

PROCUREMENT INFORMATION FOR MUNICIPALITIES

Service New Brunswick
Strategic Procurement Division
(February 2020)

Ce guide est aussi disponible en français.



The following document applies to Municipalities and Rural Communities as defined in the *Municipalities Act*. In the *Procurement Act* and Regulation 2014-93, municipalities are defined as Schedule B entities.

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

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

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

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

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

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NOTE:

The Procurement Manual for Municipalities has been updated to include changes that resulted from the updates to the *Procurement Act* and Regulation that came into force July 2, 2019 and the dissolution of the Atlantic Procurement Agreement on January 17, 2020.

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Introduction

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

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

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

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

Canadian Tendering Law

Canadian Tendering Law

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

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

Critical Court Decisions

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

New Brunswick Legislation

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

Crown Construction Contracts Act



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

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

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

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

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

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

Procurement Act and Regulation 2014-93

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

Section 58 of Regulation 2014-93 indicates that municipalities are exempt from public tendering for goods and services under \$100,000¹ (excluding taxes) or the **lowest applicable threshold value of any relevant trade agreement**, whichever is less. Municipalities are subject to trade agreements, please refer to the [Trade Agreements section](#) to determine applicable thresholds for public tenders. For all procurements at or **above** these thresholds, municipalities **must** issue a public tender (unless they are exempt under section 152 to 161 or under section 166 of Regulation 2014-93).

It's also important to remember that even though the Provincial legislation defines the procurement process, it cannot overrule the basic tendering law established by the courts. For more information on the [Procurement Act](#) and [Regulation 2014-93](#), contact Strategic Procurement Division at 1-800-561-1422 or procurement@snb.ca.

Exemptions and Alternative Procurement Methods

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

Exemptions and Alternative Procurement Methods for Municipalities

Municipalities are exempted from public tendering for the procurement of services provided by professionals identified in Section 166 of Regulation 2014-93. See Annex C for the list of exempt professional services. These exemptions only apply when the services are legislatively required to be provided by these licensed professionals. Note: For municipalities subject to the Canada – European Union Comprehensive Economic and Trade Agreement (CETA) limits apply to specified professional services in section 166(2) and to exemptions in sections 153, 155, 157 and 159. See Annex C for more information.

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

If a supplier takes legal action, the municipality will be required to justify the use of that exemption and could be held liable if it is not warranted. For more information on exemptions, please contact the Strategic Procurement Division at 1(800)561-1422 or procurement@snb.ca.

¹ The \$100,000 referred to in section 58 was adjusted for inflation to \$105,700 on January 1, 2020, as per section 4.1(2) of Regulation 2014-93.

Trade Agreements

Trade Agreements

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

Other principles established in the international and interprovincial trade agreements are reflected in the *Procurement Act*. In other words, by following the rules and procedures outlined in the Act, municipalities will adhere to the trade agreements.

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

The following table illustrates the applicable thresholds of trade agreements and legislation that would apply to municipalities. Unless exempted, procurements above these thresholds must be obtained through a competitive bidding process.					
	PA	CCCA	QC-NB	CFTA	CETA
Goods	\$ 105,700	See PA	\$ 105,700	\$ 105,700	\$ 366,200*
Services	\$ 105,700	See PA	\$ 105,700	\$ 105,700	\$ 366,200*
Construction	N/A See CCCA	N/A	\$ 100,000	\$ 264,200	\$ 9,100,000*
Note: All values are exclusive of tax					
LEGEND:					
PA: <i>Procurement Act and Regulation 2014-93</i>		CFTA: Canadian Free Trade Agreement		CETA: Canada – European Union Comprehensive Economic and Trade Agreement	
QC-NB: Agreement on the Opening of Public Procurement for NB and QC		CCCA: <i>Crown Construction Contracts Act</i>			
*CETA applies only to the following municipalities (i.e. cities): Bathurst, Campbellton, Dieppe, Edmundston, Fredericton, Miramichi, Moncton, and Saint John. If your municipality is not listed, you are not subject to CETA.					

