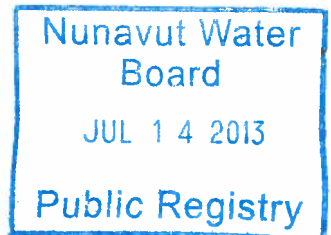


AGREEMENT BETWEEN
Nunavut Tunngavik Incorporated
And
Her Majesty In The Right Of Canada,
Represented By
The Minister Of National Defence
With Respect To Economic Benefits For Inuit
In The Clean-Up And Restoration Of
Distant Early Warning Sites
Within The Nunavut Settlement Area
(NTI-DND Economic Agreement)



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PREAMBLE

WHEREAS fifteen Distant Early Warning (DEW) Line Sites are located on Department of National Defence (DND) reserves within the Nunavut Settlement Area (NSA);

AND WHEREAS DND is undertaking an environmental clean-up of the DEW Line sites, facilities and associated areas;

AND WHEREAS the Inuit and the Federal Government have an interest in protecting the ecosystem integrity and the existing and future well-being of the residents and communities of the NSA and increasing the participation of Inuit and Inuit firms in business and employment opportunities in the NSA;

AND WHEREAS on September 1, 1998 DND and NTI have entered into an agreement to establish a framework for the remediation and restoration of the DEW Line Sites in the NSA;

AND WHEREAS the Parties wish to enter into an agreement addressing the participation of Inuit in the clean-up of DEW Line sites in the Nunavut Settlement Area, in order to achieve a cost-effective and environmentally sound clean up and restoration of DEW Line Sites, which optimises economic benefits and opportunities for Inuit in employment, the provision of goods and services, training and the transfer of technology, in accordance with the *Nunavut Land Claims Agreement* (NLCA), and specifically Article 24 of the NLCA;

NOW THEREFORE, in consideration of the premises and mutual covenants contained herein, the Parties agree as follows:

1.0 DEFINITIONS

Clean-up Contract means a contract entered into by DND's contracting agent and a Contractor for a Site clean-up;

Contractor means the party who has contracted with DND's contracting agent to carry out a Site clean-up;

Contracting Working Group means the working group established under Section 4.2 of the Agreement;

DEW Line Site means one of the Distant Early Warning Sites listed in Section 3.1 below;

DIAND DEW Line Sites means the Distant Early Warning Sites in Nunavut not listed in Sections 3.1 and 3.2;

DND means the Crown in right of Canada represented by the Minister of National Defence or his delegate;

Inuit firm has the same meaning as in the *Nunavut Land Claims Agreement*;

Inuit Firm Registry is the comprehensive list of Inuit firms maintained in accordance with Paragraph 24.7.1 of the *Nunavut Land Claims Agreement*;

MIEC means the Minimum Inuit Employment Content set in accordance with Section 5.0 of this Agreement;

MICC means the Minimum Inuit Content for Contracting set in accordance with Section 6.0 of this Agreement;

NLCA means *Nunavut Land Claims Agreement*;

NTI has the same meaning as "Tungavik" under Section 1.1.1 of the NLCA;

NTI-DND Environmental Agreement means "The Agreement Between Nunavut Tunngavik Incorporated and the Department of National Defence for the Clean-up and Restoration of DEW Sites Within the Nunavut Settlement Area" dated September 1, 1998;

Nunavut Settlement Area has the same meaning as in the NLCA;

Parties means Nunavut Tunngavik Incorporated and the Department of National Defence;

Regional Inuit Association means the Kivalliq Inuit Association, the Qikiqtani Inuit Association or the Kitikmeot Inuit Association or their successors;

Representative Occupational Grouping means a category of personnel required for a Site clean-up classified by occupation or type of work to be performed;

Registry has the same meaning as "Inuit Firm Registry";

RIA means "Regional Inuit Association";

Site means a "DEW Line Site" that is, or is projected to be, remediated and restored, as provided for in the NTI-DND Environmental Agreement;

Steering Committee means the Committee established under Section 4.1 of the Agreement;

Subcontractor means a party who contracts with a Contractor or Subcontractor to perform any part of the Contractor's obligations on a Site;

Work means materials and services furnished or provided to perform a clean-up or restoration of a Site.

2.0 OBJECTIVES

2.1 The objectives of this Agreement are as follows:

- a) to complement the NTI/DND environmental provisions as set out in the NTI-DND Agreement for the Clean-up and Restoration of DEW Sites Within the Nunavut Settlement Area, 1 Sept. 1998;
- b) to further the objectives of Article 24 of the NLCA in relation to the DEW Line Clean-up in the NSA;
- c) to achieve an efficient and cost-effective clean-up and restoration of the DEW Line Sites in the NSA;
- d) to achieve:
 - i) increased participation by Inuit firms in business opportunities generated by the clean-up;
 - ii) improved capacity of Inuit firms to compete for government contracts;
 - iii) increased employment of Inuit up to a representative level;
 - iv) increased access by Inuit to career training, on-the-job training, apprenticeship, and other job-related programs, in order to develop a skilled and professional pool of labour available for work on the DEW Line Clean Up in the NSA; and
 - v) increased opportunities for Inuit to receive training and experience to successfully create, operate and manage businesses in Nunavut;
- e) to establish a mechanism whereby successful Contractors fulfill agreed-upon commitments to levels of Inuit participation.

