

YUKON GOVERNMENT

GENERAL ADMINISTRATION MANUAL

VOLUME 1: CORPORATE POLICIES -

POLICY 1.5

GENERAL

TITLE: INTERGOVERNMENTAL RELATIONS

POLICY

EFFECTIVE 03 08 07

1 SCOPE

1.1 Authority

1.1.1. This policy is issued under the authority of Cabinet meeting No. 03-27, dated August 07, 2003.

1.1.2. Nothing in this policy limits the prerogative of Cabinet to make decisions on intergovernmental relations of the Yukon Government.

1.2 Application

1.2.1 This policy applies to all departments and public officers as defined in the *Financial Administration Act* and to intergovernmental relations between the Yukon Government and the governments of Canada, the provinces and territories and foreign countries, nations or other political jurisdictions. It also applies to consultants contracted to work on behalf of the Government of Yukon.

1.2.2 This policy does not apply to intergovernmental relations between the Yukon Government and Yukon First Nation governments, which is subject to General Administration Manual (GAM) policy 1.12, or municipalities within the Yukon.

1.2.3 This policy does not apply to an intergovernmental agreement for the provision of goods or services, construction of a public work or lease of real property, for consideration, if its value is below \$50,000. In the case of agreements with multi-year terms, the total value of the agreement must be below \$50,000.

1.2.4 Departments are not required to go to Management Board with intergovernmental agreements provided they have the spending authority for the financial obligations created by the agreement. If new financial resources are required, then prior to signing the agreement, these can be requested through a Management Board Submission or through the regular variance and supplementary appropriation process.

1.3 Purpose and Principles

1.3.1 The Yukon Government is committed to developing and maintaining good relations with the governments of Canada, the provinces and territories and foreign countries, nations or other political jurisdictions, to advance the political, social, cultural, environmental and economic interests of the people and government of Yukon.

1.3.2 The primary purpose of this policy is to ensure that the Yukon Government intergovernmental relations are carried out in a coordinated, consistent and effective manner, so that other governments will understand and consider the goals, objectives, positions and circumstances of the people and Yukon Government.

1.4 Background

1.4.1 As a result of Devolution on April 1, 2003, Yukon's intergovernmental obligations are changing and there is a need to clarify the roles and responsibilities of departments and public officers in respect to intergovernmental relations. As well, the desire to balance administrative burden, especially when dealing with intergovernmental agreements, with the exercise of due care and diligence is central to this policy.

1.5 Definitions

1.5.1 Intergovernmental Activities – include those activities that support or affect the development and maintenance of effective intergovernmental relations. This includes negotiating and entering into intergovernmental agreements, participating in intergovernmental meetings, conferences and forums, taking part in national programs, contributing to the development of national social, fiscal and trade policy and generally working and collaborating with officials and representatives from other governments.

1.5.2 Intergovernmental Agreements – means all agreements between the Yukon Government and other governments as specified in section 1.2.1. This includes contracts, memoranda and letters of understanding or cooperation, accords, or other legally or politically binding agreements.

1.5.3 Intergovernmental Relations – include all those dealings and affairs between the Yukon Government and other governments as specified in section 1.2.1. This includes all intergovernmental activities per section 1.5.1 of this policy.

1.5.4 Intergovernmental Relations Strategy – means a Cabinet approved action plan, revised at least every five years, that identifies the Yukon Government intergovernmental goals, objectives and priorities.

2 ROLES AND RESPONSIBILITIES

2.1 Roles and Responsibilities, by subject

- The Intergovernmental Relations Branch of the Executive Council Office is responsible for coordinating the development and maintenance of effective intergovernmental relations.

- Departments, within their areas of responsibility, work with other governments to advance the intergovernmental goals, objectives and priorities of the Yukon Government as outlined in the intergovernmental relations strategy.

2.1.1 Intergovernmental Relations Strategy

- The Intergovernmental Relations Branch of the Executive Council is responsible for the development and dissemination of the intergovernmental relations strategy.
- The development of the strategy is a collaborative process that involves the active participation of all departments.

2.1.2 Intergovernmental Activities

- The Intergovernmental Relations Branch of the Executive Council Office monitors, coordinates, and engages in intergovernmental activities to advance the intergovernmental goals, objectives and priorities of the Yukon Government as outlined in the intergovernmental relations strategy.
- Departments, within their areas of responsibility, engage in intergovernmental activities to advance the intergovernmental goals, objectives and priorities of the Yukon Government as outlined in the intergovernmental relations strategy.

2.1.2.1 Intergovernmental Conferences and Meetings

Officials level conferences and meetings:

- Departments may send delegates to intergovernmental conferences and meetings outside the Yukon, with the approval of their Minister or Deputy Head as delegated by the Minister.
- Public officers' statements, when attending such conferences and meetings, are to reflect the goals, objectives and priorities of the intergovernmental relations strategy.
- Public officers wanting to make statements, that involve new policy positions or change existing policy positions, at such conferences and meetings, require prior approval by Cabinet for such statements.