The Government of New Brunswick is a Party to three agreements that affect all municipalities, namely: the Canadian Free Trade Agreement (CFTA) (which replaces the Agreement on Internal Trade (AIT)), the Atlantic Procurement Trade Partnership (ATPP) and the Agreement on the Opening of Public Procurement for New Brunswick and Quebec (Quebec – New Brunswick Procurement Agreement). The Government of New Brunswick is also Party to an international agreement; Canada-European Union: Comprehensive Economic and Trade Agreement (CETA) that applies to the cities of: Dieppe, Fredericton, Moncton, Campbellton, Bathurst, Edmundston, Miramichi and Saint John.



All municipalities are covered under the **Atlantic Procurement Trade Partnership (ATPP)**, which is an agreement between the four Atlantic provinces (NB, NS, Nfld and PEI). The ATPP replaces the Atlantic Procurement Agreement and does not have any thresholds.

As of July 2017, all municipalities are covered by the **Canadian Free Trade Agreement (CFTA)** for procurements over **\$105,700 (for goods and services)** and over **\$264,200 (for construction)**. The CFTA replaces the Agreement on Internal Trade (AIT).

As of September 2017, the cities of Dieppe, Fredericton, Moncton, Campbellton, Bathurst, Edmundston, Miramichi and Saint John are covered by the **Canada-European Union: Comprehensive Economic and Trade Agreement (CETA)** for procurements over **\$366,200 (for goods and services)** and over **\$9,100,000 (for construction)**.

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

To find out how municipalities can advertise tenders and awards on NBON, call the NBON Help Line at 1-800-561-1422 by email at NBON@snb.ca.



The Tendering Process

Definition of Procurement

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

Procurement Value

The value of the procurement must be estimated at the time the tender is issued. It is based on the estimated maximum total value of the procurement contract (including any optional renewals) and must include transportation costs, tariffs, duties, installation costs, maintenance costs, costs associated with the manufacture of goods, premiums, fees, commissions, interest and any other costs incidental to the purchase of the goods or services, but does not include taxes

Note: In the case of a standing offer agreement, the estimated maximum total value of all procurement contracts anticipated under the agreement for its original duration and all optional renewals must be included.

For example, a \$20,000 per year cleaning contract for three (3) years with the option to renew for an additional two (2) years would be valued at \$100,000 (i.e. 5 x \$20,000). It is not permitted to design procurement, select a valuation method or divide purchase requirements with the intention of avoiding obligations imposed by the legislation or agreements.

Tendering Period

The *Procurement Act* requires that tenders over the thresholds (\$100,000 for goods and services) remain open for a period of not less than ten (10) calendar days, which includes the date it was first advertised and the closing date. For procurement covered by CETA, the minimum tendering period for public tenders is 40 days, this may be shortened by 5 days for each of the following that apply (reducing the number of days to 25 days):

1. the **notice** of intended procurement is published by electronic means
2. all the tender documentation is made available by electronic means from the date of the publication of the tender notice
3. the municipality accepts bids by electronic means

Please refer to the section on "[advertising requirements](#)" for further instructions on the required tendering period.



Advertising your procurement: Information you need to provide to prospective suppliers

Advertising your procurement: Information you need to provide to prospective suppliers

The *Procurement Act* and *Regulations* prescribe what information needs to be made available to prospective suppliers.

Tender notices notify prospective suppliers of your municipalities intentions to buy and are advertised on the NBO.

As per section 89 of Regulation 2014-93, the following information **must be** included on the tender notice:

- **Contact information**
 - Tender number
 - Name and Address of the municipality (who is buying and where to obtain tender documents related to the solicitation, their costs and terms of payment)
 - Contact name and contact information for questions from prospective suppliers
- **Bid submission requirements**
 - Address where to submit bids and the final date and time bids will be accepted
 - Are you doing a public opening? Include the date, time and place for any public bid openings
 - Language for bid submission (English, French or both languages?)
 - Purchase requirements
 - The Procurement Method (the way you plan to buy) and whether it will involve negotiations or electronic auction.
 - Description of what you want to buy.
 - Time-frame for delivery or duration of the contract.
- **If not already included in your tender documents**, the notice must also include the following:
 - The nature and quantity, or estimated quantity of the goods and services to be procured;
 - Are there conditions for prospective suppliers? i.e. certification If so, they must be listed and described;
 - Description of any options years.
- If, you are establishing a prequalification list and you intend to select a number of qualified suppliers to be invited to a future competitive bidding process, the criteria that will be used to select them and, if applicable, any limitation on the number of suppliers that will be permitted to bid must be included.