3.0 GENERAL

3.1 Scope. This Agreement applies to the Site clean-up at the following DEW Line Sites:

PIN 2 - Cape Young
PIN 3 - Lady Franklin Point
PIN 4 - Byron Bay
CAM 1 - Jenny Lind Island
CAM 2 - Gladman Point
CAM 3 - Shepherd Bay
CAM 4 - Pelly Bay (near Kugaaruk)
CAM 5 - Mackar Inlet
FOX M - Hall Beach
FOX 2 - Longstaff Bluff
FOX 3 - Dewar Lakes
FOX 5 - Broughton Island (near Qikiqtarjuaq)
DYE M - Cape Dyer

- 3.2** The Parties acknowledge that prior to the signing of this Agreement, the clean-up of Cape Hooper (FOX 4) and Cambridge Bay (CAM M) had been completed. Note that the process for awarding the contracts for the clean-up of Pelly Bay (CAM 4) and Broughton Island (FOX 5) will have started prior to the timelines contemplated in this Agreement.
- 3.3 No Precedent.** This Agreement is not to be construed as a precedent for any other activities of DND, Canada or any third party. Nothing in this Agreement shall be interpreted or used to define the rights of the Parties, Canada or any third party in relation to any matter under the NLCA or to interpret any Article of the NLCA except for the purpose of this Agreement.
- 3.4 Urgency.** The Parties recognize the urgency of the matters dealt with in this Agreement and agree to perform all required actions as expeditiously as possible.
- 3.5 Nunavut Land Claims Agreement.** The Parties recognize and acknowledge their respective obligations to comply with the NLCA in connection with all Work.
- 3.6 No Retrospectivity.** This Agreement binds the Parties only with respect to Site clean-ups, including selection of Contractors for Site clean-ups, that have not commenced as of the date of the signing of this Agreement, unless the Parties agree otherwise.

4.0 STEERING COMMITTEE AND CONTRACTING WORKING GROUP

4.1 Steering Committee

4.1.1 The Steering Committee established under Article 4.0 of the NTI-DND Environmental Agreement shall perform the following functions in connection with this Agreement:

- a) establish Minimum Inuit Employment Content, under Section 5.10;
- b) establish Minimum Inuit Content for Contracting, under Section 6.10;
- c) review contract award issues, under Sections 8.3.1, 8.3.3, and 8.3.5 through 8.3.11; and
- d) review Contractor's deviation from MIEC and MICC pursuant to Section 12.2;
- e) consider other items of mutual concern related to the implementation of this Agreement, raised by either Party.

4.1.2 The Steering Committee may meet either in person or by teleconference.

4.1.3 The Steering Committee shall operate on the basis of consensus.

4.1.4 The Parties each shall be responsible for their respective costs associated with participating in Steering Committee meetings.

4.1.5 The Steering Committee shall establish and make publicly available procedures governing its operations and those of the Contracting Working Group, including, without limitation, conflict of interest, release of information provided to either Party, and procedures for decision-making that ensure fairness and due process to Contractors.

4.2 Contracting Working Group

4.2.1 A Contracting Working Group shall be established, composed of two members appointed by NTI and two members appointed by DND. The working group shall perform the following functions in connection this Agreement:

- a) make a recommendation to the Steering Committee on the Minimum Inuit Employment Content (MIEC), under Section 5.8; and

- b) make a recommendation to the Steering Committee on the Minimum Inuit Content for Contracting (MICC), under Section 6.8.

4.2.2 The Contracting Working Group shall operate on the basis of consensus.

4.2.3 The Parties each shall be responsible for their respective costs associated with participating in Contracting Working Group meetings.

5.0 MINIMUM INUIT EMPLOYMENT CONTENT

5.1 A Minimum Inuit Employment Content (MIEC) shall be set for each Site.

5.2 The MIEC for a Site is the minimum level of Inuit employment that DND shall require the Contractor to achieve for the clean-up of that Site.

5.3 The MIEC shall be expressed as a percentage, and shall be calculated by dividing the total number of Inuit employed, in person-days, by the total number of persons employed, in person days, for the term of the contract of a Site clean-up. The calculation shall include all on-site and off-site personnel employed by Contractors and Subcontractors. Off-site personnel shall include without limitation:

- a) management and support personnel dedicated to the Site clean-up;
- b) project management personnel employed by the Contractor;
- c) technical or drafting personnel; and
- d) expediting, shipping, payroll or accounting personnel.

5.4 The calculation of the MIEC shall not include:

- a) project management staff at DND's contracting agent;
- b) DND employees; and
- c) any consultants contracted by DND or DND's contracting agent for the provision of advice concerning the specifications of the clean-up, contract management or other advice.

5.5 The MIEC shall be within a range of 65-85%.

5.6 Eight months prior to the scheduled commencement of a Site clean-up, DND shall provide NTI with DND's estimates of the types and level of positions that will be required for the conduct of the Site clean-up, in person-days, and broken out by Representative Occupational Grouping. The estimate shall be

provided in the form attached as Annex A.1. Education and skills profiles for Representative Occupational Groupings are listed in Annex B.

- 5.7 Within two months of the receipt of the information described in Section 5.6, NTI, in consultation with the RIAs, shall provide DND with a projection of the level of Inuit employment for the Site clean-up. The projection will be provided in the form attached as Annex A.2 to this Agreement. NTI's projection will be based on an analysis, for each Representative Occupational Grouping, of the number of Inuit qualified for work on the Site clean-up in relation to the employment opportunities using, to the extent possible, relevant available information on Inuit qualifications and employment.
- 5.8 Within one month of receipt by DND of the projection under Section 5.7, the Contracting Working Group shall recommend a MIEC for the Site clean-up. In making the recommendation to the Steering Committee for the MIEC, the Contracting Working Group shall take into account, for each Representative Occupational Grouping, the following factors:
- a) NTI's projection of Inuit employment;
 - b) Inuit employment achieved on other DND DEW Line Site clean-ups to date, compared to the MIEC established for the Sites, and on DIAND DEW Line Sites;
 - c) the results achieved by training and apprenticeship programs for Inuit labour, to date; and
 - d) the projected impact on the availability of Inuit labour of other projects being undertaken in Nunavut.
- 5.9 Where the Contracting Working Group, after a reasonable effort, is unable to reach agreement on the MIEC for a Site clean-up, either Party may refer the MIEC to the Steering Committee for resolution.
- 5.10 The Steering Committee shall meet as soon as practicable following a recommendation under Section 5.8 or a referral under Section 5.9 to decide on a MIEC. In the event that the Steering Committee does not reach agreement on a MIEC within two weeks, either Party may refer the matter to Expedited Arbitration, as provided under Section 14.0.
- 5.11 The MIEC resulting from a decision of the Steering Committee or arbitrator shall be the MIEC required under Section 5.1.
- 5.12 The forms used to provide the information required under Section 5.6 and 5.7 may be modified for a Site clean-up upon the agreement of all members of the Contracting Working Group.

