

**VILLAGE OF BELLEDUNE**



<b>POLICY:</b>	<b>PURCHASING</b>	<b>POLICY NO:</b>	<b>02/2012</b>
<b>AUTHORITY:</b>	<b>Council</b>		
<b>APPROVAL:</b>	<b>Council</b>		
<b>LEAD ROLE:</b>	<b>Council</b>	<b>DATE:</b>	<b>February 20, 2012</b>
<b>RESPONSIBILITY:</b>	<b>Clerk/Treasurer</b>	<b>REVIEW:</b>	

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The Village of Belledune wishes to provide the Village departments and employees the highest level of procurement service, achieve maximum value for dollars spent, provide fair and equal access for vendors interested in doing business with the Village, provide a level of fiscal control by ensuring conditions of Village purchases are met by vendors performing under those conditions.

The Village of Belledune subscribes to the philosophy of Centralized Purchasing, whereby authorized purchases of equipment, materials, and supplies are the responsibility of the Purchasing division, a unit of the Finance Department.

The Village of Belledune subscribes to the philosophy of competitive bidding to achieve maximum value and promote fair and equal access to vendors: Expenditures from \$2,000 to \$10,000 are subject to informal competitive bidding, and Expenditures over \$10,000 are subject to formal competitive bidding.

The Purchasing Division will not split purchases for the purchases of avoiding formal or informal competitive bidding. (Unless otherwise specified in tender specifications).

The Village of Belledune will attempt to purchase recycled and /or reusable materials, provided quality, availability and general integrity of products being purchased are not compromised.

Consultants are chosen on an as needed basis directly by the Department that will be utilizing their services, and are NOT subject to competitive bidding.

Village wide services (janitorial services, landscape maintenance, etc.) are bid by the Purchasing Division and ARE subject to competitive bidding.

The Village of Belledune will utilize the Procurement Information for Municipalities Guide provided by Central Division of the Dept. of Supply & Services, Province of New Brunswick Guide (May 2009) and it subsequent amendments, if any, to formulate its purchasing and procurement policy. (see Annex A)

**VILLAGE OF BELLEDUNE**

**SCALE FOR PURCHASES**

<b>Amount of Purchase</b>	<b>Who Purchases</b>	<b>How Goods are Purchases</b>
\$1 - \$2,000	Individual/CAO	Local Suppliers **
\$2,001 - \$10,000	Purchasing Agent Clerk/Treasurer /Finance	Three (3) vendor quotes required by phone calls, faxes or emails
\$10,001 - \$25,000 (goods) \$10,001 - \$50,000 (services)	Purchasing and or Clerk/treasurer	Three (3) competitive quotes (phone calls, faxes or emails)
\$10,001 - \$99,999 (Construction)	Village Council Approval	Three (3) quotes by invitation Written, faxes or emails
Goods over \$25,000 Services over \$50,000	Village Council Approval	Formal Competitive Bids (Sealed bids)

**Note: All above purchases for goods/services MUST BE within annual approved appropriations.**

**REMINDER: ALL PURCHASES FOR GOODS/SERVICES NOTED ABOVE MUST CORRESPOND WITH PROCUREMENT POLICY FOR MUNICIPALITIES UNDER PROVINCIAL PUBLIC PURCHASING ACT (REGULATION 94-157) FOR GOODS AND SERVICES.**

**ALSO NOTE CROWN CONSTRUCTION ACT STATE A CONTRACT EXCEEDING \$100,000 MUST BE PUBLICLY TENDERED.**

**\*\*LOCAL MEANS WITHIN 100 KILOMETRES OF VILLAGE OF BELLEDUNE.**

Public Procurement Policy 04/99 and Subsequent Amendments are hereby repealed.

Village of Belledune Purchasing Policy # 02/2012 adopted this 20<sup>th</sup> day of February, 2012.

