

PROCUREMENT INFORMATION FOR MUNICIPALITIES

Service New Brunswick
Strategic Procurement Division
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Ce guide est aussi disponible en français.



The following document applies to Municipalities and Rural Communities as defined in the *Municipalities Act*.

DISCLAIMER: The information contained in this document must not be considered to be legal advice. For any particular legal problem, the advice of your legal counsel should be obtained.

While every effort is made to ensure accuracy of the information available in this document, the Service New Brunswick assumes no liability or responsibility for the completeness, accuracy or usefulness of any of the information.

Information (including any revisions and updates) in this document is provided solely for municipal employees and officials purposes.

In case of discrepancy between content of this document and relevant New Brunswick legislation and regulations, the official version of New Brunswick Acts and Regulations as published by the Queen's Printer for New Brunswick will prevail.

It is also the responsibility of municipal employees and officials to ensure that they maintain an updated version of this document.

Prepared by:
Service New Brunswick
Strategic Procurement Division
PO Box 6000
Fredericton NB E3B 5H1

Tel.: 506-457-4371
Fax: 506-453-7462
<http://www.gnb.ca/procurement>

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Introduction

Introduction

In New Brunswick, public procurement is subject to a hierarchy of law, policy and trade agreements. Municipalities, like other public bodies, are subject to these legal obligations and have a duty to treat vendors fairly and get the best value for their dollars.

The past years have shown that vendors are aware of their rights and are not afraid to take legal action to challenge tendering procedures. For this reason, municipal employees and officials responsible for the procurement of goods, services and construction must ensure to familiarize themselves with all of their obligations.

The intent of this document is to guide municipalities through the public procurement process and help them understand that failure to comply with the established rules and procedures could result in legal action by vendors.

Municipalities must remember that although they are subject to the *Procurement Act*, they are responsible to do their own purchases and must be able to justify them. The Strategic Procurement Division can, upon request, provide information on procurement obligations; however, the Division will not provide legal advice nor will the Branch take responsibility for actions taken by municipalities.

Canadian Tendering Law

Canadian Tendering Law

Over the past couple of decades, the Canadian courts have ruled on numerous cases involving the conduct of the tender process, and the Supreme Court of Canada has stated that the integrity of the tendering process must be upheld. **These rulings have established a number of principles that are relevant to public procurement in this province. Some of the more notable principles are:**

- When a supplier submits a bid or proposal that is irrevocable in response to a tender call, a binding contract, known as Contract “A” is automatically established between the tendering agency (the owner) and the bidder. This contract requires the owner (e.g. municipality) to treat all bidders fairly and requires the bidder to honor his bid.
- A Request for Proposals (RFPs) is considered to be a tender.
- The owner is required to evaluate bids and make awards based on criteria set out in the tender documents. In the absence of other specific criteria, the award must generally be made to the lowest compliant bid.
- An owner may not arbitrarily cancel a tender after it is closed without justification.
- General statements such as “lowest or any bid not necessarily accepted” do not give the owner the right to do as they wish. The principles of fair treatment must be respected. This clause does not allow the owner to have hidden preferences and does not allow the owner to award the contract to anyone other than the lowest compliant bidder if the lowest compliant bidder is fully qualified and meets the specifications of the tender.
- The awarded contract, Contract “B”, must be substantially the same as Contract “A” (i.e. the tender call). Municipalities are not permitted to negotiate a different contract.
- Failure to fully disclose relevant information in the tender could result in failure of the process and legal action by bidders.
- The owner’s intentions regarding the evaluation of bids and award of the contract must be clearly defined in the tender documents.

Critical Court Decisions

- *Ron Engineering v. Ontario* – 1981: the Supreme Court of Canada decision that completely changed the law of competitive contracting covering all tenders and RFPs in Canada.
- *Chinook Aggregates v. Abbotsford* – BCCA 1989 and *M.J.B. Enterprises v. Defense Construction Canada* – SCC 1999: the leading Court of Appeal and Supreme Court of Canada judgments on the meaning of “lowest or any proposals not necessarily awarded”.

New Brunswick Legislation

The Province of New Brunswick has implemented two Acts that govern procurement of goods, services and construction by public bodies. These are: the *Crown Construction Contracts Act* and the *Procurement Act*.

Crown Construction Contracts Act



Definition of Crown Construction: construction, repair or alteration of land, road or structures owned by the Crown.

Definition of Construction: means a construction, reconstruction, demolition, repair or renovation of a building, structure, road or other civil engineering or architectural work and includes site preparation, excavation, drilling, seismic investigation, the supply of products and materials, the supply of equipment and machinery if they are included as an incidental to the construction, and the installation and repair of fixtures of a building, structure, road or other civil engineering or architectural work, but does not include professional consulting services related to the construction contract unless they are included in the procurement.

In New Brunswick, construction tendering is governed by the *Crown Construction Contracts Act*. This Act covers departments and most Crown corporations for highway and building construction and is administered by the New Brunswick Department of Finance.

Although this legislation does not formally cover municipalities, these organizations are expected to follow the basic principles as they are consistent with the trade agreement that applies to municipalities.

Note: If a municipality issues a tender that indicates that it is being tendered under the *Crown Construction Contracts Act*, then the rules and procedures in that Act must be followed.

For inquiries regarding building construction tendering or highway and road construction tendering please contact the Department of Transportation and Infrastructure at 453-3939.

Procurement Act and Regulation 2014-93

This Act and Regulation cover the procurement of **goods** and **services** by the Province and other public bodies, including Municipalities. It defines the tendering process and the responsibilities of various organizations and individuals. The Regulation also defines circumstances where exceptions can be made. This Act is consistent with the interprovincial trade agreements to which the Province is a Party.

Section 58 of Regulation 2014-93 indicates that municipalities are exempt from public tendering for goods under \$25,000 and services under \$50,000 (excluding taxes). However, for all procurements at or **above** these thresholds, municipalities **must** issue a public tender (unless they are exempt under section 152 to 161 or under section 166 of Regulation 2014-93).

It's also important to remember that even though the Provincial legislation defines the procurement process, it cannot overrule the basic tendering law established by the courts. For more information on the [Procurement Act](#) and [Regulation 2014-93](#), contact Strategic Procurement Division at (506) 444-5636.

Exemptions and Alternative Procurement Methods

An exemption or alternative procurement method is a provision in Regulation 2014-93 under the *Procurement Act* whereby all or some of the normal competitive bidding processes do not need to be followed for the procurement of certain goods and services, and/or goods and services in certain circumstances.

Exemptions and Alternative Procurement Methods for Municipalities

Municipalities are exempted from public tendering for the procurement of services provided by professionals identified in Section 166 of Regulation 2014-93 (see Annex C). Reporting to Strategic Procurement is not required for these exemptions; however, these exemptions only apply when the services are legislatively required to be provided by these licensed professionals.