6.0 MINIMUM INUIT CONTENT FOR CONTRACTING (MICC)

- 6.1 A Minimum Inuit Content for Contracting (MICC) shall be set for each Site.
- 6.2 The MICC for a Site is the minimum level of Inuit business participation that DND shall require the Contractor to achieve for the clean-up of that Site.
- 6.3 The Minimum Inuit Content for Contracting (MICC) for a Site clean-up shall be expressed as a percentage, and shall be calculated by dividing the total dollar value of Inuit contracting content by the total dollar value of the Clean-up Contract. The total dollar value of Inuit contracting content shall be calculated by adding the dollar value of all subcontracts for goods or services to be obtained through, or awarded to Inuit firms, including all labour costs. Where the Contractor is an Inuit firm, the total dollar value of Inuit contracting shall also include the Contractor's share of the Clean-up Contract, which is the total dollar value of the contract minus the dollar value of all subcontracts.
- 6.4 The MICC shall be within a range of 60-75%.
- 6.5 Eight months prior to the start of a Site clean-up, DND shall provide NTI with an analysis of categories of contracting opportunities and an estimate of each category's percentage of total value of the Clean-up Contract for the Site clean-up. The analysis shall be in the form provided in Annex A.3.
- 6.6 Within two months of the receipt of the analysis required under Section 6.5, NTI, in consultation with the RIAs, shall provide to DND a list of Inuit firms that have declared themselves able to perform work on a Site clean-up, listed according to the categories of contracting opportunities identified under Section 6.5.
- 6.7 NTI shall request Inuit firms to provide corporate resumes to their RIAs that shall include information on relevant capacity and work experience. NTI shall deal with all information provided to it under this section as strictly confidential. DND shall treat all information provided to it by NTI under this section as commercial confidential information. DND shall not release such information unless prior approval is received from the Inuit firm, or DND is required to release such information under the provisions of the *Access to Information Act* and/or the *Privacy Act*.
- 6.8 The Contracting Working Group shall recommend the MICC for a Site to the Steering Committee within one month of receipt of the list of Inuit firms required under Section 6.6. This recommendation shall take into account the following factors:

- a) Inuit firms' capacities;
 - b) historical data from prior Site clean-ups in Nunavut and the Western Arctic;
 - c) Site-specific characteristics; and
 - d) impact of other projects on the availability of Inuit firms.
- 6.9 In the event that the Contracting Working Group is unable to reach agreement on the MICC, as provided in Section 6.8, either Party may refer the matter to the Steering Committee.
- 6.10 The Steering Committee shall meet as soon as practicable following a recommendation under Section 6.8 or a referral under Section 6.9 to decide the MICC. In the event that the Steering Committee does not reach agreement on the matter within two weeks of a referral, either Party may refer the matter to Expedited Arbitration, as provided under Section 14.0.
- 6.11 The MICC resulting from a decision of the Steering Committee or arbitrator shall be the MICC required under Section 6.1 for a Site.
- 6.12 The form used to provide the information required under Section 6.5 may be modified for a Site clean-up upon the agreement of all members of the Contracting Working Group.

7.0 CONTRACTOR'S INUIT PARTICIPATION PLAN

- 7.1 DND shall require all companies that either submit a bid on a Clean-up Contract or enter into negotiations for a Clean-up Contract to provide a preliminary Contractor's Inuit Participation Plan (CIPP) that shall include:
- a) a description of how the company intends to achieve the MIEC, including, where possible and without limitation:
 - i) the number, percentage and types of positions, including training positions, that the company proposes to fill with Inuit, in relation to the total number of positions, and the number and percentage of person-days proposed for these positions in relation to total person-days;
 - ii) the steps the company will take to recruit potential Inuit employees; and
 - iii) any measures the company has taken or proposes to take to increase Inuit employment, including such things as the details of any Inuit recruitment programs, training or apprenticeship programs, and equivalencies for formal qualifications;

- b) where the MIEC is lower than the NTI projection provided to DND under Section 5.7, a description of how the Contractor could achieve the NTI projection for Inuit employment;
 - c) any other measures for optimizing Inuit employment and training; and
 - d) a description of how the company intends to achieve the MICC, including, where possible and without limitation the names, address and particulars of any actual or proposed Subcontractors; and the specifics of any actual or proposed contracting arrangements.
- 7.2 DND shall require all companies that submit a bid on a Clean-up Contract to submit their preliminary Contractor's Inuit Participation Plans in a separate envelope from their tender bid, to DND's contracting agent prior to the closing of bids.
- 7.3 For all bids for contracts for a Site clean-up, DND or its contracting agent shall:
 - a) advise bidders that the envelope containing the CIPP shall be opened first; and
 - b) advise bidders that bids shall be opened only if the CIPP complies fully with the requirements contained in Section 7.1.
- 7.4 Within three (3) months of DND having provided NTI with the estimates required under Section 5.6 above, NTI, through the Regional Inuit Associations, shall ensure that information regarding Inuit who have indicated their interest in employment in Site clean-ups, including information regarding their work experience and qualifications, is provided to DND's contracting agent.
- 7.5 DND's contracting agent shall make the information provided to it under Section 7.4 available to bidders for use by them in the preparation of bids and in finding suitable Inuit labour.
- 7.6 Upon the written request of the Contractor, DND's contracting agent may approve revisions to the CIPP during the course of a Site clean-up, provided that the Contractor demonstrates to DND's contracting agent that the MIEC and MICC for the Site clean-up will still be achieved.
- 7.7 In the event that DND's contracting agent approves a revised CIPP under Section 7.6, it shall provide the Steering Committee with the revised CIPP within five (5) working days of its approval. DND's contracting agent shall not release commercial confidential information to the Steering Committee without written permission from the Contractor.

8.0 SELECTION PROCESS FOR CONTRACTOR

8.1 Tender and Contract Documents

- 8.1.1 In all tender documents issued to companies that submit a bid on a Clean-up Contract or enter into negotiations for a Clean-up Contract, DND's contracting agent shall identify the following as criteria that a Contractor must comply with in a bid:
- a) Minimum Inuit Employment Content (MIEC) established in accordance with Section 5.11;
 - b) Minimum Inuit Content for Contracting (MICC) established in accordance with Section 6.11; and
 - c) Submission of a Contractor's Inuit Participation Plan (CIPP) that fully complies with Section 7.1.
- 8.1.2 DND's contracting agent shall provide a copy of this Agreement in all tender documents issued to companies that submit a bid on a Clean-up Contract or enter into negotiations for a Clean-up Contract, and shall advise such companies in the tender documents that compliance with the provisions of the Agreement by the Contractor and its Subcontractors is mandatory.
- 8.1.3 DND's contracting agent shall include as a term in all Clean-up Contracts that the Contractor will comply with this Agreement and a term that the Contractor will ensure that any Subcontractors will be bound by and comply with the Agreement, where applicable.