**Brenda Cormier**  
Brenda Cormier, Clerk/Treasurer

**Emmie Flanagan**  
Emmie Flanagan, Acting Mayor

# PROCUREMENT INFORMATION FOR MUNICIPALITIES

Department of Supply and Services  
Central Purchasing  
(May 2009)

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 Department of Supply and Services 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.***

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# 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 *Public Purchasing Act*, they are responsible to do their own purchases and must be able to justify them. The Central Purchasing Branch can, upon request, provide information on procurement obligations; however, the Branch will not provide legal advice nor will the Branch take responsibility for actions taken by municipalities.

# 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 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 *Public Purchasing 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, please contact the Design and Construction Branch of the Department of Supply and Services at 453-3742.

For further information on highway or road construction tendering, please contact the Department of Transportation at 453-2663.



# Public Purchasing Act and Regulation 94-157

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 28 of Regulation 94-157 indicates that municipalities are exempt from public tendering for goods under \$25,000 and services under \$50,000 (including taxes). However, for all procurements **OVER** these thresholds, municipalities **must** issue a public tender (unless they are exempt by Regulation 94-157).

**Note:** If a municipality opts to follow a competitive bidding process for goods and services under the thresholds of \$25,000 and \$50,000, the rules and procedures of this Act must be followed.

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 *Public Purchasing Act* and Regulation 94-157, contact Central Purchasing at 453-2245.

## Exemptions

An **exemption** is a provision in Regulation 94-157 under the *Public Purchasing 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 for Municipalities

Municipalities are exempted from public tendering for the procurement of services provided by professionals identified in Section 27 of Regulation 94-157 (see Annex D). Reporting to Central Purchasing is not required for these exemptions; however, these exemptions only apply when these professionals are performing a service that only they can legally provide under their particular designation.

Municipalities are also exempt from public tendering in circumstances identified in Section 27.1 of Regulation 94-157. Municipalities can use these exemptions under their own authority, but should ensure that they maintain records that clearly show that the exemption was warranted. In addition, each time a purchase is made as an exemption under Section 27.1 over the thresholds of \$25,000 for goods and \$50,000 for services, municipalities MUST complete an exemption form (see Annex C) and send it to the Central Purchasing Branch, as indicated on the form.

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 Central Purchasing Branch at 453-2245.

# 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, 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 will also be 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 Central Purchasing Branch of the Department of Supply and Services. 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 *Public Purchasing 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 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 taxes, commissions, tariffs, duties, installation costs, premiums, fees, transportation costs, interest and any other costs incidental to the procurement.

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 Public Purchasing 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 seventeen (17) 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:

- A brief description of the procurement.
- The address or location where the tender documents may be obtained.
- The conditions for obtaining the documents (cost, etc.).
- The address or location where the bids are to be deposited.
- The closing date and time for the tender.
- The date and time when the bids will be opened.
- A statement that indicates the procurement is subject to the Agreement on Internal Trade, the Atlantic Procurement Agreement and the Quebec-New Brunswick Procurement Agreement (when applicable).
- A statement that indicates the procurement is subject to the *Public Purchasing Act* or the *Crown Construction Contracts Act* (when applicable).

The tender documents 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.
- 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

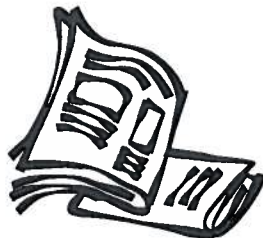
IF...	THEN...
<p>Your tender is for:</p> <ul style="list-style-type: none"> <li>- Goods between \$25,000* and \$100,000* or</li> <li>- Services between \$50,000* and \$100,000*</li> </ul>	<p>Your tender <b>MUST</b> be advertised in Newspapers OR on NBON the approved electronic tendering systems for a minimum of 17 calendar days. The approved systems are NBON, MERX and BIDS.</p>
<p>Your tender is for:</p> <ul style="list-style-type: none"> <li>- Goods and services over \$100,000*</li> </ul>	<p>Your tender <b>MUST</b> be advertised on NBON, BIDS or MERX for a minimum of 17 calendar days. Newspaper advertisements can be used <b>IN ADDITION</b> to these systems.</p>
<p>Your tender is for:</p> <ul style="list-style-type: none"> <li>- Construction over \$250,000*</li> </ul>	<p>Your tender <b>MUST</b> be advertised on NBON, BIDS or MERX for a reasonable period of time (17 calendar days is recommended). Newspaper advertisements can be used <b>IN ADDITION</b> to these systems.</p>