Municipalities are also exempt from public tendering in circumstances identified in Sections 152 through 161 of Regulation 2014-93. Municipalities can use these exemptions under their own authority, but should ensure that they maintain records that clearly show that the exemption was warranted.

If a vendor takes legal action, the municipality will be required to justify the use of that exemption and could be held liable if it is not warranted. For more information on exemptions, please contact the Strategic Procurement Division at (506) 444-5636.

Interprovincial Trade Agreements

Over the past several years, New Brunswick, along with other provinces, has signed agreements that further define the conduct of public procurement. These agreements are intended to reduce interprovincial barriers to trade by prohibiting the consideration of local content or economic benefits in the evaluation of bids. A vendor from another province must be treated in exactly the same way as a vendor from New Brunswick or the local community. They also require the use of an open and fair procurement process.

These agreements are considered as policy rather than law but could be used by suppliers to support legal action by establishing intent and precedent. Bidders who feel they are unfairly treated also have access to a bid protest process through these agreements. Mediation and bid protests can be costly in time and money; therefore, it is in your municipality's best interest to comply with these agreements.

The Government of New Brunswick is a Party to three agreements that affect municipalities, namely: the Agreement on Internal Trade (AIT), the Atlantic Procurement Agreement (APA) and the Agreement on the Opening of Public Procurement for New Brunswick and Quebec (Quebec – New Brunswick Procurement Agreement).



As of July 1999, all municipalities are covered by the Agreement on Internal Trade (AIT) for procurements over \$100,000 (for goods and services) and over \$250,000 (for construction).

As of June 30, 2009, all municipalities are covered under the Atlantic Procurement Agreement (APA) for procurements of goods over \$25,000, services over \$50,000 and construction over \$100,000 and the Quebec – New Brunswick Procurement Agreement for procurements over \$100,000 (for goods, services and construction).

One of the requirements of these agreements is that municipalities **must** advertise tenders over these thresholds on the electronic tendering system approved by the Province. The approved system is the NBON (New Brunswick Opportunities Network), which is owned and operated by the Strategic Procurement Division of Service New Brunswick. This service is free of charge for municipalities. Further information on NBON is provided in this document.



Other principles established in the interprovincial trade agreements are reflected in the *Procurement Act*. In other words, by following the rules and procedures outlined in the Act, as well as the advertising requirement outlined above, municipalities will adhere to the Agreement on Internal Trade and the Atlantic Procurement Agreement.

To find out how municipalities can advertise tenders on NBON, call the NBON Help Line at (506) 444-5636 or Toll Free at 1-877-231-8800 or 1-800-561-1422.

The Tendering Process

Definition of Procurement

Procurement means buying, purchasing, leasing, renting or acquiring by any means goods, services or construction and includes all functions related to the acquisition from definition of requirements through award of the contract and on-going contract administration.

Procurement Value

The value of the procurement must be estimated at the time the tender is issued and must include the total financial commitment resulting from the procurement including commissions, tariffs, duties, installation costs, premiums, fees, transportation costs, interest and any other costs incidental to the procurement excluding taxes.

In the case of long-term contracts the value must include all of the compulsory part of the contract but not the cost of optional renewals if the duration is more than one year. For example, a \$20,000 per year cleaning contract for three (3) years with the option to renew for an additional two (2) years would be valued at \$60,000 (i.e. 3 x \$20,000). It is not permitted to design procurement, select a valuation method or divide purchase requirements with the intention of avoiding obligations imposed by the legislation or agreements.

Tendering Period

The *Procurement Act* requires that tenders over the thresholds (\$25,000 for goods and \$50,000 for services) remain open for a period of not less than fifteen (15) calendar days, which includes the date it was first advertised and the closing date.

Please refer to the section on “advertising requirements” for further instructions on the required tendering period.



Formulation of a Tender

For every tender issued, one contact person should be identified. Municipalities are responsible to ensure that all potential bidders receive the same information, and having only one contact person identified in the tender makes that process easier.

A tender may consist of two parts, namely; the tender notice and the tender documents. For simple, straight forward tenders, these parts may be combined.

The tender notice is the part of the tender that will be advertised. When applicable, it should contain the following information:

- The solicitation number;
- A brief description of the goods or services being procured;
- The place where relevant information and tender documents may be obtained;
- The conditions for obtaining the tender documents;
- The location where a bid submission shall be submitted;
- The date and time by which a bid submission shall be submitted;
- The date, time and location that bid submissions are to be opened, if the submissions are to be publicly opened.
- For the procurement of goods or services that are subject to a trade agreement, the tender notice shall include the name of the trade agreement and the relevant chapter number in the trade agreement.
- A statement that indicates the procurement is subject to the *Procurement Act* or the *Crown Construction Contracts Act* (when applicable).

The tender document(s) is the part of the tender that is generally distributed by the procuring entity (e.g. at the town hall). The tender documents **MUST** contain the following information:

- Detailed specifications, terms, conditions, mandatory requirements, etc., for the purchase (as applicable)
- Delivery requirements and address.
- If negotiations are allowed, the details surrounding what can be negotiated and how negotiations will be conducted. See details in Section 127 of Regulation 2014-93.
- If you want the ability to waive minor non-compliance with the mandatory requirement of the tender document, you must disclose your right to do so in the tender document. See Sections 119 and 120 of Regulation 2014-93 for rules on what can and cannot be deemed a minor non-compliance.
- Evaluation criteria and relative weights if criteria other than price are to be used in the evaluation (e.g. RFPs).
- Point of contact for inquiries, clarifications, etc.
- Any other relevant information.

Advertising Requirements

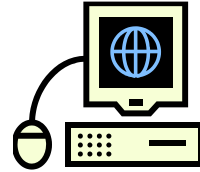
Tender Type	Minimum Advertising time
Goods at \$25,000* or above or	<p>Your tender MUST be advertised on NBON for a minimum of 15 calendar days.</p> <p>Newspaper advertisements can be used IN ADDITION to the electronic system.</p>
Services at \$50,000* or above	<p>Your tender MUST be advertised on NBON for a minimum of 15 calendar days.</p> <p>Newspaper advertisements can be used IN ADDITION to the electronic system.</p>
Construction at \$100,000* or above	<p>Your tender MUST be advertised on NBON for a reasonable period of time (15 calendar days is recommended).</p> <p>Newspaper advertisements can be used IN ADDITION to the electronic system.</p>

* Excluding taxes

New Brunswick Opportunities Network (NBON)

[www.gnb.ca/nbon]

The New Brunswick Opportunities Network is an Internet based system that advertises notices for goods, services and construction tenders issued on behalf of the Government of New Brunswick. Official tender documents for tenders issued by the Province are also available free of charge to vendors on NBON and electronic bidding is offered on selected tenders.



