

**1 Section 2 of New Brunswick Regulation 2014-93 under the Procurement Act is amended**

**(a) by adding the following definitions in alphabetical order:**

“ACAN” means an Advance Contract Award Notice provided for in section 157.1. (*PAC*)

“CETA” means the Comprehensive Economic and Trade Agreement between the Government of Canada and the European Union and its Member States, done at Brussels on October 30, 2016, including any amendments made to the agreement. (*AECG*)

“CFTA” means the Canadian Free Trade Agreement signed in 2017 by the Government of Canada and the governments of the provinces and territories of Canada, including any amendments made to the agreement. (*ALEC*)

“cultural industries” means cultural industries as defined in the CFTA. (*industries culturelles*)

“government enterprise” means a government enterprise as defined in the CFTA. (*entreprise publique*)

“small business” means a business that employs fewer than 100 persons. (*petite entreprise*)

**(b) by repealing the definition “Canadian value-added” and substituting the following:**

“Canadian value-added” means

(a) for a procurement of goods or services commenced before July 2, 2019, Canadian value-added as defined in Article 518 of the Agreement on Internal Trade, and

(b) for a procurement of goods or services commenced on or after July 2, 2019, Canadian value-added as defined in Article 521 of the CFTA. (*valeur ajoutée canadienne*)

**(c) by repealing the definition “estimated value” and substituting the following:**

“estimated value” means the estimated maximum total value of a procurement contract and any optional renewals of a procurement contract or, in the case of a standing offer agreement, the estimated maximum total value of all procurement contracts anticipated under the agreement for its original duration and any optional renewals of the procurement contracts, and includes transportation costs, maintenance costs, costs associated with the manufacture of goods, installation costs, tariffs, duties, premiums, fees, commissions, interest and any other costs incidental to the purchase of the goods or services, but does not include taxes. (*valeur estimée*)

**2 The Regulation is amended by adding after section 4 the following:**

### **Adjustment for inflation**

**4.1(1)** The lowest applicable threshold values of any relevant trade agreements referred to in this Regulation shall, if the relevant trade agreement provides for inflation-related adjust-

ments to its threshold values, be adjusted for inflation in accordance with the trade agreement.

**4.1(2)** The amount of \$100,000 referred to in section 13, subsection 13.2(1), section 14, subsection 14.2(1) and section 59 shall be adjusted for inflation in accordance with Annex 504.4 of the CFTA.

**3** *The heading “Estimated value - international trade agreements” preceding section 5 of the Regulation is repealed.*

**4** *Section 5 of the Regulation is repealed.*

**5** *Subsection 9(3) of the Regulation is repealed.*

**6** *The heading “Goods from Central Stores” preceding section 10 of the Regulation is repealed.*

**7** *Section 10 of the Regulation is repealed.*

**8** *Section 12 of the Regulation is amended*

*(a) in subsection (1)*

*(i) in paragraph (a) by striking out “\$1,500 or less” and substituting “less than \$10,000”;*

*(ii) in paragraph (b) by striking out “\$10,000 or less” and substituting “less than \$50,000”;*

*(b) in subsection (4) by striking out “section 7, 8, 9, 9.1, 9.2 or 10” and substituting “section 7, 8, 9, 9.1 or 9.2”;*

(c) *by repealing subsection (5).*

**9** *The heading “Procuring goods valued below trade agreement thresholds” preceding section 13 of the Regulation is repealed and the following is substituted:*

**Procuring goods valued between specified amounts**

**10** *Section 13 of the Regulation is amended in the portion preceding paragraph (a) by striking out “an estimated value that is greater than \$1,500 and not greater than the lowest applicable threshold value of any relevant trade agreements, but less than \$25,000” and substituting “an estimated value that is at least \$10,000 and less than the lesser of \$100,000 and the lowest applicable threshold value of any relevant trade agreements”.*

**11** *The heading “Procuring goods valued below trade agreement thresholds for specified Schedule A entities” preceding section 13.1 of the Regulation is repealed.*

**12** *Section 13.1 of the Regulation is repealed.*

**13** *The heading “Procuring goods valued above exemption limits and below trade agreement thresholds for specified Schedule A entities” preceding section 13.2 of the Regulation is repealed and the following is substituted:*

**Procuring goods valued between specified amounts for specified Schedule A entities**

**14** *Subsection 13.2(1) of the Regulation is amended by striking out “an estimated value that is greater than \$1,500 and less than the lesser of \$25,000 and the lowest applicable threshold value of any relevant trade agreements” and substituting “an estimated value that is at least \$10,000 and less than the lesser of \$100,000 and the lowest applicable threshold value of any relevant trade agreements”.*

**15** *The heading “Procuring services valued below trade agreement thresholds” preceding section 14 of the Regulation is repealed and the following is substituted:*