\* Including taxes

### As of June 30, 2009:

IF...	THEN...
<p>Your tender is for:</p> <ul style="list-style-type: none"> <li>- Goods over \$25,000* or</li> <li>- Services over \$50,000*</li> </ul>	<p>Your tender <b>MUST</b> be advertised on NBON for a minimum of 17 calendar days. Newspaper advertisements can be used <b>IN ADDITION</b> to the electronic system.</p>
<p>Your tender is for:</p> <ul style="list-style-type: none"> <li>- Construction over \$100,000*</li> </ul>	<p>Your tender <b>MUST</b> be advertised on NBON for a reasonable period of time (17 calendar days is recommended). Newspaper advertisements can be used <b>IN ADDITION</b> to the electronic system.</p>

\* Including taxes



# New Brunswick Opportunities Network (NBON)

[[www.gnb.ca/3000](http://www.gnb.ca/3000)]

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, Regional Health Authorities and Crown corporations. 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 *Public Purchasing Act*, the Agreement on Internal Trade and the Atlantic Procurement Agreement, 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 6.0 or above, or Netscape 6.2.

To find out how to advertise your tenders on NBON, please contact the NBON Help Line at 444-5636, Toll Free at 1-877-231-8800 or 1-800-561-1422 or by e-mail at [NBON@gnb.ca](mailto:NBON@gnb.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 *Public Purchasing Act*.

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

# Tender Opening

Some important points to remember about tender opening:

- Bids must remain in a locked receptacle until tender opening.
- Bids must be opened publicly and anyone can attend the opening.
- The only information that should be released at a tender opening is the name of the compliant bidders, and their total bid price where one was required.
- 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 under any circumstances. Faxed bids that are not completely transmitted by closing time are also considered to be late and cannot be accepted.

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

- It is not signed, or
- The bid security deposit, certified cheques or bid bond is not provided (in cases where this was a mandatory requirement).



**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 Central Purchasing Branch 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. 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 Agreegates v. Abotsford*, 1989.

## Use of Preferences

Local or provincial preferences must not be given on tenders ABOVE \$25,000 (for goods) and \$50,000 (for services), unless they are exempted for a legitimate reason as specified in Regulation 94-157 under the *Public Purchasing Act*. **Economic benefits to the municipality or region must NOT be considered in the evaluation of bids.** 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 \$250,000 for construction (less than \$100,000 as of June 30, 2009), **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.**

## 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

Within a reasonable period of time after the awarding of a Request for Proposals (17 calendar days is recommended, further information on Requests for Proposals is provided in this document), a municipality shall, upon request from any vendor who has submitted a proposal on that particular RFPs, disclose information pertaining to the successful proposal and the proposal submitted by the vendor making the request such that the vendor may determine the results of the evaluation of his proposal relative to that of the successful proponent.



The information disclosed shall contain the total price as well as the results of the evaluation on each and every criterion as listed in the RFPs documents for both the successful vendor and the vendor making the request.

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.**

If you are unsure about what information should be released to vendors, please contact the Central Purchasing Branch.

## 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 Central Purchasing and/or with your legal counsel.

# 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.

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 *Public Purchasing 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, 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 compliancy 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.

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

The Central Purchasing Branch 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 Central Purchasing Branch at (506) 453-2245. Central Purchasing 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 Central Purchasing Branch to obtain further information.**

# Other Resources

## Central Stores

The Department of Supply and Services operates a warehouse and delivery service for commonly used supplies. This warehouse is located in Fredericton and is known as Central Stores.

This operation is maintained in order to obtain lower prices resulting from bulk purchasing and save time by eliminating the need to tender each individual purchase. Main users of this service are government departments, schools, community colleges, Crown Corporations, agencies and other government funded bodies such as municipalities, hospitals and universities.