- **Trade Agreements**
 - If your procurement is subject to trade agreements, you must include the relevant chapter in the trade agreement. For example: *“This procurement is subject to the Quebec-New Brunswick Procurement Agreement and the Canadian Free Trade Agreement”*.
- **Applicable Legislation**
 - Include a statement to identify that your purchase is subject to the *Procurement Act and Regulation 2014-93 and any other legislation that may apply*.

Tender documents contain more detailed information and specifications about the procurement.

The following information **must be** included in the tender documents:

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

Tender Type	Estimated Value	Minimum Advertising time
Goods	AT \$105,700 or above*	10 calendar days** Tender notice MUST be advertised on NBON
Services	AT \$105,700 or above*	10 calendar days** Tender notice MUST be advertised on NBON
Construction	\$100,000 or above*	Your tender MUST be advertised on NBON for a <u>reasonable period of time</u> ** Tender notice MUST be advertised on NBON

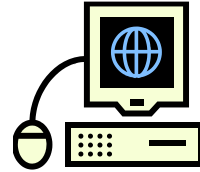
* Excluding taxes

**For municipalities subject to CETA, minimum tendering period for covered public procurements is 25 to 40 days. Please see [Trade Agreement](#) section for more information.

New Brunswick Opportunities Network (NBON)

[www.gnb.ca/nbon]

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



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

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



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

NEW! Municipalities are now required to post award notices for public tenders and any exempted purchases. Please see section on [Award Notices](#) and Exemptions for more information on what is required to be posted per the *Procurement Act and Regulations*.

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

To find out how to advertise your tenders on NBON, please contact the NBON Help Line at 1-800-561-1422 or by e-mail at nbon@snb.ca.

Bid Deposit/Receiving Bids

Bids received must be:

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

At their discretion, municipalities can keep a log and/or ask for signatures when bids are submitted, but this is not a requirement of the *Procurement Act*. It should also be noted that the *Procurement Act* permits bids to be submitted by facsimile, hand delivered, mail, courier or via the NBON.

Tender Opening

Some important points to remember about tender opening:

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

Rejection of Bids

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

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

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

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



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

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

Bid Evaluation and Tender Award

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

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

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

Right to Reject Clause

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

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

Use of Preferences

If the procurement is LESS THAN \$100,000 for goods or services or the lowest applicable threshold value of an relevant agreements, whichever is lesser or \$100,000 for construction, **AND you have clearly identified in your tender that a preference may be given to a New Brunswick or local supplier, then you may give preferential treatment to a supplier in accordance with Sections 128 through 137 of the Regulation. See [Trade Agreements](#) section for more information.**

Local or provincial preferences must not be given on tenders for goods or services at or above \$100,000 or the lowest applicable threshold value of any relevant trade agreements, whichever is lesser, unless they are exempted for a legitimate reason as specified in Regulation 2014-93 under the *Procurement Act*. **Economic benefits to the municipality or region must NOT be considered in the evaluation of bids.** Failure to comply with this requirement could result in bid protests or legal action by suppliers. See [Trade Agreements](#) section for more information.

In certain situations, the Minister responsible for Service New Brunswick may grant a temporary exemption under Section 18 of the *Procurement Act* for purposes of regional economic development in accordance with Section 161 of the Regulation if the procurement complies with trade agreements. See [Trade Agreements](#) section for more information.

Disclosure of Tender Results

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

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

Notice of Award

After awarding a procurement contract that was subject to a trade agreement, municipalities must publish an award notice on the New Brunswick Opportunities Network.

The award notice must include:

- a) the name and address of the municipality;
- b) the tender number (if applicable);
- c) a description of the goods and services procured;
- d) the name and address of the successful supplier;
- e) the value of the awarded procurement contract;
- f) the date the procurement contract was awarded; and
- g) if an Alternative Procurement Method under s.152 to 161 of regulation was used (ie. an exemption), the conditions or circumstances described in this Regulation justifying its use.

The award notice must be posted within 72 days after the procurement contract is awarded.

In order to facilitate the requirement for posting of exemption award notices, we ask that you track all exemptions used and submit a report to SNB Strategic Procurement on a monthly basis. A template spreadsheet with required information has been provided (**see appendix D**) for your convenience. Please submit the spreadsheet to procurement@snb.ca by the 5th of every month.

