



## **Public Procurement Policy**

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# 1. Introduction

## 1.1 Purpose

This Public Procurement Policy (“Policy”) has been developed to provide direction to all public bodies on the procurement of goods, services, public works and lease of space (“commodities”). It supplements the **Public Procurement Act** (“Act”) and the **Public Procurement Regulations** (“Regulations”) and forms part of the framework.

The Policy supports the Purpose of the Act, which is to establish a statutory framework which, through its operation, enables public bodies to achieve best value, transparency and accountability in procurement. The acquisition of commodities in an efficient, effective and ethical manner is paramount in public procurement. Sound principles such as fairness, competition, transparency, equality, and supplier diversity are valued to ensure public confidence in procurement by all public bodies.

It is the responsibility of public bodies and their employees involved in procurement to ensure that the acquisition process is conducted in accordance with the Act, Regulations, this Policy and relevant trade agreements. All procurement is to be carried out by staff with the required knowledge, skills and expertise to work effectively within the framework.

In the event of inconsistencies between this Policy and the Act or Regulations, the following order of precedence in the interpretation hereof or resolution of such conflict hereunder shall prevail:

- The Act
- The Regulations
- The Public Procurement Policy

## **1.2 Procurement Objectives**

The objectives for procurement as undertaken by public bodies are:

- Ensuring that commodities are obtained through an open, fair, consistent and transparent process that maximizes competition.
- Adhering to the framework and relevant trade agreement requirements.
- Utilizing best practices to obtain best value for money.
- Ensuring processes and practices are managed consistently.
- Encouraging supplier involvement to identify new and innovative ideas and products.

## **1.3 The Role of the Chief Procurement Officer**

The role of the Chief Procurement Officer (“CPO”) is to administer the Public Procurement Agency (“Agency”) and provide oversight for the procurement activities of all public bodies. The oversight function includes, but is not limited to, compliance monitoring, reporting, coordinating purchasing, performing best value and other procurement-related analysis.

The CPO will determine opportunities for the coordination of purchases on behalf of all public bodies. In this role, the CPO will review information on the procurement activities of public bodies, including the annual procurement plans. The CPO will also provide advice/recommendations to public bodies relating to the interpretation and application of the framework and develop training programs for the procurement of commodities for use by public bodies. All procurement activities by public bodies shall be subject to review by the CPO and public bodies shall make their records accessible and available upon request.

The CPO is responsible for developing and publishing general procurement policies and may determine a preferred procurement approach for use by all or select public bodies for specific commodities or thresholds, or both.

Additional information regarding the role of the CPO is included in the **Public Procurement Act, SNL2016 Chapter P-41.001**, and the **Public Procurement Regulations 13/18**.

## **1.4 Application and Scope**

The governing principles outlined in this Policy apply to all public bodies as defined in the Act. Public bodies may establish additional internal policies, guidelines or procedures that are consistent with the framework to supplement the governing principles contained in this document.

This Policy shall address all steps of the procurement cycle as outlined in the Regulations including planning for the acquisition, solicitation of bids, evaluation of bids, awarding of contracts and post award processes.

Legal services and financial services relating to the provision of credit and instruments of monetary policy are considered “professional services” in accordance with the Act and are not governed by this Policy. As per Section 8 of the Act, Treasury Board may establish a policy for the procurement of these services by public bodies.

Government departments should note that the Agency is responsible for the acquisition of all commodities that are required by the departments of the public service in accordance with Section 20 of the Act. The Agency has the authority to delegate this authority, or a portion thereof, to departments. Any such delegation will be in the form of a delegation letter prepared by the Agency and will outline any terms and conditions of the delegation.

## **1.5 Policy Development**

The Agency is responsible for the ongoing review and monitoring of public procurement activities regionally, nationally and internationally to ensure that the province is utilizing best practices in its purchasing activities. In some instances, government may identify social, economic or environmental priorities and the Act provides for the application of these priorities in the development of procurement policy where directed by the Lieutenant-Governor in Council. The Agency will incorporate direction on these priorities into this Policy, where applicable. The Agency will consult with line departments that have these priorities within their mandate to ensure all views are represented and considered in the procurement process.

## **1.6 Policy Administration**

The Chief Procurement Officer is responsible for maintaining the Public Procurement Policy and communicating updates to all public bodies. The Policy will be reviewed on an ongoing basis to identify and implement any revisions or interpretive notes that may be required.

## **1.7 Code of Ethics**

The Code of Ethics sets out the basic overarching principles of conduct for public officials within government and other public bodies. It is essential that the public procurement function be discharged with probity, transparency and accountability in a manner that secures best value for public money while utilizing best practices.

All public officials involved with or responsible for procurement shall adhere to the following Code of Ethics:

1) **Honesty/Integrity** – Maintain a high standard of integrity in all business relationships. Honesty, care and due diligence shall be integral to all procurement activities. Public officials shall, in the discharge of their duties, act in a professional manner and make decisions with the best interests of the organization in mind without consideration of personal gain.

2) **Equality** – Provide fair and equitable treatment to all suppliers. All suppliers shall be provided with the same information and public officials shall not impose any personal bias or prejudices in their decisions. All actions taken will be impartial and based on the merits of the matter. Purchasing documents shall not contain any unnecessary bias in specifications, terms and conditions or evaluation criteria.

3) **Professionalism** – Foster the highest standards of professional conduct. Respect shall be demonstrated to each other. Individuals shall not engage in any activity that may create a conflict of interest, such as accepting gifts or favors, providing preferential treatment or publicly endorsing suppliers or products. Public officials shall maintain strict confidentiality in their procurement activities and should continuously work to improve their procurement knowledge and skills to promote leading edge procurement practices.

4) **Accountability/Transparency** – Ensure procurement activities are open, transparent and accountable. Purchasing activities shall be conducted in a fair, consistent, and transparent manner with a view to obtaining the best value for public money. Public sector resources shall be used in a responsible, efficient and effective manner. Public officials shall act in such a manner that will bear the closest of public scrutiny.

5) **Compliance/Conformity** – Comply with all applicable laws, regulations, trade agreements, policies and procedures and not engage in any activity to circumvent the clear intention of the law. All activities should respect the principles of ethical business practices. All duties and responsibilities shall be performed in an independent manner without any undue pressure or interference.

## 1.8 Definitions

For the purposes of this Policy, the following definitions are provided:

“**Act**” means the Public Procurement Act;

“**Agency**” means the Public Procurement Agency continued under section 14 of the Act;

“**best value**” includes the best balance of cost, quality, performance and support, as achieved through a transparent, efficient and competitive procurement process using clear and fair evaluation and selection criteria;

“**bid**” means an offer from a supplier, submitted in response to a call for bids, to supply commodities;

“**buying group**” means a non-public body that uses the leverage of the purchasing power of a group of member organizations to achieve cost efficiencies for these organizations based on their collective buying power;

“**change order**” means an amendment within the requirements of an existing contract, or an extension of a contract, that is accessory to and does not change the nature of the contract;

“**commodities**” means goods, services, public works and lease of space;

**“contractor”** means a supplier that has been awarded a contract by a public body;

**“day”**, unless otherwise specified, means a calendar day;

**“electronic notification system”** means an internet website or linked websites through which information about procurement is broadly and openly communicated.

**“estimated value”** means an estimate of the contractual value of a commodity based on current market information;

**“framework”** means the sum of the Act and its regulations, and the policies that govern procurement of commodities;

**“goods”** means goods, chattels, material, personal property, movable property and other physical objects of every kind, including items required to be manufactured or on which a labour or skill is required to be expended before, upon or after delivery to a public body;

**“group purchasing”** means the purchasing of commodities by 2 or more public bodies;

**“head of a public body”** means

- in the case of a department, the deputy minister,
- in the case of a public body referred to in subparagraph (q)(iv) of the Act, the council or local service district committee, and
- in the case of other public bodies, the person responsible for the administration of the public body;

**“insurance services”** means services provided by an insurance company, broker or agent;

**“joint purchasing agreement”** means an agreement entered into by the province and one or more other governments to provide for joint acquisition of commodities required by public bodies;

**“lease of space”** means a transfer of the possession of space for a fixed period of time at a specified rent, and includes a renewal of a lease;

**“limited call for bids”** means an invitation to specific suppliers to submit a bid;

**“local supplier”** means a supplier of goods or services or public works that has a place of business in Newfoundland and Labrador;

**“minister”** means the minister appointed under the **Executive Council Act** to administer the Act;

**“open call for bids”** means a publicly-advertised invitation to suppliers to submit a bid;

**“place of business”** means an establishment where a supplier regularly conducts its activities on a permanent basis;

**“preferred supplier”** means the supplier who submits the lowest priced bid meeting all terms, conditions and specifications of the invitation to tender or who submits the highest ranking proposal meeting all the criteria in a request for proposals;