In addition, NBON advertises tenders issued by other public sector bodies in New Brunswick, such as municipalities, universities, community colleges, and crown corporations such as NB Power. However, these entities are responsible for distributing their own official tender documents.

NBON is easily accessible and **free of charge for municipalities**. Municipal officials responsible for procurement can easily enter their information in NBON and the tender notices can be adapted with the municipality's logo and other relevant information.



By advertising tenders on NBON, municipalities comply with the requirements of the *Procurement Act*, the Agreement on Internal Trade, the Atlantic Procurement Agreement and the Agreement on the Opening of Public Procurement for New Brunswick and Quebec, and they can continue to distribute the tender documents from their town hall or other locations of their choice.

To use this service, all you need is a computer with Internet Explorer 11, the latest version of Chrome, or the latest version of FireFox.

To find out how to advertise your tenders on NBON, please contact the NBON Help Line at (506) 444-5636, Toll Free at 1-877-231-8800 or 1-800-561-1422 or by e-mail at nbon@snb.ca.

Bid Deposit/Receiving Bids

Bids received must be:

- Date and time stamped, and
- Placed in a secure location, in a locked receptacle which must remain unopened until the prescribed date and time for the bid opening.

At their discretion, municipalities can keep a log and/or ask for signatures when bids are submitted, but this is not a requirement of the *Procurement Act*.

It should also be noted that the *Procurement Act* permits bids to be submitted by facsimile, hand delivered, mail, courier or via the NBON.

Tender Opening

Some important points to remember about tender opening:

- Bids must remain in a locked receptacle until tender opening.
- If bid submissions are to be opened in public, the procuring entity shall open them at the location, date and time specified in the solicitation documents and anyone can attend the opening.
- The only information that may be released at a tender opening is the name of the compliant bidders, and their total bid price if the competitive bidding process is based on price. If the submissions are evaluated on a point system (example: RFP), only release the name of the bidders.
- No award is to be made at the time of opening bids.

Rejection of Bids

A bid submitted after the tender closing date and time **cannot** be accepted; however, Section 111(2) of the Regulation allows an entity to accept a late bid with approval from the head of your organization if the late receipt of the bid submission was caused solely by mishandling on the part of your organization.

If you receive a bid submission by facsimile transmission, only the pages that are fully transmitted by the closure of the solicitation period may be accepted in the competitive bidding process, and all the pages received after the closure of the solicitation period shall be rejected.

A bid must be rejected **AT TENDER OPENING** if:

- It is not signed,
- The bid security deposit, certified cheques or bid bond is not provided (in cases where this was a mandatory requirement),
- If more than one item is being procured, the bid submission does not contain a total price if one was required by the solicitations documents, or
- The bid submission is illegible.



IMPORTANT: do not reject a bid at tender opening unless you are absolutely certain that it must be rejected. When in doubt, accept the bid and contact the Strategic Procurement Division or your solicitor for more information. You can always reject the bid during the evaluation process. Remember that the decision to reject a bid at tender opening is FINAL.

AFTER TENDER OPENING (during the evaluation), you must reject any bid that does not comply with the mandatory requirements featured in the tender. (See Section 119 and 120 of Regulation for details.) You cannot award to a non-compliant bid.

Bid Evaluation and Tender Award

Bids must be evaluated on the basis of the criteria specified in the tender documents. If no other criteria are specified, price will be the primary consideration.

Generally a tender is awarded to the lowest priced compliant bid or to the highest scoring compliant proposal (in the case of RFPs). A compliant bid is one that meets all mandatory conditions and specifications in the tender.

Please refer to the next section for more information on awarding tenders.

Right to Reject Clause

When a public organization wants to use a discretionary clause such as “lowest or any bid not necessarily accepted”, they must remember that this clause does not give them the right to do as they please, treat vendors unfairly, have hidden preferences, nor does it give them the right to award to an other than the low bidder if the low bidder is fully qualified and meets all specifications.

Case Law has shown that it is an implied term that the lowest qualified bidder shall be awarded the contract. For more information, refer to the judgment of BC’s Court of Appeal in *Chinook Aggregates v. Abbotsford*, 1989.

Use of Preferences

Local or provincial preferences must not be given on tenders at or above \$25,000 (for goods) and \$50,000 (for services), unless they are exempted for a legitimate reason as specified in Regulation 2014-93 under the *Procurement Act*. **Economic benefits to the municipality or region must NOT be considered in the evaluation of bids. In Exceptional circumstances the Minister may grant a temporary exemption under Section 18 of the Act for purposes of regional economic development in compliance with Section 161 of the Regulation.** Failure to comply with this requirement could result in bid protests or legal action by vendors.

If the procurement is LESS THAN \$25,000 for goods, less than \$50,000 for services or less than \$100,000 for construction, **AND you have clearly identified in your tender that a preference may be given to a New Brunswick or local vendor, then you may give preferential treatment to a vendor in accordance with Sections 128 through 137 of the Regulation.**

Disclosure of Tender Results/Debriefings

Where an award was made based on price only (to the lowest compliant bid), municipalities may disclose, upon request, the following information to a vendor who has submitted a bid on that particular tender:

- a list of all vendors who submitted a compliant bid on that tender (if the total bid prices were read at tender opening, you may disclose their total bid prices in addition to their names), and
- the name and total bid price of the successful bidder.

RFP Debriefings

After a procurement contract has been awarded and on the request of an unsuccessful supplier, the Municipality shall provide the unsuccessful supplier with a debriefing on the procurement process.

During a debriefing, a procuring entity shall not reveal the following information, except as otherwise provided for in Regulation 2014-93:

- (a) the bid of another prospective supplier; and
- (b) the score and ranking of another prospective supplier, including those of the successful supplier.

The objective here is to allow the unsuccessful proponent to improve on their next proposal. The information released for each category, other than the scoring, should be vague and give general statements as to their strengths and weaknesses for each criteria.

Municipalities are not obligated, and should not, release information contained in bids or proposals that could reasonably be considered to be proprietary or adversely affect the commercial interests of the bidder (e.g. information such as unit pricing, the company's financial situation, RFPs methodology, etc.) But the name and total bid price of the successful bidder shall not be withheld. (See Section 149 of Regulation 2014-93 – Confidentiality for more details.)

If you are unsure about what information should be released to vendors, please contact the Strategic Procurement Division.