This information will be compiled and a monthly report for all GNB will be posted publicly on the NBON website and the information will remain available for 30 days. Please see [appendix D](#) for reporting template with required information and detailed instructions.

RFP Debriefings

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

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

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

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

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

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

Tips/Suggestions



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

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

Requests For Proposals

Requests for Proposals

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

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

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

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

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

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

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

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

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

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

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

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

The Strategic Procurement Division generally distributes an “Evaluation Team Handbook” to client departments that are evaluating RFPs. To obtain a copy of this handbook, examples of RFPs templates or to obtain further information on RFPs, contact the Strategic Procurement Division at 1-800-561-1422 or procurement@snb.ca. Strategic Procurement can also provide you with a standard formula used to calculate the points attributed for the cost indicated in the proposals.

Other Resources

New Brunswick Government Contracts

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

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

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

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



How to order from contracts?

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

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

Standard Terms and Conditions

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

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

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

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

Click [here](#) to view the “Atlantic Standard Terms and Conditions for Goods and Services”.

Important Websites

[PROCUREMENT ACT](#)

[GOVERNMENT OF NEW BRUNSWICK](#)

[REGULATION 2014-93](#)

[SERVICE NEW BRUNSWICK](#)

ATLANTIC PROCUREMENT TRADE PARTNERSHIP
(ATPP)

[STANDARD TERMS AND CONDITIONS](#)

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

[N.B. GOVERNMENT CONTRACTS](#)

[NEW BRUNSWICK OPPORTUNITIES
NETWORK \(NBON\)](#)

[CANADIAN FREE TRADE AGREEMENT \(CFTA\)](#)

[CROWN CONSTRUCTION CONTRACTS ACT
AND REGULATIONS](#)

[CANADA-EUROPEAN UNION:
COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT \(CETA\)](#)

Frequently Asked Questions

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

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

Q. What is the difference between Goods, Services and Construction?

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

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

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

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

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

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

Q. When do municipalities HAVE to issue a public tender?

A. Municipalities MUST issue a public tender for:

- Goods and Services at \$105,700 and over (excluding taxes)
 - Construction at \$100,000 and over (excluding taxes)
-

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

A. Municipalities MUST advertise the following tenders on NBON:

- Goods and Services at \$105,700 and over (excluding taxes)
- Construction at \$100,000 and over (excluding taxes)

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

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

A. Tenders for goods and services over \$105,700 MUST be advertised for a minimum of 10 calendar days.

Tenders for construction should be advertised for a reasonable amount of time (10-15 calendar days is recommended), but there is no minimum number of days established. Use good business practices.

Q. Why award to the lowest compliant bid?

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

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

A. Yes. Most corporate contracts that are established for all government departments can also be used by municipalities, universities, hospitals, solid waste commissions, and other public funded bodies. In order to obtain the same prices as the government receives, you must give the supplier the contract number when you place your order. When suppliers bid on these contracts, they commit, at tender time, to give the same prices to government

funded bodies as they give the Province. More information on N.B. Government contracts is available in the “Other Resources” section.

Q. What is NBON?

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

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

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

- The procurement is less than \$105,700 for goods and services or \$100,000 for construction or for goods and services that are not covered by trade agreements **AND you have clearly identified in your tender documents that a preference may be given to local suppliers. (See Sections 128 Through 137 of Regulation 2014-93 for more details.)**

Please see [Trade Agreements section](#) for more information.

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

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

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

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

Q. Do bids always have to be opened publicly?

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

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

A. You can contact the Strategic Procurement Division, Service New Brunswick, at 1-800-561-1422 or procurement@snb.ca.

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

A. You can contact the Design & Construction Branch, Department of Transportation and Infrastructure at 506-453-3939.

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

A. You can contact the Financial and Administrative Services Branch of the Department of Transportation at 506-453-3939.

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

A. You can contact the Strategic Procurement Division, Service New Brunswick at 1-800-561-1422 or procurement@snb.ca.

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

A. You can contact the NBON Help Line at 1-800-561-1422.

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

A. You can contact the Property Services Branch at 506-453-2221.

Definitions

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

- **NEW BRUNSWICK VENDOR**: means a vendor of goods or services that has a place of business in New Brunswick
- **PREFERENCE**: means an advantage in the solicitation, restriction or award of tenders granted to a supplier by reason of the supplier's business location or origin of the goods or services.
- **PROPOSAL**: means a bid or offer submitted in response to a Request for Proposals.
- **SERVICES**: means, in relation to procurement, all services including printing, garbage removal, snow removal, salt hauling, janitorial services, studies, utilities, consulting, professional services, etc., unless the services form part of a general construction contract.
- **VENDOR/SUPPLIER**: means any corporation, partnership, individual, sole proprietorship, organization, joint stock company, joint venture or any other private legal entity.