Ministerial level conferences and meetings (Out-of Yukon):

- **Pre-activity:** The Intergovernmental Relations Branch of the Executive Council Office must be informed of the conference or meeting arrangements prior to delegate departure. This normally includes information about logistics, purpose of meeting, tentative agenda and a copy of the table of contents from briefing packages.
- **Post-activity:** A short report including communiqués and/or official minutes of the conference or meeting must be copied to the Intergovernmental Relations Branch of the Executive Council Office.

Ministerial level conferences and meetings (In-Yukon):

- Departments are to secure Cabinet approval for hosting, in-Yukon, intergovernmental conferences and meetings involving Ministers or their equivalents of other governments, **before** formal invitations are extended to conference delegates.
- When hosting in-Yukon intergovernmental conferences and meetings departments must involve the Intergovernmental Relations Branch of the Executive Council Office

to facilitate interdepartmental coordination and to ensure appropriate intergovernmental protocol is observed in relations with other governments.

2.1.2.2 Intergovernmental Negotiations and Agreements

- Departments may negotiate intergovernmental agreements and once signed, are responsible for administering these agreements.
- Departments must receive approval-in-principle from Cabinet to begin formally negotiating intergovernmental agreements that significantly change existing programs or that establish new programs.
- The Intergovernmental Relations Branch of the Executive Council Office is responsible for intergovernmental review, of all intergovernmental agreements subject to this policy, before they are signed.
- The Department of Justice is responsible for the legal review, of all intergovernmental agreements subject to this policy, before they are signed.
- Agreements that advance new policy positions, change existing policy or that require indemnification of Canada, require Cabinet approval before they are signed.

2.2 Roles and Responsibilities, by agency

2.2.1 Cabinet

As the decision-making body of the Yukon Government, Cabinet is responsible for providing overall direction for intergovernmental relations.

Its specific duties include, but are not limited to the following. Cabinet:

- Approves the intergovernmental relations strategy;
- Approves the government's policy positions on existing and emerging intergovernmental issues;
- Approves any mandates for intergovernmental negotiations;
- Approves intergovernmental agreements that advance new policy positions or change existing policy;
- Authorizes a Minister, pursuant to 65.2 of the *Financial Administration Act* (RSY 2002), to enter into an intergovernmental agreement that requires the indemnification of Canada;
- Approves departmental requests to host in-Yukon intergovernmental conferences and meetings involving Ministers or their equivalents of other governments; and
- Approves any other policies and procedures to enhance the government intergovernmental relations and to advance the objectives of this policy.

2.2.1.1 Secretary to Cabinet

- Arranges for review and analysis of intergovernmental issues and/or agreements being presented to Cabinet for approval.
- May require that intergovernmental agreements that would not normally require Cabinet or Management Board approval, be submitted to Cabinet or Management Board for such approval, by virtue of their intergovernmental implications.

2.2.2 Minister Responsible for Executive Council Office

- Recommends to Cabinet the intergovernmental relations strategy;

- Recommends to Cabinet the government's positions related to existing and emerging intergovernmental issues; and
- Recommends to Cabinet other policies and procedures to enhance the government intergovernmental relations and to advance the objectives of this policy.

2.2.3 Ministers of Departments

- Recommend to Cabinet the government's positions related to intergovernmental issues, negotiating mandates and agreements, within their departmental areas of responsibility;
- Approve departmental plans to attend intergovernmental conferences and meetings outside the Yukon;
- Seek Cabinet authorization for departmental plans to host, in-Yukon, intergovernmental conferences and meetings involving Ministers or their equivalents of other governments; and
- Seek Cabinet authorization to sign intergovernmental agreements that advance new policy positions, change existing policy or require the indemnification of Canada.

2.2.4 Deputy Head of Executive Council Office

- Advises the Minister on intergovernmental relations, including the intergovernmental relations strategy;
- Advises the Minister on intergovernmental initiatives proposed by departments;
- Advises other Deputy Heads on intergovernmental policies, initiatives, and activities, including providing guidance and assistance on protocol when hosting intergovernmental conferences, visits, and events;
- Develops guidelines to assist departments in meeting the government's intergovernmental objectives; and
- Promotes consistency and coordination of intergovernmental activities across government.