**Procuring services valued between specified amounts**

**16** *Section 14 of the Regulation is amended in the portion preceding paragraph (a) by striking out “an estimated value that is greater than \$10,000 and not greater than the lowest applicable threshold value of any relevant trade agreements, but less than \$50,000” and substituting “an estimated value that is at least \$50,000 and less than the lesser of \$100,000 and the lowest applicable threshold value of any relevant trade agreements”.*

**17** *The heading “Procuring services valued below trade agreement thresholds for specified Schedule A entities” preceding section 14.1 of the Regulation is repealed.*

**18** *Section 14.1 of the Regulation is repealed.*

**19** *The heading “Procuring services valued above exemption limits and below trade agreement thresholds for specified Schedule A entities” preceding section 14.2 of the Regulation is repealed and the following is substituted:*

**Procuring services valued between specified amounts for specified Schedule A entities**

**20** *Subsection 14.2(1) of the Regulation is amended by striking out “an estimated value that is greater than \$10,000 and less than the lesser of \$50,000 and the lowest applicable threshold value of any relevant trade agreements” and substituting “an estimated value that is at least \$50,000 and less than the lesser of \$100,000 and the lowest applicable threshold value of any relevant trade agreements”.*

**21** *The heading “Procuring goods and services valued above trade agreement thresholds” preceding section 16 of the Regulation is repealed and the following is substituted:*

**Procuring goods and services valued above amounts referred to in section 13, 13.2, 14 or 14.2**

**22** *Section 16 of the Regulation is amended by striking out “the threshold values referred to in section 13, 13.1, 13.2, 14, 14.1 or 14.2” and substituting “the lowest applicable threshold value of any relevant trade agreements referred to in section 13, 13.2, 14 or 14.2 or \$100,000, whichever is the lesser”.*

**23** *The heading “No bid submissions” preceding section 17 of the Regulation is repealed and the following is substituted:*

**Authorized procurement methods**

**24** *Section 17 of the Regulation is repealed and the following is substituted:*

**17** So long as the Minister is not doing so for the purpose of averting competition among prospective suppliers or for the purpose of discriminating against a prospective supplier, the Minister may use any procurement method authorized by this Regulation if, in response to a competitive bid solicitation under section 13, 14 or 16,

- (a) no bid submissions are received or none of the bid submissions is acceptable, or
- (b) no prospective suppliers requested participation or no prospective suppliers satisfied the conditions for participation.

**25** *Paragraph 31(h) of the Regulation is amended by striking out “for the New Brunswick Collection”.*

**26** *Paragraph 32(a) of the Regulation is amended in the portion preceding subparagraph (i) by striking out “regardless of their estimated value, if” and substituting “if the estimated value of the materials is less than 200,000 SDRs and if”.*

**27** *The heading “Division D Disqualification of Prospective Suppliers Subdivision i Disqualification for Past Performance” preceding section 33 of the Regulation is repealed and the following is substituted:*

**Division D**

**Disqualification of Prospective Suppliers**

**Subdivision i**

**Disqualification**

**28** *The heading “Disqualification for past performance” preceding section 33 of the Regulation is repealed and the following is substituted:*

**Disqualification**

**29** *Section 33 of the Regulation is repealed and the following is substituted:*

**33(1)** If there is supporting evidence, the Minister may, subject to sections 44 and 45, disqualify for a period of six months a prospective supplier from providing goods and services to Schedule A entities for the following reasons:

- (a) significant or persistent deficiencies in the performance of any substantive requirement or obligation under a prior contract or contracts;
- (b) false declarations;

- (c) professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the prospective supplier; or
- (d) failure to pay taxes.

**33(2)** If there is supporting evidence, the Minister may, subject to sections 44 and 45, disqualify a prospective supplier that has become an insolvent person or a bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada) from providing goods and services to Schedule A entities for the period during which the prospective supplier is an insolvent person or a bankrupt, as the case may be.

**30** *Section 35 of the Regulation is amended in the portion preceding paragraph (a) by striking out “section 33” and substituting “subsection 33(1)”.*

**31** *Section 38 of the Regulation is amended*

- (a) *by renumbering the section as subsection 38(1);*
- (b) *in subsection (1) in the portion preceding paragraph (a) by striking out “section 33” and substituting “subsection 33(1)”;*
- (c) *by adding after subsection (1) the following:*

**38(2)** The Minister’s decision to disqualify a prospective supplier under subsection 33(2) shall be in writing.

**32** *Section 42 of the Regulation is amended*

- (a) *by renumbering the section as subsection 42(1);*
- (b) *in subsection (1) by striking out “section 33” and substituting “subsection 33(1)”;*

*(c) by adding after subsection (1) the following:*

**42(2)** A prospective supplier that has been disqualified under subsection 33(2) may apply in writing to the Minister to be reinstated if the prospective supplier is no longer an insolvent person or a bankrupt.