Conduct Handbook for Municipal Employees and Officials

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

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

ANNEX A: Contacts

Annex A: Contacts

For more information on procurement of goods and services, the *Procurement Act*, trade agreements, etc., contact the Strategic Procurement Division at 1-800-561-1422 or procurement@snb.ca

CONTACTS

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

ANNEX B: Summary of Rules and Thresholds

Annex B: Summary of rules and thresholds

THRESHOLDS*	PROCEDURES TO FOLLOW
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* All amounts exclude taxes.

** Or the lowest applicable threshold value of any relevant agreements, whichever is lesser. Please see [Trade Agreements section](#) for more information.

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

< \$105,700**
(GOODS & SERVICES)

- For goods and services purchases below these thresholds, municipalities don't have to publicly tender, but are strongly encouraged to use good business practices and obtain several quotes for procurements below these thresholds.

<\$100,000
(CONSTRUCTION)

- For construction projects, municipalities are encouraged to follow the basic principles outlined in the *Crown Construction Contracts Act* and Regulations.

≥ \$105,700***
(GOODS & SERVICES)

- For goods and services purchases at or above these thresholds, municipalities MUST follow the rules and procedures identified in the *Procurement Act* and Regulation 2014-93 (i.e. MUST issue a public tender).
- **MUST be publicly advertised on NBON. (Tender Notice) Must post award information on NBON. See section on [Notice of Awards](#) for more information.**
- MUST be advertised for a minimum of 10 calendar days, unless exempted by regulation.
- MUST also follow the rules and procedures outlined in the Canadian Free Trade Agreement and the Quebec-New Brunswick Procurement Agreement for procurement of goods or services over \$105,700.

≥ \$100,000***
(CONSTRUCTION)

- Encouraged to follow the basic principles outlined in the *Crown Construction Contracts Act* and Regulations.
- MUST follow the rules and procedures outlined in the Canadian Free Trade Agreement, the Atlantic Procurement Agreement and the Quebec-New Brunswick Procurement Agreement (MUST issue a public tender).
- **MUST be publicly advertised on NBON. (Tender Notice)** (May place tender notices in newspapers in addition to the electronic system.)
- **Must Post award information on NBON**

EXEMPTIONS

In Regulation 2014-93, municipalities are exempt from following the rules and procedures outlined in the *Procurement Act* for the circumstances identified in Sections 152 through 161. Municipalities must be able to justify exempted procurements.

Must post award information on NBON. See section on [Notice of Awards](#) for more information.

Annex C: Alternative Procurement Methods - Exemptions

Annex C: Alternative Procurement Methods - Exemptions

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

Limited competitive bidding – Under Section 152

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

(a) Goods for Resale to the Public Purchase of goods intended for resale to the general public;	RESALE
(b) Third Party Purchase of goods or services procured on behalf of an entity that is subject to neither the Act nor a trade agreement;	THIRD PARTY
(c) Philanthropic Purchase of goods or services procured from a philanthropic institution or goods manufactured by or services provided by incarcerated persons or persons with disabilities;	PHILANTHROPIC
(d) Restricted Movement Purchase of goods that are legally restricted from moving interprovincially, if the restriction is consistent with applicable trade agreements;	RESTRICTED MOVEMENT
(e) Repealed: 2019-20	
(f) Financial Management Services Purchase of financial services respecting management of a Schedule A entity's or a Schedule B entity's financial assets and liabilities, including treasury operations and ancillary advisory and information services, regardless of whether they are delivered by a financial institution;	FINANCIAL MANAGEMENT SERVICES
(g) Health Services and Social Services Purchase of health services and social services;	HEALTH SERVICES / SOCIAL SERVICES
(h) Advertising and Public Relations Purchase of advertising and public relation services, if the estimated value is less than \$200,000;	ADVERTISING & PR
(i) Purchase from Department or Public Body	DEPARTMENT OR PUBLIC BODY