**“pre-qualified supplier”** means a supplier who has met the public body qualification requirements in response to a request for qualifications, and has been approved for participation in a proposed procurement by the public body;

**“private sector entity”** means a corporation, partnership or other entity in which the Crown or a Crown corporation is not a majority shareholder and a corporation, other than a Crown Corporation, without share capital;

**“public body”** means

- a department of the government of the province, or in the case where procurement is on behalf of a department of the government of the province by the Agency, the Agency,
- a corporation in which not less than 90% of the issued common shares are owned by the Crown,
- a corporation established by and Act under which the corporation is made an agent of the Crown,
- a municipality or local service district under the **Municipalities Act, 1999**, the City of Mount Pearl established by the **City of Mount Pearl Act**, the City of St. John’s established by the **City of St. John’s Act** and the City of Corner Brook established by the **City of Corner Brook Act**,
- a school board elected under the Schools Act, 1997,
- an agency or authority of the province,
- The provincial health authority established under the **Provincial Health Authority Act**, and
- a board, commission, corporation, Royal Commission or other body designated by the Lieutenant-Governor in Council as a public body for the purpose of the Act;

**“public work”** means the construction, re-construction, extension, enlargement, repair, maintenance, improvement and demolition of real property, including improvements to leased property;

**“public-private partnership or P3”** means a performance-based contract between public and private sector parties, where the private sector party assumes a share of the risks involved in the integrated delivery of public infrastructure (for example, design, build, operate, maintain, finance/capital at risk). Under the contract, the risks and rewards are allocated between the parties;

**“real property”** means land, buildings, structures, improvements and fixtures erected or placed upon, in, over or under land or affixed to land, and includes an interest in any of them;

**“request for qualifications”** means an open call used for the qualification of commodities or to invite suppliers to seek registration on a pre-qualified supplier list;

**“services”** means all services incidental to the supply of goods including the provision of transportation of all kinds; printing and reproduction services; accounting, land surveying and voice telephone services; engineering services; architectural services; banking services not captured by subparagraph (p)(ii) of the Act; insurance services; services that require the giving of an opinion, creativity, the preparation of a design, or technical expertise except those services defined in paragraph (p) of the Act; and all other services not considered to be professional services; and

**“supplier”** means an individual, partnership, corporation, joint venture or other form of business organization engaged in the lawful supply of commodities.

## **1.9 Acronyms**

For the purpose of this Policy, the following acronyms are provided:

- ITT - Invitation to Tender
- RFQ – Request for Quotations
- RFI – Request for Information
- RFEI – Request for Expressions of Interest
- RFSQs – Request for (Supplier) Qualifications
- RFP – Request for Proposals
- SOA – Standing Offer Agreement

## **1.10 Access to Information and Protection of Privacy Act**

Suppliers occasionally request information on the bids of their competitors from public officials. The information requested can range from bid prices and products supplied to internal bid evaluations. The Act and Regulations allow for the release of certain information through public openings. Procurement officials should be cognizant of the information they are permitted to release and should familiarize themselves with the **Access to Information and Protection of Privacy Act, 2015** as well as any other internal policies that may exist in their organization. Section 5 of this Policy provides additional information on statements that relate to the **Access to Information and Protection of Privacy Act, 2015**, which are to be included within an open call for bids document.

## **2. Related – Legislation, Agreements, Terms and Conditions**

### **2.1 Public Procurement Act**

The **Public Procurement Act** establishes a statutory framework which, through its operation, enables public bodies to achieve best value, transparency and accountability in procurement. The Act fosters and encourages participation in procurement by suppliers; promotes competition among suppliers in procurement; provides for the fair and equitable treatment of all suppliers and contractors; promotes the integrity and fairness of, and public confidence in, procurement; promotes making information on procurement publicly available; and values diversity in procurement. The **Public Procurement Act** may be viewed at <https://www.gov.nl.ca/ppa/division/legislation/>.

### **2.2 Public Procurement Regulations**

The **Public Procurement Regulations** provide an additional level of procurement detail to the **Public Procurement Act**. They include the policy and procurement processes,

authorities and delegations, approval mechanisms and procurement thresholds. The *Regulations* address the four general stages of procurement including the planning process; solicitation of bids; evaluation of submissions and contract award; and, post award requirements. The *Regulations* also provide detail regarding the preparation of purchasing documents, estimating the value of the procurement and determining the appropriate procurement tool. The **Public Procurement Regulations** may be viewed at <https://www.gov.nl.ca/ppa/division/legislation/>.

## 2.3 Trade Agreements

Trade agreements play a vital role in our economy. They create market access for our goods and services by reducing barriers to, among other things, labour, mobility, investments, energy, agriculture, and government procurement. Agreements can be comprehensive, covering a number of different topics, or more concentrated by covering individual topics. Each agreement has unique language, exemptions, rules, and requirements. Trade agreements help to open markets and expand opportunities for Newfoundland and Labrador businesses.

Trade Agreements that may impact government procurement in Newfoundland and Labrador include:

### **Domestic Agreements:**

- Canadian Free Trade Agreement

### **International Agreements:**

- Canada-European Union Comprehensive Economic and Trade Agreement (CETA)
- World Trade Organization Government Procurement Agreement (WTO-GPA)

These agreements may be viewed at <https://www.gov.nl.ca/ppa/tradeagreements/>.

## **2.4 Atlantic Provinces Standard Terms and Conditions**

*The Atlantic Provinces Standard Terms & Conditions* were developed by the four Atlantic Provinces to provide suppliers with a common set of terms and conditions that will apply to most Atlantic government tenders. These terms and conditions cover a wide range of provincial procurements however, not all clauses will be applicable in all situations. Supplementary terms and conditions may be incorporated into tendering documents to supplement or replace clauses identified in this document. The Atlantic Provinces Standard Terms and Conditions may be viewed at <https://www.gov.nl.ca/ppa/termsconditions/>.

## **3. Procurement Planning**

### **3.1 General**

Procurement planning is the first and most integral step in the acquisition process. Proper planning will help ensure an effective and efficient process with greater surety of a successful acquisition. A well planned procurement benefits all stakeholders including the end-user, procurement official and supplier. Good planning will allow public bodies to determine the goods, services, public works or lease of space requirements necessary to meet business requirements; provide opportunities to aggregate spend in order to create process efficiencies and maximize value for money; and, identify potential sources of supply. Additionally, proper planning will identify a legitimate estimate for the procurement; determine the appropriate procurement tool to utilize to obtain best value; and, determine the overall time frame necessary to complete the procurement process.

The initial step in planning rests with the end-users and it is incumbent upon them to ensure that they allow sufficient lead time for the procurement officials to conduct an effective process. The Act requires that the head of the public body ensure that its purchasing activities are managed in accordance with the framework. The Regulations

provide additional detail indicating the preparation of purchasing documentation, estimating the value of the procurement, determining the appropriate tool and time management.

Public bodies are strongly encouraged to consider engaging legal counsel at the onset of any large procurement project to ensure that solicitation documents meet all legal requirements. Additionally, for large projects any subject matter expert that would assist in the preparation of solicitation documents and become part of the acquisition team should be identified at the initial stage of the procurement.

### **3.2 Complete Documentation**

The first step in the process is identifying the good, service, lease or public work required to meet business requirements. This involves early identification of needs through needs recognition and justification, contract renewal planning, the review of contracts close to expiration, and verifying past usage and quantities to be ordered. Identifying the needs and carefully developing the requirements can minimize the necessity for changes later.

Next, it is important to determine whether the commodity is already available from an existing procurement such as a Standing Offer Agreement (SOA). An SOA is usually arranged by the Agency and is an established contract with a supplier for the purchase of pre-determined commodities for a set period of time. In order to participate in an SOA, the public body must have been identified as a participant prior to the close of the bidding process. If your public body is not a participant in an SOA, you should still review the commodities that are available through the agreement to identify whether they could better meet your needs in the future. Taking advantage of economies of scale to achieve better pricing and creating process efficiencies facilitates the achievement of value for money. More information on SOA's is provided in Section 3.6.7.

If you are not purchasing from an SOA, the next step is to determine which approvals are required and when they will be required to ensure the procurement process can be carried out in a timely manner using the appropriate procurement method. All approvals should be granted prior to proceeding with a procurement to ensure the necessary support for the procurement exists.

Determine specifications for the commodity. Detailed generic specifications identifying performance and functional requirements should be developed to encourage competition and ensure best value is achieved. Brand names or equivalencies may be suggested in conjunction with the specification under certain circumstances, however, it is important to ensure that equivalencies of brand names are considered and accepted in the evaluation process. The specifications shall be clear and concise to ensure the commodity meets the actual needs of the public body and personal preference shall not be considered in the process. If necessary, consider using a Request for Information to assist in this process.