8.2 Solicitation of Interest

- 8.2.1 DND's contracting agent shall prepare a Solicitation of Interest (SOI) for a Site clean-up. The SOI shall be in English and Inuktitut and shall request Letters of Interest (LOI) to identify firms that are both interested in and capable of performing as the prime Contractor for clean-up of the Site. The SOI shall be distributed Canada-wide through MERX and by mail or by fax to firms on the Registry.
- 8.2.2 The Solicitation of Interest under subsection 8.2.1 shall have the following characteristics:
- a) The type of opportunity will be a *Letter of Interest (LOI)*;
 - b) The region of delivery will be *Nunavut*;
 - c) The region of opportunity will be *Canada Wide*;

- d) The agreement type is *Comprehensive Land Claim Agreement (CLCA)*.

8.2.3 DND's contracting agent shall include the following in the SOI: .

- a) A description of the background, objectives and nature of the clean-up of DND DEW Line Sites;
- b) A description of the services to be provided by a Contractor for clean-up of the Site and of the specific capabilities required for a Contractor;
- c) A statement that the Site is located in a region where a Comprehensive Land Claim Agreement has been signed;
- d) Instructions for the preparation of a response to the Solicitation of Interest;
- e) A description of the employment and contracting environment in Nunavut, within the context of the NCLA and the requirements of the NTI-DND Economic Agreement (as per Annex D of this Agreement);
- f) A definition of Minimum Inuit Employment Content (MIEC) and the Minimum Inuit Content for Contracting (MICC) and identification of the range for the MIEC and MICC that must be achieved by the Contractor in the Site clean-up;
- g) All available values for the MICC and MIEC for previous Clean-up Contracts in Nunavut.

8.2.4 DND's contracting agent shall require that firms responding to the Solicitation of Interest adhere to the following process:

- a) Firms shall provide a complete and fully documented LOI in the format prescribed in the SOI.
- b) Firms shall provide in a LOI any information or documentation necessary to demonstrate capability to:
 - i) Provide the services of a Contractor for clean-up of the Site;
 - ii) Manage and finance a contract as Contractor for clean-up of the Site;
 - iii) Obtain liability insurance;
- c) Each firm's LOI shall contain a statement that the firm understands the requirements to meet the levels for MIEC and MICC for the clean-up of the Site provided for under Sections 5.5 and 6.4 of the Agreement, and is capable of meeting those requirements

8.2.5 DND's contracting agent shall assess the Letters of Interest to determine those firms that have demonstrated their capability to be a Contractor for clean-up of a given Site and based on that assessment shall establish a list of qualified Contractors for that Site.

8.3 Selection Process for a Site Clean-up

8.3.1 Where DND's contracting agent determines under Section 8.2.5 that only one firm is capable of performing the contract for the Site clean-up, the following procedure shall be followed:

- (a) DND's contracting agent shall issue an Advance Contract Award Notice (ACAN) indicating its intent to negotiate the contract with the firm;
- b) if no valid challenge to the ACAN is received within the time frame provided for in the Treasury Board of Canada Contracting Policy, DND's contracting agent shall negotiate with the firm for the purpose of arriving at a price for the Site clean-up and shall require the firm to submit a CIPP in accordance with the requirements of Section 7.1 above;
- c) if negotiations have been successfully completed under Subsection b), above, DND shall make a determination as to whether the price is acceptable, and whether the criteria set forth in Subsections 8.1.1 (a) to (c) have been met;
- d) in the event that DND determines under Subsection c) above that the price is acceptable and that the criteria set forth in Subsections 8.1.1 (a) to (c) have been met, DND's contracting agent shall issue a letter of intent to award the contract to the firm;
- e) in the event that DND determines under Subsection c) above that the firm has not fully met the criteria set forth in Subsections 8.1.1 (a) to (c), DND shall refer the matter to the Steering Committee and Sections 8.3.7 through 8.3.10 shall apply; and
- f) in the event that negotiations under Subsection b) above are not successfully completed, or the price is not acceptable to DND, DND's contracting agent may decline to award the contract to the firm.

8.3.2 Where DND's contracting agent determines under Section 8.2.5 that more than one firm is capable of performing the Clean-up Contract, it may invite bids from the list of firms determined in 8.2.5 in accordance with Section 8.3.3. Where there is a valid challenge to the Advance Contract Award Notice issued in accordance with Section 8.3.1, DND's contracting agent may

invite bids from the sole firm considered capable in Section 8.2.5 plus the firms which have put forward a valid challenge to the ACAN, in accordance with Section 8.3.3.

8.3.3 The process for the tender shall follow the Treasury Board of Canada Contracting Policy, along with the following specific procedures, whereby DND's contracting agent shall:

- a) open the envelopes containing the Bidder's CIPP before opening any other part of any bid;
- b) with respect to each bidder's CIPP, make a determination as to whether the CIPP meets the criteria set forth in Subsections 8.1.1 (a) to (c) , and open only those bids that in DND's contracting agent's determination meet those criteria;
- c) if DND's contracting agent determines that none of the bids meets the criteria set forth in Subsections 8.1.1 (a) to (c), refer the matter to the Steering Committee, which shall determine if the work should be retendered with a revised MIEC and/or MICC;
- d) identify the lowest priced of the bids opened under Subsection b) and determine whether the price is acceptable to DND; and
- e) if the bid meets the criteria set forth in Subsections 8.1.1 (a) to (c) and the price is acceptable, issue a letter of intent to award the contract, otherwise the contract shall not be awarded.