Tips/Suggestions



Here are a few things to remember about the public tendering process:

- Never tell a bidder that they have won (or lost) before the award has been officially made.
- Never discuss bids or proposals with anyone (other than other members of the evaluation team) during the evaluation. This information is confidential.
- Always direct questions regarding a tender to the individual identified in the tender documents (in order for all potential bidders to receive the same information).
- Do not provide copies of bids or proposals to competing vendors.
- Treat all vendors fairly. This principle is one of the fundamentals of public procurement.
- **Even if you are not obligated by legislation to do a certain thing, always use good business practices. Remember, it is your duty to responsibly spend your tax payers' dollars.**
- “Right to reject” clauses are there to protect you from unqualified vendors; not to allow you to give preferential treatment.
- Whenever you are in doubt, always consult with staff from Strategic Procurement and/or with your legal counsel. Note: Strategic Procurement does not provide legal advice.

Requests For Proposals

A **request for proposals** (RFP) is an invitation where criteria other than just the price are used to evaluate responses and where the award is made based on the highest compliant score. **Proposals** are the bids received in response to RFPs.

In general, the RFP process is used when procuring complex services where the method of completing a project is usually left up to the vendors. The RFP outlines the “what”, “when” and the “why”, but the “how” is left to be identified by the vendors. RFP’s are sometimes used to procure complex goods as well.

Unlike standard tenders, cost is not the primary factor upon which an award is made. Depending on the procurement, any number of criteria, in addition to the cost, can be used to evaluate proposals (e.g. experience of the company’s personnel, qualifications, history of past similar projects, delivery time, methodology, etc.).

Whatever the criteria used to evaluate proposals, the *Procurement Act* requires that the RFPs clearly indicate the criteria to be used and the method by which the proposals will be evaluated, including the relative weight assigned to each criterion. Hidden criteria cannot be used to evaluate RFPs.

The main objective of the RFP evaluation process is to fairly and objectively determine the frontrunner (and not to rank all the proposals in order).

Proposals must be evaluated by an evaluation committee comprised of people with public procurement knowledge and/or people who understand the project and have no conflicts of interest with the procurement.

This committee should have a Committee Chair responsible for informing all the members of their duties and distributing copies of proposals to committee members for evaluation.

Once the RFP has closed and all the proposals have been received, a copy of each proposal must be distributed to each committee member. Members should be notified that all information related to this process must remain confidential until an award has been made.

On their own, (can be in the same room) members will then read all proposals and score each solely on its contents and on the extent to which it addresses the stated evaluation criteria. Proposals must not be scored in comparison to other proposals. **They must only be scored based on the contents of the proposals and the RFP criteria. New criteria cannot be added after the RFP has closed.**

When scoring, provide written comments or notes for the score in each category of criteria including both strengths and weaknesses. Keep in mind that your evaluation must be defensible and may have to be conveyed to unsuccessful proponents or be defended in court. We recommend that once each member has scored every proposal, the committee should meet in order to come to a consensus of the total scoring for each proposal.

In order to ensure compliance, review each proposal to assure full compliance to all mandatory requirements. Words such as “MUST”, “MANDATORY”, “SHALL” or “REQUIRED” indicate requirements that must be met in order for the proposal to receive further consideration. An award CANNOT be made to a proposal that does not meet mandatory requirements. (See Sections 119 through 127 of Regulation 2014-93 for more details.)

Recommend award of the RFP to the vendor with the highest scoring compliant proposal.

The Strategic Procurement Division generally distributes an “Evaluation Team Handbook” to client departments that are evaluating RFPs. To obtain a copy of this handbook, examples of RFPs templates or to obtain further information on RFPs, contact the Strategic Procurement Division at (506) 444-5636. Strategic Procurement can also provide you with a standard formula used to calculate the points attributed for the cost indicated in the proposals.

Request for Expressions of Interest (REOI)

Municipalities must realize that REOI is not a process used to circumvent public tendering, nor is it a process used to disqualify vendors or create a short list for a RFP. Most organizations use a REOI to build vendor interest in a project, and to see if there is enough competition to justify a RFP.

A REOI is exactly what it says, a “request for expressions of interest”. You have a project that you want to realize and you are not sure if there are any vendors with the necessary resources and experience that would be interested in the project. How do you find these vendors, and how do you get them interested in your project? You can issue a widely advertised REOI.

Your ultimate goal in a REOI process should be to build vendor interest and ultimately to get the best proponents to submit proposals. So it’s important to have a solid plan, a clear definition of the project and to provide answers to vendors’ key concerns.

The REOI document should contain information such as a clear description of the project, timeline, and a general outline of the evaluation criteria for the upcoming RFP or for any intervening stages. Finally, the REOI should ask vendors to respond (i.e. maximum of 5 pages) with information such as identification of the team/corporate players, financial information, similar project experience and their approach to the process. If the REOI is successful, a publicly issued RFP should follow.

We strongly suggest that municipalities unfamiliar with this process communicate with the Strategic Procurement Division to obtain further information.

Other Resources

New Brunswick Government Contracts

When goods or services are frequently purchased by government departments, Strategic Procurement establishes long-term contracts with vendors through an open tendering process. These contracts are established in order to obtain lower prices by bulk purchasing and to save time by eliminating the need to tender each individual purchase.

All government departments as well as municipalities may purchase goods and services through these contracts.

Office furniture, computers, automobile parts, informatics and electrical supplies are just a few examples of goods and services that can currently be bought by departments and other government funded bodies under long-term contracts.

To view the list of contracts, use the “contract browse” option in NBON. To have access to this service, forward a written request to nbon@snb.ca. For more information, call the NBON Help Line at 1-877-231-8800 or 1-800-561-1422.



How to order from contracts?

Please note that to order from these contracts, you must send a request or requisition **TO THE VENDOR** and indicate the contract number from which you wish to buy. Vendors must give municipalities the same prices they give to departments.

If you experience problems obtaining the same prices as departments, contact the Procurement Specialist responsible for that contract.

Standard Terms and Conditions

The Government of New Brunswick, in collaboration with the other Atlantic Provinces, has established a set of “Standard Terms and Conditions” which apply to all of its goods and services tenders.

These terms and conditions cover issues and situations such as late bids, how to submit bids, vendor registration, liability for costs, right to reject, bidders located outside Canada, standards and certifications, right to cancel tender, etc.

These terms and conditions are intended to fully disclose all relevant procurement information to vendors and in return protect the province from challenges or legal actions.

Municipalities are welcome to use any of these clauses for their own tenders. However, municipalities must remember that these clauses are intended to protect the procuring entity in certain circumstances; these clauses do not allow the province or municipalities to treat vendors unfairly.