The terms and conditions of the solicitation as well as the selection and evaluation criteria should clearly reflect what is expected of suppliers and how they will be evaluated. For clarity, evaluation criteria must include the methods of weighting, unless price is the sole criterion. The terms and conditions shall specify the deliverables such as contract period, delivery requirements, and maintenance and storage requirements, etc. When estimating the delivery requirements for a procurement, consideration should be given to the following factors: the complexity of the procurement, the nature of the commodity - whether it is available locally or does it have to be manufactured; the method of transportation used to obtain the product, etc. Use clear, concise and plain language in the documents to ensure clarity and avoid disputes. This eliminates any misinterpretations of the solicitation.

### 3.3 Estimated Value

The estimated value shall be based on current market information. Procurement officials may utilize any available means to determine a legitimate estimate including research on the internet; current pricing in the marketplace; or a recent purchase, preferably from a competitive situation, conducted by the public body or another public body. An estimated value for complex procurements may also be determined through a Request for Information or through professional consultation. In calculating the estimated value, the public body shall take into account all forms of remuneration including premiums, fees, commissions and interest and delivery.

Estimated values will be exclusive of HST.

- An estimated value shall be based on the entire length of the contract, including extension options.
- When total cost of ownership or life cycle costing will be utilized in the evaluation process, this shall be considered in the estimated value.
- If a legitimate estimate cannot be determined for a procurement, then an open call for bids shall be issued.
- If a legitimate estimate is close to the threshold values consider an open call for bids.
- If a single procurement includes a combination of goods and services, the public body shall determine the estimated value for each component of the procurement (e.g., goods (\$10,000) + services (\$2,000) = \$12,000). In determining whether an open call for bids is required, the threshold for the component which represents the larger portion of the cost of the procurement will govern.
- If the procurement is for a public work, the public body shall include the value of all goods and services to be supplied by the supplier in the estimated value.

The procurement of goods or services outside the scope of a public works contract is not considered to be procurement for construction, and is subject to the thresholds applicable to goods or services.

- If a public body is uncertain as to whether a procurement is a good, service, or public work, the Agency may be contacted for an opinion.

### **3.4 Splitting or Underestimating Requirements**

A public body shall not split or underestimate requirements to avoid issuing an open call for bids. If a procurement official identifies multiple requests for the same commodity, the requirements should be combined to take advantage of volume purchasing and achieve better value and ensure the appropriate process is followed.

### **3.5 Planning Tools**

#### **3.5.1 Request for Information**

A Request for Information (RFI) is a research and information gathering tool used to learn about the options available for addressing a particular need or want. It assists with obtaining information to help create viable requirements for a particular solicitation. An RFI can be used to determine if there is sufficient supplier interest to justify proceeding with a competitive procurement process and/or to gain additional information about a particular good or service, as well as the availability and performance of the good or service. The RFI process is designed to gather information that can aid in the development of a future solicitation. It is not designed to solicit bids or proposals; therefore it is not intended to nor does it lead directly to a contract. A response to an RFI does not pre-qualify a potential contractor on any subsequent opportunity and shall not be used to shortlist suppliers. The information requested shall be deemed to be non-proprietary as the intention may be to utilize this information in a future solicitation.

The information gathered will help plan a fair and cost-effective solicitation process, define the requirements for the solicitation documents, or identify whether there are interested suppliers. RFI documents need to be customized to the unique need of each procurement opportunity.

An RFI should at least include the following:

- A description of the RFI process that suppliers will be engaging in, including any terms and conditions;
- An explanation of why the requested information is of interest to the public body;
- A statement that the public body will not be under any obligation to advise any respondent to the RFI of the issuance of any subsequent bidding documents and that it is incumbent on all suppliers to monitor the electronic notification system to find out about the posting of any subsequent bidding documents;
- A description of the anticipated project scope if departments are seeking specific interests; and
- The type of procurement process that may follow, if possible.

The public body may request the following type of information through an RFI:

- A company profile, including business capabilities and capacities, technical and project management capabilities and staff qualifications;
- Information on the types of goods or services available that may meet the public body's requirements;
- General pricing information that may be used in determining an estimated value. It is important not to request firm prices at this stage of the process; and
- Other information the public body may request.

An RFI should be advertised on the electronic notification system. This will ensure that all potential suppliers are aware of the opportunity to submit a response. The PPA can provide a sample RFI template upon request. Email [PPAReporting@gov.nl.ca](mailto:PPAReporting@gov.nl.ca) to request a copy of the template. A copy of the template is also available internally on the Government Intranet.

### **3.5.2 Request for Expressions of Interest**

A Request for Expressions of Interest (RFEI) allows a public body to gather information about supplier interest in an opportunity or information about supplier capabilities and qualifications. An RFEI may be used to clarify the ability of the supplier community to provide the necessary services or solutions. The RFEI process is designed to gather information that can aid in the development of a future solicitation. It is not designed to solicit bids or proposals; therefore, it is not intended to nor does it lead directly to a contract. A response to an RFEI does not pre-qualify a potential contractor on any subsequent opportunity. The information requested shall be deemed to be non-proprietary as the intention may be to utilize this information in a future solicitation.

RFEI documents need to be customized to the unique need of each procurement opportunity. An RFEI should at least include the following:

- A description of the RFEI process that suppliers will be engaging in, including any terms and conditions;
- An explanation of why the requested information is of interest to the public body;
- A description of the anticipated project scope if public bodies are seeking specific interests;
- The type of procurement process that may follow, if possible, such as an Invitation to Tender or a Request for Proposals.

- A statement that the public body will not be under any obligation to advise any respondent to the RFEI of the issuance if any subsequent bidding documents, and
- That it is incumbent on all suppliers to monitor the electronic notification system to find out about the posting of any subsequent bidding documents.

The public body may request the following type of information through an RFEI:

- A company profile, including business capabilities and capacities, technical and project management capabilities and staff qualifications;
- Information on the types of goods or services available that may meet the public body's requirements; and
- Other information the public body may request.

An RFEI should be advertised on the electronic notification system.

### **3.5.3 Advance Contract Award Notice**

An Advance Contract Award Notice (ACAN) is a public notice indicating to the supplier community that a department or agency intends to award a good, service or construction contract to a pre-identified supplier.

ACANs are designed to enhance transparency in potential sole source and direct award procurement situations and to identify other possible sources of supply of the goods and/or services. It identifies the rationale for the proposed sole source, but also invites the supplier community to provide alternatives, or for previously unknown sources of supply, to respond to the procurement opportunity.

An ACAN cannot be used as a tool to avoid conducting a competition. ACANs cannot be used in place of traditional bidding procedures when it is clear that more than one supplier exists that can provide the required commodity.

When public bodies suspect that they are in a sole source or direct purchase position above open call thresholds, an ACAN may be used before the direct award is made.

The ACAN is not a competitive process, and does not constitute a competitive process. The ACAN operates as a notice identifying that a direct award is expected to be undertaken, but also invites suppliers to reply indicating their ability to meet the requirements as set out in the ACAN.

The ACAN typically includes the following information:

- The name of the public body initiating the ACAN and summary of the requirement;
- The name of the potential supplier, including address;
- Delivery date(s) and/or the period of the proposed contract, including extension options;
- Rationale for the ACAN, demonstrating why the selected supplier has been identified as the only supplier capable of meeting the requirements;
- A full description of the problem to be addressed and the commodity to be provided. This may include tasks to be performed, objectives, expected results, performance standards, constraints and deliverables. For example:
  - For goods, a full description of the relevant physical, functional, or other mandatory technical requirements including performance requirements.
  - For services and construction, a full description of the services to be provided, objectives, expected results, mandatory technical requirements, performance standards and deliverables.
- An explanation on how suppliers can challenge an ACAN;
- Closing date for accepting statements of capabilities including the time of day;
- An explanation on how the procurement process will proceed with and without ACAN responses;
- Notification indicating that any responses received after the closing date and time will not be considered; and
- Contact details for inquiries and where responses can be submitted.

The ACAN shall be made public by posting on the electronic notification system. The ACAN must be posted for 10 business days.

If during the posting period, a supplier(s) submits a statement of capabilities that does not meet the requirements set out in the ACAN, suppliers should be advised in writing of the decision to reject the statement of capabilities. Debriefings must be offered to these suppliers.

If during the posting period, a supplier(s) submits a statement of capabilities demonstrating that it meets the requirements set out in the ACAN, public bodies must prepare the appropriate procurement documents and publicly advertise the procurement opportunity.

If, during the posting period, no supplier submits a statement of capabilities demonstrating that it meets the requirements set out in the ACAN, the public body may proceed to sole-source the commodity to the identified supplier.

- The PPA can provide a sample ACAN template upon request. Email [PPAReporting@gov.nl.ca](mailto:PPAReporting@gov.nl.ca) to request a copy of the template. A copy of the template is also available internally on the Government Intranet.