**33** *Section 43 of the Regulation is amended*

*(a) by renumbering the section as subsection 43(1);*

*(b) in subsection (1) by striking out “prospective supplier if” and substituting “prospective supplier that has been disqualified under subsection 33(1) if”;*

*(c) by adding after subsection (1) the following:*

**43(2)** The Minister shall reinstate a prospective supplier that has been disqualified under subsection 33(2) if the Minister is satisfied that the prospective supplier is no longer an insolvent person or a bankrupt.

**34** *Section 45 of the Regulation is amended by striking out “section 33” and substituting “subsection 33(1)”.*

**35** *Section 47 of the Regulation is repealed and the following is substituted:*

**47** Despite subsection 33(1), if a prospective supplier has been previously disqualified, the initial period of disqualification shall be 12 months if the prospective supplier is disqualified for the reasons set out in subsection 33(1).

**36** *The heading “Procuring goods and services valued below trade agreement thresholds” preceding section 58 of the Regulation is repealed and the following is substituted:*

**Procuring goods and services valued below specified amounts**

**37** *Section 58 of the Regulation is amended*

(a) *in paragraph (a) by striking out “\$25,000” and substituting “\$100,000”;*

(b) *in paragraph (b) by striking out “\$50,000” and substituting “\$100,000”.*

**38** *The heading “Procuring goods and services valued above trade agreement thresholds” preceding section 59 of the Regulation is repealed and the following is substituted:*

**Procuring goods and services valued above amounts referred to in section 58**

**39** *Section 59 of the Regulation is amended by striking out “the amounts set out in section 58” and substituting “the lowest applicable threshold value of any relevant trade agreements referred to in section 58 or \$100,000, whichever is the lesser”.*

**40** *The heading “No bid submissions” preceding section 60 of the Regulation is repealed and the following is substituted:*

**Authorized procurement methods**

**41** *Section 60 of the Regulation is repealed and the following is substituted:*

**60** So long as a Schedule B entity is not doing so for the purpose of averting competition among prospective suppliers or for the purpose of discriminating against a prospective supplier, the Schedule B entity may use any procurement method authorized by this Regulation if, in response to a competitive bid solicitation under section 59,

(a) no bid submissions are received or none of the bid submissions is acceptable, or

(b) no prospective suppliers requested participation or no prospective suppliers satisfied the conditions for participation.

**42** *The heading “Division C Disqualification of Prospective Suppliers Subdivision i Disqualification for Past Performance” preceding section 64 of the Regulation is repealed and the following is substituted:*

**Division C**

**Disqualification of Prospective Suppliers**

**Subdivision i**

**Disqualification**

**43** *The heading “Disqualification for past performance” preceding section 64 of the Regulation is repealed and the following is substituted:*

**Disqualification**

**44** *Section 64 of the Regulation is repealed and the following is substituted:*

**64(1)** If there is supporting evidence, the head of a Schedule B entity or the person responsible for its procurement may, subject to sections 75 and 76, disqualify for a period of six months a prospective supplier from providing goods and services to the Schedule B entity for the following reasons:

(a) significant or persistent deficiencies in the performance of any substantive requirement or obligation under a prior contract or contracts;

(b) false declarations;

- (c) professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the prospective supplier; or
- (d) failure to pay taxes.

**64(2)** If there is supporting evidence, the head of a Schedule B entity or the person responsible for its procurement may, subject to sections 75 and 76, disqualify a prospective supplier that has become an insolvent person or a bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada) from providing goods and services to the Schedule B entity for the period during which the prospective supplier is an insolvent person or a bankrupt, as the case may be.

**45** *Section 66 of the Regulation is amended in the portion preceding paragraph (a) by striking out “section 64” and substituting “subsection 64(1)”.*

**46** *Subsection 68(1) of the French version of the Regulation is amended by striking out “de l’annexe B” and substituting “d’une entité de l’annexe B”.*

**47** *Section 69 of the Regulation is amended*

- (a) by renumbering the section as subsection 69(1);*
- (b) in subsection (1) in the portion preceding paragraph (a) by striking out “section 64” and substituting “subsection 64(1)”;*
- (c) by adding after subsection (1) the following:*

**69(2)** The decision to disqualify a prospective supplier under subsection 64(2) shall be in writing.

**48** *Section 70 of the French version of the Regulation is amended by striking out “de l’annexe B” and substituting “d’une entité de l’annexe B”.*

**49** *Section 73 of the Regulation is amended*

*(a) by renumbering the section as subsection 73(1);*

*(b) in subsection (1) by striking out “section 64” and substituting “subsection 64(1)”;*

*(c) by adding after subsection (1) the following:*

**73(2)** A prospective supplier that has been disqualified under subsection 64(2) may apply in writing to the head of a Schedule B entity or the person responsible for its procurement to be reinstated if the prospective supplier is no longer an insolvent person or a bankrupt.

