

Section

Purchasing

Subject

Purchasing and Tendering Policy

APPLICATION

1. This Policy applies to the procurement by the Municipality of the County of Annapolis of all goods and services, including construction and facilities, by purchase or lease, but does not apply to procurements:
 - (a) by the Municipality from organizations owned or controlled by the Municipality;
 - (b) where a construction project is managed by a third party on behalf of the Municipality, in which case the procurement for the project must be in accordance with the contract between the Municipality and the third party, and in accordance with generally accepted procurement practices.
2. This policy also applies to boards, agencies or commissions funded by the Municipality as a condition for maintaining continued funding.

AUTHORITY

Public Procurement Act (May 2011, as amended)

DEFINITIONS

3. In this Policy:
 - (a) “alternative procurement practice” means the purchase of goods or services without a public tender or other competitive process, in the circumstances described at Section 20 of this Policy;
 - (b) “best value” means evaluating bids not only on purchase price and life cycle cost considerations, but also taking into account items such as environmental and social considerations, delivery, servicing and the capacity of the supplier to meet other criteria as stated in tender documents;
 - (c) “environmental considerations” means factors associated with the purchase, manufacture, operation or disposal of a product or asset that affect the environment, such as the degree to which the product or asset uses recycled materials, is energy efficient, or produces or reduces greenhouse gas emissions;
 - (d) “life cycle cost” means the total costs associated with a product or asset over its life span, including the cost of maintenance, repair, operation and disposal;
 - (e) “local business” means businesses whose main office or operations are physically located within the boundaries of the Municipality of the County of Annapolis and includes within the Towns of Annapolis Royal, Bridgetown and Middleton;
 - (f) “Municipality” means the Municipality of the County of Annapolis;
 - (g) “public tender” means publicly advertising the Municipality’s intended procurement of certain goods or services and inviting responses from interested suppliers. Public tenders include traditional tenders, requests for proposals, and two phase bids, and are described at Section 14 of this Policy;
 - (h) "request for proposals" means a formal invitation to suppliers to describe how their services, methods, equipment or products can address and/or meet the needs of the Municipality. Requests for proposals are described at Section 17 of this Policy;

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- (i) "request for quotations" means informally obtaining price quotations from a number of different suppliers. Requests for quotations are described at Section 14 of this Policy;
- (j) "social considerations" means factors associated with the purchase or manufacture of a product or asset that relate to the rights or interests of the workers involved, such as working conditions, fair wages, and compliance with human rights legislation and conventions;
- (k) "standing offer" means a source of supply available to the Municipality either through a standing price agreement with a supplier or as a member of a larger group of purchasers. Standing offers are described at Section 13 of this Policy;
- (l) "traditional tender" means a formal invitation to suppliers to submit a bid to supply specified goods or services. Traditional tenders are described at Section 16 of this Policy;
- (m) "two phase bid" means a two stage process in which suppliers submit proposals for evaluation, and separately submit prices. Two phase bids are described at Section 19 of this Policy.

POLICY INTENT

- 4. The purpose of this policy is to provide for the procurement of goods, services, construction and facilities by the Municipality public sector entities in a fair, open, consistent and transparent manner resulting in best value.

PROCUREMENT PRINCIPLES

- 5. All procurement carried out by the Municipality must be carried out with a view to:
 - (a) ensuring an equitable, open and transparent process for the acquisition of goods and services by the Municipality;
 - (b) avoiding dishonesty, corruption or favouritism in the procurement of goods and services;
 - (c) encouraging competitive bidding wherever possible and, in any event, minimizing the Municipality's cost of acquiring goods and services while obtaining best value;
 - (d) utilizing suppliers who can be expected to provide satisfactory performance;
 - (e) taking into account environmental considerations in all procurement decisions and selecting environmentally beneficial goods and services where practical;
 - (f) complying with applicable regional, national, and international trade agreements, including the *Agreement on Internal Trade* and the *Atlantic Procurement Agreement*;
 - (g) complying with *the Public Procurement Act*, S.N.S. 2011, c. 12 and Regulations made pursuant to the *Public Procurement Act*.
- 6. Pursuant to Subsection 15(1) of *the Public Procurement Act*, all employees involved in procurement on behalf of the Municipality must:
 - (a) ensure their procurement activities are conducted according to this Policy, provincial and federal legislation, trade agreements and ethical business practices;

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- (b) encourage and support collaborative procurement amongst other municipalities and public sector entities such as hospitals and school boards;
- (c) follow leading procurement practices;
- (d) in good faith, conduct business with current and prospective suppliers and be fair in all business dealings;
- (e) strive to obtain the best value for each expenditure;
- (f) require suppliers provide accurate representations of goods, services and construction;
- (g) encourage suppliers to consider integrating environmental, economic and social considerations in their product or service offerings;
- (h) encourage the negotiation of an equitable and mutually acceptable settlement when a dispute arises;
- (i) request removal from a procurement process when a personal conflict of interest is perceived.

NORMAL PROCUREMENT PRACTICES

- 7. In addition to adhering to the principles in Sections 5 and 6, normal purchasing practices must be as described below in Sections 8 to 11.
- 8. For goods and services having a value of less than \$2,500:
 - (a) The procurement decision must be made by the applicable Director or Service Group Manager or by an employee designated by one of those persons.
 - (b) Goods and services must be procured under a standing offer if one exists for the goods or services required, and if doing so will provide best value.
 - (c) If the goods or services cannot be procured under subsection (b), they may be purchased from any supplier, unless municipal staff have reason to believe that:
 - (i) purchasing the goods or services from that supplier would not provide best value; or
 - (ii) acquiring the goods and services from that supplier would otherwise not conform with the procurement principles in Section 5.
- 9. For goods and services having a value between \$2,500 and \$10,000:
 - (a) The procurement decision must be made by the applicable Director or Service Group Manager or by an employee designated by one of those persons.
 - (b) Goods and services must be procured under a standing offer if one exists for the goods or services required, and if doing so will provide best value.
 - (c) If the goods or services cannot be procured under Subsection (b), the goods or services must be procured by a request for quotations.

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10. For goods and services having a value between \$10,000 and \$25,000:

- (a) The procurement decision must be made by the CAO or the applicable Director or other position designated by the CAO.
- (b) Goods and services must be procured under a standing offer if one exists for the goods or services required, and if doing so will provide best value.
- (c) If the goods or services cannot be procured under Subsection (b), the CAO or the applicable Director or other position designated by the CAO must decide whether the goods or services must be procured by a request for quotations or by public tender.
- (d) If the goods or services are procured by a request for quotations, in addition to any other requirements for the request for quotations process, the following requirements must be met:
 - (i) all quotations must be obtained in writing;
 - (ii) all suppliers of the particular goods and services listed in the Municipality's Supplier Registry must be given an opportunity to quote;
 - (iii) the request for quotations must be placed on the Municipality's web page.

11. For goods and services having a value of more than \$25,000:

- (a) The procurement decision must be made by the CAO;
- (b) Goods and services must be procured by public tender, which may be preceded by a request for qualifications or request for expressions of interest.

12. Municipal staff may approve exceptions to the normal purchasing practices outlined in Sections 8 to 11 of this Policy:

- (a) when a more competitive process normally used for goods and services of higher value, is used; or
- (b) when, in accordance with the criteria described in the “alternative procurement practices” provisions at Section 20 of this policy, it is necessary or appropriate that the goods or services be purchased in accordance with that section.

GUIDELINES FOR PROCUREMENT PROCEDURES

13. Standing offers:

- (a) A standing offer is a source of supply available to the Municipality either through a standing price agreement with a supplier or as a member of a larger group of purchasers, and includes:
 - (i) a standing agreement between the Municipality and a supplier in which the supplier commits to providing specified goods or services at a specific price for a specific period of time. Such standing agreements should themselves be the subject of a competitive tender process;

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- (ii) equipment leasing programs through the Government of Nova Scotia;
- (iii) Nova Scotia Provincial "standing offers" administered by the Nova Scotia Government;
- (iv) supplies and services available from the Nova Scotia Government;
- (v) a procurement program administered by the Union of Nova Scotia Municipalities or the Association of Municipal Administrators;
- (vi) any other program available to several municipal units and other public sector entities such as hospitals and school boards, provided that municipal staff is satisfied that such program has been developed and conforms with the principles set out in Section 5.

14. Request for quotations:

- (a) A request for quotations process involves informally obtaining price quotations from a number of different suppliers.
- (b) Requests for quotations are generally used when the cost of the goods or services does not warrant the time, effort and expense required for a formal public tender process.
- (c) Quotations must normally be sought from at least three suppliers but fewer suppliers may be used when three suppliers are not available within a reasonable distance, having regard to the value of the goods and services, the shipping or travel cost and the amount of time available before the goods and services are required to be available. If it is decided to obtain fewer than three quotations, the person responsible for that decision must document their reasons for doing so.
- (d) Quotations must normally be obtained in writing, but when time does not permit the obtaining of written quotations, the quotations may be obtained verbally, except when this Policy stipulates otherwise. If a quotation is obtained verbally, the person obtaining it must document the quotation, including the time, date, supplier, price and description of the goods and services, the person from whom the quotation was obtained and the name of the municipal staff obtaining the quotation.

15. Public tender:

- (a) Public tender means publicly advertising the Municipality's intended procurement of certain goods or services and inviting responses from interested suppliers.
- (b) Public tenders are used for higher value procurements, when the cost of the goods or services warrants the time, effort and expense required for a public tender process.
- (c) Public tenders can be in the form of traditional tenders (see Section 16), requests for proposals (see Section 17), or two phase bids (see Section 18).

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16. Traditional tender:

- (a) A traditional tender is a formal invitation to suppliers to submit a bid to supply specified goods or services.
- (b) A traditional tender should be used when the procurement requirements of the Municipality can be clearly and completely specified.
- (c) Traditional tenders do not have to be opened in public, but if they are not, the name of each bidder and the amount of their bid must be made available to each bidder after the tenders are opened.
- (d) The Municipality must not negotiate with any bidders, but must award the procurement contract to the bidder that meets the tender requirements and provides best value.

17. Request for proposals:

- (a) A request for proposals is a formal invitation to suppliers to describe how their services, methods, equipment or products can address and/or meet the needs of the Municipality.
- (b) A request for proposals may be used when the Municipality is unable to clearly or completely specify the goods or services required, and suppliers are therefore asked to provide a solution to the problem, requirement or objective. Requests for proposals may also be used for professional and consulting services.
- (c) In order to preserve confidentiality of sensitive commercial information contained in a proposal, proposals submitted in response to a request for a proposal need not be opened in public, but must be opened in the presence of at least two representatives of the Municipality, and after the proposals are opened a list of the proponents must be available to the public and the proponents upon request.
- (d) Negotiations may be conducted with a proponent after proposals have been opened, subject to complying with the terms of the request for proposals which must be drafted to avoid unfair "bid-shopping" by the Municipality (that is, to avoid using the bids submitted as a negotiating tool to obtain a better price or other benefit).
- (e) The Municipality must award the procurement contract to the supplier whose proposal is determined to provide best value to the Municipality based upon the evaluation criteria set out in the request for proposals and equitably applied to all proposals.

18. Two phase bids:

- (a) A two phase bid process invites suppliers to submit bids as follows:
 - (i) Phase One: one or more steps in which bidders submit proposals for evaluation, either with or without prices in a separate submission;
 - (ii) Phase Two: Only those bidders whose bids were determined to be acceptable will be entitled to submit priced bids for consideration or, where prices are submitted separately in Phase One, the prices are opened.