Studies on Central Stores pricing indicate average savings of 25% on commonly used supplies. Administrative and delivery costs are included in the price; therefore it is the same everywhere in the province. Municipalities may take advantage of these savings by purchasing commonly used items through Central Stores.

Central Stores carries a variety of items, such as office supplies, computer accessories, janitorial & maintenance products, outdoor and recreational supplies, clothing & personal items, etc.

Central stores uses an open tendering process to procure stock, therefore every interested vendor from all regions have an equal opportunity to bid on tenders. These tenders are advertised on NBON.

To obtain a copy of the Central Stores Catalogue, please call 453-2466. Municipalities registered on NBON can also search the catalogue on-line.



There are two (2) ways to buy from Central Stores:

1. You can fax your requests at 453-2016. Central Stores accepts all major credit cards or you can also be invoiced by providing a PO number.
2. You can order through the NBON system. To have access to this service, you must forward a written request to [NBON@gnb.ca](mailto:NBON@gnb.ca). For more information, call the NBON Help Line at 1-877-231-8800 or 1-800-561-1422. Municipalities are strongly encouraged to buy from Central Stores through NBON.

Turnaround is generally 4 to 5 days, but it may vary depending on the time of year or the number of requests received that week. If your request is urgent, call Central Stores or clearly indicate on your request that it is "urgent".

## N.B. Government Contracts

When goods or services are frequently purchased by government departments, Central Purchasing 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@gnb.ca](mailto:NBON@gnb.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. (MUNICIPALITIES ARE NOT ABLE TO ORDER FROM GOVERNMENT CONTRACTS THROUGH THE INTERNET OR NBON. THE INTERNET OR NBON ARE SIMPLY USED TO VIEW THE LIST OF CONTRACTS).

If you experience problems getting 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://www.gnb.ca/3000/index1.htm>

## Important Websites

### PUBLIC PURCHASING ACT

<http://www.gnb.ca/0062/acts/acts/p-23-1.htm>

### REGULATION 94-157

<http://www.gnb.ca/0062/regs/p-23-1reg.htm>

### CROWN CONSTRUCTION CONTRACTS ACT AND REGULATIONS

<http://www.gnb.ca/acts/acts/c-36.htm> &  
[www.gnb.ca/0062/regs/c-36reg.htm](http://www.gnb.ca/0062/regs/c-36reg.htm)

### NEW BRUNSWICK OPPORTUNITIES NETWORK (NBON)

<http://www.gnb.ca/3000>

### AGREEMENT ON INTERNAL TRADE (AIT) and MASH annex

<http://www.marcan.net> (follow the links to the Agreement on Internal Trade)

### ATLANTIC PROCUREMENT AGREEMENT (APA)

<http://www.cap-cpma.ca/default.asp?mn=1.62.23.35>

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

<http://www.gnb.ca/0099/tenders/Procurement/2008QC-NBprocurement-e.pdf>

### GOVERNMENT OF NEW BRUNSWICK

<http://www.gnb.ca>

### DEPARTMENT OF SUPPLY AND SERVICES

<http://www.gnb.ca/0099/index-e.asp>

### STANDARD TERMS AND CONDITIONS

<http://www.gnb.ca/3000/index1.htm>

### N.B. GOVERNMENT CONTRACTS

<http://www.gnb.ca/3000>

# 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.
- 

**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 *Public Purchasing Act*, and construction is legislated by the *Crown Construction Contracts Act*.

Goods means, in relation to procurement, raw materials, products, supplies, 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, road, 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 an incidental to the construction, and the installation and repair of fixtures of a building, road, 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. When do municipalities HAVE to issue a public tender?**

- A. Municipalities MUST issue a public tender for:

- Goods over \$25,000 (including taxes)
  - Services over \$50,000 (including taxes)
  - Construction over \$250,000 (including taxes) → **As of June 30, 2009, construction over \$100,000 (including taxes)**
-

**Q. How do municipalities HAVE to advertise their public tenders?**

A. Municipalities MUST advertise the following tenders in Newspapers OR on one of the approved electronic tendering systems (NBON, BIDS or MERX):