## **3.6 Selection of Procurement Strategy**

### **3.6.1 General**

Determining an appropriate method for acquiring a commodity is an integral part of the planning process and is based on a number of key factors such as: the type of commodity being acquired; the estimated cost; risks associated with the acquisition; and marketplace considerations. The Regulations provide guidance on the tools available for various acquisitions. These are provided below.

### **3.6.2 Invitation to Tender (ITT)**

The Invitation to Tender is a common format used by public bodies when acquiring goods and services. The ITT is a legally binding document in which the rules for bidding are clearly defined. It establishes requirements including a description of the commodity required, evaluation criteria, closing times and dates for submissions to be received, delivery conditions, bonding requirements, etc. The ITT establishes rules to which both the supplier and the public body shall adhere.

- The ITT focuses the evaluation predominantly on price, specifications, terms and conditions and delivery requirements.
- The successful bidder is normally the one who submits the lowest cost bid meeting all terms, conditions, specifications, and delivery requirements.
- The ITT does not contemplate any negotiations. The PPA can provide a sample ITT template upon request. Email [PPAReporting@gov.nl.ca](mailto:PPAReporting@gov.nl.ca) to request a copy of the template. A copy of the template is also available internally on the Government Intranet

### **3.6.3 Request for Proposals (RFP)**

A Request for Proposals is used to invite submissions when the requirement is of a complex or unique nature and all or part of the requirements cannot be precisely defined. A RFP may also be used when requirements are fully known however the evaluation is comprised of a number of factors in addition to price to ensure best value is obtained.

The RFP document provides suppliers with an overview of the perceived or expected requirements. It also provides general public body information and the scope of work that is being contemplated. The evaluation criteria are also disclosed in the RFP and provide suppliers with detailed information on how their submissions will be evaluated and scored. The evaluation criteria, which must include the methods of weighting, are also disclosed in the RFP and provide suppliers with detailed information on how their submissions will

be evaluated and scored. In accordance with the Act the highest ranking proposal will be deemed to be the preferred supplier. RFP's may take many forms, from a mainstream RFP with no negotiation to RFP's which permit various forms of negotiation. These range from concurrent negotiations to consecutive negotiations. Under concurrent negotiations more than one supplier is engaged at a time and suppliers are encouraged to present a best and final offer after discussions with the public body officials. The consecutive negotiation process involves a public body negotiating with the highest ranking proponent first to determine if a contract can be established. If a contract cannot be formed then the public body may negotiate with the second ranked proponent and so on in order of ranking.

It is important to note that all information regarding the type of RFP that will be utilized is to be clearly articulated and disclosed in the documents such that all suppliers are fully aware of the rules that apply. Public bodies should consult with their legal counsel on any questions or concerns on the drafting of a RFP. The PPA can provide a sample RFP template upon request. Email [PPAReporting@gov.nl.ca](mailto:PPAReporting@gov.nl.ca) to request a copy of the template. A copy of the template is also available internally on the Government Intranet.

#### **3.6.4 Request for Quotations (RFQ)**

A Request for Quotations is a document used for the solicitation of price and delivery information for a specified commodity. The RFQ is normally used for low dollar acquisitions or commodities that have minimum specifications. The document does not contain elaborate terms and conditions and should be awarded to the lowest price bid for the commodity that was requested. The PPA can provide a sample RFQ template upon request. Email [PPAReporting@gov.nl.ca](mailto:PPAReporting@gov.nl.ca) to request a copy of the template. A copy of the template is also available internally on the Government Intranet.

### **3.6.5 Direct Awards**

A direct award is a contract that is awarded directly to a supplier without a competitive procurement. This type of award is normally made in the case of a sole source purchase. However, other situations such as an emergency may dictate the need for a direct award to a single supplier. In instances where the direct award procedure is utilized, a public body may negotiate a detailed contract with the supplier to ensure best value is obtained. Public bodies, through a detailed planning process, should ensure that the sole source supplier chosen for a direct award is the only supplier reasonably available to supply the required commodity. The rationale and justification for acquisitions made through a direct award process shall be clearly documented and such documentation shall be maintained in the procurement file. See section 7.2 for situations that constitute a sole source acquisition.

### **3.6.6 Request for Supplier Qualifications (RFSQs)**

A Request for Supplier Qualifications is an open call to pre-qualify suppliers for an upcoming procurement or to establish a pre-qualified supplier list for undetermined future procurements. The RFSQs identifies the qualifications that the public body has identified as necessary for suppliers to be considered for future procurements. The utilization of RFSQs reduces the effort required in the evaluation of future opportunities and provides an efficient methodology for determining successful suppliers.

The method of selection from the pre-qualified supplier list for future procurements shall be identified in the RFSQs. See section 6.2 below for further information on pre-qualified supplier lists. The PPA can provide a sample RFSQs template upon request. Email [PPAReporting@gov.nl.ca](mailto:PPAReporting@gov.nl.ca) to request a copy of the template. A copy of the template is also available internally on the Government Intranet.

### **3.6.7 Standing Offer Agreement (SOA)**

An SOA is a supply agreement that enables a public official to order directly from suppliers over a specific period of time at prescribed prices and terms and conditions. Quantities are approximate, for estimation only and shall be requested on an “as and when required” basis for a specified period. Multiple acquisitions can be made through a SOA; however, there is no guarantee that any minimum purchase volumes will be reached through a SOA. This type of agreement normally follows the open call for bids process and is usually set up for frequently used items. More than one SOA may be established to ensure continuity of supply and solicitation documents should identify if more than one award will be made. There may be situations where the SOA is sole source due to the nature of the commodity and the requirement. In such cases public bodies shall abide by the established rules for sole source acquisitions.

SOAs often provide better prices due to bulk purchases and provide for a more efficient provision of the commodity. They also reduce administration costs by eliminating the requirement for the user to go through the procurement cycle each time a need is recognized. SOAs also decrease overall inventory costs.

### **3.7 Timing of Procurement**

Early and efficient planning shall ensure the procurement is made in sufficient time to ensure a competitive process in accordance with the framework. Public bodies shall keep in mind that a specific amount of time is required to complete the procurement process. Planning shall not be left to the last minute thereby resulting in the acquisition of a commodity without benefit of a competitive process due to poor planning. Poor planning is not a legitimate reason for awarding a contract without an open competition. Enough time shall be allotted to prepare documents, issue call for bids, evaluate bids and award the contract, while permitting time for delivery.

The estimated value of the procurement will have an impact on the timing of the procurement since generally commodities below the thresholds would require less time to process than commodities above the thresholds. Higher valued acquisitions normally require more detailed specifications and evaluation processes and would require additional time for all involved in the process.

A public body may, before issuing an open or limited call for bids, issue an RFI to determine what commodities are available in the marketplace or to obtain information required for the effective design and conduct of a proposed procurement. It may also issue an RFEI to determine the level of supplier interest or availability for a proposed procurement. The information gathered will help plan a fair and cost-effective solicitation process, define the requirements for the solicitation documents, or identify whether there are interested suppliers. These processes should also be factored into any decisions regarding the length of time for a procurement process.

### **3.8 Conflict of Interest**

All solicitation documents should identify to suppliers that Conflict of Interest rules apply and where suppliers may access any legislation, policies or rules that may apply.

Additionally, all employees of public bodies shall be fully aware of all conflict of interest legislation, policies or rules that may apply if they are involved in any part of a procurement process.

### **3.9 Single Point of Contact**

All solicitation documents shall clearly identify a single source of contact for each procurement. Suppliers shall be advised that all communication regarding a specific procurement shall be through the individual identified on the document and any other communication or information received from any other individual shall not be considered

binding on the public body. When communicating with suppliers, public bodies shall ensure that identical information is provided to all suppliers.

## **4. Procurement Controls**

### **4.1 General**

A control is an integral component of a public body that provides reasonable assurance that the objectives of the public body are being achieved in terms of efficiency and effectiveness of the operations, reliability of financial reporting, and compliance with applicable legislation and regulations. It is a series of actions and activities that occur throughout a public body's operations and on an ongoing basis.

A public body shall ensure that the proper controls are in place for procurement respecting the security of bids, separation of duties and the authorization and approval of purchasing documents.

### **4.2 Security of Bids**

Public bodies utilizing electronic bidding procedures shall ensure that protocols exist to maintain the security of bid submissions within the system. Public bodies utilizing physical submissions shall ensure that bid submissions for open and limited calls for bids are date and time stamped upon receipt and kept secure (i.e., locked box, locked file cabinet) that is only accessible to the staff responsible for competitive procurement control. Buyers or staff directly involved in the procurement process shall not hold a key to the locked facility or have access to the facility. Any submission received shall not be opened prior to the date and time of the opening. Bid submissions can only be retrieved by authorized staff if an open call for bids is cancelled or documents need to be accessed for some other justified reason. Management approval should be required prior to retrieving any bid submissions.