**50** *Section 74 of the Regulation is repealed and the following is substituted:*

**74(1)** The head of a Schedule B entity or the person responsible for its procurement may reinstate a prospective supplier that has been disqualified under subsection 64(1) if the head of a Schedule B entity or the person responsible for its procurement is satisfied that the prospective supplier has taken appropriate corrective measures.

**74(2)** The head of a Schedule B entity or the person responsible for its procurement shall reinstate a prospective supplier that has been disqualified under subsection 64(2) if the head of a Schedule B entity or the person responsible for its procurement is satisfied that the prospective supplier is no longer an insolvent person or a bankrupt.

**51** *Section 76 of the Regulation is amended by striking out “section 64” and substituting “subsection 64(1)”.*

**52** *Section 78 of the Regulation is repealed and the following is substituted:*

**78** Despite subsection 64(1), if a prospective supplier has been previously disqualified, the initial period of disqualification shall be 12 months if the prospective supplier is disqualified for the reasons set out in subsection 64(1).

**53** *Section 87 of the Regulation is amended*

*(a) in subsection (3)*

*(i) by repealing paragraph (a) and substituting the following:*

(a) the period for which the list is to be established, or if the period is not specified, an indication of the method by which the procuring entity shall notify prospective suppliers of the termination of the period;

*(ii) by repealing paragraph (b) and substituting the following:*

(b) the Schedule A entities, the Schedule B entities, the public bodies and the private organizations that may use the list;

*(iii) by adding after paragraph (b) the following:*

(b.1) the criteria that will be used to prequalify prospective suppliers;

(b.2) if a limited number of prospective suppliers on the prequalification list may submit bid submissions, information concerning the limitation on the number of prospective suppliers and the criteria for selecting the limited number of prospective suppliers; and

*(b) in subsection (4) by striking out “The solicitation notice” and substituting “Subject to subsection (5), the solicitation notice”;*

*(c) by adding after subsection (4) the following:*

**87(5)** If a prequalification list is to be valid for a period of not more than three years, the procuring entity shall publish the solicitation notice to establish the prequalification list on the New Brunswick Opportunities Network at least once at the beginning of the period for which the list is to be established, and the solicitation notice shall contain the following information:

- (a) the period for which the list is to be established;
- (b) a statement that no further solicitation notices will be published; and
- (c) the information set out in section 89.

**54 Section 88 of the Regulation is amended**

- (a) *in subsection (1) by striking out “solicitation documents” and substituting “solicitation documents, or if no period is indicated in the solicitation documents, for the period established by the procuring entity”;*
- (b) *by repealing subsection (5) and substituting the following:*

**88(5)** When a procuring entity procures goods or services that are subject to a trade agreement and for which a prequalification list has been established, the following prospective suppliers may submit bid submissions:

- (a) all the prospective suppliers that are on the list or in an applicable category of the list;  
or
- (b) if the solicitation documents for the establishment of the prequalification list include information concerning a limitation on the number of prospective suppliers that will be in-

vited to submit bid submissions and the criteria for selecting the limited number of prospective suppliers, a limited number of prospective suppliers.

**55 Section 89 of the Regulation is amended**

**(a) in the portion preceding paragraph (a) by striking out “section 96 or 97” and substituting “section 96”;**

**(b) in paragraph (b) by striking out “being procured” and substituting “being procured, including the nature and the quantity, or estimated quantity, of the goods or services being procured, unless that information is included in the solicitation documents”;**

**(c) by repealing paragraph (c) and substituting the following:**

(c) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain relevant solicitation documents, and the costs, if any, for the solicitation documents and the terms of payment;

**(d) by adding after paragraph (c) the following:**

(c.1) a list and brief description of any conditions for the participation of prospective suppliers, including any requirements for specific documents or certifications to be provided by prospective suppliers, unless those requirements are included in solicitation documents;

(c.2) the period during which the goods or services are to be delivered, or the duration of the procurement contract;

(c.3) a description of any options, unless those options are included in solicitation documents;

(c.4) the procurement method that will be used, and whether the procurement will involve negotiation or electronic auction;

(c.5) the language or languages in which bids or responses to requests for prequalification may be submitted, if they may be submitted in a language other than that of the solicitation notice;

(e) *by repealing paragraph (d).*

**56 Section 96 of the Regulation is repealed and the following is substituted:**

**96(1)** The minimum solicitation period for an open competitive bidding process is ten days, unless

(a) a longer minimum period is required under a trade agreement that applies to the goods or services being procured, or

(b) the procuring entity determines that a longer minimum period is required for prospective suppliers to prepare their bid submissions.

**96(2)** When determining the length of a solicitation period under paragraph (1)(b), a procuring entity shall take into consideration any factor it considers relevant, including:

(a) the nature and complexity of the procurement;

(b) the extent of subcontracting anticipated; and

(c) the time necessary for delivering the solicitation documents by non-electronic means.