8.3.4 DND's contracting agent shall require that, within twenty-eight (28) calendar days of a company receiving a letter of intent pursuant to Sections 8.3.1 or 8.3.3, the company shall provide to DND's contracting agent a final CIPP confirming that it is capable of achieving the MICC and MIEC for the Site, and that this final CIPP shall meet the criteria set forth in Subsections 8.1.1 (a) to (c), and shall include, without limitation:

- a) documentation evidencing the signing of agreements with Inuit Subcontractors, or the intention to enter into subcontracts with Inuit Subcontractors, if applicable; and
- b) a schedule showing a monthly projection of Inuit labour and Subcontractors to be utilized throughout the life of the contract.

8.3.5 DND's contracting agent shall review the final CIPP, including the documentation and schedule provided by the company under Section 8.3.4. In the event that DND's contracting agent determines that the documentation and schedule is adequate to confirm that the bidder can meet the criteria set forth in Subsections 8.1.1 (a) to (c), the contracting agent, acting in good

faith, shall approve the CIPP and may award the Contract to the company. In all other events DND's contracting agent shall either:

- a) withdraw the letter of intent; or
- b) request a review by the Steering Committee.

8.3.6 DND's contracting agent shall provide the Steering Committee with a copy of the approved CIPP within fifteen (15) days of contract award. DND's contracting agent shall not release commercial confidential information to the Steering Committee without written permission from the Contractor.

8.3.7 In the event that DND's contracting agent requests a review of a contract award under Section 8.3.1, 8.3.3 or 8.3.5, the Steering Committee shall meet to determine whether the company has made best efforts to meet the criteria set forth in Subsections 8.1.1 (a) to (c), and, whether fault for any failure to do so cannot reasonably be placed on that company. The determination of best efforts shall take into account, without limitation:

- a) the specific activities of the firm to achieve the elements contained in its preliminary CIPP; and
- b) adherence by the firm with the requirements of Section 9.0.

8.3.8 In the event that the Steering Committee fails, within 3 weeks of a matter being referred to it under Section 8.3.1, 8.3.3 or 8.3.5, to agree on whether the company has made best efforts to meet the criteria set forth in Subsections 8.1.1 (a) to (c), the Steering Committee shall refer the matter for decision under the Expedited Arbitration provisions in Section 14.0.

8.3.9 In the event that the Steering Committee, or arbitrator appointed under Section 14.0, determines that the company failed to make best efforts to meet the criteria set forth in Subsections 8.1.1 (a) to (c) and that fault for the failure can reasonably be placed on the company, DND's contracting agent shall withdraw the letter of intent to award the contract.

8.3.10 In the event that the Steering Committee, or arbitrator appointed under Section 14.0, determines that the company has made best efforts to meet the criteria set forth in Subsections 8.1.1 (a) to (c) and that fault cannot reasonably be placed on the company for its failure, the MICC shall be adjusted at the discretion of the Steering Committee or arbitrator in order to allow for the awarding of the contract.

8.3.11 The specific contracting process to be utilized in issuing contracts for monitoring of Sites will be determined by the Steering Committee prior to the preparation of any future contract documents for monitoring of Sites.

9.0 SELECTION PROCESS FOR INUIT SUBCONTRACTORS

9.1 Inuit Firm Registry

9.1.1 NTI shall provide to DND the most current Inuit Firm Registry ("the Registry"). The Registry shall contain a brief description of the equipment, goods or services provided by each Inuit firm, the firm's experience, address and contact name.

9.1.2 The Registry shall be included in all contract solicitation documents.

9.2 Bid Invitations for Subcontracts

9.2.1 DND's contracting agent shall require Contractors who have a letter of intent or who have been awarded the contract, or any Subcontractors, in subcontracting work on a Site clean-up, to invite Inuit firms listed in the Registry that may be capable of performing the proposed subcontracting work, to bid on the proposed subcontracting work.

9.2.2 DND and its contracting agent and Contractors shall be held blameless if Inuit firms that do not appear in the Registry are not solicited under Section 9.2.1.

9.2.3 Nothing in Section 9.2.1 shall prevent a Contractor or Subcontractor from seeking bids from firms not listed in the Registry.

9.2.4 All contract documents issued by DND's contracting agent shall require Contractors and Subcontractors, in subcontracting work on a Site clean-up, to:

- a) include in bid invitations only employment and skills requirements that are essential to the Site clean-up;
- b) provide Inuit firms with a minimum of 15 days to respond to a bid invitation, but that in no event shall an Inuit firm have less time to respond than firms not listed in the Registry; and
- c) enter into a contract with an Inuit firm if that Inuit firm's bid meets the Contractor's or Subcontractor's requirements, including such criteria as technical compliance and price, if the Contractor or Subcontractor enters into a subcontract for the Work.

9.2.5 All contract documents issued by DND's contracting agent shall require Contractors and Subcontractors, in subcontracting Work on a Site clean-up, to take the following steps in the event that they reject a bid from an Inuit firm

on grounds that it contains minor variances which cause it to be considered not technically compliant or not competitive:

- a) provide the Inuit firm that submitted the bid with a written statement of the variances and the grounds for rejection;
- b) provide the Inuit firm that submitted the bid the opportunity to revise its bid to address the stated variances and submit another bid within 7 calendar days of the date on which it was notified that the bid was rejected; and
- c) enter into a subcontract with the Inuit firm if the new bid meets the Contractor's or Subcontractor's requirements and is less than or equal to the lowest priced bid from non Inuit firms which meet the Contractor's or Subcontractor's requirements; otherwise the contract may be awarded to a firm not listed in the Registry.

9.2.6 DND's contracting agent shall, where a bid has been rejected under Section 9.2.5, require the Contractor or Subcontractor, upon receiving a request in writing, to provide the Inuit firm within thirty (30) calendar days with written reasons why the bid was rejected. Subject to the approval of the Inuit firm, a copy of the reasons shall also be provided to NTI.