The “Atlantic Standard Terms and Conditions for Goods and Services” are available on-line at <http://atlanticsuppliers.ca/acts-regulations/atlantic-provinces-standard-terms-and-conditions-goods-and-services/>

Important Websites

PROCUREMENT ACT

<http://laws.gnb.ca/en/ShowPdf/cs/2012-c.20.pdf>

GOVERNMENT OF NEW
BRUNSWICK

<http://www.gnb.ca>

REGULATION 2014-93

<http://laws.gnb.ca/en/ShowPdf/cr/2014-93.pdf>

Service New Brunswick

www.gnb.ca/procurement

CROWN CONSTRUCTION CONTRACTS ACT AND
REGULATIONS

<http://laws.gnb.ca/en/showpdf/cs/C-36.pdf> &
<http://laws.gnb.ca/en/showpdf/cr/82-109.pdf>

STANDARD TERMS AND
CONDITIONS

[Atlantic Standard Terms and
Conditions for Goods and Services](#)

NEW BRUNSWICK OPPORTUNITIES NETWORK
(NBON)

www.gnb.ca/nbon

N.B. GOVERNMENT CONTRACTS

www.gnb.ca/nbon

AGREEMENT ON INTERNAL TRADE (AIT)

<http://www.ait-aci.ca/agreement-on-internal-trade/>

ATLANTIC PROCUREMENT AGREEMENT (APA)

<http://www.cap-cpma.ca/images/CAP/Procurement%20Agreement%20English.pdf>

AGREEMENT ON THE OPENING OF PUBLIC PROCUREMENT FOR NEW BRUNSWICK AND
QUEBEC (Quebec-New Brunswick Procurement Agreement)

[http://www2.gnb.ca/content/dam/gnb/Departments/gq-sg/pdf/Procurement/2008QC-
NBprocurement-e.pdf](http://www2.gnb.ca/content/dam/gnb/Departments/gq-sg/pdf/Procurement/2008QC-NBprocurement-e.pdf)

Frequently Asked Questions

Q. What is a Request for Proposals (RFP)?

- A. A RFP is a tender where criteria other than just the price are used to evaluate responses and where the award is made based on the highest compliant score. RFPs are generally used to purchase complex goods or services where the method of completing a project is usually left up to the vendors. The RFP outlines the “what”, “when”, and the “why”, but the “how” is left to be identified by the vendors.
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Q. What is the difference between Goods, Services and Construction?

- A. In Canada, public procurement is divided into three (3) distinct categories: GOODS, SERVICES, and CONSTRUCTION. In New Brunswick, Goods and Services are legislated by the *Procurement Act*, and construction is legislated by the *Crown Construction Contracts Act*.

The *Agreement on Internal Trade* (AIT) provides the following definitions:

Goods means, in relation to procurement, moveable property (including the costs of installing operating, maintaining or manufacturing such moveable property) and includes raw materials, equipment and other physical objects of every kind and description whether in solid, liquid, gaseous or electronic form, unless they are procured as part of a general construction contract.

Services means, in relation to procurement, all services including printing, garbage removal, snow removal, salt hauling, janitorial services, studies, utilities, consulting, professional services, etc., unless the services form part of a general construction contract.

Construction means a construction, reconstruction, demolition, repair or renovation of a building, structure or other civil engineering or architectural work and includes site preparation, excavation, drilling, seismic investigation, the supply of products and materials, the supply of equipment and machinery if they are included in and incidental to the construction, and the installation and repair of fixtures of a building, structure or other civil engineering or architectural work, but does not include professional consulting services related to the construction contract unless they are included in the procurement.

Q. How do I determine if my procurement is a good or a service when I am purchasing a mix of goods and services?

- A. When both goods and services are to be obtained by a procurement process, the procurement shall be treated as one of the following:
- a) a procurement for services, if the estimated value of the services to be obtained is greater than the estimated value of the goods to be obtained; or

- b) a procurement for goods, if the estimated value of the goods to be obtained is greater than the estimated value of the services to be obtained.
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Q. When do municipalities HAVE to issue a public tender?

- A. Municipalities MUST issue a public tender for:
- Goods at \$25,000 and over (excluding taxes)
 - Services at \$50,000 and over (excluding taxes)
 - Construction at \$100,000 and over (excluding taxes)
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Q. How do municipalities HAVE to advertise their public tenders?

- A. Municipalities MUST advertise the following tenders on NBON:
- Goods at \$25,000 and over (excluding taxes)
 - Services at \$50,000 and over (excluding taxes)
 - Construction at \$100,000 and over (excluding taxes)

Newspaper ads can be used IN ADDITION to the electronic system (NBON).

Q. For how many days do municipalities have to advertise tenders?

- A. Tenders for goods over \$25,000 and services over \$50,000 MUST be advertised for a minimum of 15 calendar days.

Tenders for construction should be advertised for a reasonable amount of time (15 calendar days is recommended), but there is no minimum number of days established. Use good business practices.

Q. Why award to the lowest compliant bid?

- A. Awarding to the lowest compliant bid is a principle established by case law. Using clauses such as “lowest or any bid not necessarily accepted” does not mean that municipalities can award the tender to the vendor of their choice. This clause does not allow municipalities to award to another bid other than the lowest bid if the lowest bid is compliant, qualified and meets all specifications of the tender. (See Section 139 of Regulation 2014-93 for additional details.)
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Q. Can municipalities buy off contracts established by the Government of New Brunswick?

A. Yes. Most corporate contracts that are established for all government departments can also be used by municipalities, universities, hospitals, solid waste commissions, and other public funded bodies. In order to obtain the same prices as the government receives, you must give the vendor the contract number when you place your order. When vendors bid on these contracts, they commit, at tender time, to give the same prices to government funded bodies as they give the Province. More information on N.B. Government contracts is available in the “Other Resources” section.

Q. What is NBON?

A. NBON stands for the **New Brunswick Opportunities Network**. NBON is an electronic tendering system owned and operated by Service New Brunswick. All public tenders issued by the Province are advertised on this system. Municipalities also use this system at no charge to advertise their tenders. More information on NBON and how to use the system is available in the “New Brunswick Opportunities Network” section.

Q. When can municipalities give a preference to a local vendor when awarding a tender?

A. Municipalities can only give preferential treatment to a local vendor when:

- The procurement is less than \$25,000 for goods, \$50,000 for services or \$100,000 for construction or for goods and services that are not covered by trade agreements **AND you have clearly identified in your tender documents that a preference may be given to local vendors. (See Sections 128 Through 137 of Regulation 2014-93 for more details.)**

Q. Where can I find an example of a tender document or RFP document?

A. Depending on what you are buying, Strategic Procurement can provide you with templates or examples of tenders to help you with the design of your tenders. We recommend that you contact us and we can provide you with information that meets your specific needs.

Q. What happens if a municipality doesn't follow the rules established in legislation, the principles of case law or trade agreement policies?

A. If a municipality chooses to proceed in such ways, then it is susceptible to bid protests, legal actions and potentially negative publicity. Bids protests and legal actions can be very costly in time and money. Spending tax payers' money is the responsibility of all municipal officials and should be done in accordance with the established rules and procedures.