Purchase of goods or services procured from a Schedule A entity, a Schedule B entity, a government enterprise, another jurisdiction or a public body;

(i.1) Fiscal agency or depository services

Purchase of fiscal agency or depository services;

**FISCAL AGENCY
OR DEPOSITORY
SERVICES**

(i.2) Liquidation services

Purchase of liquidation and management services procured on behalf of a regulated financial institution;

**LIQUIDATION
SERVICES**

(i.3) Public debt

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

PUBLIC DEBT

(j) Repealed: 2019-20

(k) Repealed: 2019-20

(l) Cultural Industries

Purchase of goods and services related to culture or cultural industries.

**CULTURAL
INDUSTRIES**

Limited competitive bidding – International Agreements – Section 153(1)

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

(a) Sporting and Convention Facility

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

**SPORTING AND
CONVENTION
FACILITY**

(b) Non-profit Organization

Purchase of goods and services procured from a non-profit organization, other than a good or service referred to in paragraph 152(c) of Regulation;

NON-PROFIT

(c) Representational or Promotional Purposes – Goods

Purchase of goods procured for representational or promotional purposes;

**REPRESENTATION
- GOODS**

(d) Representational or Promotional – Services

Purchase of services procured for representational or promotional purposes outside the Province;

**REPRESENTATION
- SERVICES**

(d.1) Locally owned trucks

Purchase of transportation services provided by locally owned trucks for hauling aggregate on highway constructions projects;

LOCALLY OWNED TRUCKS

(d.2) Construction materials

Purchase of construction materials if it can be demonstrated that transportation costs or technical consideration impose geographical limits on the available supply base, specifically in the case of sand, stone, gravel, asphalt compound and premixed concrete used in the construction or repair of roads;

CONSTRUCTION MATERIALS

(d.3) Marketing

Purchase of marketing management consulting services;

MARKETING

(d.4) Local food

Purchase of local food;

LOCAL FOOD

(d.5) Donations

Purchase of goods or services financed primarily from donations; and

DONATIONS

(e) Urgent Purchase

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

URGENT

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

Please note that the exemptions listed in section 153(1) are restricted to 200,000 SDR or \$366,200 Canadian for cities that are covered by the Canada-European Union: Comprehensive Economic and Trade Agreement (CETA). Please see the Trade Agreements [section](#) for further details.

Compatibility with existing goods – Section 154(1)

NO SUBSTITUTION

In order to ensure compatibility with existing goods, the municipality may restrict a solicitation for submissions to a specific product without the

possibility of substitution and, when doing so shall use an open competitive bidding process.

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

GOODS, SERVICES OR CANDIAN SUPPLIERS

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

Please note that the exemptions listed in section 155(1) are restricted to 200,000 SDR or \$366,200 Canadian for cities that are covered by the Canada-European Union: Comprehensive Economic and Trade Agreement (CETA). See the Trade Agreements [section](#) for further details.

Single Source of Supply – Section 156

The municipality may grant exemptions from the public tendering process and enter into a mutual agreement if no reasonable alternative or substitute goods or services exist and only one prospective supplier is able to meet the procurement in any of the following circumstances:

(a) Exclusive Rights – Sole Source

In order to recognize exclusive rights, such as exclusive licenses or copyright or patent rights.;

EXCLUSIVE RIGHTS

(b) No Competition

Where there is an absence of competition for technical reasons;

NO COMPETITION

(c) Statutory Monopoly

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

MONOPOLY

(d) Repealed: 2019-20

(e) Work Performed in Leased Building

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

WORK IN LEASED BUILDING

(f) Warranty or Guarantee

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

WARRANTY SERVICES

(g) Repealed: 2019-20

(h) Repealed: 2019-20

(i) Original Work of Art

For the procurement of an original work of art.

WORK OF ART

Single Source of Supply – Section 157(1)

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

(a) Repealed: 2019-20

(b) Newspapers, Magazines or other periodicals

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

**NEWSPAPERS,
MAGAZINES,
PERIODICALS**

(c) Compatibility

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

COMPATIBILITY

Please note that the exemptions listed in section 157 (1) restricted to 200,000 SDR or \$366,200 Canadian for cities that are covered by the Canada-European Union: Comprehensive Economic and Trade Agreement (CETA). See the Trade Agreements [section](#) for further details.