10.0 TRAINING

- 10.1 DND shall provide NTI with \$50,000 per Site to assist in meeting the overall objective of achieving a representative level of Inuit employment on DEW Line Site clean-ups through the training of Inuit for clean-up related jobs, for a total of \$750,000 for all Sites in Nunavut.
- 10.2 DND and NTI agree to work jointly to identify additional funding sources for training activities envisioned in Section 10.1.
- 10.3 Of the \$750,000 DND has agreed to provide under Section 10.1, NTI acknowledges that DND has already provided \$100,000 in connection with the clean-up of the FOX 4 and CAM M Sites. Of the \$650,000 remaining, DND shall make an initial payment of \$75,000 to NTI as soon as practical after the signing of this Agreement to fund the development of a comprehensive training plan, schedule and budget.
- 10.4 The cost of any training positions identified in the plan developed by NTI for on-the-job training at a Site shall be funded from sources other than DND's budget for the Site Clean-up Contract. Cost for such training shall also include administrative costs that may be borne as result of the presence of trainees.

- 10.5 The training plan, which shall be completed within one year after receipt of funding for the plan, shall set out a schedule for further payments to NTI from DND up to the full amount of \$650,000.
- 10.6 Subject to DND's agreement to the schedule which may be based on reasonable budget considerations, DND shall make payments to NTI in accordance with the schedule completed under Section 10.5. NTI shall provide DND with an updated training plan and budget, outlining the proposed use of funds, prior to each payment.
- 10.7 The training plan referred to in Section 10.3 shall incorporate both common and site specific elements. The training plan shall include, without limitation, the following elements:
- a) an analysis of skills and knowledge requirements for all positions;
 - b) learning objectives derived from the skills analysis identified in Subsection (a);
 - c) identification of training resources, including existing and required training programs;
 - d) development of a detailed plan and schedule for design, delivery and evaluation of orientation and training courses necessary to achieve representative levels of Inuit employment; and
 - e) development of milestones and performance indicators that will be considered in setting MIEC and MICC under Sections 5.8 and 6.8.

11.0 REPORTING

- 11.1 DND shall provide to NTI, by December 1 of each year that this Agreement is in effect, a report covering annual and cumulative results by type and level of employment, for each Site clean-up, including:
- a) the total number of person days worked by all employees by Representative Occupational Grouping;
 - b) the total number of person days worked by Inuit, by Representative Occupational Grouping;
 - c) the percentage of total person days worked by Inuit, by Representative Occupational Grouping; and
 - d) a list of all contracts for goods, services and labour awarded to Inuit firms and to non-Inuit firms during the year and the dollar value of each of those contracts.

- 11.2 NTI shall provide DND with a report, by December 1 of each year that this Agreement is in effect, outlining the progress of the training program, the number of Inuit trained as well as the success rate of the program, including:
- a) a list of training programs provided under the NTI training plan;
 - b) the number of hours of training received by Inuit in these programs;
 - b) the percentage of Inuit who successfully completed the training; and
 - c) the number of graduates who were subsequently hired by Contractors and Subcontractors.
- 11.3 DND shall include as a term in all Clean-up Contracts between DND and the Contractor a requirement for the Contractor to submit monthly reports on the Contractor's compliance with the final CIPP or the revised CIPP. DND shall advise NTI within five (5) business days of any deviations below the currently approved CIPP. Either Party may request a meeting of the Steering Committee following such a report. Where DND advises NTI of such a deviation below the CIPP in any two consecutive months, a meeting of the Steering Committee is required to be held pursuant to Section 12.2.

12.0 ENFORCEMENT

- 12.1 Where, during a Site clean-up, deviation from the approved CIPP or from the CIPP as amended pursuant to Section 7.6 indicate that the MIEC or MICC may not be achieved by the Contractor over the remainder of the Site clean-up, DND or its contracting agent shall advise the Steering Committee within ten (10) working days.
- 12.2 The Steering Committee, within one week of receiving notice under Section 12.1, shall convene to make a determination as to whether the Contractor is using its best efforts to comply with the MIEC or MICC. The Contractor shall then be required to demonstrate to the satisfaction of the Steering Committee that it has made best efforts to comply with the MIEC or MICC, and that fault for the failure to comply with the MIEC or MICC cannot reasonably be placed on the Contractor.
- 12.3 Where the Steering Committee does not make the determination required under Section 12.2 within 3 weeks, either Party may refer the matter to arbitration under the Expedited Arbitration provisions in Section 14.0.
- 12.4 Where the Steering Committee in a determination made under Section 12.2, or arbitrator to which a matter is referred under Section 12.3, determines that the Contractor failed to make best efforts to comply with the MIEC or MICC, and that fault can reasonably be placed on the Contractor for this failure, the

Steering Committee shall so advise DND's contracting agent of their determination or of that of the arbitrator. The Steering Committee or arbitrator may make recommendations on remedial measures to be applied, and DND's contracting agent may, after considering any recommendations by the Steering Committee or arbitrator, apply remedial measures at its sole discretion. DND's contracting agent shall report to the Steering Committee as soon as practicable on the results of the remedial measures applied. Remedial measures shall, to the extent possible, be designed to correct the Contractor's failure to achieve the MICC and/or MIEC, and to provide a disincentive for future failures. DND's contracting agent shall consider the following measures and inform NTI of the actions taken. Measures may include:

- a) requiring the Contractor to undertake additional measures to achieve the MIEC or MICC;
- b) providing the Contractor with information about specific Inuit or Inuit firms who are known to be available and qualified for employment by the Contractor, and advising the Contractor that further enforcement steps may be taken if the MIEC or MICC are not met;
- c) withholding progress payments;
- d) issuing a stop work order;
- e) charging the Contractor for damages related to a stop work order; or
- f) terminating the contract.

12.5 Where the Steering Committee, or arbitrator appointed under Section 14.0 determines that the Contractor made best efforts to achieve the MIEC and MICC through its currently approved CIPP, and that fault cannot reasonably be placed on the Contractor for failing to meet the MIEC or MICC, the Steering Committee, or arbitrator, shall adjust the MIEC or MICC.

12.6 Following an adjustment to the MIEC or MICC under Section 12.5, DND's contracting agent shall thereafter continue to monitor and report on the Contractor's performance as provided for in Section 11.3.