Q. Do bids always have to be opened publicly?

A. No. When a public tender is issued, bids should indicate if a public opening will occur. (See Section 114 of Regulation 2014-93 for details.)

Q. Who can I contact to get information on tendering goods/services?

A. You can contact the Strategic Procurement Division, Service New Brunswick, via the NBON helpline at 444-5636.

Q. Who can I contact to get information on building construction tendering?

A. You can contact the Design & Construction Branch, Department of Transportation and Infrastructure at 453-3939.

Q. Who can I contact to get information on road construction tendering?

A. You can contact the Financial and Administrative Services Branch of the Department of Transportation at 453-3939.

Q. Who can I contact to get information on the Procurement Act and the various trade agreements?

A. You can contact the Strategic Procurement Division, Service New Brunswick via NBON helpline at 444-5636.

Q. Who can I contact to register on NBON and have access to services provided on NBON?

A. You can contact the NBON Help Line at 1-877-231-8800 or 1-800-561-1422 or 506-444-5636.

Q. Who can I contact to get information on how to sell land or property?

A. You can contact the Property Services Branch at 453-2221.

Definitions

- **BID**: Bidder's written offer to provide the required goods or services at a given price or rate, or any similar document issued in reply to a Solicitation. May also be referred to as a Proposal, Tender, Quotation, Submission, Response or similar name.
- **BIDDER**: Any person, business, or Consortium that submits a bid.
- **BID PROTEST**: means a formal complaint made against the methods employed or decisions made by a procurement authority in the process leading to the award of a tender or contract.
- **CONSTRUCTION**: means a construction, reconstruction, demolition, repair or renovation of a building, structure or other civil engineering or architectural work and includes site preparation, excavation, drilling, seismic investigation, the supply of products and materials, the supply of equipment and machinery if they are included in and incidental to the construction, and the installation and repair of fixtures of a building, structure or other civil engineering or architectural work, but does not include professional consulting services related to the construction contract unless they are included in the procurement.
- **ELECTRONIC TENDERING**: means the use of a computer-based system directly accessible by suppliers and providing them with information related to calls for tenders and requests for information.
- **EXEMPTIONS/EXCEPTIONS**: means the exemption from tendering certain goods or services or the exemption from tendering goods or services in certain circumstances.
- **GOVERNMENT FUNDED BODIES** or **PUBLIC BODIES**: means any corporate body, corporation, municipality, university, board, commission and body prescribed by Regulation.
- **INVITATION TO TENDER** or **TENDER**: means a written invitation for prospective vendors to submit offers, bids, or proposals for specified goods, services or construction projects.
- **GOODS**: means, in relation to procurement, moveable property (including the costs of installing, operating, maintaining or manufacturing such moveable property) and includes raw materials, products, equipment and other physical objects of every kind and description whether in solid, liquid, gaseous or electronic form, unless they are procured as part of a general construction contract.
- **MANDATORY**: means obligatory, required by order: a provision that cannot be waived.
- **MASH SECTOR**: means **M**unicipalities, publicly funded **A**cademic institutions (universities), **S**ocial service and **H**ealth entities (hospitals).
- **PREFERENCE**: means an advantage in the solicitation, restriction or award of tenders granted to a vendor by reason of the vendor's business location or origin of the goods or services.
- **PROPOSAL**: means a bid or offer submitted in response to a Request for Proposals.

- **SERVICES:** means, in relation to procurement, all services including printing, garbage removal, snow removal, salt hauling, janitorial services, studies, utilities, consulting, professional services, etc., unless the services form part of a general construction contract.
- **VENDOR/SUPPLIER:** means any corporation, partnership, individual, sole proprietorship, organization, joint stock company, joint venture or any other private legal entity.

Conduct Handbook for Municipal Employees and Officials

Written for the public sector, this book is an excellent Canadian resource that discusses ethical standards and codes of conduct for municipal employees and officials involved in competitive contracting. Covering topics from abuse of office and corruption to conflict of interest and financial disclosure, the book provides a review of legislation and ethical standards.

The authors are M. Rick O'Connor, Peter-John Sidebottom and David G. White. This book was originally published in June 1999 by Butterworths, and the 2nd Edition was published in March 2003.

ANNEX A: Contacts

Annex A: Contacts

For more information on procurement of goods and services, the *Procurement Act*, trade agreements, etc., contact the Strategic Procurement Division at 444-5636.

CONTACTS

Department of Transportation & Infrastructure	453-3939	
Property Services Branch	453-2221	
NBON Help Line	444-5636 or 1-800-561-1422	NBON@snb.ca

ANNEX B: Summary of Rules and Thresholds

THRESHOLDS*	PROCEDURES TO FOLLOW
<p>< \$25,000 (GOODS)</p> <p>< \$50,000 (SERVICES)</p> <p><\$100,000 (CONSTRUCTION)</p>	<ul style="list-style-type: none"> Municipalities don't have to publicly tender, but are strongly encouraged to use good business practices and obtain several quotes for procurements below these thresholds. For construction projects, municipalities are encouraged to follow the basic principles outlined in the <i>Crown Construction Contracts Act</i> and Regulations.
<p>≥ \$25,000** (GOODS)</p> <p>≥ \$50,000** (SERVICES)</p>	<ul style="list-style-type: none"> MUST follow the rules and procedures identified in the <i>Procurement Act</i> and Regulation 2014-93 (i.e. MUST issue a public tender). MUST follow the rules and procedures outlined in the Atlantic Procurement Agreement. MUST be publicly advertised on NBON. (May place tender notices in newspapers <u>in addition</u> to the electronic system) MUST be advertised for a minimum of 15 calendar days, unless exempted by regulation. MUST also follow the rules and procedures outlined in the Agreement on Internal Trade and the Quebec-New Brunswick Procurement Agreement for procurement of goods or services over \$100,000.
<p>≥ \$100,000** (CONSTRUCTION)</p>	<ul style="list-style-type: none"> Encouraged to follow the basic principles outlined in the <i>Crown Construction Contracts Act</i> and Regulations. MUST follow the rules and procedures outlined in the Agreement on Internal Trade, the Atlantic Procurement Agreement and the Quebec-New Brunswick Procurement Agreement (MUST issue a public tender). MUST be advertised on NBON. (May place tender notices in newspapers <u>in addition</u> to the electronic system.)
<p>EXEMPTIONS</p>	<p>In Regulation 2014-93, municipalities are exempt from following the rules and procedures outlined in the <i>Procurement Act</i> for the circumstances identified in Sections 152 through 161. Municipalities must be able to justify exempted procurements.</p>

* All amounts exclude taxes.

** The legislation and the agreements **forbid the use of local preferences and the consideration of economic development criteria or local content** in the evaluation of tenders and awards of contracts over these thresholds.