- Goods between \$25,000\* and \$100,000\*
- Services between \$50,000\* and \$100,000\*

Municipalities MUST advertise the following tenders in NBON, MERX OR BIDS:

- Goods and services over \$100,000\*
- Construction over \$250,000\*

Newspaper ads can be used IN ADDITION to the electronic systems.  
\* Including taxes

**→ As of June 30, 2009:**

Municipalities MUST advertise the following tenders on NBON:

- Goods over \$25,000\*
- Services over \$50,000\*
- Construction over \$100,000\*

Newspaper ads can be used IN ADDITION to the electronic system.  
\* Including taxes

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**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 17 calendar days.

Tenders for construction should be advertised for a reasonable amount of time (17 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. This principle is not outlined in the *Public Purchasing Act* nor is it outlined in the *Crown Construction Contracts Act*, but this implied term is the result of many court rulings. 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 an other than the lowest bid if the lowest bid is compliant, qualified and meets all specifications of the tender.

---



**Q. Can municipalities buy off contracts established by the Government of New Brunswick?**

A. Yes. 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.

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**Q. What is Central Stores and can municipalities buy from there?**

A. Central Stores is a warehouse in Fredericton, operated by the Department of Supply and Services, where commonly used supplies are stocked. Office supplies and cleaning products are amongst the items that are sold at Central Stores. Municipalities and other public funded bodies can buy goods stocked in this facility. More information on Central Stores and how to buy from there is available in the "Other Resources", « Central Stores » section.

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**Q. What is NBON?**

A. NBON stands for the **New Brunswick Opportunities Network**. NBON is an electronic tendering system owned and operated by the Department of Supply and Services. All public tenders issued by the Province are advertised on this system. Municipalities may 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.

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**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 \$250,000 for construction (over **\$100,000**, as of **June 30, 2009**) **AND you have clearly identified in your tender documents that a preference may be given to local vendors.**

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

A. Depending on what you are buying, Central Purchasing can provide you with templates or examples of tenders to help you with the design of your tenders. Every purchase is different therefore there is no standard RFP or tender template. We recommend that you contact us and we can provide you with information that meets your specific needs.

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**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 bad 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.

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**Q. Do bids always have to be opened publicly?**

A. Yes. When a public tender is issued, bids must be opened publicly and anyone can attend the opening.

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

A. You can contact one of the Procurement Managers of the Central Purchasing Branch, Department of Supply and Services at 453-2245.

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

A. You can contact the Executive Director of the Design & Construction Branch, Department of Supply and Services at 453-3742.

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**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 453-2663.

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

A. You can contact the Senior Procurement Analyst from the Central Purchasing Branch, Department of Supply and Services at 444-4109.

**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.**

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

**A. You can contact the Director of the Property Management Branch, Department of Supply and Services at 453-3742.**

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## Definitions

- **BID**: means an offer or submission by a vendor in response to an invitation to tender or request for proposals.
- **BIDDER**: means a vendor that submits a bid or proposal in response to a tender invitation or a request for proposals.
- **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, road, 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 a incidental to the construction, and the installation and repair of fixtures of a building, road, 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 SYSTEM**: means an on-line electronic display of procurement information and tender document request system that gives vendors flexible and open access to procurement opportunities.
- **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 body corporate, corporation, municipality, university, board, commission and body prescribed by Regulation.
- **INADVERTENT VIOLATION**: means an inadvertent procurement or inadvertent authorization of the procurement of goods or services that was not processed according to the *Public Purchasing Act* and Regulation 94-157.
- **INVITATION TO TENDER** or **TENDER**: means a written invitation for prospective vendors to submit offers, bids, quotations or proposals for specified goods, services or construction projects.
- **GOODS**: means, in relation to procurement, raw materials, products, supplies, 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 Municipalities, publicly funded Academic institutions (universities), and Social service and Health 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 2<sup>nd</sup> Edition was published in March 2003.

# ANNEX A: Contacts

For more information on procurement of goods and services, the *Public Purchasing Act*, trade agreements, etc., contact the Central Purchasing Branch.