13.0 ARBITRATION

13.1 If DND and NTI disagree on any question of fact or mixed question of law and fact related to the interpretation, implementation or operation of this Agreement, with the exception of any matter within the jurisdiction of the Arbitration Board under the NLCA and of any matter related to provisions of this Agreement mentioned in Section 14.1, either Party may by written demand refer the dispute to arbitration in accordance with the following

- 14.6 The arbitration proceedings shall be held within two weeks of the appointment of an arbitrator. The arbitration proceedings shall be in a location agreed upon by the Parties, or if the Parties are unable to agree, as determined by the arbitrator. The timing for the hearing may be extended only by the mutual consent of the Parties, acting reasonably.
- 14.7 The arbitrator shall have all of the powers granted under the Commercial Arbitration Act (Canada) to conduct the arbitration, may compel the attendance of the Parties and any required witnesses and the tendering of any documents or things and dispose of any further matters that arise out of the arbitration decision (if raised by the Parties within five (5) days of the completion of the arbitrator's written decision).
- 14.8 With respect to any such arbitration:
- a) each Party shall bear its own costs and an equal share of the other costs of the arbitration, including remuneration and expenses of the arbitrator;
 - b) the arbitrator shall have jurisdiction to determine all questions of fact, law, and questions of mixed fact and law and make a determination;
 - c) all witnesses called to give evidence at the hearing shall be sworn under oath and shall be subject to such examination as the arbitrator determines to be appropriate, and there shall be a court reporter and a formal record of the hearing.
- 14.9 The arbitrator shall, on application, allow a Contractor or a Subcontractor directly affected by a decision requested of the arbitrator to participate in the expedited arbitration as an intervenor, on such terms as the arbitrator in his or her discretion may order.
- 14.10 The arbitrator shall render a decision in writing and provide such decision to the Steering Committee within one week of the conclusion of the hearing. The decision shall state the reasons on which it is based. The decision is final and binding, and is not subject to appeal.
- 14.11 Where a Party to the arbitration fails to comply with any of the terms of the decision of the arbitrator, any Party to the arbitration may file in the office of the Registrar of the Nunavut Court of Justice, a copy of the decision in the prescribed form, whereupon the decision shall be entered in the same way as a judgment or order of the court, and is enforceable as such.
- 14.12 Unless the Parties otherwise agree, the proceedings and arbitrator's decision shall be made public.

15.0 ENTIRE AGREEMENT

This Agreement and the Annexes hereto shall constitute the entire and sole agreement between the Parties and shall supersede all other communications, negotiations, arrangements and agreements of any nature among them in relation to this Agreement prior to the date of the Agreement.

16.0 SEVERABILITY

If any provision of this Agreement or its application to any person or circumstance shall, to any extent, be invalid and unenforceable, the remainder of this Agreement, or the application of such provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall be valid and enforced to the fullest extent permitted by law and be independent of every other provision of this Agreement.

17.0 ENUREMENT

This Agreement shall enure to the benefit of and be binding upon each of the Parties hereto, their respective heirs, legal representatives, successors and permitted assigns.

18.0 APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with the applicable laws of Canada and Nunavut.

19.0 TIME IS OF THE ESSENCE

The Parties acknowledge that time is of the essence of this Agreement.

20.0 PARLIAMENTARY APPROPRIATION

The implementation of the Agreement is subject to there being an appropriation for the contracts for the fiscal year in which any commitment would come in course of payment.

21.0 HOUSE OF COMMONS

No member of the House of Commons shall be admitted to any share or part of this Agreement, or to any benefit arising thereof.

22.0 AMENDMENTS

- 22.1 If either Party wishes to make changes to this Agreement, it shall provide notice of proposed changes in writing to the other Party. Amendments must be agreed upon by both Parties. Any agreed-upon amendments will be executed and attached as an appendix to this Agreement.
- 22.2 DND and NTI agree to consider amendments in an expeditious manner, particularly where the proposed amendments directly affect the conduct of a Site clean-up that is in progress or one which is scheduled to commence in the near term.

23.0 NOTICES

- 23.1 Where any Party is obliged or entitled to give any notice, request, approval, demand, consent, direction or other communication (i.e. Notice) to the other Party, such Party shall first communicate the substance thereof personally or by telephone. However, such Notice shall not be sufficiently given until sent in writing to the addressees at the address below. Any Notice may be personally delivered or sent by registered mail or telefacsimile and will be effective upon receipt by the addressee.

- 23.2 Notices to DND will be sent to:

Director General Environment
National Defence Headquarters
101 Colonel By Drive
Ottawa, Ontario
K1A 0K2

- 23.3 Notices to NTI will be sent to:

1st Vice President
Nunavut Tunngavik Incorporated
Box 1041
Cambridge Bay
Nunavut
X0E 0C0

24.0 OFFICIAL LANGUAGES

- 24.1 The official languages of this Agreement shall be English and Inuktitut. In the case of incompatibility between the two texts, the text of the English version shall prevail.

25.0 TERMINATION OF THE AGREEMENT

- 25.1 This Agreement will terminate on the later of December 31st, 2008 or when the Clean-Up Work as set out in this Agreement for the Sites listed in Section 3.1 is completed or on such a date agreed to by the Parties in accordance with Section 22.3 of this Agreement.

IN WITNESS HEREOF, the Parties have executed this Agreement.

**Nunavut Tunngavik
Incorporated**

Department of National Defence

Acting President

Minister of National Defence

this ____ day of _____ 2001

ANNEXES TO THE AGREEMENT

ANNEX A: REPORTS

A.1 Format for DND Work Force Estimate (Section 5.6)

Site:
Region:

Occupational Group	Projected Manpower Requirements							
	Year 1		Year 2		Year 3		Overall	
	Positions	Persondays	Positions	Persondays	Positions	Persondays	Positions	Persondays
Project Manager/General								
Superintendent (Off-site)								
Site Superintendent								
Site Clerk								
Expediter (Off-Site)								
Surveyor								
Surveyor's Assistant								
Service Truck Driver								
Camp Setup Carpenter/								
Electrician/Plumber								
Foreman								
Heavy Equipment Operator								
Heavy Equipment Mechanic								
Truck Driver								
Labourer/Scaleperson/Cutter								
Asbestos Labourer								
Hazardous Material Handler								
Cook/Cook's Helper								
Bear Monitor								
Nurse/First Aid								
Other								
Other								
Total:								

Note: The specific Representative Occupational Groupings included in this form may be changed, under Section 5.12, by mutual consent of the Contracting Working Group to reflect variations among Sites. DND's work force estimate may include additional categories of work not listed, as required.