Annex C –Alternative Procurement Methods - Exemptions

Exemptions under section 152 through 159, section 161 and section 166 of the Regulation under the *Procurement Act*

Limited competitive bidding – Under Section 152

The municipality may grant exemptions from the public tendering process and invite bids from select suppliers for the following goods and services:

- | | |
|--|--|
| (a) Goods for Resale to the Public
Purchase of goods intended for resale to the general public; | RESALE |
| (b) Third Party
Purchase of goods or services procured on behalf of an entity that is subject to neither the Act nor a trade agreement; | THIRD PARTY |
| (c) Philanthropic
Purchase of goods or services procured from a philanthropic institution or goods manufactured by or services provided by incarcerated persons or persons with disabilities; | PHILANTHROPIC |
| (d) Restricted Movement
Purchase of goods that are legally restricted from moving interprovincially, if the restriction is consistent with applicable trade agreements; | RESTRICTED
MOVEMENT |
| (e) Financial Analysts or management of investments
Purchase of services of a financial analyst or the management of investments by an organization, if that is one of the organization's primary purposes; | FINANCIAL
SERVICES /
INVESTMENTS |
| (f) Financial Management Services
Purchase of financial services respecting management of a Schedule A entity's or a Schedule B entity's financial assets and liabilities, including treasury operations and ancillary advisory and information services, regardless of whether they are delivered by a financial institution; | FINANCIAL
MANAGEMENT
SERVICES |
| (g) Health Services and Social Services
Purchase of health services and social services | HEALTH SERVICES
/ SOCIAL
SERVICES |
| (h) Advertising and Public Relations
Purchase of advertising and public relation services, if the estimated value is less than \$200,000; | ADVERTISING &
PR |

<p>(i) Purchase from Department or Public Body Purchase of goods or services procured from a Schedule A entity, a Schedule B entity, another jurisdiction or a public body;</p>	<p>DEPARTMENT OR PUBLIC BODY</p>
<p>(j) Transportation Services – Locally-owned Trucks Purchase of transportation services provided by locally-owned trucks for hauling aggregate on highway construction projects;</p>	<p>LOCAL TRUCK</p>
<p>(k) Road Repair Materials Purchase of construction materials if it can be demonstrated that transportation costs or technical considerations impose geographical limits on the available supply base, specifically in the case of sand, stone, gravel, asphalt compound and premixed concrete used in the construction or repair of roads; and</p>	<p>ROAD REPAIR MATERIALS</p>
<p>(l) Cultural or Artistic Purchase of goods and services related to cultural or artistic fields.</p>	<p>CULTURAL OR ARTISTIC</p>

Limited competitive bidding – Section 153(1)

The municipality may grant exemptions from the public tendering process and invite bids from select suppliers for the following goods and services:

<p>(a) Sporting and Convention Facility If the procuring entity operates a sporting or convention facility, goods or services procured in order to comply with a commercial agreement that is incompatible with a trade agreement and that was entered into with an entity that is not subject to a trade agreement;</p>	<p>SPORTING AND CONVENTION FACILITY</p>
<p>(b) Non-profit Organization Purchase of goods and services procured from a non-profit organization, other than a good or service referred to in paragraph 152(c) of Regulation;</p>	<p>NON-PROFIT</p>
<p>(c) Representational or Promotional Purposes – Goods Purchase of goods procured for representational or promotional purposes;</p>	<p>REPRESENTATION - GOODS</p>
<p>(d) Representational or Promotional – Services Purchase of services procured for representational or promotional purposes outside the Province; and</p>	<p>REPRESENTATION - SERVICES</p>
<p>(e) Urgent Purchase Purchase of goods and services urgently required due to unforeseen circumstances that cannot be obtained in a timely manner through an open competitive bidding process.</p>	<p>URGENT</p>

Please note that the exemptions listed in section 153(1) can be used by a municipality entity regardless of value as they are not subject to international trade agreements.

Compatibility with existing goods – Section 154(1)

**NO
SUBSTITUTION**

In order to ensure compatibility with existing goods, the municipality may restrict a solicitation for submissions to a specific product without the possibility of substitution and, when doing so shall use an open competitive bidding process.

Please note that the exemptions listed in section 154(1) can be used by a municipality entity regardless of value as they are not subject to international trade agreements.

Procurement restricted to Canadian goods, Canadian services or Canadian suppliers – 155(1)

A municipality may use a limited competitive bidding process to restrict procurement to Canadian goods, Canadian services or Canadian suppliers if the following conditions are met:

- (a)** The procuring entity is satisfied that there is sufficient competition among prospective Canadian suppliers;
- (b)** The solicitation documents advise all qualified prospective suppliers of the use of the preference in the procurement process and of the applicable rules for determining Canadian content; and
- (c)** The requirement for Canadian content is no greater than necessary to qualify the procured good or service as a Canadian good or service.

**CANADIAN
GOODS /
SERVICES OR
SUPPLIERS**

Please note that the exemptions listed in section 155(1) can be used by a municipality regardless of value as they are not subject to international trade agreements.

Single Source of Supply – Section 156

The municipality may grant exemptions from the public tendering process and enter into a mutual agreement if only one prospective supplier is able to meet the procurement requirements in any of the following circumstances:

(a) Exclusive Rights – Sole Source

In order to recognize exclusive rights, such as exclusive licenses or copyright or patent rights, or to maintain specialized goods that must be maintained by the manufacturer or its representative;

**EXCLUSIVE
RIGHTS**

(b) No Competition

Where there is an absence of competition for technical reasons, and the goods or services can be supplied by only one person and no alternative or substitute exists;

**NO
COMPETITION**

(c) Statutory Monopoly

For the supply of the good or service is controlled by a supplier that is a statutory monopoly;

MONOPOLY

(d) Commodity Market

For the procurement of goods on a commodity market;

**COMMODITY
MARKET**

(e) Work Performed in Leased Building

Where the procuring entity requires work to be performed on or about a leased building that may be performed only by the lessor;

**WORK IN
LEASED
BUILDING**

(f) Warranty or Guarantee

Where the procuring entity requires work to be performed on property by a contractor according to the provisions of a warranty or guarantee with respect to the property or with respect to the original work of the contractor;

**WARRANTY
SERVICES**

(g) Prototype or First Good or Service

Where the good or service being procured is a prototype or a first good or service to be developed in the course of and for a particular contract for research, experiment, study or original development, but not for any subsequent purchases;

PROTOTYPE

(h) Exceptionally Advantageous Circumstances

For the procurement of goods under exceptionally advantageous circumstances such as a bankruptcy or receivership, but not to make routine purchases; or

**EXCEPTIONALLY
ADVANTAGEOUS
CIRCUMSTANCES**

(i) Original Work of Art

For the procurement of an original work of art.