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- (b) A two phase bid process may be used when detailed specifications are not available or it is impractical to prepare a specification based on price. This type of procurement has the advantages of a request for proposals in Phase One and a traditional tender in Phase Two.
- (c) The Phase One submissions need not be opened in public, but must be opened in the presence of at least two representatives of the Municipality and a list of the proponents will be available to the public and the proponents upon request. Phase Two bids must be opened in public.
- (d) The Municipality must not negotiate with any bidders, and must award the procurement contract to the supplier whose proposal is determined to provide best value to the Municipality based upon the evaluation criteria set out in the Phase One request for submissions equitably applied to all proposals, and the prices in Phase Two.

19. Alternative procurement practices

- (a) In certain circumstances, described in this section, the Municipality may purchase goods or services without using one of the options set out above. An alternative procurement purchase may occur only:
 - (i) Where an unforeseeable situation of urgency exists and the goods, services or construction cannot be obtained in time by means of open procurement procedures;
 - (ii) Where goods or consulting services regarding matters of a confidential or privileged nature are to be purchased and the disclosure of those matters through an open tendering process could reasonably be expected to compromise government confidentiality, cause economic disruption or otherwise be contrary to the public interest;
 - (iii) Where compliance with the open tendering provisions set out in this Policy would interfere with the Municipality's ability to maintain security or order or to protect human, animal or plant life or health;
 - (iv) In the absence of tenders in response to an open or selective tender, or when the tenders submitted have been collusive, or not in conformity with the essential requirements in the tender;
 - (v) 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;
 - (vi) Where there is an absence of competition for technical reasons and the goods or services can be supplied only by a particular supplier and no alternative or substitute exists;
 - (vii) For the procurement of goods or services the supply of which is controlled by a supplier that is a statutory monopoly;
 - (viii) For the purchase of goods on a commodity market;

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- (ix) For work to be performed on or about a leased building or portions thereof that may be performed only by the lessor;
 - (x) For work to be performed on property by a contractor according to provisions of a warranty or guarantee held in respect of the property or the original work;
 - (xi) For the procurement of a prototype or a first good or service to be developed in the course of and for a particular contract for research, experiment, study or original development, but not for any subsequent purchases;
 - (xii) For the purchase of goods under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases;
 - (xiii) For the procurement of original works of art;
 - (xiv) For the procurement of subscriptions to newspapers, magazines or other periodicals;
 - (xv) For the procurement of real property;
 - (xvi) For the procurement of goods intended for resale to the public;
 - (xvii) For procurement from philanthropic institutions, prison labour, persons with disabilities, sheltered workshop programs or through employment equity programs;
 - (xviii) For procurement from a public body or a non-profit organization; or
 - (xix) For the procurement of services of expert witnesses, specifically in anticipation of litigation or for the purpose of conducting litigation.
- (b) When an alternative procurement purchase occurs, the reason for doing so must be documented.

REQUIREMENTS FOR ALL PUBLIC TENDERS

20. The following requirements apply to all public tenders, whether traditional tenders, requests for proposals, or two phase bids:

- (a) The Municipality must provide reasonable notice and opportunity to respond to public tenders, and must post or place notices of public tenders as follows:
 - (i) on the public website maintained and operated by the government of Nova Scotia;
 - (ii) on the Municipality’s website;
 - (iii) in the *The Spectator*;
 - (iv) in the *The Chronicle-Herald*, upon the direction of the CAO, when the CAO determines that the cost and nature of the procurement warrants the expense of doing so;
 - (v) in other media, as directed by the CAO, when the CAO determines that the cost and nature of the procurement warrants the expense of doing so.
- (b) Every public tender must include or have attached the terms and conditions that govern the tender.

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- (c) The terms and conditions of every notice of public tender must be consistent with:
 - (i) the standard instructions that support public tenders issued by the four Atlantic provinces for goods and services, known as the Atlantic Standard Terms and Conditions (a copy of which is attached as Schedule “A” to this Policy), for the procurement of goods and services;
 - (ii) the standard instructions that support construction tenders issued by the government of Nova Scotia, known as the Construction Contract Guidelines (a copy of which is attached as Schedule “B” to this Policy), for the procurement of construction.
 - (d) Public tenders should normally include specifications or terms as follows:
 - (i) expressly or by implication outlining the issues or criteria that will be used for selection of a successful bidder or proponent;
 - (ii) a privilege clause stating that the lowest or any bid or proposal will not necessarily be accepted;
 - (iii) the location for delivery of bids or proposals;
 - (iv) the means of delivery of bids or proposals, e.g., whether faxes or e-mails are acceptable in addition to "hard copy" submissions;
 - (v) the time and date of closing;
 - (vi) a warning that tender documents and bids will be open to the public, except to the extent otherwise stated in a call for tenders or a request for proposals, in which event there must be included a warning that proposals or bids are subject to the Freedom of Information and Protection of Privacy provisions of the *Municipal Government Act*;
 - (vii) for design or architectural services, a statement that the Municipality will own the copyright in the design, plans and other intellectual property produced for the Municipality.
 - (e) Public tenders should also include a form of contract that the successful bidder will be required to enter into with the Municipality, or should direct that bidders or proponents must provide the form of contract with their bid or proposal.
 - (f) For each public tender that is awarded, the Municipality must post the name of the successful supplier and the contract amount on the public website maintained and operated by the government of Nova Scotia, and on the Municipality’s website.
 - (g) The terms and conditions of every public tender must state the criteria that the Municipality will use in evaluating responses. Those criteria are not limited to purchase price and life cycle cost considerations, but may also include items such as environmental and social considerations, delivery, servicing and the capacity of the supplier.
21. Upon the request of a supplier who is an unsuccessful bidder in a public tender, the Municipality must conduct a debriefing with that supplier to provide feedback on the evaluation of the public tender. The debriefing must be conducted as follows:
- (a) the CAO or the individuals who evaluated the public tender must conduct the debriefing;

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- (b) the debriefing must provide reasons for the disqualification of the supplier, or in the case where evaluation scoring was used, provide an overview of the supplier’s score in each category and reasons for that score;
- (c) the debriefing must also provide information to the supplier on how to improve future submissions;
- (d) the debriefing must not disclose any information regarding other bidders or their submissions.

LOCAL PREFERENCE AND SUSTAINABILITY CONSIDERATIONS

Local preference

22. Municipal staff (whoever has the authority to award the contract under this Policy) must give preference to purchasing goods and services from local businesses in accordance with the following:

- (a) If the goods or services available from a local business are equal in providing best value to those available from a non-local business, the goods or services from the local business must be purchased.
- (b) In evaluating which goods or services offer best value to the Municipality, the Municipality must apply a preference of 10% to the price offered by a local business as compared with non-local businesses, such that the price offered by the local business is adjusted lower by 10% for the purposes of evaluating which goods or services offer best value.
- (c) All requests for quotations and notices of public tender must state that local preference applies to the procurement.
- (d) In accordance with the Atlantic Procurement Agreement, the local preference described above does not apply to the following procurements:
 - (i) goods that have a value of \$25,000 or greater;
 - (ii) services that have a value of \$50,000 or greater;
 - (iii) construction that has a value of \$100,000 or greater.

Sustainability considerations

- 23. Pursuant to *the Public Procurement Act*, in evaluating which goods or services offer best value to the Municipality, the Municipality may consider sustainability criteria, meaning environmental considerations, social considerations and economic considerations.
- 24. All requests for quotations and notices of public tender must list the sustainability criteria that apply to the procurement.

GENERAL

Supplier registry

25. Suppliers wishing to do business with the Municipality shall be encouraged to register in the Municipality's Supplier Registry. The Registry must be maintained by a staff person so designated by the CAO and must consist of a table of prospective suppliers for goods and services of various types, along with contract information. At least once per year, the Municipality will advertise the existence of the Supplier Registry and the method of registration in order to update the Registry. The Registry must be used as a source or supplementary source of suppliers for requests for quotations, invitations to tender, requests for proposals and other public purposes, subject always to the principles outlined in Sections 5 and 6 of this Policy.

Unsatisfactory suppliers

26. The Municipality may refuse to purchase goods and services from a supplier, and may remove a supplier name from the Supplier Registry, if, in the opinion of Municipal Council, the supplier has not provided satisfactory performance, satisfactory quality goods or has otherwise not provided best value to the Municipality in dealings within the preceding three years.

Conflicts of interest

27. If a staff member otherwise authorized to award a contract has a conflict of interest (that is, he or she stands to gain or lose financially from a contract award), the award must be made by the person to whom the conflicted staff member normally reports and the conflicted staff member must not participate in the procurement process related to the contract in any manner.¹

Duration of contracts

28. Contracts for goods and services that are required to be procured by public tender under this policy, including price agreements, must be re-tendered at least once every five (5) years but may be re-tendered more frequently at the direction of Municipal Council.

Lease arrangements

29. Lease arrangements are subject to the provisions of this policy, save and except that Municipal Council's authority must be obtained for any leases required by the *Municipal Government Act* to be authorized by Council.

Approval of form of tender

30. Public tendering documents are to be reviewed by the CAO or his / her designate prior to issuance to ensure consistency of tendering documents and practices.

¹ Where Municipal Council is awarding a contract, *the Municipal Conflict of Interest Act* applies, so any councillor who has a conflict of interest as defined in the *Act* must act accordingly.

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Expenditures

31. Expenditures for goods and services made pursuant to this policy must be made in compliance with the Municipality's approved annual budgets.

Estimating the value of goods and services

32. In determining the cost of the goods or services for the purpose of deciding which of Sections 8 to 11 apply to a purchase, staff must reasonably estimate the cost of the goods or services.

Posting on Municipal Website

33. A copy of this policy must be posted on the Municipality's website.

Compliance with Policy

34. All staff and councillors must act in good faith to comply with this policy, but failure to comply with this policy does not invalidate any procurement decision or act of the Municipality, nor is the Municipality liable to any supplier or prospective supplier for failing to comply with this policy.

Municipal Clerk's Annotation for Official Policy Book

I certify that this policy was adopted by Municipal Council as indicated below:

Seven (7) Day Notice.....**January 9, 2018**

Council Approval**January 16, 2018**

Carolyn Young

Municipal Clerk

At Annapolis Royal Nova Scotia

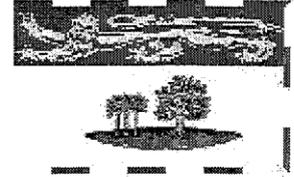
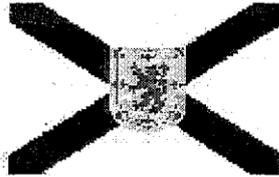
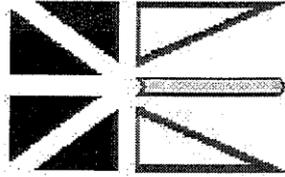
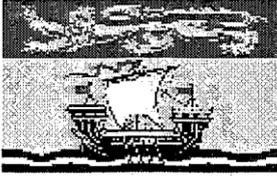
January 16, 2018

Date

Approved August 21, 2012

Amended January 16, 2018 - increased local preference (*Sub-section 22 (b)*) from 5% to 10%

AM-1.7.4 Purchasing and Tendering Policy Schedule "A"



Atlantic Provinces Standard Terms and Conditions Goods and Services Effective 2007 April.1 or later

NOTE: These Terms and Conditions and the Supplements for the issuing Province shall apply only to those documents that reference them specifically. In the event of any conflict or disagreement between these Terms and Conditions and the invitation documents, the Invitation documents have precedence and will be assumed to be correct.