## CENTRAL PURCHASING BRANCH

Reception	453-2245	453-7462 (fax)	
Acting Director of Purchasing	Janice York	453-8880	<a href="mailto:janice.york@gnb.ca">janice.york@gnb.ca</a>
Management of Strategic Procurement	Jean Martell	444-4107	<a href="mailto:jean.martell@gnb.ca">jean.martell@gnb.ca</a>
Procurement Manager	Nancy Durelle	444-4114	<a href="mailto:nancy.durelle@gnb.ca">nancy.durelle@gnb.ca</a>
Senior Procurement Analyst	Johanne Dumont	444-4109	<a href="mailto:johanne.dumont@gnb.ca">johanne.dumont@gnb.ca</a>

## OTHER CONTACTS

Central Stores		453-2466	453-2016 (fax)
Design and Construction Branch (DSS)		453-2228	
Department of Transportation (Financial & Admin. Services)		453-2663	
Property Management (DSS)		453-3742	
<b>NBON Help Line</b>	1-877-231-8800 1-800-561-1422	444-5636	<a href="mailto:NBON@gnb.ca">NBON@gnb.ca</a>

# ANNEX B1: Summary of Rules and Thresholds

THRESHOLDS*	PROCEDURES TO FOLLOW
<p>&lt; \$25,000 (GOODS)</p> <p>&lt; \$50,000 (SERVICES)</p> <p>&lt;\$250,000 (CONSTRUCTION)</p>	<ul style="list-style-type: none"> <li>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.</li> <li>For construction projects, municipalities are encouraged to follow the basic principles outlined in the <i>Crown Construction Contracts Act</i> and Regulation.</li> </ul>
<p>Between \$25,000** and \$100,000 (GOODS)</p> <p>Between \$50,000** and \$100,000 (SERVICES)</p>	<ul style="list-style-type: none"> <li>MUST follow the rules and procedures identified in the <i>Public Purchasing Act</i> and Regulation 94-157 (i.e. MUST issue a public tender).</li> <li><b>MUST be publicly advertised</b> (either in newspapers and/or on NBON, BIDS or MERX).</li> <li>MUST be advertised for a minimum of 17 calendar days, unless exempted by regulation.</li> </ul>
<p>&gt; \$100,000 (GOODS and SERVICES)</p>	<ul style="list-style-type: none"> <li>MUST follow the rules and procedures outlined in the Agreement on Internal Trade.</li> <li><b>MUST be advertised on NBON, BIDS or MERX</b> for a minimum of 17 calendar days, unless exempted by regulation. (May place tender notices in newspapers <u>in addition</u> to the electronic systems)</li> </ul>
<p>&gt; \$250,000 (CONSTRUCTION)</p>	<ul style="list-style-type: none"> <li>Encouraged to follow the basic principles outlined in the <i>Crown Construction Contracts Act</i> and Regulations.</li> <li>MUST follow the rules and procedures outlined in the Agreement on Internal Trade (MUST issue a public tender).</li> <li><b>MUST be advertised on NBON, BIDS or MERX.</b> (May place tender notices in newspapers <u>in addition</u> to the electronic systems).</li> </ul>
<p><b>EXEMPTIONS</b></p>	<p>In Regulation 94-157, municipalities are exempt from following the rules and procedures outlined in the <i>Public Purchasing Act</i> for the circumstances identified in Sections 27 and 27.1. Purchases exempted by section 27.1 must be reported to the Department of Supply and Services. Municipalities must be able to justify exempted procurements.</p>

\* All amounts include taxes

\*\* The legislation and the agreement 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 B2: Summary of Rules and Thresholds