### 4.3 Separation of Duties

Separation of duties is an essential internal control mechanism within the procurement process that helps prevent any fraud or misgivings from occurring. It reduces the exposure of inappropriate, unauthorized or unlawful expenditures and increases the integrity of the process. There are primarily seven functional roles in the procurement process that should lie, to the extent practicable, with different departments or at a minimum, with different individuals. The purpose of separating responsibility for different activities among various personnel is to prevent one person from controlling the entire procurement process. It reduces the risk to the public body and protects against any improper activity.

Following is a chart displaying the typical procurement roles with the corresponding accountable party:

<b>Functional Role</b>	<b>Accountable Party</b>
Preparation of Requisition	User requesting the commodity
Approval of Requisitions	Management/Budget Personnel
Issuance of Call for Bids	Procurement Personnel
Evaluation of Submissions	Procurement Personnel/End User
Issuance of Purchase Order	Procurement Personnel
Receipt of Commodities	End User
Payment of Invoices	Accounts Payable

### 4.4 Approval Authorities

The purpose of an approval authority policy is to establish approval authorization limits for the procurement of goods, services, public works and lease of space to ensure that expenditures incurred by public bodies are approved by officials who have the responsibility, authority and accountability for such expenditures. Approval authorities are an internal mechanism used to control and monitor procurement activity.

The dollar value of the requirement will determine the level of approval that shall be obtained prior to commencement of any procurement process. It is important to ensure that the approval authorities are consistent with separation of duties.

Approval authorities are specific to each individual public body and it is necessary for each body to establish their own authority levels. The key items for which approval authorities are required are for authorization to purchase; approval of a requisition and issuance of a purchase order.

## 5. Open Call for Bids

### 5.1 General

The *Regulations* outline the thresholds for goods, services, public works and lease of space at which an open call for bids is required. These thresholds are established to identify dollar values at which public bodies shall acquire the commodities in an open, transparent and competitive manner and to offer all suppliers the opportunity to compete for public body requirements. Public bodies shall determine the appropriate procurement tool to ensure best value is received.

An open call for bids is required for commodities at or above the following thresholds (unless an exception applies). All thresholds are exclusive of harmonized sales tax.

Public Bodies	Open Call for Bids Thresholds			
	Goods	Services	Public Works	Lease of Space
Departments	\$34,700	\$139,000	\$139,000	\$100,000
MASH*	\$139,000	\$139,000	\$347,400	\$100,000
Crown Corporations	\$264,200	\$264,200	\$264,200	\$100,000

\*Municipalities, Local Service Districts, Academic Institutions, School Districts, Health Authorities

A public body may, in its discretion, issue an open call for bids for commodities where the estimated value is below the thresholds and the requirements of the framework respecting an open call for bids shall apply.

In conjunction with the increase in the open call for bids thresholds, reporting requirements for limited calls have been enhanced. Reporting requirements are provided in Section 20: Summary of Reporting Requirements.

## **5.2 Notification**

All open call for bids notifications for goods, services, lease of space and public works shall be posted on or be accessible through the electronic notification system. If a public body does not have its own electronic notification system, it will provide notification on the Agency's website.

Public bodies will report the details on the open call for bids via the spreadsheet that is available at <https://www.gov.nl.ca/ppa/forms/>. Please see the **Summary of Reporting** section of this Policy for further information on the process to be followed.

A public body may publish a notice of an open call for bids in other media, but that notice shall not be published before notification is published on the Agency's website.

A notice respecting an open call for bids shall contain the following:

- A brief description and location of the commodity;
- The location where information and bid documents may be obtained;
- The conditions for obtaining bid documents;
- The location where bids are to be submitted;
- The date and time of bid closing;
- The date, time and location of the public opening of bids; and
- A statement that the procurement is subject to trade agreements, if applicable.

“Location” with respect to the commodity means the place where the good or service is to be delivered, the place where the public work is to be executed or the space required.

### 5.3 Open Call for Bids Document

The open call for bids period shall be based on the anticipated dollar value of the acquisition and the degree of complexity of the procurement. Each public body shall consider the acquisition and the complexity of the document to determine an appropriate time frame for bidders to respond. A longer tender call period should be provided for procurements that are of high complexity, risk and/or dollar value.

The open call for bids document shall contain the following information:

- A description of the commodity, including all terms, conditions and specifications, as appropriate;
- A privilege clause (ie. The (insert the name of the public body) reserves the right to cancel this solicitation at any time. The lowest, or highest ranking, or any bid may not necessarily be accepted.);
- All evaluation criteria and processes used to select a preferred supplier;
- The name and contact information of the public body and official responsible for the open call for bids;
- The deadline for receipt of bids as well as the location where bids shall be submitted;
- The date, time and location of the public opening of bids;
- A statement that the procurement is subject to trade agreements, if applicable; and
- The following statements in relation to the disclosure of information:
  - The financial value of a contract resulting from this procurement process will be publicly released as part of the award notification process.
  - This procurement process is subject to the **Access to Information and Protection of Privacy Act, 2015.**

- The bidder agrees that any specific information in its bid that may qualify for an exemption from disclosure under subsection 39(1) of the **Access to Information and Protection of Privacy Act, 2015** has been identified. If no specific information has been identified it is assumed that, in the opinion of the bidder, there is no specific information that qualifies for an exemption under subsection 39(1) of the **Access to Information and Protection of Privacy Act, 2015**.

An addendum is any change or clarification to an open call for bids document issued during the time between publishing the open call for bids and the closing date.

When issuing an addendum, the public body should give consideration to the impact the addendum will have on the suppliers' ability to respond. If necessary, time frame extensions should be considered. It is critical to ensure that all potential suppliers are provided the same information on a change or clarification to an open call for bids.

An open call for bids shall clearly indicate that it is the supplier's responsibility to ensure that they are in receipt of all addenda.

All addenda shall be posted on or be accessible through the electronic notification system or the Agency's website. Public bodies utilizing the Agency's website will report the details of the addenda via the spreadsheet that is available at <https://www.gov.nl.ca/ppa/forms/>. Please see the **Summary of Reporting** section of this Policy for further information on the process to be followed.

A public body may publish an amendment (addendum) to an open call for bids in other media, but that amendment shall not be published in other media before it is published on the electronic notification system.

## **5.4 Receipt of Bid Submissions**

All bid submissions received by mail, electronic submission, and fax or delivered in person shall be legible and shall be completed in all respects as required. Any tool utilized for electronic submission shall have the ability to administer an electronic time and date stamp. All submissions shall be date and time stamped immediately upon receipt. The bid submissions should show on the face thereof, the competitive procurement number, closing date and closing time. This information clearly identifies the applicable bid solicitation information for administrative purposes. It helps ensure that the bid submission is held in the correct location and facility and opened on the correct date and time. A supplier who has submitted a bid submission may request, prior to closing, that it be withdrawn. Where bid security is required, the withdrawal may be permitted if the request is made prior to the closing time for the solicitation document to which it applies. Bid security is subject to forfeiture if the bid is withdrawn after the closing time. Withdrawal of a bid submission must be directed to the designated official in writing. Telephone requests are not considered. The withdrawal of a bid submission does not disqualify a bidder from submitting another bid submission on the same solicitation or request.

Late bid submissions shall be rejected. If physical bid documents are received, bids received after the closing time shall be time and date stamped and a photocopy of the bid envelope showing the date and time of receipt and the transmittal letter shall be placed in the procurement file. Bids shall then be returned to the bidder with a cover letter noting that the bid was received late.

## **5.5 Public Opening of Bids**

All bids received prior to the stipulated closing time in response to an open call for bids shall be opened publicly.

- Bid submissions shall be opened by the public body at the prescribed time and location stated in the competitive procurement documents. At least two representatives of the public body which is responsible for the procurement

must be present. Bid submissions are time and date stamped and initialed by the representatives of the public body.

- An Open Call for Bids report shall be completed which will record the date, time and location of the public opening; names of the persons in attendance for the opening, including public body representatives; names of suppliers submitting bids and open call for bids reference information. This document shall be placed in the procurement file for future reference. The Open Call for Bids Record may be viewed at <https://www.gov.nl.ca/ppa/forms/>.
- The bidder's name and bid price will be revealed at an Invitation to Tender public opening; however, only the bidder's name will be disclosed at other public openings. This information shall be disclosed to all persons attending the public opening. Attendees should be advised that the bid prices revealed in the public opening are for reference purposes only and that a full evaluation of the bid submissions will be completed to determine if there is a preferred supplier.
- With respect to Invitation to Tender public openings, the public body may choose to forward bid prices to suppliers by an electronic or other means, such as a spreadsheet, in accordance with the framework, after the public opening instead of reading out bid prices at the public opening. The names of bidders shall still be disclosed at the public opening and the electronic distribution of bidder names and bid prices should occur within a reasonable time frame.
- The award method will determine whether each unit price, a group pricing or a total bid amount is disclosed. If the award is made in whole and the bidder was required to submit a total bid price, the total bid price would be disclosed. If the award is to be made by item or by groupings, the unit price or price for that grouping, respectively, would be disclosed.