These Terms and Conditions are intended to cover a wide range of provincial procurements, including goods and services. As such, not all clauses will be applicable in all situations. If Bidders have questions regarding any of these Terms and Conditions, they must call the contact person named on the Invitation form, or get in touch with the Procurement Office. To satisfy special requirements, supplementary Terms and Conditions may also apply to some acquisitions. If this is the case, the Invitation documents will reference any such documents, in addition to these Terms and Conditions.

The official Terms and Conditions are available from the Council of Atlantic Premiers (CAP) website a <http://www.cap-cpma.ca/default.asp?mn=1.62.74> . In the event of any discrepancy or conflict, the Terms and Conditions at the CAP website will be considered the correct version. If you do not have access to these documents on the Internet, contact your closest Procurement Office.

Failure to completely comply with these Terms and Conditions could cause the Bidder's Bid to be disqualified.

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Definitions

Bid: Bidder's written offer to provide the required goods or services at a given price or rate, or any similar document issued in reply to an Invitation. May also be referred to as a Proposal, Tender, Quotation, Submission, Response or similar name.

Bidder: Any person, business, or Consortium that submits a Bid.

Broader Public Sector: Any governmental or government-funded entity within a Province, including the MASH sector (Municipal governments, Academic institutions such as universities and community colleges, School boards and Hospitals). Includes all government departments, agencies, boards, offices and commissions and Crown Corporations.

Consortium: Two or more Bidders having no formal corporate links, who submit a joint Bid.

E-bid: A Bid submitted electronically via the Internet.

Fax Bid: A Bid submitted by means of facsimile transmission over telephone lines.

Invitation: A formal request for prices or responses, whether in printed or electronic form, with sealed Bids, faxed Bids, electronically submitted Bids, or similar responses opened at a given time. May also be referred to as a Tender, Request for Bids, Request for Quotations, Request for Proposals, Request for Information, Prequalification, Request for Expression of Interest, or similar name. The Invitation incorporates any addenda that may be issued.

Paper Bid: A Bid submitted in printed form, not through facsimile or other electronic medium

Procurement Office: The office responsible for the issuing and processing of Invitations for the Province, as identified in the Invitation documents.

Province: Her Majesty the Queen in right of the Province or Provinces identified in the Invitation, including the Procurement Office and the Department or agency on whose behalf the Invitation is issued.

Denotations: The words "may" "could" or "should" denote the permissive. The words "must", "shall" or "will" denote the imperative.

AM-1.7.4 Purchasing and Tendering Policy Schedule "A"

Provincial Offices

The table below gives specific information about the Procurement Office for each Province.

Prov	New Brunswick	Newfoundland & Labrador	Nova Scotia	Prince Edward Island
	Central Tendering Branch PO Box 8000 Room 205, 20 McGloin St. Marysville Place Fredericton, NB E3B 5H6 Phone 506-453-2245 Fax 506-444-4200	Government Purchasing Agency 30 Strawberrymarsh Road St. John's, NL A1 B 4R4 Phone 709-729-3348 Fax 709-729-5817	Public Tenders Office PO Box 787 Suite 200 6176 Young St. Halifax, NS B3J 2V2 Phone 902-424-3333 Fax 902-424-0622 e-mail ptenders@gov.ns.ca	Procurement Services PO Box 2000 Room 27, 2nd Floor Shaw 105 Rochford St. Charlottetown, PE CIA 7N8 Phone 902-368-4040 Fax 902-368-5171
	Atlantic time, 1 hour ahead of Eastern time (10:00 am Eastern time is 11:00 am in New Brunswick)	Newfoundland time, 1 1/2 hours ahead of Eastern time	Atlantic time, 1 hour ahead of Eastern time (10:00 am Eastern time is 11:00 am in Nova Scotia)	Atlantic time, 1 hour ahead of Eastern time (10:00 am Eastern time is 11:00 am in Prince Edward Island)

1. Date, Time and Place of Closing and Opening; Late Bids

- 1.1 Invitations will close at the time, date and location specified in the Invitation documents.
- 1.2 All Bids must be received in their entirety *at or before* the closing time specified; Bidders are responsible for ensuring that their Bid, however submitted, is received on time and at the location specified.
- 1.3 All times are local times; note the time difference between Bidder's location and the Procurement Office (see Procurement Office table).
- 1.4 Bids received late, or not received completely by the closing time will not be considered; the Procurement Office time clock will be assumed to be correct in the event of dispute.
- 1.5 All Bids must be sent to the Procurement Office (as identified in the Invitation documents), and will be opened there, in accordance with that Procurement Office's rules for opening Bids.
- 1.6 Bids will be opened publicly at the time and date specified in the Invitation. The public is allowed to attend Bid openings for most publicly-advertised Invitations - the website Invitation Notice, advertisement and/or the Invitation document itself will specify if the Bid opening can be attended by the public.

2. Methods of Submission

2.1 General

- 2.1.1 Bids must be legible and complete, must include the Invitation number and identify the Bidder's name and address and supply all information requested; incomplete or illegible Bids are subject to rejection.

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- 2.1.2 All questions or areas on the Invitation form must be answered, even if it is only to indicate that the referenced item is not available; blank items will be assumed to be unavailable, and may result in rejection of Bidder's Bid.
- 2.1.3 Where the price summaries of the Bid do not fully explain the cost implications of an item, additional pricing detail should be attached, and shall form part of the Bid.
- 2.1.4 Prices should be broken down as requested; if the cost of an item has been included in some other item, enter "Included in Item [nn]".

2.2 Paper Bids

- 2.2.1 Bids must be enclosed in a sealed, opaque envelope or package.
- 2.2.2 The Bidder's name, the Invitation number and the Invitation closing date should be clearly visible on the outside of the envelope or package.
- 2.2.3 The Bid must be signed by an appropriate authorized official of the firm submitting the Bid.

2.3 Fax Bids

- 2.3.1 A Bid may be submitted by facsimile (fax) unless the Invitation documents state that fax Bids are not acceptable.
- 2.3.2 Fax Bids may not be acceptable where the Bid must be accompanied by original documents, plans, deposits, or physical samples.
- 2.3.3 Fax Bids are accepted for the convenience of the Bidder; the Province cannot ensure the confidentiality or error-free receipt of fax Bids. A Bidder submitting a Fax Bid does so at its own risk.
- 2.3.4 Submit Fax Bids to the Procurement Office only; do not send the Bid to any other fax number unless specifically directed to do so.
- 2.3.5 The Bid must be signed by an appropriate authorized official of the firm submitting the Bid.

2.4 Electronic Bids

- 2.4.1 E-bids, or Bids submitted partially in electronic format, are permissible only where the Invitation documents specifically identify that they can be used, and should be submitted in the manner and format specified; Bids not fulfilling these requirements may be rejected without further consideration.
- 2.4.2 The Province cannot ensure the confidentiality or error-free receipt of electronically-submitted Bids or Bid components, and cannot guarantee that the Internet connections or website will be available at all times up to the closing time for Bid submission. A Bidder submitting an Electronic Bid does so at its own risk.
- 2.4.3 Complete instructions for submitting e-bids are available online with any e-bid Invitation opportunity.
- 2.4.4 Invitations that permit e-bids may require that all submissions be made in electronic format, or they may allow a combination of electronic and written responses; the conditions and permissible forms will be stated in the Invitation documents.
- 2.4.5 All e-bids are subject to verification by the Procurement Office to ensure that the Bid is a bona fide offer submitted by the person or company named in the Bid.
- 2.4.6 Click on the links below to view further specific information about submitting Electronic Bids for each Province. A new window will open in the browser to allow Bidders to view this information. Close the new window when ready to return to this document.

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Prov	New Brunswick	Newfoundland & Labrador	Nova Scotia	Prince Edward Island
Link	See NB Supplement	Not Applicable	See NS Supplement	Not Applicable

3. Obtaining Documents

3.1 Bids should be submitted on the official Invitation forms as issued through the Procurement Office; failure to use the correct forms could result in the Bid being rejected.

3.2 Click on the links below to view specific information about obtaining Invitation Forms for each Province. A new window will open in the browser to allow Bidders to view this information. Close the new window when ready to return to this document.

Prov	New Brunswick	Newfoundland & Labrador	Nova Scotia	Prince Edward Island
Link	See NB Supplement	See NL Supplement	See NS Supplement	See PE Supplement

3.3 Only use copies of Invitation forms received from the official sources/agencies listed in section 3.2; improperly obtained forms could result in the Bid being rejected.

3.4 It is the Bidder's responsibility to obtain Invitation documents at their cost.

3.5 Bidders must not alter any portion of the Invitation or associated documents, with the exception of adding the information requested by the Invitation. Bids containing clauses additional to the Invitation that are "qualified" or "conditional" may be rejected.

3.6 The Invitation, or any supplementary document or portion thereof is proprietary information, and must not be used by the Bidder for any purpose other than the submission of Bids without the permission of the Procurement Office.

4. Vendor Registration

4.1 Click on the links below to view specific information regarding Bidder Registration and/or Corporate Registration requirements for each Province. Bidder Registration deals with processes required for Bidders to receive Invitations and/or submit Bids. Corporate Registration deals with the requirements for doing business in the Atlantic Provinces, including receiving awards. A new window will open in the browser to allow Bidders to view this information. Close the new window when ready to return to this document.

Prov	New Brunswick	Newfoundland & Labrador	Nova Scotia	Prince Edward Island
Link	See NB Supplement	See NL Supplement	See NS Supplement	See PE Supplement

5. Liability for Costs

5.1 Bidders are responsible for their own expenses in preparing, delivering or presenting a Bid and for subsequent negotiations with the Province, if any. The Province will not defray any costs incurred by a Bidder in responding to an Invitation.

5.2 The Province will not be responsible for any costs, expenses, losses, damages or liability incurred by the Bidder as a result of, or arising out of, the submission of any Bid, or due to the Province not accepting or rejecting any Bid.

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6. Alternative Bids; Altering Bids Already Submitted

- 6.1 Alternative Bids are multiple replies to an Invitation, all or any of which are open for consideration. If Alternative Bids are being made, each alternative should be submitted as a complete, separate and independent Bid, and the Bid form, e-bid or fax must be identified with words such as "Alternative A", "Alternative B", etc.
- 6.2 Multiple Bids submitted by the same Bidder and not clearly identified as Bid revisions will be assumed to be Alternative Bids.
- 6.3 Bids already submitted may be amended prior to closing a) by submitting an amendment identifying the plus or minus variance to the original Bid, or b) by sending in a complete new Bid, clearly indicating it replaces the previously submitted Bid. Any such revision must clearly identify the Invitation number and closing date of the Bid being submitted. A Bid revision replaces any other Bid revisions previously submitted by the Bidder; only the last of any Bid revisions received will be accepted.
- 6.4 Any Bid submitted in response to an Invitation may be withdrawn by written request to the Procurement Office, but cannot be withdrawn, altered or changed in any way after the Invitation closing date and time.
- 6.5 All requests for withdrawal, amendment or submission of a replacement Bid must be submitted in writing on company letterhead or equivalent, and be signed by an authorized official of the Bidder.