2.2.4.1 Intergovernmental Relations Branch of the Executive Council Office

- Manages the development and dissemination of the intergovernmental relations strategy;
- Provides strategic advice and makes recommendations to the Deputy Head of Executive Council Office on the intergovernmental implications of issues and policy initiatives advanced by departments;
- Reviews policies, programs and legislation for intergovernmental implications;
- Plans for, attends and/or hosts conferences or meetings or other intergovernmental activities;
- Provides advice and support to departments that are hosting conferences or meetings or other intergovernmental activities;
- Maintains the Intergovernmental Relations Ottawa Office and the Office of Protocol to assist departments with intergovernmental relations and activities;
- Reviews intergovernmental agreements to ensure their consistency with the intergovernmental relations strategy and for intergovernmental implications; and
- Maintains a registry of intergovernmental agreements.

2.2.5 Deputy Head of Justice

Arranges for the legal review of intergovernmental agreements before they are signed.

2.2.5.1 Legal Services Branch of the Department of Justice

Reviews intergovernmental agreements to ensure they are legally sound and that all statutory requirements are met.

2.2.6 Deputy Heads of Departments

- Advise their Minister and the Deputy Head responsible for Executive Council Office on intergovernmental activities within their departments' mandates;
- Recommend to their Minister on departmental plans to attend intergovernmental conferences and meetings outside the Yukon;
- Obtain guidance and assistance from the Executive Council Office when hosting intergovernmental events or entertaining important representatives of other governments, particularly when these conferences or visits involve Ministers or their equivalents of other governments;
- Ensure that intergovernmental agreements are reviewed by the Intergovernmental Relations Branch of the Executive Council Office and the Department of Justice prior to being signed;
- Ensure, where appropriate, an early review by Fiscal Relations of intergovernmental agreements that may impact on Formula Financing with the Government of Canada;
- Ensure that required Cabinet approvals are obtained before agreements are signed;
- Ensure that approval-in-principle has been received from Cabinet to begin formally negotiating intergovernmental agreements that significantly change existing programs or that establish new programs;
- Ensure that the department has approval from Cabinet prior to hosting in-Yukon conferences and meetings of Ministers or their equivalents of other governments; and
- Ensure all staff participating in intergovernmental activity understand their responsibility to represent government policy positions.

2.2.7 Public officers

Public officers participating in any intergovernmental activities represent the Yukon Government. They are to reflect the government's goals and objectives and communicate its policy positions when participating in intergovernmental activities.

Their responsibilities include the following:

- Ensure policy statements made in intergovernmental forums are consistent with policy direction obtained from Cabinet and/or the intergovernmental relations strategy;
- Develop, as required, an understanding of the political, social, economic and cultural character of their destination, prior to attending international intergovernmental conferences or events;
- Submit a brief post-conference or meeting report to their Deputy Minister;
- In the case of out-of-Yukon conferences and meetings involving Ministers or their equivalents, submit to the Intergovernmental Relations Branch of the Executive

Council Office a short report including communiqués and/or official minutes of the conference or meeting;

- In cases where more than one public officer attends the conference or meeting, the report will be submitted by the designated member of the government's delegation.

Note: It is understood that public officers often participate in intergovernmental activities that are exploratory in nature and, where frank and open discussions support consensus building and/or position development. Nothing in this section is intended to limit public officers' discretion to speak freely and to explore options in such a context. However, once formal governmental positions have been established, public officers are required to communicate these as outlined above.

3 PROCEDURES

3.1 Procedures related to intergovernmental agreements

- In order to ensure that due care and diligence is exercised when negotiating and signing intergovernmental agreements, departments are required to submit their prospective agreements for review by the Intergovernmental Relations Branch of the Executive Council and the Legal Services Branch of the Department of Justice.
- In addition, agreements that set or change policy or that require the indemnification of Canada, must be submitted for approval by Cabinet.

Note: For a flow chart representation of this process, refer to Appendix 1.

3.1.1 Is an Intergovernmental Agreement Needed?

- Often a department will engage in a number of activities with other governments that are informal in nature and, while such activities may be subject to specific arrangements, sometimes even in writing and include the need to cover some internal expenses, these arrangements are not necessarily intergovernmental agreements.
- For example, departmental officials often collaborate with colleagues from other governments on projects, committees or workgroups that may include specific workplans and/or commitments, without such commitments being intergovernmental agreements.
- Intergovernmental agreements are only those agreements between governments that are either politically or legally binding on the signatories to the agreement. Departments need only enter into intergovernmental agreements, when less formal arrangements are not feasible or prudent.
- If a department is unsure if an intergovernmental agreement is needed, advice should be sought from the Intergovernmental Relations Branch of the Executive Council Office.
- If an intergovernmental agreement is needed, departments must proceed as detailed in sections 3.1.2 to 3.1.9 below.

3.1.1.1 Renewals, amendments and new appendices to agreements

For the purpose of this policy renewals and/or amendments to existing agreements and/or new appendices to agreements that are in force are deemed to be intergovernmental agreements and subject to the same review and approval processes.

3.1.1.2 Negotiating mandates

Departments must receive approval-in-principle from Cabinet to begin formally negotiating intergovernmental agreements that significantly change existing programs or that establish new programs.