**57 The heading “Solicitation period – notice of procurement” preceding section 97 of the Regulation is repealed.**

**58** *Section 97 of the Regulation is repealed.*

**59** *Section 100 of the Regulation is amended in the portion preceding paragraph (a) by striking out “sections 96 and 97” and substituting “section 96”.*

**60** *Section 102 of the Regulation is amended by striking out “procuring entity” and substituting “procuring entity within the period of time set out in the solicitation documents for requesting a clarification”.*

**61** *Subsection 115(1) of the Regulation is amended by striking out “The person” and substituting “Subject to section 116.1, the person”.*

**62** *The Regulation is amended by adding after section 116 the following:*

**Rectification of bid submission**

**116.1** If the authority to allow the rectification of a bid submission was disclosed in the solicitation documents and the rectification would not give a prospective supplier an unfair advantage over other prospective suppliers who submitted bids, a procuring entity, in accordance with that authority, may allow the prospective supplier whose bid submission would otherwise be rejected for the reasons set out in subsection 115(1) to rectify the bid submission by the date and time specified in the solicitation documents.

**63** *Paragraph 119(2)(e) of the Regulation is amended by striking out “false or misleading” and substituting “false”.*

**64** *Section 127 of the Regulation is amended*

*(a) by renumbering the section as subsection 127(1);*

*(b) in subsection (1) by adding after paragraph (a) the following:*

(a.1) it appears from the procuring entity's evaluation that no bid submission is obviously the most advantageous based on the criteria set out in the solicitation documents;

*(c) by adding after subsection (1) the following:*

**127(2)** If negotiations are conducted concurrently with multiple prospective suppliers, the procuring entity shall provide a common deadline for the participating prospective suppliers to submit any new or revised bid submissions.

**127(3)** If negotiations are conducted consecutively with one prospective supplier at a time, the procuring entity shall provide a deadline for the participating prospective supplier to submit any new or revised bid submissions prior to proceeding to negotiate with the next ranked prospective supplier.

**65 Section 137 of the Regulation is amended**

*(a) by repealing subsection (2) and substituting the following:*

**137(2)** When goods or services are to be procured that are subject to only one international trade agreement, preferential treatment may be given under subsection (1) only if the estimated value of the goods or services is less than the threshold value of that trade agreement.

*(b) by adding after subsection (2) the following:*

**137(3)** When goods or services are to be procured that are subject to more than one international trade agreement, preferential treatment may be given under subsection (1) only if the estimated value of the goods or services is less than the lowest applicable threshold value of the relevant trade agreements.

**66 Section 141 of the Regulation is repealed and the following is substituted:**

**141** When bid submissions for inclusion on a prequalification list are evaluated on a point system, the procuring entity shall place on the prequalification list

- (a) all prospective suppliers with compliant bid submissions that meet the minimum acceptable score indicated in the solicitation documents, or
- (b) a limited number of prospective suppliers with compliant bid submissions that have the highest scores if the authority to limit the number of prospective suppliers based on their score was disclosed in the solicitation documents.

**67** *Subsection 145(2) of the Regulation is amended by adding after paragraph (d) the following:*

- (d.1) if an alternative procurement method that is authorized in the circumstances by this Regulation was used to procure the goods and services, the reasons for using the alternative procurement method;

**68** *Subsection 150(3) of the Regulation is amended*

*(a) in the portion preceding paragraph (a) of the French version by striking out “des toutes” and substituting “de toutes”;*

*(b) by adding after paragraph (a) the following:*

(a.1) a statement as to how subsequent purchases will be made from the supplier under the agreement;

*(c) in paragraph (c) by striking out “the Schedule B entities, the public bodies” and substituting “the Schedule B entities, the jurisdictions, the public bodies”.*

**69** *Subsection 151(2) of the Regulation is amended by striking out “a Schedule B entity, a public body” and substituting “a Schedule B entity, a jurisdiction, a public body”.*

**70** *Section 152 of the Regulation is amended*

*(a) by repealing paragraph (e);*

*(b) in paragraph (i) by striking out “a Schedule B entity,” and substituting “a Schedule B entity, a government enterprise,”;*

*(c) by adding the following after paragraph (i):*

*(i.1) fiscal agency or depository services;*

*(i.2) liquidation and management services procured on behalf of a regulated financial institution;*

*(i.3) services related to the sale, redemption, and distribution of the public debt of the Province or any other province or territory of Canada, including loans, bonds, debentures, notes, interest-bearing and non-interest-bearing treasury bills, certificates of indebtedness and any other securities representing part of the public debt of the Province or another province or territory of Canada; and*

*(d) by repealing paragraph (j);*

*(e) by repealing paragraph (k);*

*(f) in paragraph (l) by striking out “cultural or artistic fields” and substituting “culture or cultural industries”.*