7. Supporting Documents

- 7.1 A brief supplementary statement may be included with the response to an item to give the evaluators a clear understanding of the products/ personnel proposed and their ability to perform the specified tasks.
- 7.2 In addition to the responses requested in the Invitation, Bidders may include specifications on some or all proposed items for evaluation purposes.
- 7.3 Supporting documents should be suitably cross-referenced to the Invitation.

8. Unit Prices and Extensions; Taxes excluded; Currency; Shipping costs

- 8.1 All prices should be extended and totaled. The extended price is derived by multiplying the unit price by the quantity of units required.
- 8.2 In the event of an error in calculation of the extended price, the unit price will be taken as correct and will govern in the Bid evaluation and contract administration.
- 8.3 Do not include any Provincial or Federal sales taxes in the price.
- 8.4 All prices should be quoted in Canadian dollars unless other currencies are specifically requested.
- 8.5 Shipping, cartage, loading, insurance and handling charges must be included in the total price. If these charges have not been stated specifically, it will be assumed that they have been included in the Bid price, i.e. FOB to the destination(s) listed in the Invitation. The Province will not assume responsibility for any goods or services until they have been delivered to the destination(s) specified in the Invitation.
- 8.6 Unless stated otherwise in the Invitation, a firm, all-inclusive price is required, i.e. hourly rates or "Time and Materials" are not acceptable responses.

9. Duration of Bid/Award Prices

- 9.1 If the Bid is accepted, prices must remain firm for the duration of the contract unless otherwise specified.
- 9.2 Unless stated otherwise in the Invitation, Bids must remain open to acceptance and are irrevocable for a period of 90 days after the Invitation closing date.

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10. Payment Terms and Discounts

10.1 Click on the links below to view specific information about Payment Terms and Discounts for each Province. A new window will open in the browser to allow Bidders to view this information. Close the new window when ready to return to this document.

Prov	New Brunswick	Newfoundland & Labrador	Nova Scotia	Prince Edward Island
Link	See NB Supplement	See NL Supplement	See NS Supplement	See PE Supplement

11. Delivery

- 11.1 Where the Invitation includes a mandatory delivery schedule, the Province will assume that the Bidder can meet the requested schedule and is satisfied that the goods or services required will be available for delivery on the requested date(s).
- 11.2 If Bidders wish to specify a delivery schedule different from that requested in the Invitation, they must provide specific delivery dates or a schedule in calendar days from the date a Purchase Order is issued. Bids that do not meet the delivery schedule as requested in the Invitation may be rejected.
- 11.3 Time is of the essence, and Bidder's delivery schedule is legally binding. The Province reserves the right to assess penalties or cancel awards to Bidders who fail to meet their stated delivery or completion dates.

12. Quality / Complete Product

- 12.1 Unless otherwise stated in the Invitation, all material included in the Bid must be new, first quality goods; used, refurbished, second, obsolete, discontinued or demonstrator items must only be proposed if the Invitation specifically requests or otherwise states that such goods will be allowed.
- 12.2 By submitting a Bid, Bidder guarantees that, unless the Invitation specifies otherwise, all components required to make the required equipment or system operable or to deliver the required services have been included in the Bid, or will be provided at no additional charge to the Province.
- 12.3 Where applicable, the end user must be provided with complete operation manuals, warranty registration forms, user licenses/ authentications and/or other associated documentation normally provided by the manufacturer, reseller, installer and/or consultant.

13. Substitutions and Equivalents, Discontinued Items

- 13.1 The specifications in the Invitation define the minimum acceptable goods and/or services required. Minor deviations from the specifications may or may not be permitted at the sole discretion of the Procurement Office.
- 13.2 The Invitation may specify items by brand name and/or model number to designate the design, type of construction, quality, functional capability and/or performance level of the product requested.
- 13.3 If an item has been discontinued during the Invitation process, or is otherwise unavailable, the Procurement Office will cancel the Invitation, or will issue an Addendum to update the specification. Bidders should notify the Procurement Office immediately when they become aware of any discontinuation of specified items.
- 13.4 If Bidders feel that they can provide items with equivalent or better functionality at the same or lower cost, they may be able to offer a substitute item. Substitutions offered must be of equal or better quality and clearly identified, and accompanied by brochures and technical information to permit evaluation of the item being offered. Substitution items must be identified by manufacturer's stock/part number and other descriptive information to establish equivalency. Substitutions offered without documentation sufficient to determine equivalency may be rejected as non-compliant.

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- 13.5 The Procurement Office reserves the right to inspect or test any product bid to determine equivalency, and may require demonstrator or sample items in order to be able to evaluate the items proposed. The Province will be the sole judge of equivalency.
- 13.6 Specifications may, for technical or logistical reasons, require that the items specified be supplied without substitution.

14. Standards and Certification

- 14.1 Where applicable, all equipment must be certified by the appropriate regulatory agencies (e.g. Canadian Standards Association, Communications Canada, Transport Canada, Canadian Gas Association, Health Canada, etc.), and/or must be approved by the appropriate Provincial agency (e.g. Office of the Fire Marshal).

15. Addenda, Corrections or Extensions of the Invitation

- 15.1 The Procurement Office reserves the right to modify the terms of the Invitation at any time prior to closing, at its sole discretion.
- 15.2 The Procurement Office will make information available to the public regarding any changes made to the Invitation, or any change in the closing date or time. Bidders are responsible for ensuring that they are aware of and have complied with any Addenda.
- 15.3 When these changes occur within five business days of the closing date, the closing date may be extended to allow for a suitable Bid preparation time.

16. Environmental Considerations

- 16.1 The Province may seek to purchase recycled and/or environmentally sensitive products where practical and effective.
- 16.2 Where appropriate, the integration of environmental considerations into Invitations may be noted in the specifications; the specifications will identify these considerations to ensure that suppliers have a full understanding of the conditions to be met. For example, the supply of goods or services to Provincial parks may be affected by regulations such as the Canada Wildlife Act that are not normally a consideration in Provincial procurements.

17. Warranty

- 17.1 The Bidder must describe the duration, type (e.g. on-site, depot, ship-in or carry-in) and terms of the manufacturer's warranty on all goods.
- 17.2 If the Bidder provides any additional/ supplementary warranty coverage, describe this as well.
- 17.3 If warranties can be upgraded or extended, identify the upgrade costs separately. Do not include warranty upgrade or extension costs in the Bid price unless the Invitation specifically states that the upgrade is a mandatory requirement.
- 17.4 If local service is a requirement of the Invitation, describe the means by which this will be accomplished, i.e. by "own forces" or through a contractual arrangement with a third party (which must be identified - see Section 19, "Subcontractors and Consortium Bids").

18. No Restrictions on Fair Use

- 18.1 The Bidder warrants that there are no patents, trademarks or other rights restricting the use, repair or replacement of the goods or services furnished or any part thereof. The Bidder agrees to indemnify and save harmless the Province from and against all claims filed or prosecuted in any manner because of such use, repair or replacement of the goods or services being a violation of any patent, trademark, or other right.

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19. Subcontractors and Consortium Bids

- 19.1 The use of a subcontractor is permitted, and encouraged where this will result in skills and technology transfer to the Province.
- 19.2 Names of all Subcontractors and/or Consortium members, and the services they will provide, must be listed on or attached to the Bid, if requested.
- 19.3 If a Consortium Bid is being submitted, one of the Bidders must be prepared to take overall responsibility for successful provision of the goods or services, and this must be defined in the Bid. Failure to do so may result in disqualification of the Bid.
- 19.4 "Own Forces" may only be named as Subcontractors when the Bidder is equipped to carry out and normally carries out the work noted.
- 19.5 If subcontractors (including "own forces") are named, work must be carried out by the named forces and substitution of others will not be allowed without prior approval of the Province.

20. Right to Reject; Financial Stability; Non-Compliance

- 20.1 Failure to comply with any of the mandatory terms or conditions contained or referenced in the Invitation documents may result in the rejection of the Bid.
- 20.2 All of the terms, conditions and/or specifications stated or referenced in the Invitation are assumed to be accepted by the Bidder and incorporated in the Bid.
- 20.3 Bidders may be required to demonstrate financial stability, authorization to provide the goods/services being acquired, and/or regulatory agency approval, licensing or registration as needed, or otherwise clarify Bidder's capability to satisfy the Invitation requirements. The Procurement Office reserves the right to reject Bids from any Bidder that it feels is incapable of providing the necessary labour, materials, equipment, financing or management resources to perform the work or supply the goods in a satisfactory and timely manner.
- 20.4 The Province reserves the right to waive minor non-compliance where such non-compliance is not of a material nature in its sole and absolute discretion, or to accept or reject in whole or in part any or all Bids, with or without giving notice. Such minor non-compliance will be deemed substantial compliance and capable of acceptance. The Procurement Office will be the sole judge of whether a Bid is accepted or rejected.
- 20.5 The Procurement Office reserves the right to split an award amongst Bidders as deemed in the best interests of the Province.

21. Cancellation; No Award

- 21.1 Issuing an Invitation implies no obligation on the Province to accept any Bid, or a portion of any Bid submitted. The lowest or any Bid will not necessarily be accepted.
- 21.2 Invitations may be cancelled in whole or in part without penalty, when a) the price Bid exceeds the funds allocated for the purchase; b) there has been a substantial change in the requirements after the Invitation has been issued; c) information has been received by the Province after the Invitation has been issued that the Province feels has substantially altered the procurement; or d) there was insufficient competition in order to provide the level of service, quality of goods or pricing required.
- 21.3 If no compliant Bids are received in response to an Invitation, the Province reserves the right to enter into negotiations with one or more vendors in order to complete the procurement.
- 21.4 The Province will be the sole judge of whether there is sufficient justification to cancel any Invitation. 21.5 No action or liability will lie or reside against the Province in its exercise of its rights under this section.

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22. Governing Laws and Trade Agreements - Local Preference

- 22.1 Unless the Invitation documents specifically state otherwise, the Invitation, all Bids, and any subsequent contracts will be construed and interpreted in accordance with the laws of the Province in which the Invitation was issued.
- 22.2 Invitations subject to the Atlantic Procurement Agreement, the Agreement on Internal Trade, or any other inter-provincial agreement, will be specifically identified as such in the public notice and/or the Invitation documents.
- 22.3 Copies of any applicable trade or procurement agreements and/or legislation can be obtained by contacting the Procurement Office.
- 22.4 Bidders agree to comply with all applicable laws, regulations and standards, including all labour, occupational health & safety, and worker compensation requirements of the Province.
- 22.5 The Procurement Office may consider and evaluate any Bids from other jurisdictions on the same basis that the purchasing authorities in those jurisdictions would treat a similar Bid from a supplier located in this Province. The Province will be the sole judge of whether these conditions will be used and the extent to which they will be applied.
- 22.6 Vendors registered to do business in any Atlantic Province can bid on Invitations issued by any other Atlantic Province without having to satisfy any local registration or residency requirements.
- 22.7 Local Preference - Click on the links below to view specific information regarding local supplier preference provisions for each Province. A new window will open in the browser to allow Bidders to view this information. Close the new window when ready to return to this document.

Prov	New Brunswick	Newfoundland & Labrador	Nova Scotia	Prince Edward Island
Link	Not Applicable	Not Applicable	Not Applicable	See PE Supplement

- 22.8 Under Canadian law (and international agreements), your Bid must be arrived at separately and independently, without conspiracy, collusion or fraud; see <http://www.competitionbureau.gc.ca/internet/index.cfm?itemid=1243&lq=e> for further information.