- If no supplier representatives attend the openings, the envelopes are opened after the opening time has passed. The bid submissions are time and date stamped, initialed and recorded on the Open Call for Bids record.

## **5.6 No Bids Received**

- Where an open call for bids results in no bids received or no bids which meet the terms, conditions, specifications or other criteria of an open call for bids are received, the public body may acquire the commodity by issuing a limited call for bids to fulfill the requirement provided the requirements are not substantially modified. After issuing an open call for bids, the public body would have met that requirement and could then proceed to acquire through a limited call procedure, as described in Section 6.

## **6. Limited Call for Bids**

### **6.1. General**

As noted in Section 5.6, where an open call for bids results in no bids received or no bids which meet the terms, conditions, specifications or other criteria of an open call for bids are received, the public body may acquire the commodity by issuing a limited call for bids to fulfill the requirement.

Where a public body requires commodities and an open call for bids is not required to be issued because the estimated value of the commodity is below the open call for bid thresholds or the commodity is of a nature that an open call for bids could reasonably be expected to compromise security, the public body may issue a limited call for bids to fulfill the requirement.

Procuring a commodity through a limited call for bids requires the public body to either:

- Obtain quotations from at least three suppliers. These can be obtained through various methods such as telephone, fax, electronic, ITT and RFP. It is important to rotate the procurement opportunities among several suppliers, if possible, and not continuously invite quotations or bids from the same or select group of suppliers;
- Determine a fair and reasonable price for the commodity based on recent market conditions;

The method chosen to obtain quotations will usually be determined based on the value and complexity of the commodity being procured. If criteria other than price are being used to evaluate bids in a limited call process, these criteria and their relative weightings must be disclosed in the solicitation documents. If a fair and reasonable price approach is used, public bodies will be expected to demonstrate how they determined the price was fair and reasonable.

In accordance with the Regulations, the Chief Procurement Officer may identify a preferred approach for use by all or select public bodies for specific commodities, thresholds or both of them. The preferred approach has been outlined in the following sections.

### **6.1.1 Goods – Preferred Approach**

For goods valued at \$10,000 and greater (to threshold limit per section 5 above), the preferred approach is for public bodies to obtain quotations from at least three suppliers. If this is not feasible, at least one quotation should be obtained and the price shall be fair and reasonable. Where three quotations are not obtained, the file documentation shall include rationale as to why obtaining three quotations was not feasible.

### **6.1.2 Services – Preferred Approach**

For services valued at \$10,000.00 and greater (to threshold limit per section 5 above) the preferred approach is for public bodies to obtain quotations from at least three suppliers. If this is not feasible, at least one quotation should be obtained and the price shall be fair and reasonable. Where three quotations are not obtained, the file documentation shall include rationale as to why obtaining three quotations was not feasible.

### **6.1.3 Public Works – Preferred Approach**

For public works valued at \$20,000.00 and greater (to threshold limit per section 5 above), the preferred approach is for public bodies to obtain quotations from at least three suppliers. If this is not feasible, at least one quotation should be obtained and the price shall be fair and reasonable. Where three quotations are not obtained, the file documentation shall include rationale as to why obtaining three quotations was not feasible.

### **6.1.4 Fair and Reasonable Price**

Examples of methods in which a fair and reasonable price may be established include, but are not limited to:

- obtaining two direct quotations and comparing the prices to determine whether competitive market forces have ensured that the prices are fair and reasonable – note that if this method is being used, the lowest quotation bidder must be accepted;
- obtaining one direct quotation and substantiating that it is fair and reasonable through reference to trade catalogues, price lists, or a recent acquisition price for similar goods or services;

- obtaining one direct quotation and substantiating that it is fair and reasonable through the utilization of a rotational system, which consists of at least two suppliers, and which is monitored to ensure that prices are competitive and fair and reasonable;
- obtaining one direct quotation and substantiating that it is fair and reasonable from an operations perspective where the goods or services are urgently required and a delay in delivery would negatively impact the operations of a department;
- obtaining one direct quotation and determining that the price is fair and reasonable as a result of a limited supplier base in the area (consideration would be given to additional direct and administrative costs associated with acquiring the goods or services in another area); or
- obtaining one quotation via shelf pricing or advertised price for a low dollar value, or purchasing card, acquisition for which a direct quotation is not generally provided. In this instance, business should be rotated to ensure that prices are competitive and fair and reasonable.

## **6.2 Pre-Qualified Supplier List**

A public body may solicit bids from a pre-qualified supplier list provided that the list was established through a Request for Supplier Qualifications as outlined in the Act and Regulations. Where a pre-qualified supplier list has been compiled as a result of a Request for Supplier Qualifications, a public body shall, when procuring a commodity the estimated value of which is below the open call for bids thresholds, do one of the following:

- Obtain quotations for that commodity from at least three suppliers on the list; or
- Determine a fair and reasonable price from the suppliers on the list for the commodity based on market conditions.

Quotations may be obtained through telephone, fax and electronically. The method chosen to obtain quotations will be determined based on the complexity of the commodity being procured. It is important to rotate the business opportunities among suppliers and not continuously invite quotations or bids from the same or select group of suppliers.

When procuring a commodity the estimated value of which **meets or exceeds the open call for bids thresholds**, the public body shall issue a limited call to all the suppliers on the list. This provides all the suppliers on the list with an equal opportunity to provide a bid.

The pre-qualified supplier list shall be valid for one year from the time it is compiled. This ensures any list will be dynamic and reflect the current environment, Also it provides new entrants the opportunity to enter the market place and for existing suppliers to update their qualifications.

Notwithstanding the above, a pre-qualified supplier list may have a validity period that exceeds one year provided that an annual notice is published by the public body and if published by electronic means, made available continuously.

Suppliers must be notified of the results of the Request for Supplier Qualifications. A supplier who unsuccessfully responded to the initial Request for Supplier Qualifications and who has subsequently addressed deficiencies in their initial submission to meet the requirements; or another supplier who did not respond to the original opportunity and who meets the necessary qualifications may be added to the list upon request at any time. A letter stating the supplier's name, date and why the supplier was added to the list shall be placed on the procurement file. In each case it is the supplier's responsibility to meet all the requirements and qualifications of the original Request for Supplier Qualifications.

A pre-qualified supplier list shall be renewed through a Request for Supplier Qualifications to maintain openness and transparency in the procurement process, and ensure fair and equitable treatment of all suppliers.

## 7. Open Call for Bids Not Required

### 7.1 Exceptions

A public body is not required to issue an open call for bids where the head of the public body determines that:

- The estimated cost of the commodity being acquired is less than the procurement thresholds in Section 5.1. However, the public body shall request quotations for that commodity from at least three suppliers or determine a fair and reasonable price for the commodity based on market conditions.
- The commodity is of the nature that an open call for bids could reasonably be expected to compromise security. However, the public body shall request quotations for that commodity from at least three suppliers or determine a fair and reasonable price for the commodity based on market conditions. “Security” could include the physical security of a police officer or the security of a government-wide IT asset.
- The commodity is available from a public body.
- An emergency or a situation of urgency exists, and the acquisition of the commodity cannot reasonably be made in time by an open call for bids. However, if time permits it is recommended the public body obtain quotations if possible.
- There is only one source reasonably available for the commodity. A non-competitive procurement process shall be used where only one supplier is able to meet the requirement. Public bodies shall review the situation and circumstances surrounding the acquisition prior to determining whether it is sole source or not. Where necessary the procurement official shall conduct research to ensure the commodity required is only available from one source. Sole source justifications

shall be documented and maintained on the purchase file. Examples of sole source situations have been outlined in Section 7.2.

- A list of pre-qualified suppliers has been established using a Request for Supplier Qualifications (RFSQs) and the public body is requesting quotations from all pre-qualified suppliers on the list. A RFSQs is an open call process that pre-qualifies suppliers for a known or unknown opportunity and assists in streamlining the process thus resulting in shorter timeframes and greater efficiencies.
- An acquisition of a commodity is for the purpose of resale or for incorporation into a product for resale. Public bodies acquiring commodities for this purpose should utilize best practices to ensure best value is obtained.

A public body is also not required to issue an open call for bids where set rates have been established by the Public Utilities Board acting under the **Public Utilities Act** or another Act.