3.1.2 Completing an Intergovernmental Agreement Routing Slip

Complete the routing slip and send it, together with a copy of the draft agreement, to the Director of Intergovernmental Relations (IGR) in the Executive Council Office and to the ADM of Legal Services in the Department of Justice. Upon receiving the draft agreement, the IGR Director will assign an IGR officer to review the agreement. Similarly, the ADM of Legal Services will assign a solicitor.

***Note:** For a copy of the Intergovernmental Agreements: Routing Slip, refer to Appendix 2*

3.1.2.1 Role and responsibility of the IGR officer

The role of the officer is to review the prospective agreement for intergovernmental implications. This includes, but is not limited to: ensuring that the agreement is consistent with other similar intergovernmental agreements that have been previously concluded; ensuring that the agreement does not create an undesirable intergovernmental precedent, and ensuring that the agreement is consistent with the intergovernmental relations strategy. The IGR officer is responsible to provide, in writing to the departmental contact, his/her review comments and any associated recommendations.

3.1.2.2 Role and responsibility of the solicitor

The role of the solicitor is to review the prospective agreement for legal implications. This includes, but is not limited to: ensuring that the purpose of the agreement is consistent with the obligations and rights contained in the agreement; ensuring the proper legal description of the parties; ensuring that documents that are not intended to be legally binding include a provision so specifying; determining if the intended Yukon signatory has authority to sign; determining if an OIC for authority to indemnify is required, and generally ensuring that the agreement is complete and legally sound. The solicitor is responsible to provide, in writing to the departmental contact, his/her review comments and any associated recommendations.

3.1.2.3 Role and responsibility of the departmental contact:

The role of the departmental contact is to ensure that prospective agreements are reviewed and receive necessary approvals before they are signed. The departmental contact is responsible to provide, in sufficient lead-time, the necessary context and relevant documents that make the review and/or approval of the agreement effective and efficient.

3.1.3 Incorporating IGR and Justice Review Recommendations

The department initiating the agreement is responsible to determine which of the recommendations, made through the review process, it will incorporate in the final agreement. However, if any recommendations are not incorporated into the agreement, the department must be prepared to provide an explanation of its rationale for deciding not to implement such recommendations.

3.1.4 Seeking Cabinet Approval

Notwithstanding the review of intergovernmental agreements by the Intergovernmental Relations Branch of the Executive Council Office and by the Department of Justice, agreements pursuant to sections 3.1.4.1 below, must also be submitted to Cabinet for approval before being signed.

3.1.4.1 Cabinet approval is required for:

- Intergovernmental agreements that set new governmental policy positions; or
- Intergovernmental agreements that significantly change existing governmental policy positions; or
- Intergovernmental agreements that require indemnification of Canada.

3.1.5 Cabinet submission process

If the agreement requires approval by Cabinet, the submission process outlined in Part 2 of the Cabinet Handbook must be followed.

3.1.5.1 Simple agreement (Cabinet Submission – Exec. Summary)

If the agreement is quite simple in nature, a Memorandum to Cabinet – Executive Summary is required (see Cabinet Handbook, part 4 for assistance).

3.1.5.2 Complex agreement (Cabinet Submission – Full Submission)

If the agreement is more complex in nature, a Memorandum to Cabinet – Cabinet Submission is required (see Cabinet Handbook, Parts 2 and 4 for assistance).

3.1.6 Deciding who should sign an agreement

It is common protocol that the signatories to an agreement are of a similar level. Yukon normally follows this convention, provided the prospective Yukon signatory has authority to sign the agreement on behalf of Government. However, if the agreement involves receiving or spending money, section 5.5.3 of the Financial Administration Manual applies, which may further limit who has authority to sign the agreement on behalf of the Government.

3.1.7 Signing Authority

- Section 3(1) of the *Intergovernmental Agreements Act* provides for the Commissioner in Executive Council to assign to any Minister authority to negotiate and sign intergovernmental agreements on behalf of the Yukon Government.
- Order-In-Council 2003/236, an OIC of general applicability, provides any Minister with the authority to negotiate or sign such agreements.

- Section 17 of the *Interpretations Act* (RSY 2002) provides for ministerial delegation of signing authority to any appropriate public officer.

3.1.8 Indemnification (OIC requirement)

Section 65.2 of the *Financial Administration Act* (RSY 2002) prohibits entering into agreements that include indemnification provisions unless, in the case of agreements with Canada, approval is granted through an OIC. The determination of whether an OIC is required rests with the Department of Justice.

3.1.9 Registration of agreement

Once the agreement has been signed by all parties, one (1) copy must be sent to the IGR officer assigned in respect to that agreement, for entry into the Intergovernmental Agreements Registry. Departments should retain originals as needed for operational purposes and schedule their eventual disposition as required under the *Archives Act*