**71** *Section 153 of the Regulation is amended*

**(a) in subsection (1)**

**(i) in paragraph (d) of the English version by striking out “and” at the end of the paragraph;**

**(ii) by adding the following after paragraph (d):**

(d.1) transportation services provided by locally owned trucks for hauling aggregate on highway construction projects;

(d.2) 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;

(d.3) marketing management consulting services;

(d.4) local food;

(d.5) goods or services financed primarily from donations; and

**(iii) by repealing paragraph (e) and substituting the following:**

(e) goods and services that are strictly necessary and, for reasons of urgency brought about by an event unforeseeable by the following entities, cannot be obtained in a timely manner through an open competitive bidding process:

(i) if the Minister procures the goods and services on behalf of a Schedule A entity, the Schedule A entity;

- (ii) if the Minister procures the goods and services on behalf of a Schedule B entity, the Schedule B entity;
- (iii) if a Schedule B entity procures the goods and services for itself, the Schedule B entity;
- (iv) if a Schedule B entity procures the goods and services on behalf of another Schedule B entity, the other Schedule B entity; or
- (v) if a Schedule B entity procures the goods and services on behalf of the Minister, the Minister.

***(b) by repealing subsection (2) and substituting the following:***

**153(2)** If only one international trade agreement applies to the procurement of a good or service referred to in subsection (1), a procuring entity may only use a limited competitive bidding process if the estimated value of the good or service is less than the threshold value of the trade agreement.

***(c) by adding after subsection (2) the following:***

**153(3)** If more than one international trade agreement applies to the procurement of a good or service referred to in subsection (1), a procuring entity may only use a limited competitive bidding process if the estimated value of the good or service is less than the lowest applicable threshold value of the relevant trade agreements.

**72** *Subsection 154(2) of the Regulation is repealed.*

**73** *Section 155 of the Regulation is amended*

***(a) by repealing subsection (1) and substituting the following:***

**155(1)** So long as a procuring entity is not doing so for the purpose of averting competition among prospective Canadian suppliers or for the purpose of discriminating against Canadian goods, services or suppliers, a procuring entity may use a limited competitive bidding process to restrict procurement to Canadian goods, services or suppliers.

*(b) by repealing subsection (2) and substituting the following:*

**155(2)** If only one international trade agreement applies to the procurement of a good or service, a procuring entity may procure under subsection (1) only if the estimated value of the good or service is less than the threshold value of the trade agreement.

*(c) by adding after subsection (2) the following:*

**155(3)** If more than one international trade agreement applies to the procurement of a good or service, a procuring entity may procure under subsection (1) only if the estimated value of the good or service is less than the lowest applicable threshold value of the relevant trade agreements.

**74 Section 156 of the Regulation is amended**

*(a) in the portion preceding paragraph (a) by striking out “if only one prospective supplier is able to meet the procurement requirements” and substituting “if no reasonable alternative or substitute goods or services exist and only one prospective supplier is able to meet the procurement requirements”;*

*(b) in paragraph (a) by striking out “, or to maintain specialized goods that must be maintained by the manufacturer or its representative”;*

*(c) in paragraph (b) by striking out “, and the goods or services can be supplied by only one person and no alternative or substitute exists”;*

*(d) by repealing paragraph (d);*

*(e) in paragraph (f) of the English version by adding “or” at the end of the paragraph;*

*(f) by repealing paragraph (g);*

*(g) by repealing paragraph (h).*

**75 Section 157 of the Regulation is amended**

*(a) in subsection (1)*

*(i) by repealing paragraph (a);*

*(ii) by repealing paragraph (c) and substituting the following:*

(c) to ensure compatibility with existing goods, or to maintain specialized goods that must be maintained by the manufacturer of the goods or its representative.

*(b) by repealing subsection (2) and substituting the following:*

**157(2)** If only one international trade agreement applies to the procurement of a good or service, a procuring entity may procure under subsection (1) only if the estimated value of the good or service is less than the threshold value of the trade agreement.

*(c) by adding after subsection (2) the following:*

**157(3)** If more than one international trade agreement applies to the procurement of a good or service, a procuring entity may procure under subsection (1) only if the estimated value of the good or service is less than the lowest applicable threshold value of the relevant trade agreements.

**76 *The Regulation is amended by adding after section 157 the following:***

**ACAN**

**157.1(1)** A procuring entity may, before entering into a procurement contract with a prospective supplier by mutual agreement under section 156 or 157, publish on the New Brunswick Opportunities Network an ACAN indicating that the procuring entity intends to enter into a procurement agreement with a prospective supplier that it believes to be the only one able to meet the procurement requirements.

**157.1(2)** An ACAN shall be published for the minimum solicitation period for an open competitive bidding process set out in section 96 in order to allow interested suppliers an opportunity to signal their interest in bidding by submitting a statement of capabilities.