## **7.2 Sole Source Situations**

Procurement officials may utilize the sole source option above in the following circumstances:

- 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;
- 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;
- for the procurement of goods or services the supply of which is controlled by a supplier that is a statutory monopoly;

- for the purchase of goods on a commodity market;
- for work to be performed on or about a leased building or portions thereof that may be performed only by a lessor or the lessor's representative or for which the public body has determined that using a supplier other than the lessor or lessor's representative would pose a significant risk for the public body;
- 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;
- for a contract to be awarded to the winner of a design contest;
- 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;
- for the purchase of goods under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases;
- for the procurement of original works of art; and
- for the procurement of subscriptions to newspapers, magazines or other periodicals.

Where a commodity is required under the above sole-source reasons, the public body may negotiate a detailed contract for the commodity with the supplier to ensure best value is obtained.

If the public body is not entirely certain that the commodity is only available from one source, and the estimated value of the commodity is in excess of the thresholds, the public body should issue an open call for bids or issue an advance contract award notice (ACAN). See section 3.5.3 for further information relating to use of ACANs.

Sole source procurements shall include justification for not using an open call for bids and this information shall be retained in the procurement file.

### 7.3 Emergency Requirement or Situation of Urgency

In the normal course of operations, circumstances may arise beyond anyone's control where an acquisition cannot be made within the time frame required to issue an open call for bids. In these emergency situations or situations of urgency, procurement officials need to procure the required commodities in the most expedient manner possible. Depending on the commodity and the situation, there may be opportunity to acquire more than one quote which can assist in determining that a fair and reasonable price has been obtained.

Emergencies and situations of urgency are dependent on the situational circumstances; therefore, it is not possible to predict when they will occur or exactly what they will be. Some examples of an emergency or situation of urgency may include a ferry breakdown, road washout, flooding, fire, etc. Unknown work identified during the refit of a ferry vessel operated by government that is required to be completed for regulatory and/or safety reasons may be considered a situation of urgency. The public body shall make the determination of whether a situation is an emergency or urgent. Requests for emergency or urgent procurement shall include a justification for not using an open call for bids and this information shall be retained on the procurement file.

Poor planning or end of the fiscal year spending **does not** constitute an emergency or situation of urgency and such practices should be discouraged.

## 8. Evaluation of Bids

The purpose of evaluating bid submissions is to identify the preferred supplier as required by the Act. It is a rigorous examination of responses for compliance to requirements and evaluation of any criteria established in the open or limited call for bids.

Depending on the commodity being procured and the procurement tool utilized, there may be differences in the evaluation methodology. Also, a participant in the evaluation process shall not be in a conflict of interest position and, if so, shall be removed from the evaluation to maintain the integrity of the process.

Normally, the first step in the evaluation process is compliance testing which determines a submission's eligibility to be evaluated. During compliance testing, the public body assesses each submissions' compliance to any process and content requirements set out in the call for bids.

Testing for process requirements is usually performed by the official responsible for the procurement file and includes such things as ensuring submissions were received on time and in the prescribed format. Testing of content requirements is often a collaborative effort between the official responsible for the procurement file and a technical expert or end user of the commodity. Testing content requirements may include verifying that submissions included all required insurance documentation or confirming the specifications of a proposed product.

When compliance testing is complete, the official responsible for the procurement file shall document the results. Public bodies should consider a checklist approach when assessing and documenting compliance testing results to improve the consistency and efficiency of the process. A submission may be rejected for failing to meet any of the process or content requirements. Submissions that satisfy all requirements are eligible to move forward next phase of evaluation, according to the process described in the open or limited call for bids.

After compliance testing, the majority of open and limited calls for bids specify one of two types of evaluation methodologies: (a) price only, or (b) price + other factors. Price-only evaluations are normally performed by the official responsible for the procurement file and define the preferred supplier as the lowest-priced compliant bidder. That supplier shall be awarded a contract if an award is made. When identical bids are received, the preferred supplier shall be determined by drawing names from a hat ("the **Drawing**") in the presence of the bidders. If a bidder is unable to personally view the Drawing, they

may nominate someone to attend in their place or send written consent to perform the Drawing without a representative.

Certain commodities require evaluations that consider price as well as non-price factors to identify best value. The open and limited calls for bids used for these procurements must specify precisely how submissions will be evaluated. This responsibility includes:

- presenting all of the factors to be evaluated, including price, and describing how each will be evaluated;
- presenting the relative value assigned to each factor, as well as any minimum performance thresholds for non-price factors; and
- describing how evaluation results of price and non-price factors will be combined into an overall ranking of submissions;

At any point during an evaluation, a submission may be rejected for failure to meet a minimum performance threshold specified in the open or limited call for bids. The highest-ranking submission after the evaluation carried out in accordance with the open or limited call for bids shall be the preferred supplier and be awarded a contract, if an award is made.

In the unlikely situation that identical bids are received and the open or limited call for bids presents no other tie-breaking mechanism, the preferred supplier shall be determined by a Drawing in the presence of the bidders. If the bidder(s) is unable to personally view the Drawing, they may nominate someone to attend in their place or send written consent to perform the Drawing without a representative.

In all circumstances, the evaluation process shall be documented and form part of the procurement record.

### 8.1 Application of Provincial Supplier Allowance

In the evaluation of submissions, for either a limited or open call, public bodies must apply a ten per cent (10%) reduction to the bid price of a provincial supplier prior to the evaluation, provided the estimated value is below those thresholds as provided in the Regulations.

A provincial supplier is defined as a supplier of goods and services or public works that has a place of business in the province. A place of business is defined as an establishment where a supplier regularly conducts its activities on a permanent basis. For clarity, the place of business should have a storefront that is clearly identified by name and is accessible during normal business hours, unless the business is an incorporated home-based business or sole proprietorship.

For clarity, the preference must be applied when the estimated value of the procurement is less than the following values:

Public Bodies	Provincial Supplier Allowance Thresholds			
	Goods	Services	Public Works	Lease of Space
Departments	\$34,700	\$139,000	\$139,000	\$100,000
MASH*	\$139,000	\$139,000	\$347,400	\$100,000
Crown Corporations	\$694,700	\$694,700	\$6,943,900	\$694,700

\* Municipalities, Local Service Districts, Academic Institutions, School Districts, Health Authorities

The ten percent reduction only needs to be applied when the evaluation includes suppliers that are not provincial suppliers.

For a tender or quote scenario, the submission with the lowest price, following the application of the provincial supplier reduction allowance if required, and that meets all the requirements will ultimately be determined to be the preferred supplier and be awarded a contract if an award is made.

In a request for proposals-type process, where a number of factors are considered, a similar process is followed. A review of administrative and mandatory items is required followed by the application of the evaluation criteria established in the document, including the application of the provincial supplier reduction allowance if required.

When identical bids are received, the preferred supplier shall be the provincial supplier when bids are below trade agreement thresholds. Otherwise, the preferred supplier shall be determined by a coin toss in the presence of the bidders. If the bidder(s) is unable to personally view the coin toss, they may nominate someone to attend in their place or send written consent to perform the coin toss without a representative.

In all circumstances, the evaluation process shall be documented and form part of the procurement record.

## **9. Change Orders**

Change orders are acceptable within the procurement process; however, proper procurement planning should reduce the requirement and frequency of the need for change orders. Any changes that are required shall be within the scope of the original contract. Change orders for add-ons when there is money left over in the budget is not acceptable. For example, if the contract is for the construction of a building, a change order for the paving of a parking lot is not an acceptable change. A change order may be issued if the change is within the scope of the contract.

- A head of a public body may, within the published scope of an open or limited call for bids or a negotiated contract, authorize a change order or an aggregate value of change orders to a value of 10% of the original contract or \$15,000, whichever is greater, without a reporting requirement to the CPO.
- A head of a public body may, within the published scope of an open or limited call for bids or a negotiated contract, authorize a change order or an aggregate value

of change orders in excess of the limit allowed as stated above and shall report the change order to the chief procurement officer in the required form.

- Notwithstanding the limit noted above, a change order with a value of \$1,000,000 or greater shall be reported to the chief procurement officer in the required form.
- The report to the CPO should include a brief description of the original contract and the purpose of the change order, total cost of the change order, the name of the supplier and the head of the public body or delegate who authorized the change order. This report is to be sent to the CPO on an annual basis, and is to be received by the CPO within three months of the end of the preceding fiscal year (for example, if the fiscal year ends at March 31, the change order report is to be received by June 30), unless the change order(s) relates to a project that is still ongoing. If a project is still ongoing, the net change orders for the entire project should be reported after the project is completed. The change order report with any and all supporting documentation shall also be maintained in the procurement file. The spreadsheet to be used for reporting change orders to the CPO may be viewed at <https://www.gov.nl.ca/ppa/forms/>. Please see the **Summary of Reporting** section of this Policy for further information on the process to be followed.
- When deemed necessary, the CPO may review a specific contract if it appears that the change orders are excessive. Also, the CPO may investigate a public body that is continually issuing change orders and extensions above the threshold to determine the adequacy of the solicitation documents and planning process. Public bodies shall provide all records to the CPO upon request.
- The exercising of a renewal option that was identified in an original contract is not considered to be a change order.