A.2 Format for NTI Inuit Labour Projection (Section 5.7)

Site:														
Region:														
Positions Identified	Projected Manpower Requirements (person days)							Projected Inuit Employment (person days)						
	Year 1		Year 2		Year 3		Overall	Year 1		Year 2		Year 3		Overall
	Pos.	Person Days	Pos.	Person Days	Pos.	Person Days	Person Days	Pos.	Person Days	Pos.	Person Days	Pos.	Person Days	Person Days
Project Management														
Site Superintendent														
Site Clerk														
Expediter														
Surveyor														
Surveyor's Assistant														
Service Truck Driver														
Camp Setup														
Carpenter/Electrician/Plumber														
Foreman														
Heavy Equipment Operator														
Heavy Equipment Mechanic														
Truck Driver														
Labourer/Scaleperson/Cutter														
Asbestos Labourer														
Hazardous Material Handler														
Cook/Cook's Helper														
Bear Monitor														
Nurse/First Aid														
Other														
Other														
Total Positions														
Projected Inuit Employment									%		%		%	%

Note: The specific Representative Occupational Groupings included in this form may be changed, under Section 5.12, by mutual consent of the Contracting Working Group to reflect variations among Sites.

A.3 DND: Analysis of Contracting Opportunities (Section 6.5)

Site:	
Region:	
Description	% of Total Contract Value
1 Marine Transportation	
2 Commercial Airlines	
3 Local Aircraft Charter	
4 Catering	
5 Small Tools	
6 Camp Supply	
7 Bonds & Insurance	
8 Office Supplies	
9 Communications Equipment	
10 Bear Monitor	
11 Geotextile - Supply & Install	
12 Geomembrane - Supply & Install	
13 Drilling for Instrumentation	
14 Instrumentation	
15 Public Consultation/Translation	
16 Excavate Hazardous/Contaminated Soil	
17 Landfarming	
18 Gravel - Excavate & Place	
19 Excavation	
20 Demolition & Debris	
21 Landfill Excavation	
22 Asbestos Abatement	
23 Project Management and Overhead	
24 Other	
Total	100%

Note: The specific Contracting Opportunities included in this form may be changed, under Section 6.12, by mutual consent of the Contracting Working Group to reflect variations among Sites. DND's analysis of contracting opportunities may include other contracting opportunities not listed, as required.

ANNEX B: EDUCATION AND SKILLS PROFILES

Position	Essential Qualifications
Superintendent/Construction Manager	3-5 years directly related project management experience, and substantial (minimum 10 years) construction supervision experience, normally combined with trade certification in one or more relevant trades and/or relevant post-secondary education
Clerk	Previous clerical experience
Expediter	2-3 years experience as expeditor for a northern construction company, ideally combined with 2-3 years trade experience in an applicable construction trade
Surveyor Technologists	2-3 year college program and trade certification
Surveying Assistants	Some related training and/or experience
Service Truck Driver	On-the-job training Driver's license appropriate to class of vehicle
Foreman	3 years supervising similar construction activities
Electrician	Trade certification
Carpenter	Trade certification or 3-5 years on the job experience
Welder	Trade certification
Plumber	Trade certification
Heavy Equipment Operator	5 week certification program Valid driver's license
Heavy Equipment Mechanic	Trade certification or 5 years experience
Small Equipment Mechanic	Trade certification or 3-5 years experience
Truck Driver	Valid driver's license Approved medical certificate 3-4 weeks training
Labourer	On-the-job training; physically fit for the proposed work
Asbestos Labourer	12 hours classroom instruction 12 hours practical instruction
Asbestos Foreman	18 hour training course (following minimum of 2 years of experience as asbestos labourer)

Position	Essential Qualifications
	Certificate from Occupational Health and Safety
Hazardous Materials Handler	5 years + TDG certification through employer
Cooks	Trade certification or 2 years experience
Cooks Helper	Some related experience
First Aid	Training in appropriate first aid courses
Bear Monitor	Experienced polar bear hunter

Note: This list of qualifications is for the use of the Contracting Working Group in establishing the MIEC. This list is not intended for any other use by any third party for any purpose, and DND and NTI are not liable for any use of this list by any third party. Bidders or Contractors are required to establish their own criteria for hiring project staff.

ANNEX C: LIST OF ARBITRATORS

Honourable Roger P. Kerans

Roger F. X. Marentette

Daniel Ish Q.C.

Harvey J. Kirsh

Honourable Lorne O. Clarke

Paul-Emile Chiasson

ANNEX D BUSINESS ENVIRONMENT STATEMENT

The following language shall be included in all Solicitations of Interest prepared and distributed by DND's contracting agent, as described in Section 8.2 of this Agreement:

One of the principal objectives of The Nunavut Land Claims Agreement is to provide Inuit with means of participating in economic opportunities through government contracting. Article 24 of the NLCA ("Government Contracting") provides full details of the Government of Canada's obligations to fulfill this objective. In the case of DEW Line Clean Up for which the Department of National Defence (DND) has responsibility, NTI and the Government of Canada, as represented by DND, have entered into an Agreement (see Annex XX of the SOI).

The principal mechanism to which NTI and DND have agreed for provision of economic benefit for Inuit is the use of a Minimum Inuit Employment Content (MIEC) and a Minimum Inuit Content for Contracting (MICC). Companies that are invited to submit tenders for the work following this SOI will be informed of the site specific MIEC and MICC. These levels will be set within the following ranges – MIEC (65-85%); MICC (60-75%). Contractors will be required to achieve the MIEC and MICC in the contract, and DND's contracting agent will monitor levels of MIEC and MICC based on a monthly plan submitted by the Contractor.

In the case of the MIEC the Inuit workforce must be made up of Inuit enrolled under the NLCA. Contractors must understand that they may need to recruit a workforce from a number of communities in Nunavut, and that a significant number of the workers have Inuktitut as their first language. DND's contracting agent will provide bidders with a list of Inuit who have indicated their interest in employment in Site clean-ups, including information regarding their work experience and qualifications. This list will be prepared by NTI approximately six months prior to the commencement of the clean-up of a given Site.

In the case of the MICC, Inuit firms used as Subcontractors must be drawn from the Inuit Firm Registry maintained by NTI.