WORK OF ART

Single Source of Supply – Section 157(1)

The municipality may grant exemptions from the public tendering process and enter into a mutual agreement if only one prospective supplier is able to meet the procurement requirements in any of the following circumstances:

(a) Winner of design contest

Where the procurement contract is to be awarded to the winner of a design contest;

**WINNER OF
DESIGN
CONTEST**

(b) Newspapers, Magazines or other periodicals

Where the procurement contract is for subscriptions to newspapers, magazines or other periodicals; or

**NEWSPAPERS,
MAGAZINES,
PERIODICALS**

(c) Compatibility

Where the goods procured must be compatible with existing products.

COMPATIBILITY

Please note that the exemptions listed in section 157 (1) can be used by a municipality regardless of value as they are not subject to international trade agreements.

Mutual agreement– 158

The municipality may grant exemptions from the public tendering process and enter into a mutual agreement in order to procure the following goods or services:

(a) Specific Skills

Services with an estimated value of less than \$50,000, if it can be shown that due to a need for specific skills, knowledge or experience, only one person or a very limited number of persons meet the requirements of the procurement;

SPECIFIC SKILLS

(b) Emergency

Goods or services immediately required due to an unforeseen emergency situation that is not attributable to the procuring entity and the goods or services cannot be obtained in a timely manner through an open procurement process;

EMERGENCY

(c) Maintain Security, Protect Human, Animal or Plant Life or Health

Goods or services that, if procured by an open competitive bidding process, would impair the procuring entity's ability to maintain security or order or to protect human, animal or plant life or health;

SECURITY/ORDER

(d) Resale to public

Goods intended for resale to the public;

**RESALE TO
PUBLIC**

(e) Third Party

Goods or services procured on behalf of an entity that is subject to neither the Act nor a trade agreement;

THIRD PARTY

<p>(f) Philanthropic Goods or services procured from a philanthropic institution or goods manufactured by or services provided by incarcerated persons or persons with disabilities;</p>	<p>PHILANTHROPIC</p>
<p>(g) Restricted Movement Goods that are legally restricted from moving interprovincially, if the restriction is consistent with the applicable trade agreements;</p>	<p>RESTRICTED MOVEMENT</p>
<p>(h) Financial Analysts The services of a financial analyst or the management of investments by an organization, if that is one of the organization's primary purposes;</p>	<p>FINANCIAL SERVICES</p>
<p>(i) Financial Management Services Financial services respecting management of a Schedule A entity's or a Schedule B entity's financial assets and liabilities, including treasury operations and ancillary advisory and information services, regardless of whether they are delivered by a financial institution;</p>	<p>FINANCIAL MANAGEMENT SERVICES</p>
<p>(j) Health Services and Social Services Health services and social services;</p>	<p>HEALTH SERVICES / SOCIAL SERVICES</p>
<p>(k) Advertising or Public Relations Advertising and public relation services advertising and public relation services, if the estimated value is less than \$200,000;</p>	<p>ADVERTISING/PR</p>
<p>(l) Purchase from Department of Public Body Goods and services procured from a Schedule A entity, a Schedule B entity, another jurisdiction or a public body;</p>	<p>DEPARTMENT OR PUBLIC BODY</p>
<p>(m) Transportation Services – Locally-owned Trucks Transportation services provided by locally owned trucks for hauling aggregate on highway construction projects;</p>	<p>LOCAL TRUCK</p>
<p>(n) Road Repair Materials Construction materials if it can be demonstrated that transportation costs or technical considerations impose geographical limits on the available supply base, specifically in the case of sand, stone, gravel, asphalt compound and premixed concrete used in the construction or repair of roads; and</p>	<p>ROAD REPAIR MATERIALS</p>
<p>(o) Cultural or Artistic Fields Goods or services related to cultural or artistic fields.</p>	<p>CULTURAL</p>

Mutual agreement – 159(1)

The municipality may grant exemptions from the public tendering process and enter into a mutual agreement in order to procure the following goods or services:

(a) Urgent Purchase

Purchase of goods or services urgently required due to an unforeseen circumstance that is not attributable to the procuring entity and the goods or services cannot be obtained in a timely manner through an open procurement process;

URGENT

(b) Confidentiality

Purchase of goods or consulting services regarding matters of a confidential or privileged nature, if the disclosure of those matters through an open competitive bidding process could reasonably be expected to compromise government confidentiality, cause economic disruption or otherwise be contrary to the public interest;

CONFIDENTIALITY

(c) Cooperation Agreement

Purchase of goods or services procured under a contract that is to be awarded under a cooperation agreement that is financed, in whole or in part, by an international cooperation organization, but only to the extent that the agreement between the procuring entity and the organization includes rules for awarding contracts that differ from the obligations set out in the applicable trade agreements;

**COOPERATION
AGREEMENT**

(d) Sporting and Convention Facility

Purchase if the procuring entity operates a sporting or convention facility, goods or services procured in order to comply with a commercial agreement that is incompatible with a trade agreement and that was entered into with an entity that is not subject to a trade agreement;

**SPORTING AND
CONVENTION
FACILITY**

(e) Non-Profit Organization

Purchase of goods and services procured from a non-profit organization, other than a good or service referred to in paragraph 158(f) of Regulation;

NON-PROFIT

(f) Representational or Promotional Purposes – Goods

Purchase of goods procured for representational or promotional purposes; and

**REPRESENTATION
GOODS**

(g) Representational or Promotional Purposes – Services

Services procured for representational or promotional purposes outside the Province.

**REPRESENTATION
SERVICES**

Please note that the exemptions listed in section 159(1) can be used by a municipality regardless of value as they are not subject to international trade agreements.

Regional economic development – exemption for Schedule B entity (Municipality) – 161

In exceptional circumstances and after consultation with Board of Management, the Minister may grant to municipality a temporary exemption under section 18 of the Act for the purposes of regional economic development:

- (a) The Municipality has demonstrated to the satisfaction of the Minister that a region of the Province may gain a significant economic benefit from granting the exemption, and
- (b) The procurement will comply with applicable trade agreements.

**ECONOMIC
DEVELOPMENT**

Professional services exemption – 166

The following Professional Services that may *only* be provided by **licensed professionals** listed in section 166 of Regulation 2014-93 under the *Procurement Act* are exempt from the application of the *Act*.

- (a) engineers
- (b) architects
- (c) land surveyors
- (d) accountants
- (e) lawyers
- (f) notaries
- (g) medical doctors
- (h) dentists
- (i) nurses
- (j) midwives
- (k) pharmacists
- (l) psychologists
- (m) veterinarians

The services acquired must be those that are legislatively required to be provided by the above mentioned licensed professionals.