23. Confidentiality and Freedom of Information

Prov	New Brunswick	Newfoundland & Labrador	Nova Scotia	Prince Edward Island
Link	Not Applicable	Not Applicable	See NS Supplement	Not Applicable

- 23.1 All Bids submitted become the property of the Province. By submitting a Bid, the Bidder hereby grants the Province a license to distribute, copy, print or translate the Bid for the purposes of the Invitation. Any attempt to limit the Province's right in this area may result in rejection of the Bid.

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- 23.2 Bidder's Bid package may be subject to disclosure under the Province's "freedom of information" legislation. By submitting a Bid, the Bidder agrees to the appropriate disclosure of the information supplied, subject to the provisions of the governing law. The Province cannot guarantee the confidentiality of the complete content of any Bid after the procurement has been awarded to the successful Bidder.
- 23.3 During the delivery and installation of goods and/or services, the Bidder or Bidder's staff may have access to confidential information belonging to the Province. Should this occur, the Bidder must ensure that such information is not released to any third parties or unauthorized individuals; failure to comply may result in criminal or civil charges and/or the Bidder's disqualification from any further Invitations issued by the Province.

24. Bidders Located Outside Canada

- 24.1 If a Bid is given in currency other than Canadian dollars, the Bidder assumes the risk of variations in international exchange rates, and Bidder's prices must include all associated costs and overheads connected with foreign currency transactions.
- 24.2 The bidder must arrange for clearance of goods through the Canada Border Services Agency, along with all brokerage fees and payment of applicable Canadian taxes and duties. For information pertaining to the Canada Border Services Agency please visit <http://www.cbsa-asfc.gc.ca> .
- 24.3 The Bidder must arrange all visas, insurance, work permits, passports, etc. for personnel required to visit Canada in association with the Bid.
- 24.4 All warranties on goods must be valid in Canada. To the extent that facilities are available, warranty service should be provided in Canada.
- 24.5 There must be no conflict with authorized Canadian distributors of the goods and/or services being Bid.
- 24.6 All goods must be compliant with Canadian operating environments (e.g. common domestic electricity is 60Hz 115v 1 phase) and, where applicable, must be certified by the appropriate Canadian regulatory agencies (reference para. 14.1).
- 24.7 Professional personnel (medical staff, engineers, architects, lawyers, accountants, etc.) must be registered with the appropriate Canadian professional and/or regulatory authorities, or must be eligible to register with such authorities if accepted for the work being tendered.
- 24.8 Where any of the requirements set out in Paragraphs 24.1 to 24.7 inclusive are not met, the Province reserves the right to reject the Bid, or to require bonds or sureties to ensure compliance.
- 24.9 Sale of Goods Act - Bidder's acceptance of any Purchase Order(s) resulting from this Invitation, in writing or by delivery, must include all of, and must be limited to, the terms and conditions of the Purchase Order only. Formal objection is hereby made to any additional or different terms a Bidder might propose in acceptance of any Purchase Order(s).

25. Enquiries and Contacts

- 25.1 In case of any dispute over the completeness, accuracy and/or interpretation of any Invitation documents, the versions of such documents held by the Procurement Office will be considered correct.
- 25.2 Information, offers, commitments or instructions obtained from any source other than the Procurement Office will not be binding on the Province.
- 25.3 Enquiries regarding the Invitation must be made to the contact(s) named in the Invitation documents (or their designates); quote the Invitation number on any correspondence.

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- 25.4 If an envelope was included with the Invitation documents, this envelope must not be used to submit an enquiry; these envelopes are not opened before the closing time for receipt of Bids.
- 25.5 Enquiries and the responses given may be recorded and may be distributed to all other Bidders as Addenda. No response shall be binding on the Province unless made in writing.
- 25.6 All enquiries regarding the interpretation of these Terms and Conditions, general procurement policy or procedures must be made to the Procurement Office.

26. Accuracy of the Invitation; Right to Clarify

- 26.1 While the Province has tried to ensure accuracy in the Invitation, it is not guaranteed or warranted by the Province to be accurate, nor is it necessarily comprehensive or exhaustive.
- 26.2 The Procurement Office will assume that all Bidders have resolved any questions they might have about the Invitation and have informed themselves as to existing conditions and limitations, site restrictions, etc. before submitting their Bids.
- 26.3 Nothing in the Invitation is intended to relieve Bidders from forming their own opinions and conclusions with respect to the matters addressed in the Invitation or its associated documents.
- 26.4 The Province reserves the right in its sole discretion to clarify any Bid after closing by seeking further information from that Bidder, without becoming obligated to clarify or seek further information from any or all other Bidders. However, Bidders are cautioned that any clarifications sought will not be an opportunity either to correct errors or change their Bids in any substantive manner.

27. Language

- 27.1 Unless specifically requested otherwise, all Bids, supporting materials, operation manuals and documentation must be in the language(s) as noted here. Click on the links below to view default language requirements for each Province. A new window will open in the browser to allow Bidders to view this information. Close the new window when ready to return to this document.

Prov	New Brunswick	Newfoundland & Labrador	Nova Scotia	Prince Edward Island
Link	See NB Supplement	See NL Supplement	See NS Supplement	See PE Supplement

28. Eligibility and Conflict of Interest

- 28.1 A Bid may not be eligible for acceptance if current or past corporate or other interests of the Bidder may, in the Province's opinion, give rise to a conflict of interest in connection with a project.
- 28.2 Bidders are cautioned that acceptance of their Bid may preclude them from bidding on subsequent phases where a conflict of interest may arise; Bidders should study the project implementation strategy to determine whether or not they plan to submit Bids on subsequent phases.
- 28.3 If the Bid covers the first phase of what may prove to be a multi-phased project, the successful Bidder on the initial phase may be permitted to bid on subsequent phases as long as, in the Province's opinion, no conflict of interest would be created in performance of the work by that Bidder.
- 28.4 Sub-contracting to any firm or individual whose current or past corporate or other interests may, in the Province's opinion, give rise to a conflict of interest in connection with this acquisition will not be permitted. This includes, but is not limited to, any firm or individual involved in the preparation of the Invitation documents.
- 28.5 Provincial Requirements: Click on the links below to view further requirements for each Province. A new window will open in the browser to allow Bidders to view this information. Close the new window when ready to return to this document.

Schedule "A" to AM-3.2.1 Purchasing and Tendering Policy

Prov	New Brunswick	Newfoundland & Labrador	Nova Scotia	Prince Edward Island
Link	Not Applicable	Not Applicable	See NS Supplement	Not Applicable

29. Extension to the Broader Public Sector

29.1 The Province may choose to allow the Broader Public Sector (see Definitions) to purchase goods or services from some Invitations. the Broader Public Sector are generally permitted to purchase from "Standing Offers", which are long-term contracts resulting from an Invitation. Other Invitations may also be available to the Broader Public Sector; if so, the Invitation documents will state this.

29.2 By submitting a Bid to a Standing Offer or other identified Invitation, the Bidder agrees to extend the same pricing to other eligible Broader Public Sector institutions as per the terms and specifications in the Invitation.

30. Miscellaneous Terms and Conditions

Prov	New Brunswick	Newfoundland & Labrador	Nova Scotia	Prince Edward Island
Link	See NB Supplement	Not Applicable	Not Applicable	Not Applicable

CONSTRUCTION CONTRACT GUIDELINES

May 18, 2006

Schedule "B" to Purchasing and Tendering Policy

NOVA SCOTIA
Transportation and Public Works

Schedule "B" to AM-3.2.1 Purchasing and Tendering Policy

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CCGO1 STATEMENT OF PURPOSE

- 1.1 These guidelines provide the process for the administration of the Province of Nova Scotia construction contracts. The objective of these guidelines is to maintain a high level of confidence in the procurement and contract administration process by ensuring that bidding is fair, equitable, consistent, efficient, and undertaken in an open and competitive manner.
- 1.2 The Province of Nova Scotia Procurement Policy of January 26, 2001, the Atlantic Procurement Agreement, the Agreement on Internal Trade and Procurement Services instructions provide the framework within which these guidelines have been formulated.
- 1.3 These guidelines are not a substitute for the specifications of a particular project, but highlight certain fundamental principles of the procurement and contracting process.
- 1.4 The guidelines have been developed in consultation with the Construction Association of Nova Scotia.
- 1.5 It is intended that these Construction Contract Guidelines will apply to all construction procurement for government departments, agencies, commissions, school boards and health authorities and are recommended for use (where deemed appropriate, at the discretion of the Contracting Authority) by crown corporations, municipalities and academic institutions.

CCGO2 DEFINITIONS

The following definitions may be found in this document or related contract documents.

- 2.1 **Bid:**
An offer submitted in response to an invitation to tender.
- 2.2 **Bid closing time:**
The time up to which bids will be accepted and beyond which bids will be rejected.
- 2.3 **Bidder:**
A person, firm or corporation who submits a bid.
- 2.4 **Bidding period:**
A time provided to prospective bidders to assemble and submit their bid. Further defined as the time period between the Invitation to bid and the bid closing time.
- 2.5 **Bid security:**
A promise to pay to the contracting authority its costs of accepting another bid, up to a limit, specified in the bid document, if it is the contracting authority's intent to award a contract and the bidder fails to enter into the required contract.

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2.6 Completion of the contract:

Completion of the contract shall have been reached when the work has been certified as being complete and any deficiencies documented during the specified warranty period have been corrected and so certified by the consultant and/or the contracting authority on behalf of the public sector.

2.7 Completion of the work:

Completion of the work shall have been reached when all construction and all deficiencies documented at the time of Substantial Performance have been corrected, and so certified by the consultant and by the contracting authority on behalf of the public sector.

2.8 Construction:

Construction means a construction, reconstruction, demolition, repair or renovation of a building, structure, road, bridge or other engineering or architectural work. It does not include professional consulting services related to the construction contract, unless they are included in the procurement.

2.9 Construction management contracts:

A contracting strategy wherein the construction manager is responsible to provide the contracting authority with complete executive and administrative functions relative to the construction of the project, including the administration of all contracts entered into as:

2.9.1 Direct agreements between the construction manager and the trade contractors for various portions of the construction.

2.9.2 Direct agreements between the contracting authority and the trade contractors.

2.10 Contract price:

The set amount of money considered and agreed to by both parties for the execution of the work as described in the contract documents.

2.11 Contracting authority:

The public sector body-having authority to enter into a contract on behalf of the Province of Nova Scotia.

2.12 Contractor:

The contractor is the person, firm or corporation identified as such in the contract. The team contractor means the contractor or his authorized representative as designated to the contracting authority.

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2.13 Design build contracts:

A contracting strategy wherein the contracting authority enters into a contract with a contractor, who will provide complete design, procurement and construction services for a specified price.

2.14 Estimated contract value:

The estimated contract value is the total value of the work being tendered as determined by the contracting authority from a Class A estimate. A Class A estimate is an estimate that has been prepared, based on a complete set of tender documents prior to tender call.

2.15 Evaluation criteria:

Evaluation criteria are the methods, standards and measures used to assess the degree to which a bid has addressed the requirements identified in the invitation to bid documents.

2.16 Invitation to bid:

An invitation to bid solicits competitive bids. An invitation to bid is used when the requirement is adequately defined to permit the evaluation of bids against clearly stated criteria and specifications. The bid document describes the specifications to be met and the terms and conditions that will apply.