**157.1(3)** An ACAN shall contain the information listed in section 89.

**157.1(4)** If a procuring entity receives a statement of capabilities that meets the requirements set out in the ACAN, the procuring entity shall procure the good or service through an open competitive bidding process.

**157.1(5)** If no other supplier submits a statement of capabilities that meets the requirements set out in the ACAN, the procuring entity may enter into a procurement contract with the prospective supplier by mutual agreement under section 156 or 157, as the case may be.

**77 *Section 158 of the Regulation is repealed and the following is substituted:***

**158(1)** A procuring entity may enter into a procurement contract with a prospective supplier by mutual agreement in order to procure the following goods or services:

- (a) 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;
- (b) goods or services procured on behalf of an entity that is subject to neither the Act nor a trade agreement;
- (c) goods intended for resale to the public;
- (d) goods or services procured from a philanthropic institution or goods manufactured by or services provided by incarcerated persons or persons with disabilities;
- (e) 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;
- (f) health services and social services;
- (g) goods or services procured from a Schedule A entity, a Schedule B entity, a government enterprise, another jurisdiction or a public body;
- (h) fiscal agency or depository services;
- (i) liquidation and management services on behalf of a regulated financial institution;
- (j) services related to the sale, redemption, and distribution of the public debt of the Province or any other province or territory of Canada, including loans, bonds, debentures, notes, interest-bearing and non-interest-bearing treasury bills, certificates of indebtedness

and any other securities representing part of the public debt of the Province or another province or territory of Canada;

(k) goods or services procured on behalf of or by non-governmental bodies that exercise governmental authority delegated to them;

(l) goods or services procured for the specific purpose of providing international assistance, including development aid, provided that the procuring entity does not discriminate on the basis of origin or location within Canada of goods, services or suppliers; and

(m) goods or services related to culture or cultural industries.

**158(2)** So long as a procuring entity is not doing so for the purpose of averting competition among prospective suppliers or for the purpose of discriminating against a prospective supplier, a procuring entity may enter into a procurement contract with a prospective supplier by mutual agreement in order to procure the following goods or services:

(a) goods and services that are strictly necessary and, for reasons of emergency brought about by an event unforeseeable by the following entities, cannot be obtained in a timely manner through an open competitive bidding process or a limited competitive bidding process:

(i) if the Minister procures the goods and services on behalf of a Schedule A entity, the Schedule A entity;

(ii) if the Minister procures the goods and services on behalf of a Schedule B entity, the Schedule B entity;

(iii) if a Schedule B entity procures the goods and services for itself, the Schedule B entity;

- (iv) if a Schedule B entity procures the goods and services on behalf of another Schedule B entity, the other Schedule B entity; or
- (v) if a Schedule B entity procures the goods and services on behalf of the Minister, the Minister;
- (b) 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;
- (c) goods that are legally restricted from moving interprovincially, if the restriction is consistent with the applicable trade agreements;
- (d) advertising and public relation services, if the estimated value is less than \$200,000;
- (e) a prototype or a first good or service that is developed at the request of the procuring entity in the course of and for a particular contract for research, experiment, study or original development, including limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;
- (f) goods or services of which the purchase is made under exceptionally advantageous conditions that only arise in the very short term, such as unusual disposals by enterprises that are not normally suppliers or disposals of assets of businesses in liquidation, receivership or bankruptcy, but not in routine purchases from regular suppliers;
- (g) goods or services procured from the winner of a design contest, provided that:

- (i) the contest is organized in a fair manner;
  - (ii) the procuring entity publishes on the New Brunswick Opportunities Network, for a period of time that the procuring entity considers sufficient to enable prospective suppliers to prepare their bid submissions, a notice of the contest containing sufficient information to enable prospective suppliers to determine if they wish to participate in the contest; and
  - (iii) the participants are judged by an independent jury with a view to awarding the design contract to the winner;
- (h) goods on a commodity market; and
- (i) goods or services resulting from additional deliveries by the original supplier of goods or services that were not included in the initial procurement, if a change of supplier for additional goods or services
- (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services, or installations procured under the initial procurement; and
  - (ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity.

**78 Section 159 of the Regulation is amended**

- (a) *by repealing subsection (1) and substituting the following:*

**159(1)** So long as a procuring entity is not doing so for the purpose of averting competition among prospective suppliers or for the purpose of discriminating against a prospective sup-

plier, a procuring entity may enter into a procurement contract with a prospective supplier by mutual agreement in order to procure the following goods or services:

(a) goods and services that are strictly necessary and, for reasons of urgency brought about by an event unforeseeable by the following entities, cannot be obtained in a timely manner through an open competitive bidding process:

(i) if the Minister procures the goods and services on behalf of a Schedule A entity, the Schedule A entity;

(ii) if the Minister procures the goods and services on behalf of a Schedule B entity, the Schedule B entity;