> As of June 30, 2009 <

THRESHOLDS*	PROCEDURES TO FOLLOW
< \$25,000 (GOODS)	<ul style="list-style-type: none"> <li>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.</li> </ul>
< \$50,000 (SERVICES)	<ul style="list-style-type: none"> <li>For construction projects, municipalities are encouraged to follow the basic principles outlined in the <i>Crown Construction Contracts Act</i> and Regulations.</li> </ul>
<\$100,000 (CONSTRUCTION)	
> \$25,000** (GOODS)	<ul style="list-style-type: none"> <li>MUST follow the rules and procedures identified in the <i>Public Purchasing Act</i> and Regulation 94-157 (i.e. MUST issue a public tender).</li> </ul>
> \$50,000** (SERVICES)	<ul style="list-style-type: none"> <li>MUST follow the rules and procedures outlined in the Atlantic Procurement Agreement.</li> <li><b>MUST be publicly advertised on NBON.</b> (May place tender notices in newspapers <u>in addition</u> to the electronic system)</li> <li>MUST be advertised for a minimum of 17 calendar days, unless exempted by regulation.</li> <li>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.</li> </ul>
> \$100,000 (CONSTRUCTION)	<ul style="list-style-type: none"> <li>Encouraged to follow the basic principles outlined in the <i>Crown Construction Contracts Act</i> and Regulations.</li> <li>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).</li> <li><b>MUST be advertised on NBON.</b> (May place tender notices in newspapers <u>in addition</u> to the electronic system.)</li> </ul>
<b>EXEMPTIONS</b>	In Regulation 94-157, municipalities are exempt from following the rules and procedures outlined in the <i>Public Purchasing Act</i> for the circumstances identified in Sections 27 and 27.1. Purchases exempted by section 27.1 must be reported to the Department of Supply and Services. Municipalities must be able to justify exempted procurements.

\* All amounts include taxes.

\*\* The legislation and the agreement 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: Exemption Form



## PROVINCE OF NEW BRUNSWICK MASH Sector Exemptions Report

Return form to: Department of Supply and Services  
Central Purchasing Branch  
Policy and Promotions  
P.O. Box 8000  
Fredericton, N. B. E3B 5H6

Fax: 453-7462

**Name of municipality :** \_\_\_\_\_

**Date of exemption:** \_\_\_\_\_

**Description of goods or services purchased:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Value:** \_\_\_\_\_  
(include all taxes, commissions, etc.)

**Name and address of supplier:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Reason for exemption:** \_\_\_\_\_  
(Please use titles from attached pages. For example: 27.1 f) *No Competition [Sole Source of Supply]*)

**Explanation:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Filed by:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date filed:** \_\_\_\_\_

# ANNEX D: Exemptions

## Exemptions that apply to municipalities

*If you are unsure of the meaning of these exemptions, please contact Central Purchasing at 453-2245.*

### Permitted Exceptions:

#### **Section 27 - Professional Services**

Services that may, by legislation, be provided only by one of the following licensed professionals: engineers, architects, land surveyors, chartered accountants, lawyers, notaries, medical doctors, dentists, nurses, pharmacists or veterinarians. *(Note that this only applies when these professionals are performing a service that only they can legally provide.)*

#### **Section 27.1**

##### **a) Lease Buyout**

Purchase of supplies that are the subject of a lease contract where payments are partially or totally credited to the purchase;

##### **(b) Specific Skills**

Purchase of services with a total value of less than one hundred thousand dollars where it can be shown that for reasons of specific skills, knowledge or experience, the choice of vendor is limited to one or a very limited number of individuals, provided that the exemption is not used to unduly restrict competition;

##### **(c) Representational Purpose**

Purchase of supplies or services for representational purposes outside the Province;

##### **(d) Emergency or Urgency**

Where the supplies or services are required in the event of an emergency or urgent situation *(note that urgent situations are to be unforeseeable urgent situations)*

##### **(e) Maintenance of Security, Order, Life or Death**

Where the use of a public tendering process would interfere with the ability to maintain security or order, or to protect human, animal or plant life or health;

##### **(f) No Competition (Sole Source of Supply)**

Where there is an absence of competition for technical reasons and the supplies or services can be supplied only by a particular vendor (in Canada) and no alternative or substitute exists; *(Note the wording carefully. It means that only one vendor in Canada can provide the commodity and there is no substitute. It does not mean only one local or provincial supplier or that one supplier is better)*