2.17 Irrevocable standby letter of credit:

A form of Bid, Performance, Payment and Warranty Security issued by a certified financial institution subject to the Uniform Customs and Practices for Documentary Credits (1993 Revision) International Chamber of Commerce (Publication No. 500), for a sum as specified in the Invitation to Bid. The Irrevocable Standby Letter of Credit will remain in effect until the Certificate of Completion of the Contract is issued.

2.18 Lowest competent bid:

The lowest priced, compliant bid submitted by a responsible contractor or supplier is deemed the lowest competent bid.

2.18.1 Responsible:

A responsible person, association of persons or body corporate is one who is capable in all respects to perform the contract.

2.18.2 Compliant:

To be considered compliant, a proposal, bid or offer must meet all requirements stipulated in the invitation. Bids are deemed to be non-compliant if they fail to meet any mandatory requirement set out in the bid solicitation.

2.19 Major change of scope:

Changes in scope of work of 10% or greater, of estimated contract value.

Schedule "B" to AM-3.2.1 Purchasing and Tendering Policy

2.20 **Minor change of scope:**

Changes in scope of work of less than 10% of estimated contract value.

2.21 **Pre-qualification of bidders:**

The process where an open invitation is advertised and conducted for the purpose of soliciting bidders to submit their qualifications to the contracting authority to be evaluated and selected to be invited to bid on a tender. The submitted qualifications are measured against predetermined evaluation criteria and those bidders receiving a passing grade are invited to bid on the work.

2.22 **Public advertisement:**

A public advertisement means advertising in the public media with provincial circulation. In addition, public advertisement includes a notice posted on the Nova Scotia Procurement Website.

2.23 **Public Tenders Office:**

Procurement Services administers the bidding process on behalf of Departments, Agencies, Boards and Commissions, of the Government of Nova Scotia.

2.24 **Rejected bid:**

A bid that is not considered on the basis that it does not meet the requirements specified in the Invitation to bid documents.

2.25 **Subcontractor:**

A subcontractor is a person, firm or corporation having a direct contract with the contractor to perform a part or parts of the work, or to supply products worked to a special design according to the contract documents, but does not include one who merely supplies products not so worked.

2.26 **Substantial performance of the work:**

Substantial Performance shall- have been reached when the work is ready for use or is being used for the purpose intended and when the work to be done under this contract is capable of completion or correction at a cost of not more than two and one half percent of the contract price as so certified by the consultant and the contracting authority.

2.27 **Supplier:**

One who furnishes material not worked to a special design.

2.28 **Unit price contract:**

A contract whereby both parties agree to carry out the work as described in the tender documents, based on individual work item unit bid prices.

Schedule "B" to AM-3.2.1 Purchasing and Tendering Policy

CCGO3 REQUIREMENT TO SOLICIT COMPETITIVE BIDS

- 3.1 The contracting authority shall invite bids prior to entry into any contract, subject to the following:
 - 3.1.1 Construction requirements with an estimated value of up to and including \$10,000 will be acquired by departments at competitive prices, in accordance with procedures established by Procurement Services.
 - 3.1.2 Construction requirements with an estimated value above \$10,000 will be posted on the Nova Scotia Procurement Website. In addition, bids or proposals may also be invited to ensure an adequate degree of competition.
 - 3.1.3 Construction requirements with an estimated value greater than \$100,000 will be publicly advertised. In addition, bids or proposals may be invited.
- 3.2 Conditions where alternative procurement practices may be used are identified in the Province of Nova Scotia Procurement Policy, such as:
 - 3.2.1 An unforeseeable situation of urgency or emergency where the good, service, or construction requirement cannot be obtained by means of open procurement procedures.
 - 3.2.2 A situation where tendering could reasonably be expected to compromise government confidentiality, cause economic disruption, or otherwise be contrary to the public interest.
 - 3.2.3 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.
 - 3.2.4 Where, for technical reasons, there is an absence of competition, and the goods or services can be supplied only by a particular supplier and no alternative or substitute exists.
 - 3.2.5 The procurement of goods or services for which there is a statutory monopoly that is controlled by a supplier.
 - 3.2.6 The purchase of goods on a commodity market.
 - 3.2.7 Work to be performed on or about a leased building, or portions thereof, that may be performed only by the lessor.

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- 3.2.8 Work to be performed according to the provisions of a warranty or guarantee.
- 3.2.9 The procurement of a good or service to be developed in the course of and for a particular contract for research, experiment, study, or original development, but not for any subsequent purchases.
- 3.2.10 The purchase of goods under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases.
- 3.2.11 The procurement of original works of art.
- 3.2.12 The procurement of subscriptions to newspapers, magazines, or other periodicals.
- 3.2.13 Processes that foster the development of minority businesses.
- 3.2.14 Processes that foster the development of sheltered workshop programs.
- 3.2.15 Goods intended for resale to the public.
- 3.2.16 Goods and services from persons with disabilities, philanthropic institutions, or through employment equity programs
- 3.2.17 Services of expert witnesses, specifically in anticipation of litigation or for the purpose of conducting litigation.
- 3.2.18 Medical services for persons in the care and custody of the province.
- 3.2.19 Procurement of goods or services from another level of government.

CCGO4 CONTENT OF TENDER NOTICE

- 4.1 It shall contain at least the following information:
 - 4.1.1 A brief description of the procurement contemplated.
 - 4.1.2 The place where a person may obtain information and tender documents.
 - 4.1.3 The conditions of obtaining the tender documents.
 - 4.1.4 The place where the bids are to be sent.
 - 4.1.5 The date and time limit for submitting bids.
 - 4.1.6 The time and place of the opening of the bids in the event of a public opening.
 - 4.1.7 A statement that the procurement is subject to the Atlantic Procurement Agreement and Agreement on Internal Trade.

CCG05 REGISTRATION REQUIREMENTS

- 5.1 The successful contractor and subcontractors must comply with the Nova Scotia Corporations Registration Act or Partnerships and Business Names Registration Act before a contract is awarded to them by the Minister.

CCG06 PREQUALIFICATION OF BIDDERS

- 6.1 Where a contracting authority wishes to pre-qualify bidders before issuing an invitation to bid for a contract in excess of \$10,000, it shall publicly advertise for bidders to submit their qualification for work of a specified nature for a specific contract.
- 6.2 Only those bidders who are deemed as qualified shall be issued tender documents.
- 6.3 The contracting authority shall not add the name of a bidder to the qualified bidder list except through the evaluation and acceptance of the bidder's qualification as submitted in response to the pre-qualification process.

CCG07 PREQUALIFICATION PROCESS

- 7.1 The contracting authority may invite interested contractors to submit their qualifications for evaluation.
- 7.2 The submissions received are measured against a predetermined set of evaluation criteria, usually consisting of three areas of interest:
- 7.2.1 Background information detailing the companies' project history, years in business, principals of the company and surety information.
 - 7.2.2 Safety qualifications of the firm.
 - 7.2.3 Project specific information, including but not limited to, the contractor's past experience with similar projects, personnel to be assigned to the project and their curriculum vitae, approach to conducting the work, and references.
- 7.3 Each submission will be independently evaluated by a team of three or more individuals representing the contracting authority. Scores are determined by applying a predetermined set of evaluation criteria to each qualification submission. Upon completion of the independent evaluations, the scores are reviewed and an average score for each section of the submission is determined. The section scores are totalled and a final score is determined.

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- 7.4 If the final score for a qualification submission meets or exceeds a minimum acceptable score, often 80 out of a possible 100 points, the contractor submitting the qualification is invited to bid on the construction project.
- 7.5 A debriefing session is available upon written request to the contracting authority.

CCG08 CONSTRUCTION MANAGEMENT PROCESS

- 8.1 The contracting authority will engage where appropriate, the services of a design consultant to prepare the design of the project and to prepare discrete trade package tender documents.
- 8.2 The contracting authority will engage the services of a construction manager, typically through pre-qualification and competitive bidding, or through a 2 envelope system where the construction manager is evaluated on qualifications and price, to administer the trade packages and to have overall responsibility for all aspects of the construction project.
- 8.3 The contracting authority will tender the trade packages, for competitive bids. The tender documents will disclose the contract terms between the trade contractor and the construction manager such as labour relations obligations. The contracting authority will either:
- 8.3.1 Assign the successful bidders to the construction manager's contract via change order. The construction manager then assumes responsibility for administering the trade contractors.
 - 8.3.2 Enter into direct agreement with the trade contractors and have the construction manager administer the contract.

CCG09 DESIGN BUILD PROCESS

- 9.1 The contracting authority may pre-qualify interested design build contractors and sub-contractors as outlined in CCG7 (prequalification process).
- 9.2 The selected design build contractors are invited to submit a competitive bid based on a performance criteria document prepared by the contracting authority.
- 9.3 The performance criteria document will include, but not be limited to, the following information:
- The program description for the project.
 - 9.3.1 Specific design requirements to be met.
 - 9.3.2 Specific building system performance requirements to be met.

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- 9.3.3 Geotechnical information for the site.
 - 9.3.4 Schedule for the delivery of the completed project.
 - 9.3.5 Adhere to the design review process.
 - 9.3.6 Warranties to be provided for specific building systems.
 - 9.3.7 Specific construction administration requirements, such as processes to be followed.
- 9.4 The contracting authority will enter into a contract with the contractor who submits the most competitive bid that meets all the tender requirements.
- 9.5 The design builder will be responsible to oversee and co-ordinate the activities of the prime consultant, sub consultants and all subcontractors that were named in the pre-qualification submission.
- 9.6 The contracting authority may consider the option for short listing and providing an honorarium to the unsuccessful bidders on the short list.

CCG10 UNIT PRICE CONTRACTS

- 10.1 Each item for which a bid amount is required shall be described in the tender documents.
- 10.2 The estimate of quantities of work to be carried out and materials to be furnished will be as shown on the tender form. These quantities are approximate and the contracting authority reserves the right to increase, decrease or omit quantities as required.
- 10.3 The Tender Bid Form must be completed in full. A unit bid price must be entered, in both written words and numerals, for each item where a quantity is shown.
- 10.4 Items may be subject to minimum or maximum unit prices, as described in the contract documents. Unit bid prices, which are greater than the maximum permitted for a particular item, will be reduced to the maximum allowable. Unit bid prices, which are less than the minimum permitted for a particular item, will be increased to the minimum allowable. The aggregate amount of the tender will be adjusted accordingly.
- 10.5 Tenders containing unit bid prices that are considered inconsistent with the actual level of effort or cost of carrying out the work for a particular item are considered unbalanced. Unbalanced bidding may be reason for rejection.
- 10.6 Unforeseen work that is not known at the time of tender call must be authorized and payment provided by one of the following two methods:

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10.6.1 The contracting authority shall obtain a letter of quotation from the contractor, containing a unit price or prices for the additional work. Said prices must be approved by the contracting authority before the work commences.

10.6.2 An extra work order shall be issued by the contracting authority, describing the work to be carried out. Compensation for the work shall be on a cost plus basis.

10.7 If the additional work described in 10.6 is valued at more than 10% of the original tender value, the additional items of work may be tendered in accordance with the contracting authorities tendering policy.

CCG11 ESTIMATION OF CONTRACT VALUE

11.1 The contracting authority shall use its best reasonable efforts in the circumstances to establish the value of the work and have funds approved prior to invitation to bid. Class A construction cost estimates shall be in accordance with the Canadian Handbook of Practice for Architects by the Royal Architectural Institute of Canada.