(iii) if a Schedule B entity procures the goods and services for itself, the Schedule B entity;

(iv) if a Schedule B entity procures the goods and services on behalf of another Schedule B entity, the other Schedule B entity; or

(v) if a Schedule B entity procures the goods and services on behalf of the Minister, the Minister;

(b) 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;

(c) if the procuring entity operates a sporting facility or convention centre, 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;

(d) goods and services procured from a non-profit organization, other than a good or service referred to in paragraph 158(1)(d);

(e) goods procured for representational or promotional purposes;

(f) services procured for representational or promotional purposes outside the Province;

(g) transportation services provided by locally owned trucks for hauling aggregate on highway construction projects;

(h) 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;

(i) marketing management consulting services;

(j) local food; and

(k) goods or services financed primarily from donations.

***(b) by repealing subsection (2) and substituting the following:***

**159(2)** If only one international trade agreement applies to the procurement of a good or service, a procuring entity may procure under subsection (1) only if the estimated value of the good or service is less than the threshold value of the trade agreement.

***(c) by adding after subsection (2) the following:***

**159(3)** If more than one international trade agreement applies to the procurement of a good or service, a procuring entity may procure under subsection (1) only if the estimated value of the good or service is less than the lowest applicable threshold value of the relevant trade agreements.

**79** *The heading “Regional economic development - exemption for Schedule A entity” preceding section 160 of the Regulation is repealed and the following is substituted:*

**Regional economic development – Schedule A entities subject to trade agreements**

**80** *Section 160 of the Regulation is repealed and the following is substituted:*

**160** After consultation with Treasury Board, the Minister may, on behalf of a Schedule A entity that is subject to a trade agreement, enter into a procurement contract with a prospective supplier by mutual agreement in order to promote regional economic development if the procurement complies with the applicable trade agreements.

**81** *The heading “Regional economic development - exemption for Schedule B entity” preceding section 161 of the Regulation is repealed and the following is substituted:*

**Regional economic development – exemption for Schedule B entities subject to trade agreements**

**82** *Section 161 of the Regulation is repealed and the following is substituted:*

**161** After consultation with Treasury Board, the Minister may grant to a Schedule B entity that is subject to a trade agreement a temporary exemption under section 18 of the Act in order to promote regional economic development if the procurement complies with the applicable trade agreements.

**83** *The Regulation is amended by adding after section 161 the following:*

**Regional economic development – exemption for Schedule A entities and Schedule B entities not subject to trade agreements**

**161.1(1)** After consultation with Treasury Board, the Minister may, on behalf of a Schedule A entity that is not subject to a trade agreement, enter into a procurement contract with a prospective supplier by mutual agreement in order to promote regional economic development if the Minister is satisfied that a region of the Province may gain a significant economic benefit from doing so.

**161.1(2)** If a Schedule B entity is not subject to a trade agreement, the Minister may, after consultation with Treasury Board, grant to the Schedule B entity a temporary exemption under section 18 of the Act for the purposes of promoting regional economic development if the Minister is satisfied that a region of the Province may gain a significant economic benefit from granting the exemption.

**Procurement set-aside for small businesses**

**161.2** If the Province establishes a procurement set-aside program for small businesses that is fair, open and transparent and does not discriminate on the basis of origin or location of goods, services or prospective suppliers, a procuring entity may restrict all or a portion of a solicitation for submissions to small businesses in accordance with the program.

**84** *Section 166 of the Regulation is amended*

*(a) by renumbering the section as subsection 166(1);*

*(b) in subsection (1)*

*(i) by repealing paragraph (a);*

*(ii) by repealing paragraph (b);*

*(iii) by repealing paragraph (c);*

*(iv) by repealing paragraph (d);*

*(c) by adding after subsection (1) the following:*

**166(2)** The services that are legislatively required to be provided by the following licensed professionals are exempt from the application of the Act if the services are procured by or on behalf of a Schedule A entity or a Schedule B entity that is subject to CETA and the estimated value of the services to be procured is less than the lowest applicable threshold value of CETA:

(a) engineers;

(b) architects;

(c) land surveyors; and

(d) accountants.

**85** *The Regulation is amended by adding after section 166 the following:*

### **Goods and services exempted**

**166.1** The following goods or services are exempt from the application of the Act:

(a) 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 organiza-

tion, 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; and

(b) services of expert witnesses or factual witnesses used in court or legal proceedings.

**86** *Schedule A of the Regulation is amended by striking out the following:*

*Regional Health Authority A*

*Regional Health Authority B*

**87** *Schedule B of the Regulation is amended by adding the following in alphabetical order:*

Regional Health Authority A

Regional Health Authority B

**88** *Any procurement that was commenced under New Brunswick Regulation 2014-93 under the Procurement Act before the commencement of this Regulation shall be dealt with as if this Regulation had not come into force.*

**89** *This Regulation comes into force on July 2, 2019.*