##### **(g) Statutory Monopoly**

Supplies or services provided by a vendor that is a statutory monopoly;

**(h) Compatibility and Exclusive Rights**

Where it is necessary to ensure compatibility with existing products, to recognize exclusive rights, such as exclusive licenses, copyright and patent rights, or to maintain specialized products that must be maintained by the manufacturer or its representative;

**(i) Warranty or Guarantee**

For services or supplies provided by a vendor under the provisions of a warranty or guarantee;

**(j) Absence of Bids (No Reply to Tender)**

In the event of an absence of bids in response to a tender made in accordance with the tendering procedures specified in the Act and this Regulation;

**(k) Exceptionally Advantageous Circumstances**

Where supplies may be purchased under exceptionally advantageous circumstances such as bankruptcy or receivership;

**(l) Guarantee**

Where the carrying out of work by a vendor other than the vendor who did the original work would nullify the guarantees held;

**(m) Confidentiality**

Services related to matters of a confidential nature where disclosure of the matter through a public tendering process would compromise the confidentiality of the matter;

**(n) Philanthropic**

Purchase of supplies or services from philanthropic organizations or handicapped persons;

**(o) Goods for Resale to the Public**

Purchase of goods intended for resale to the general public;

**(p) Economic Benefit**

Where Board of Management has determined that there would be a significant economic benefit to the province if the purchase is made from a specific vendor and recommends the purchase to the Minister or the government funded body;

*Note: the Agreement on Internal Trade (AIT) states that, under exceptional circumstances, procurements can be excluded for economic development purposes provided that all such exclusions are reported, prior to the commencement of any procedure leading to the award of a contract, to the other Provinces with an explanation of the reasons justifying the decision. A Province invoking this provision will seek to minimize the discriminatory effects of the exclusion on the suppliers of the other Provinces.*

**(q) Prototype or Original Concept**

Supplies or services directly related to research and development or production of a prototype or original concept, provided that subsequent purchases are carried out in accordance with the Act and this regulation;

**(r) Purchases from Non-Profit Organizations or Government Funded Bodies**

Supplies or services purchased from a department, government funded body or non-profit organization;

**(s) Cooperation Agreement**

Purchase of supplies and services made under the provisions of a cooperation agreement financed in whole or in part by an international cooperation organization, if the agreement specifies different rules for such purchases;

**(t) Joint Purchase**

Purchases of supplies or services made jointly with another government or a department, agency or body under the jurisdiction of that government through an agreement or through an agency established to oversee such purchases provided that the purchases are made through an open tendering process;

**(u) Federal Contracts**

Purchases of supplies or services from standing offer or supply contracts established by the federal government;

*(Note that other sections of the legislation already allow MASH entities to use provincial contracts)*

**(v) Road Repair Materials**

Purchases of sand, stone, gravel, asphalt compound or pre-mixed concrete for use in the construction or repair of roads where transportation costs or technical considerations restrict the available supply base to local sources of supply;

**(v.1) Locally Owned Truck**

Transportation services provided by locally-owned trucks for hauling aggregate on highway construction projects;

*(Note that use of this exemption is limited to very specific circumstances, i.e. highway construction for hauling aggregate only.)*

**(v.2) Sporting Events**

Services for sporting events if the sporting events have been procured by an organization whose main purpose is to organize such events;

**(v.3) Financial Analysts**

Services of financial analysts;

**(v.4) Investment Management**

Services provided by an organization for the management of investments if the management of investments is the primary purpose of the organization;

**(v.5) Financial Services**

Financial services respecting the management of financial assets and liabilities, including ancillary advisory and investment services and information services, whether or not delivered by a financial institution;

**(v.6) Advertising and Public Relations**

Advertising and public relations services;

**(w) Marketing Boards**

Purchase of products under supply management or regulated by provincial marketing boards;

**(x) Culture and Art**

Purchase of supplies and services related to cultural or artistic fields;

**(y) Subscriptions**

Purchase of subscriptions to newspapers, magazines or other periodicals; and

**(z) Third Party**

Purchase of supplies or services on behalf of a third party not covered by the Act or this Regulation.