Mutual agreement– 158(1)

The municipality may enter into a procurement contract with a prospective supplier by mutual agreement in order to procure the following goods or services:

(a) Specific Skills

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

SPECIFIC SKILLS

(b) Third Party

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

THIRD PARTY

(c) Resale to public

Goods intended for resale to the public;

RESALE TO PUBLIC

(d) Philanthropic

Goods or services procured from a philanthropic institution or goods manufactured by or services provided by incarcerated persons or persons with disabilities;

**RESALE TO
PUBLIC**

(e) Financial Management Services

Financial services respecting management of a Schedule A entity's or a Schedule B entity's financial assets and liabilities, including treasury operations and ancillary advisory and information services, regardless of whether they are delivered by a financial institution;

**FINANCIAL
MANAGEMENT
SERVICES**

(f) Health Services and Social Services Health services and social services;	HEALTH SERVICES / SOCIAL SERVICES
(g) Purchase from Department of Public Body Goods and services procured from a Schedule A entity, a Schedule B entity, another jurisdiction or a public body;	DEPARTMENT OR PUBLIC BODY
(h) Fiscal Agency and Depository Services Fiscal agency and depository services;	FISCAL AGENCY/ DEPOSITORY SERVICES
(i) Liquidation and Management Services Liquidation and management services on behalf of a regulated financial institution;	LIQUIDATION / MANAGEMENT SERVICES
(j) Public Debt Services related to the sale, redemption, and distribution of the public debt of the Province or any other province or territory of Canada, including loans, bonds, debentures, notes, interest-bearing and non-interest-bearing treasury bills, certificates of indebtedness and any other securities representing part of the public debt of the Province or another province or territory of Canada;	PUBLIC DEBT
(k) Behalf of or by Non-Governmental Bodies Goods or services procured on behalf of or by non-governmental bodies that exercise governmental authority delegated to them;	BEHALF OF OR BY NON- GOVERNMENTAL BODIES
(l) International Assistance Goods or services procured for the specific purpose of providing international assistance, including development aid, provided that the procuring entity does not discriminate on the basis of origin or location within Canada of goods, services or suppliers; and	INTERNATIONAL ASSISTANCE
(m) Culture or Cultural Industries Goods or services related to culture or cultural industries	CULTURE / CULTURAL INDUSTRIES

Mutual agreement – Non-Discrimination – 158(2)

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

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

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

(b) Confidentiality

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

CONFIDENTIALITY

(c) Restricted Movement

Goods that are legally restricted from moving interprovincially, if the restriction is consistent with the applicable trade agreements;

**RESTRICTED
MOVEMENT**

(d) Advertising or Public Relations

Advertising and public relation services advertising and public relation services, if the estimated value is less than \$200,000;

ADVERTISING / PR

(e) Prototype or First Good or Service

A prototype or a first good or service that is developed at the request of the procuring entity in the course of and for a particular contract for research, experiment, study or original development, including limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;

PROTOTYPE

(f) Exceptionally Advantageous Circumstances

Goods or services of which the purchase is made under exceptionally advantageous conditions that only arise in the very short term, such as unusual disposals by enterprises that are not normally suppliers or disposals of assets of businesses in liquidation, receivership or bankruptcy, but not in routine purchases from regular suppliers;

**EXCEPTIONALLY
ADVANTAGEOUS
CIRCUMSTANCES**

(g) Winner of design contest

Where the procurement contract is to be awarded to the winner of a design contest. This can be used provided that:

**WINNER OF DESIGN
CONTEST**

- (i) the contest is organized in a fair manner;

- (ii) the procuring entity publishes on the New Brunswick Opportunities Network, for a period of time that the procuring entity considers sufficient to enable prospective suppliers to prepare their bid submissions, a notice of the contest containing sufficient information to enable prospective suppliers to determine if they wish to participate in the contest; and
- (iii) the participants are judged by an independent jury with a view to awarding the design contract to the winner; and

(h) Commodity Market

For the procurement of goods on a commodity market;

**COMMODITY
MARKET**

(i) Goods or services resulting from additional deliveries

Goods or services resulting from additional deliveries by the original supplier of goods or services that were not included in the initial procurement, if a change of supplier for additional goods or services

**ADDITIONAL
DELIVERIES**

- (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services, or installations procured under the initial procurement; and
- (ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity.