CCG12 NON-DISCLOSURE OF ESTIMATED CONTRACT VALUE

12.1 The contracting authority will not normally disclose the estimated contract value.

CCG13 QUERIES OF TENDER DOCUMENTS

13.1 Questions relating to the bid document must be directed to the contact person indicated in the tender documents. Requests for changes or clarifications must be in writing, and the contracting authority will only be bound by its written response, which shall be by way of addendum provided to known bidders.

CCG14 INCLUSIVE NATURE OF THE TENDER DOCUMENTS

14.1 Terms and conditions of the contract are as stated in the tender documents.

CCG15 INFORMATION IN THE TENDER DOCUMENTS

15.1 The tender documents shall include the following information:

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- 15.1.1 Terms and conditions for submission of bids including:
 - I. Form on which bids are to be submitted.
 - II. Bid/Performance/Payment Security Requirements.
 - III. Information requested to be provided in the bid.
 - IV. Time and place of bid opening.
 - V. Acceptability of a bid submitted by facsimile.
- 15.1.2 Requirement to list the major subcontractors as part of tender submission and a statement advising bidders that this requirement will be part of tender evaluation.
- 15.2 The tender documents will generally include the following information:
 - 15.2.1 Full description of goods or services required.
 - 15.2.2 The bid form, amount, terms and conditions of bid/performance/payment security.
 - 15.2.3 Requirement that bids are to be submitted on mandatory forms supplied by the contracting authority.
 - 15.2.4 Requirement that bids are to be without conditions that would modify the terms of the tender documents.
 - 15.2.5 Completion date or other timing considerations.
 - 15.2.6 Method of calculation of liquidated damages/early completion premium.
 - 15.2.7 Payment terms.
 - 15.2.8 Evaluation criteria.
 - 15.2.9 Name and title of the designated contracting authority contact.
 - 15.2.10 Other relevant information.

CCG16 BID SECURITY/CONTRACT SECURITY

- 16.1 When the value of a contract is estimated to be:
 - 16.1.1 Equal to, or greater than \$100,000, the bid/performance/payment security shall be bonds on the contracting authorities prescribed forms, irrevocable standby letters of credit, money order, certified cheques or bank drafts in amounts specified in the tender documents.
 - 16.1.2 Less than \$100,000:
 - I. Bid security may be required.
 - II. The performance/payment security shall be provided only by the successful bidder, after selection but prior to signing the contract. Contract security shall be either bonds on the contracting authorities prescribed forms, irrevocable standby letters of credit, money order or certified cheques in amount specified in the tender documents.
- 16.2 When a bidder enters into a contract(s) with a subcontractor in an amount of \$50,000 or more, the subcontractor will be required to provide contract security to the bidder.

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- 16.3 If a bidder is notified of the contracting authorities intent to award a contract and fails to enter into the contract, the contracting authority may retain the bid security to an amount required to compensate for the extra costs incurred as a result of the bidder's failure to enter into the contract up to the limit specified in tender documents.

CCG17 CERTIFICATE OF RECOGNITION PROGRAM - LETTER OF GOOD STANDING

- 17.1 The Occupational Health and Safety Requirements of all contracts dictate that any prospective contractors and sub-contractors must meet the minimum standards of the Province of Nova Scotia. Prior to contract award, at the request of the contracting authority, the successful bidder must provide:
- 17.1.1 A certificate of recognition issued jointly by the Workers' Compensation Board and an occupational health and safety organization approved by the Workers' Compensation Board. Or
 - 17.1.2 Valid letter of good standing from an occupational health and safety organization approved by the contracting authority indicating the contractor is in the process of qualifying for the certificate of recognition. Similarly, subcontractors must provide certification within the period of time as stipulated in the tender documents.

CCG18 RETURN OF CONTRACT SECURITY

- 18.1 Where a deposit held as contract security is no longer required by the terms of the contract, the contracting authority shall return any unused portion of the deposit to the contractor.

CCG19 REPLACEMENT OF CONTRACT SECURITY

- 19.1 Within 10 days of award of contract, the contractor may replace the contract security, provided the replacement security is in the form of a bond, irrevocable standby letter of credit, money order, certified cheque or bank draft in the amount specified.

CCG20 CONTRACT INSURANCE

- 20.1 The contracting authority may require the contractor to provide insurance. The form and amount of any insurance required shall be defined in the tender documents.
- 20.2 Where insurance is required, the contractor shall not start work under the contract until proof of the required insurance has been received by the contracting authority.

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CCG21 WORKERS' COMPENSATION ACT

21.1 The contracting authority shall require upon request the contractor to furnish evidence of coverage under the Worker's Compensation Act, R.S.N.S. and a clearance certificate indicating the contractor, sub contractor(s) and other contractor(s) are in good standing.

CCG22 AMENDMENTS TO TENDER DOCUMENTS

22.1 Tender documents may be amended by the contracting authority by the issuance of a written addendum not less than five business days for major changes and three business days for minor changes before bid closing time.

CCG23 ADJUSTMENTS TO CLOSING TIME

23.1 When an addendum is issued, the closing time shall, where necessary, be adjusted to reasonably allow bidders to receive the addendum and adequately consider, prepare and submit their bids, taking into account the impact of the addendum.

CCG24 CANCELLATION OF INVITATION TO BID

24.1 An invitation to bid may be cancelled at any time prior to award of a contract.

CCG25 BID MAY BE AMENDED

25.1 A bidder may amend a bid prior to the closing time.

CCG26 WITHDRAWAL OF BID PRIOR TO TENDER CLOSING

26.1 A vendor who has submitted a bid on a contract may request that the bid be withdrawn. The withdrawal of a bid will be allowed if the request is submitted in writing to the place prescribed for the receipt of bids and is received before the bid closing time. The withdrawal request must be in an appropriate written form on the bidder's letterhead including the signature of an authorized official. The withdrawal of a bid does not disqualify a bidder from submitting another bid on that tender call, as long as the revised bid is received on time. Bid withdrawal requests may be communicated by post, hand delivery, or by facsimile.

CCG27 PERMISSION TO WITHDRAW BID AFTER TENDER CLOSING

27.1 The contracting authority may, upon receipt of bona fide evidence, permit the withdrawal of a bid without penalty prior to award if such evidence, in the sole opinion of the contracting authority, clearly indicates a serious demonstrable error has been made in the preparation of the bid.

CCG28 CLOSING TIME FOR BIDS

- 28.1 Bid closing time shall be selected to reasonably allow for distribution of the invitations and the preparation of bids.
- 28.2 The tendering period for publicly advertised invitations shall be a minimum of 15 calendar days, except where urgency may require a shorter period.

CCG29 RECEIPT OF BIDS TO BE RECORDED ON DOCUMENTS

- 29.1 The date, time and place of receipt of a bid shall be recorded on the bid envelope or the facsimile cover sheet as the case may be.

CCG30 INFORMATION INCLUDED IN BIDS

- 30.1 Bids shall contain the following information:
- 30.1.1 The bid amount.
 - 30.1.2 An offer to enter into a contract, which may be made by reference to the tender documents.
 - 30.1.3 The name of the person, firm, or corporation submitting the bid and authorized signature(s).
 - 30.1.4 A telephone number, facsimile number and address to which notifications may be sent to the bidder.
 - 30.1.5 Other information or documents requested in the tender documents.

CCG31 LATE BIDS

- 31.1 The contracting authority shall reject bids received after the closing time.
- 31.2 Late bids shall be returned to the bidder. In the case of sealed bids, they shall be returned unopened unless there is no return address on the outside of the envelope, whereby the envelope will be opened to obtain a return address.

CCG32 NO BIDS

- 32.1 As a result of a no bid situation the contracting authority reserves the right to negotiate a construction contract with whomever they deem appropriate.

CCG33 EXECUTION OF BIDS

- 33.1 A bid shall be signed by the person or persons authorized to make the bid on behalf of the person, firm or corporation that is submitting the bid.

33.2 When specified in the tender documents, amendments to a bid may be submitted by facsimile transmission.

33.3 Facsimile transmissions indicating amendment to a price, (either an increase or decrease amount to the price only) a change or withdrawal will be accepted up to bid closing in accordance with the requirements of the Public Tenders Office.

33.4 Amendments must be signed on behalf of the bidder, by a person with signing authority.

33.5 A written bid shall be submitted in an envelope which clearly identifies it as a bid submitted in response to the invitation to bid.

33.6 Bids and security must bear original signatures.

33.7 Public Tenders Office time calculation will govern.

CCG34 ERRORS IN CONTRACT VALUE

34.1 Where unit prices are requested and the bid contains an error in calculating the bid amount, the aggregate of the products of estimated quantities and respective unit prices shall prevail.

CCG35 WORDS AND NUMBERS DIFFER

35.1 Where the bid is requested in both words and numbers, and the two do not represent the identical amount, words shall prevail.

CCG36 EQUIPMENT, PRODUCT AND MATERIAL SPECIFICATION AND STANDARD

36.1 Specification and standards shall not be used for the sole purpose of limiting competition.

CCG37 BID EVALUATION

37.1 The contracting authority will evaluate the bid based on the criteria outlined in the bid documents and shall be conducted in accordance with the contracting authorities' procurement policy and process.

CCG38 IDENTICAL BIDS

38.1 Where two or more bids are identical, the successful bidder shall be selected by a coin toss by the contracting authority in the presence of the identical bidders.

CCG39 NOTICE AWARD/REJECTION

39.1 After the contracting authority has accepted a bid, the successful bidder will be notified in writing and the bid security of the unsuccessful bidders will be returned. The departmental contact person on the tender document is responsible for the return of bid security.

39.2 Notices of award and rejection will be in writing.

CCG40 NOTICE OF AWARD

40.1 The notice of award constitutes a binding letter of acceptance and obligates the contractor to begin the work and sign the formal contract documents. Prior to beginning on-site work, all post tender documentation must be received to the satisfaction of the contracting authority.

CCG41 EFFECT OF BIDS HIGHER THAN THE ESTIMATED CONTRACT VALUE

41.1 Where all bids submitted in response to an invitation to bid are higher than the estimated contract value, bids shall not necessarily be invalidated for this reason.

41.2 If the lowest competent bidder is within 15% of the estimated contract value, the contracting authority may choose to:

41.2.1 Award the contract for the bid amount.

41.2.2 Negotiate changes in the scope of work with the lowest competent bidder (Within the framework of the original tender call, including all sub contractors listed) to achieve an acceptable contract price. If negotiations fail, the contracting authority can make changes to the scope of work and re-tender the work or invite the three lowest competent bidders to re-bid the work.

41.3 If the lowest competent bidder is greater than 15% over the estimated contract value, the contracting authority may choose to:

41.3.1 Award the contract for the bid amount.

41.3.2 Make major changes to the scope of work (10% of estimated contract value or greater) and re-tender the work.

- 41.3.3 Make major changes to the scope of work (10% of estimated contract value or greater) and invite the three lowest competent bidders to re-bid. If invited bids fail to bring a bid to within 15% of the estimated contract value and subject to confirmation of the contracting authorities' budget, the contracting authority may take whatever action, which in its opinion will result in an acceptable contract price.
- 41.3.4 Make minor changes to the scope of work (less than 10% of the estimated contract value) and negotiate changes with the lowest competent bidder to achieve an acceptable contract price.

