with the increased data elements and believes that changes would be required to be done to the GN and CGS database data to implement this recommendation.</p> <p>4: The Committee agrees with this recommendation.</p> <p>5: The NNI Secretariat does not have the capacity to undertake this recommendation. Although the intent was agreed to, at this time the Committee also concurs that given the current status of data collection employed by Housing Corp., CGS and QEC that there is currently no capacity for government-wide standardized data collection. The Committee believes that implementing a centralized and standardized database would not be possible given the current situation with the contracting authorities. The NNI Secretariat would need to have access to any centralized database; currently the NNI Secretariat has access to the Contract Reporting Data Base.</p>
<p><b>Application of the NNI Policy to Municipalities</b></p>	
<p><b>BLG Recommendation</b></p>	<p>1. Currently, the NNI Policy only applies to municipal procurements in cases where more than 51% of a particular contract’s funds are provided by the GN, as no municipalities are receiving more than 51% of their annual operating funds from the GN.</p> <p>2. The GN needs to determine whether it wants all or a portion of local government (municipalities, towns, hamlets and villages) procurements to be conducted in accordance with the NNI Policy. If so, the GN should enact the necessary laws or policy changes to do so.</p> <p>3. If the GN does require municipalities to adhere to the NNI Policy, the GN should set a minimum contract value threshold which if met or exceeded would require local governments to adhere to the NNI Policy obligations.</p> <p>4. If the GN determines that it wants all or some municipal procurements to be covered by the NNI Policy, the GN should provide training and resources to assist local government purchasing staff to cope with the intricacies and complexities that the NNI Policy presents.</p>
<p><b>NNI Review Committee Conclusion</b></p>	<p>The Committee believes that the municipalities may implement a basic version of the NNI policy on a voluntary basis to comply with the spirit and intent of Article 24 and the NNI Policy, to promote Inuit businesses and Inuit employment.</p> <p>Some Committee members considered that most municipalities do not have the expertise or resources required to implement the NNI Policy.</p>

	It is understood that there is no existing legislation or policy that requires municipalities to comply with the NNI Policy, and this is not a requirement of Article 24.
<b>Application of the NNI Policy to QEC</b>	
<b>BLG Recommendation</b>	<ol style="list-style-type: none"> <li>1. The NNI Policy applies to the Qulliq Energy Corporation.</li> <li>2. If there is any lingering doubt on this issue, the Minister or Executive Council should enact a specific policy or guideline stating that QEC is subject to the obligations of the NNI Policy.</li> </ol>
<b>NNI Review Committee Conclusion</b>	<p>The Committee strongly agrees that there is no reason for QEC not to comply with Article 24 and the NNI Policy. QEC is fully required to comply with Article 24 and the NNI Policy.</p> <p>The GN must take action to ensure that QEC complies with the Policy.</p>
<b>Monitoring and Enforcement</b>	
<b>BLG Recommendation</b>	<ol style="list-style-type: none"> <li>1. The GN should immediately put into place the monitoring and enforcement measures required by the NNI Policy and as more fully detailed in the report in terms of meeting the minimum Inuit content obligations and training obligations.</li> <li>2. The GN should amend the NNI Policy to empower the GN to debar a business and its principals from bidding on contracts for a set period of time in the event that the entity is found to have violated the spirit and intent of the NNI Policy. While similar debarment provisions should be contained in the NNI Policy related to specific breaches of NNI Policy obligations, this provision would act as a catch-all for any observed inappropriate conduct.</li> </ol>
<b>NNI Review Committee Conclusion</b>	Contracting Authorities require increased PYs in order to implement this recommendation. Currently the primary contracting authorities, NHC and CGS, do not have sufficient human resources to properly monitor projects.
<b>Changes to the NTI Inuit Firms Registry and NNI Nunavut Business Directory</b>	
<b>BLG Recommendation</b>	<ol style="list-style-type: none"> <li>1. The NNI Secretariat should not require applicants seeking re-registration to submit supporting documentation in the absence of a material change to their business. The NNI Secretariat should accordingly revise its renewal requirements and processes to align with those used by NTI.</li> <li>2. The NNI Secretariat and NTI should extend the validity of their respective registrations to three years.</li> <li>3. The NNI Secretariat and NTI should share relevant documents submitted by applicants in order to alleviate the burden on applicants and facilitate the greatest possible information sharing between the two organizations. This can be accomplished through a shared document database or restricted website housing the documents.</li> <li>4. The NNI Secretariat and NTI should adopt a policy whereby any applicant found to have provided inaccurate information for the purpose of improperly obtaining registration is barred from registered the business at issue or any other business in which the applicant is a material stakeholder for a set period of time.</li> </ol>

	<p>5. The NNI Secretariat and NTI should assign registration numbers to all registrants.</p> <p>6. The NNI Tribunal should be vested with the jurisdiction to make recommendations on the decisions of both the NNI Secretariat and NTI to deny registration or to deny a renewal application.</p>
<b>Community Education on the NNI Policy and its Implementation</b>	
<b>BLG Recommendation</b>	<p>1. The GN should provide better education within the community to enable businesses to better understand the meaning and operation of the NNI Policy in respect of procurement and contracting opportunities.</p> <p>2. The GN should provide appropriate and on-going training to government officials about the application of the NNI Policy in the context of any procurement or contracting activity.</p>
<b>NNI Review Committee Conclusion</b>	The NNI Secretariat is anticipating an increase in its human resources capacity and is planning to do a series of community workshops as a part of ongoing community education in Public Procurement and the NNI Policy.
<b>Translation of Procurement Documents</b>	
<b>BLG Recommendation</b>	<p>1. The GN should make the Nunavut Tenders website available in all official languages.</p> <p>2. If stakeholders want to have specific procurement documents provided in one of the official languages other than English, recourse should be made available to draw upon to translate the document in a timely manner and the deadline for the submission of bids and proposals should be extended by whatever time is necessary to complete the required translations.</p>
<b>NNI Review Committee Conclusion</b>	<p>Item # 1: The Committee considers that the GN currently does not have the capacity or technical resources to implement this recommendation.</p> <p>Item #2: The Committee considers that all tenders and RFPs should have an opening statement that Inuktitut, Inuinnaqtun or French translated copies are available upon request.</p>
<b>Other Clarifications to the NNI Policy Language</b>	
<b>BLG Recommendation</b>	As part of the amendments to the NNI Policy, the GN should conduct a wholesale review of the policy to correct a number of noted typographical errors, to ensure internal consistencies and to effect required clarifications.
<b>NNI Review Committee Conclusion</b>	The Committee agrees that once the recommendations are decided upon, the revisions of the type referred to will also be reflected in a revised NNI Policy.
<b>Senior Level Government NNI Policy Leader</b>	
<b>BLG Recommendation</b>	1. The GN should appoint a senior government official with responsibility to ensure the NNI Policy's objectives are being met and who is accountable for the NNI Policy's performance, or lack thereof.
<b>NNI Review Committee Conclusion</b>	The Committee concluded that this responsibility should belong to the Deputy Minister and Minister responsible for the department in which the NNI Secretariat is situated.