Mutual agreement – International Trade Agreements – Section 159(1)* –

So long as a municipality is not doing so for the purpose of avoiding competition among prospective suppliers or for the purpose of discriminating against a prospective supplier, a municipality may enter into a procurement contract with a prospective supplier by mutual agreement in order to procure the following goods or services:

(a) Urgent Purchase

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

URGENT

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

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

(b) Confidentiality

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

CONFIDENTIALITY

(c) Sporting and Convention Facility

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

**SPORTING AND
CONVENTION
FACILITY**

(d) Non-Profit Organization

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

NON-PROFIT

(e) Representational or Promotional Purposes – Goods

Purchase of goods procured for representational or promotional purposes;

**REPRESENTATION
- GOODS**

(f) Representational or Promotional Purposes – Services

Services procured for representational or promotional purposes outside the Province;

**REPRESENTATION
- SERVICES**

(g) Transportation Services – Locally-owned Trucks

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

LOCAL TRUCK

(h) Road Repair Materials

Construction materials if it can be demonstrated that transportation costs or technical considerations impose geographical limits on the available supply base, specifically in the case of sand, stone, gravel, asphalt compound and premixed concrete used in the construction or repair of roads;

**ROAD REPAIR
MATERIALS**

(i) Marketing Managing Consulting Services

Services related to marketing managing consulting;

**MARKETING
MANAGING**

(j) Local Food

Purchase of local food; and

LOCAL FOOD

(k) Donations

Goods or services financed primarily from donations.

DONATIONS

***Please note that the exemptions listed in section 159 (1) restricted to 200,000 SDR or \$366,200 Canadian for cities that are covered by the Canada-European Union: Comprehensive Economic and Trade Agreement (CETA). See the Trade Agreements [section](#) for further details.**

Regional economic development – exemption for Schedule B entities subject to trade agreements – 161

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

Regional economic development – exemption for Schedule B entities not subject to trade agreements – 161.1(1)

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

Professional services exemption – 166(1)

The following Professional Services that may *only* be provided by **licensed professionals** listed in section 166(1) of Regulation 2014-93 under the *Procurement Act* are exempt from the application of the *Act*:

- (a) Repealed: 2019-20
- (b) Repealed: 2019-20
- (c) Repealed: 2019-20
- (d) Repealed: 2019-20
- (e) lawyers
- (f) notaries
- (g) medical doctors
- (h) dentists
- (i) nurses
- (j) midwives
- (k) pharmacists
- (l) psychologists
- (m) veterinarians

Professional services exemption – 166(2)

For entities not subject to the Canada-European Union: Comprehensive Economic and Trade Agreement (CETA)*, the following Professional Services that may *only* be provided by **licensed professionals** listed in section 166(2) of Regulation 2014-93 under the *Procurement Act* are exempt from the application of the *Act*.

For entities that are subject to Canada-European Union: Comprehensive Economic and Trade Agreement (CETA)*, the following Professional Services that may *only* be provided by **licensed professionals** listed in section 166(2) of Regulation 2014-93 under the *Procurement Act* are exempt from the application of the *Act* *only* if the **estimated value** of the services to be procured **is less than threshold value of CETA**. See the Trade Agreements [section](#) further details.

- (a) Engineers
- (b) Architects
- (c) land surveyors
- (d) accountants

***CETA applies only to the following municipalities (i.e. cities): Bathurst, Campbellton, Dieppe, Edmundston, Fredericton, Miramichi, Moncton, and Saint John. If your municipality is not listed, you are not subject to CETA and therefore the limit does not apply.**

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

Annex D: Exemption Reporting

Annex D: Exemption Reporting

Process:

The amended Regulation requires procuring entities to post notice of award if an Alternative Procurement Method was used under s.152 to 161. (see [Notice of Award](#) section for more information.)

In order to facilitate the requirement for posting of exemption award notices, we ask that you track all exemptions used and submit a report to SNB Strategic Procurement on a monthly basis. A template spreadsheet with required information can be found [here](#). Please submit the spreadsheet to procurement@snb.ca by the 5th of every month.

This information will be compiled and a monthly report for all public entities will be posted publicly on the NBON website and the information will remain available for 30 days.