CCG42 BID DEPOSITORY

- 42.1 The bid depository of Nova Scotia system of bid collection administered by the Construction Association of Nova Scotia, or another system approved by the contracting authority may be used for subcontract classifications as applicable to the project provided that in the opinion of the contracting authority:
 - 42.1.1 The process does not unduly limit the number of prime or trade bidders. 42.1.2 The potential for interference with free market forces is minimal compared to benefits to be achieved.
- 42.2 When the bid depository is used, it will apply to the following:
 - 42.2.1 Conventional general contract bids for projects with an estimated value of \$1,000,000 or greater.
 - 42.2.2 Trade sections where the estimated value of the work of the trade section is equal to or greater than 10% of the estimated value of the project based on the contracting authority's estimates.
 - 42.2.3 Any other trade section, which in the opinion of the contracting authority constitutes a critical element of work and merits inclusion.

CCG43 RULES OF BID DEPOSITORY

- 43.1 The rules of the bid depository shall apply subject to any amendments provided by the contracting authority as permitted by the bid depository rules.

CCG44 FORM OF CONTRACT

- 44.1 The contract form shall be the standard form used by the contracting authority, or a form acceptable to both parties under the contract.

CCG45 PAYMENTS UNDER CONTRACT

- 45.1 The contract shall provide the basis on which payments under the contract will be made.

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45.2 Proof of payment to subcontractors and suppliers is required and will be in the form of a Province of Nova Scotia approved statutory declaration provided by the general contractor.

45.3 Progress payments may include compensation for the value of Products delivered and stored on the Place of the Work provided as outlined in the bid documents.

CCG46 HOLDBACKS

46.1 The contracting authority will maintain holdback funds in accordance with the Builders' Lien Act. The Builders' Lien Act provides that where the Province of Nova Scotia is the owner of a property, the claim for lien may only be served upon the Minister of Justice.

CCG47 PAYMENT ON COMPLETION OF THE WORK

47.1 Upon completion of the work according to its requirements, and following receipt of any statutory declarations, the contracting authority shall release all funds due and payable to the contractor, with the exception of any holdbacks properly retained.

CCG48 TAXES TO BE PAID

48.1 Taxes, which are the responsibility of the contractor, will be defined in the tender documents.

CCG49 TAXES NOT TO BE PAID

49.1 The contracting authority will indicate in the tender documents whether or not taxes are applicable to all or part of the work and the method of calculation and recording.

CCG50 BUILDING PERMITS

50.1 Municipal building permits are not required on projects unless stipulated by the contracting authority.

CCG51 CHANGES PERMITTED

51.1 Nothing in these guidelines shall prohibit the contracting authority from issuing change orders to accommodate changes in scope, schedule or price of the contract. The value of such changes will be in accordance with the terms and conditions of the contract.

Schedule "B" to AM-3.2.1 Purchasing and Tendering Policy

CCG52 RELATIONS OF CONTRACTOR AND SUBCONTRACTOR

52.1 The contractor must bind every subcontractor to the terms and conditions of the standard form of contract between the Minister and contractor, as far as applicable to the subcontractor's work.

CCG53 RELATIONS OF CONTRACTING AUTHORITY AND SUBCONTRACTOR

53.1 Nothing in these guidelines or terms and conditions of the contract shall create contractual relations between the subcontractor and the contracting authority.

CCG54 REFERENCE TO VENDOR COMPLAINT PROCESS

54.1 Vendor complaints must follow the format in the Vendor Complaint Process Guide located on the Procurement website: www.gov.ns.ca/tenders

CCG55 REFERENCE TO ARCHITECTS & PROFESSIONAL ENGINEERING SERVICES

55.1 Proposals for Architects & Professional Engineering Services will be based on the guidelines located on the Procurement website: www.gov.ns.ca/tenders.

CCG56 E-PROCUREMENT

56.1 Bidders who obtain the RFC and/or associated documents by electronic means or who convert the printed document to electronic media must not alter any portion of the document, with the exception of adding the information requested.

56.2 Bidders must follow and adhere to the General Instructions to Bidders as it relates to electronic procurement located at the Procurement website: www.gov.ns.ca/tenders.

Schedule "B" to AM-3.2.1 Purchasing and Tendering Policy

Nova Scotia Model Policy Manual for Municipalities Chapter 22: Purchasing and Tendering Policy
Editors Annotations April 2012

Purchasing and Tendering Policy Editor's Annotations

Enabling Legislation

The *Public Procurement Act*, R.S.N.S. 2011, c. 12 (the "Act") governs the procurement practices of all municipalities in Nova Scotia. The Act and Regulations under the Act contain a fairly comprehensive set of requirements that all municipalities must follow. The Act has three primary purposes, outlined at s. 2:

- (a) *provide for the procurement of goods, services, construction and facilities by public sector entities in a fair, open, consistent and transparent manner resulting in best value;*
- (b) *encourage competition, innovative ideas and solutions while respecting trade agreement obligations;*
- (c) *promote sustainable procurement in procurement decisions including identifying and exploring opportunities to work with and support social enterprises and businesses that are owned by and who employ under-represented populations.*

Many municipal units have purchasing and tendering policies in place; however, pursuant to s. 8(2)(a) of the Act, municipalities are required to adopt or adapt their procurement policies to conform with the *Public Procurement Act*. Under s. 8(2)(b) of the Act, the provincial Government's Sustainable Procurement Policy will be deemed to apply to all municipalities that do not have policies in place that conform with the Act by May 19, 2012.

Municipal units are also bound by certain regional, national and international trade agreement obligations, including the Agreement on Internal Trade and the Atlantic Procurement Agreement.

Municipal units are also required to ensure that their public tender notice complies with all legislation affecting the scope of the tender pursuant to s. 14(3) of the *Public Procurement Act*. Under s.14(2) of the Act, the terms and conditions of every public tender notice must be consistent with the Atlantic Standard Terms and Conditions for the procurement of goods and services and Construction Contract Guidelines for the procurement of construction.

Under s.15(1) of the Act, municipal employees are required to ensure that their procurement activities are conducted according to the policies of the municipality, provincial and federal legislation, trade agreements, and ethical business practices.

Municipalities are encouraged to consult the AMANS – NSMFC – FMCBC Recommended Practice: Purchasing Policy (Approved 2008), available on the website of the Association of Municipal Administrators at:

http://www.amans.ca/index.php?option=com_docman&task=search_result&Itemid=59

Also, under the Act there is a Procurement Advisory Group, and it is anticipated that this Group will be putting together template tender and Request for Proposal documents, contracts and other procurement documents to assist municipalities. This material should be available through Service Nova Scotia and Municipal Relations.

Schedule "B" to AM-3.2.1 Purchasing and Tendering Policy

Important Notice

The reader is cautioned that editorial and drafting choices involve interpretation of the law. Municipal units should consult with their own legal advisors before relying upon and applying to their own circumstances, the comments or drafts contained in this Manual.

Comment

- Particular care should be taken to obtain legal counsel regarding any departure from accepted wordings in public tender documents, or regarding unconventional or casual practices in awarding tenders.
- The model Policy is drafted to be consistent with the *Public Procurement Act* and the terms and principles from the *Act*.
- Section 3 of the model Policy states that the Policy applies to all procurement by the Municipality, and to all procurement by certain boards or agencies that receive funding from the Municipality. The only exceptions are for purchases that the Municipality makes from an organization that the Municipality owns or controls, or for construction projects where the Municipality has hired a third party construction management company that has responsibility for managing the procurement process for the project.
- Section 4 of the model Policy states the underlying principles to be used in procurement activities by the municipal unit. The principles are intended to ensure public confidence in the honesty of the process, the fairness of treatment of competing suppliers, the obtaining of the best value for municipal tax dollars expended on procurement and other factors such as compliance with environmental objectives and compliance with free trade agreements (within Canada). The principles are intended to apply to all transactions.

Section 4(3) of the model Policy provides that municipalities engaging in procurement should be doing so with a view to encouraging competitive bidding where possible, minimizing the cost of acquiring goods and services while obtaining best value. Best value pursuant to s. 2(2) of the model Policy means “evaluating bids not only on purchase price and life cycle cost considerations, but also taking into account items such as environmental and social considerations, delivery, servicing and the capacity of the supplier to meet other criteria as stated in tender documents”.

- Section 5 of the model Policy sets out the obligations of employees involved in procurement on behalf of the Municipality as required by the Public Procurement Act.
- Section 7 to 10 of the model Policy details a sample hierarchy of procurement practices depending on the value of the goods and services being purchased. All of the dollar figures are used for illustration and may be varied by Council as there are no specific requirements under the Municipal Government Act or the Public Procurement Act. In reading these sections, it is important to consider the definitions in section 2 and the guidelines in s. 12 - 20 for details of the procurement procedures. The more elaborate and expensive processes such as public tender (which includes either a request for proposals or a traditional tender) are reserved for the most expensive purchases. For other purchases of lesser value, a variety of processes, including price agreements, multi-municipal supply programs, and request for quotations are recommended.

Schedule "B" to AM-3.2.1 Purchasing and Tendering Policy

- Section 18 of the Policy outlines “alternative procurement practices”, circumstances in which the normal procurement practices in s. 7 to 10 may be departed from. These exceptions include emergency purchases (described at s. 18(1)(a)), and are designed to achieve beneficial outcomes, not to provide a means to circumvent the intent of the Policy. Accordingly, the principles in s. 4 continue to apply to transactions which are exempt from normal practice.
- The model Policy provides requirements in s. 19 for all public tenders, whether traditional tenders, requests for proposals or two-phase bids.
- Section 20 of the model Policy provides for a debriefing of an unsuccessful bidder in a public tender at the request of the unsuccessful bidder to provide feedback. A debriefing procedure is required by s. 17 of the Public Procurement Act.
- Granting a local preference when awarding a tender must comply with s. 13(1) and (2) of the Public Procurement Act which is reflected in s. 21 of the model Policy. Under s. 13(1) of the Public Procurement Act, municipalities may apply a purchasing preference for goods valued up to the thresholds of the Atlantic Procurement Agreement, which are manufactured or produced in the Province. Section 21 of the model Policy requires Municipal staff or Council to give preference to purchasing goods and services from local businesses and sets out suggested guidelines for doing so.
- Under s. 22 and 23 of the model Policy, municipalities are encouraged to adopt sustainability criteria when making their purchase decisions and considering which goods or services offer best value to the municipality. Municipalities are encouraged to consider environmental, social and economic considerations.
- The model Policy contemplates the municipality setting up a Supplier Registry at s. 24. This ensures that businesses will have an opportunity not to be overlooked when the municipality makes major purchases. Typically, local businesses would be more aware of the Registry than outside businesses, and the use of a Supplier Registry is likely to be welcomed by the local business community. Under the model Policy wording in s. 25, only Council may strike an unsatisfactory supplier from the Registry. Note that s. 24 and 25 are strictly optional, and if a municipality decides to adopt a Supplier Registry, it must ensure that it applies adequate resources and attention to properly maintain it. While a Supplier Registry could be useful, there is a risk that a supplier who is struck from the Registry could take legal action against the Municipality. Municipalities are therefore cautioned to seek the advice of their solicitor before including these provisions in their Policy.
- Section 32 of the model Policy requires that a copy of the municipality’s Purchasing and Tendering Policy be posted on the municipality’s website as required by the Public Procurement Act.
- Section 33 is included to add some protection to municipalities in situations where the Municipality has inadvertently not complied with some aspect of the Policy, and faces legal action by an unsuccessful supplier.
- The Chapter number in the Policy title bar should be replaced by each municipal unit with the Chapter number it assigns to this Policy.