## 10. Cancellations

Cancellation of an open or limited call for bids is sometimes necessary for numerous reasons including a significant change in the requirement; the acceptance period may have expired; there were no submissions that meet all terms, conditions, specifications and evaluation criteria; or where the bids are substantially over the budget allocated for the procurement. A lot of thought and consideration shall be put into a decision to cancel a call for bids. Suppliers put a tremendous amount of time and effort into bid preparation, thereby incurring preparation costs. The cancellation of a call for bids shall not be taken lightly. The public body is not responsible for any costs incurred by a supplier resulting from a cancellation and this should be identified in the solicitation documents.

- A public body may cancel an open or limited call for bids or cease negotiations at any time before awarding a contract.
- If the cancellation is prior to the closing or the opening of the bids, a cancellation notice shall be posted on or be accessible through the public body's website, or in the absence of a website, the Agency's website. Please see the **Summary of Reporting** section of this Policy for further information on the process to be followed.
- A public body may publish a cancellation to an open call for bids in other media, but that cancellation shall not be published in other media before it is published on the website.
- Any bid submissions that are received prior to the cancellation of the call for bids shall be returned unopened to the bidder with a cover letter indicating the opportunity has been cancelled.
- If an open or limited call for bids is cancelled subsequent to the closing date and time, a notification shall be sent to all bidders by mail or through an electronic process indicating that the opportunity has been cancelled. All bid submissions

received shall be maintained on the procurement file and not returned to the supplier.

- Any plan to recall the call for bids at a later date, if known, shall be indicated in the cancellation.
- The reason for cancelling a procurement opportunity shall be documented and placed on the procurement file.

## 11. Contract Awards

Subsequent to the evaluation process, and after a determination that an award is to be made, a public body shall award a contract to the preferred supplier.

- Upon completion of the evaluation, all participating suppliers shall be informed of the award decision resulting from an open call for bids. A formal contract award notification (i.e. contract or purchase order) shall be sent to the successful supplier as a result of the competitive process. Unsuccessful suppliers shall be informed about the outcome of the competitive procurement through the posting of award information on the public body's or Agency's website. Please see the **Summary of Reporting** section of this Policy for further information on the process to be followed.
- A public body may publish contract award information resulting from an open call for bids in other media, but that award shall not be published in other media before it is published on the website.
- The bid security of all unsuccessful bidders shall be returned, if applicable.
- Where, as a result of an open call for bids, only one bid that meets the evaluation criteria is received, the public body may award a contract to the supplier who submitted that bid if it is determined that the price is fair and reasonable.

- Where a public body determines that the one bid received would not result in best value as the price is not fair and reasonable, the public body may negotiate the price of the contract with the supplier or may cancel the open call for bids. The procurement file shall include details regarding the reason for negotiation or cancellation of an open or limited call for bids.
- All information regarding a contract award shall be maintained on the procurement file.
- Successful suppliers shall be fully informed that no work is to be started or goods or services supplied until a contract has been duly executed and signed by all parties where necessary.

## **12. Lease of Space**

When a lease of space is required, the same process used for any other acquisition shall be utilized. Public bodies shall properly plan for the acquisition, issue an open or limited call for bids, depending on thresholds, and award to a preferred supplier in accordance with the *Act*.

When planning for a lease, public bodies should consider the length of the lease and if there is a need to include a renewal option for an additional period.

When considering renewal options, public bodies should consider potential future increases or decreases in space that may be required due to operational needs.

Where a public body reasonably requires a particular space, the Lieutenant-Governor in Council may exempt that procurement from the requirements of an open call for bids.

Where a lease of space is required as a matter of urgency, the lease shall not exceed twelve months during which time an open call for bids shall be issued.

### **13. Exemption – Economic Development**

The acquisition of a commodity for economic development purposes may be exempt from the requirements of the framework subject to the approval of the Lieutenant – Governor in Council.

A public body making an acquisition for economic development purposes shall comply with any reporting requirements that may apply and shall notify the Chief Procurement Officer of any acquisition resulting from an approved exception. Additionally, the public body shall maintain complete records of the procurement for review by the Chief Procurement Officer upon request.

### **14. Alternative Procurement Approaches**

Alternative procurement approaches such as the use of public-private partnerships or buying groups to acquire commodities may be permitted subject to the approval of the Lieutenant-Governor in Council.

A public-private partnership is a long-term performance-based approach for procuring public infrastructure. It is a government service or private business venture which is funded and operated through a partnership of government and one or more private sector companies. These contracts are usually long-term covering a large part of the economic useful life of the commodity. The private sector assumes a major share of the responsibility in terms of risk and financing for the delivery and the performance of the infrastructure.

A buying group is a non-public body that uses the purchasing power leverage of member organizations to achieve cost efficiencies for these organizations based on their collective buying power. The buying group itself does not procure any commodities rather it negotiates contracts that public bodies can utilize to realize cost savings and efficiencies.

Other alternative procurement approaches may also be approved by the Lieutenant-Governor in Council in accordance with Section 20 of the **Regulations**.

## 15. Group Purchasing

Group purchasing of commodities is encouraged when the arrangement results in overall best value. This type of purchasing is the combining of requirements of two or more public bodies to leverage the benefits of volume purchases, delivery and supply chain advantages, best practices and the reduction of administrative time and expenses.

- A public body may delegate its purchasing authority in writing to another public body for the purpose of group purchasing.
- A public body which delegates purchasing authority for the above reason shall inform the chief procurement officer of the delegation in the format determined by the chief procurement officer
- The notification shall state the commodity being purchased, the public body or bodies involved in the group purchasing and the contract period. The Group Purchasing Notification Form can be viewed at <https://www.gov.nl.ca/ppa/forms/>. Completed forms must be sent to [ppareporting@gov.nl.ca](mailto:ppareporting@gov.nl.ca).
- One public body shall take the lead in the group purchasing arrangement.

- Each public body shall prepare their own contracts or purchase orders with the successful bidder after the award is issued.
- The lead public body shall report the contract award on the electronic notification system.
- All public bodies are bound to the procurement process and framework and the cooperative agreement shall be in writing. All parties may be part of the evaluation however; the lead public body shall issue the award.
- Group purchasing arrangements are used to lower prices, lower administrative costs, increase efficiencies, increase competition and obtain more favorable terms and conditions.
- The CPO may require that public bodies coordinate the group purchasing of commodities and in this instance delegation in writing is not required. A public body, however, may apply to be exempt from a requirement for group purchasing. Such exemption is subject to the approval of the Minister.

## **16. Joint Purchasing**

Joint purchasing is an arrangement to procure goods and services with other provinces when it will result in overall best value and it is deemed to be in the best interest of the Government. Public bodies can participate when such an agreement will benefit both the organization and Government. However, there may be situations where it is not applicable to all public bodies and may be sector based (i.e., school buses) thus limiting the participation to specific bodies.

- Where a public body wishes to enter into a joint purchasing agreement, the public body shall send a request to the CPO outlining the details of the commodity to be

purchased and the benefits of utilizing this approach. The CPO shall review the information regarding the joint procurement and determine whether this type of procurement method will create best value for Government.

- Under the authority of subsection 5(2) of the Act, where the province enters into a joint purchasing agreement, the province may, notwithstanding this Act, acquire commodities under the agreement and the provisions of the agreement with respect to the acquisition of commodities shall apply to the acquisition instead of the provisions of this Act.
- The CPO may require that public bodies coordinate the joint purchasing of commodities and in this instance delegation in writing to the Agency is not required. A public body, however, may apply to be exempt from a requirement for joint purchasing. Such exemption is subject to the approval of the Minister.

## **17. Annual Procurement Plans**

Where required by the Lieutenant – Governor in Council public bodies shall submit annual procurement plans to the CPO. The purpose of the Annual Procurement Plan is to provide the CPO with a list of planned procurements that will assist in identifying opportunities for consolidated procurement opportunities.

This information will enhance strategic procurement opportunities through greater collaboration among public bodies and provide best value for dollars spent. Additionally, it may provide vital information concerning emerging trends in the types of commodities being procured by public bodies.

The Annual Procurement Plan is a forecast of anticipated purchases for the upcoming period but is not a firm commitment on behalf of the public body.

Since requirements may change over the course of a year and original plans may be altered, public bodies should notify the CPO of any major changes to Annual Procurement Plans as they arise. This will permit the CPO the opportunity to adjust any consolidated plans accordingly.

Public bodies will be advised when the schedule for the Annual Procurement Plan has been approved by the Lieutenant-Governor in Council.

## **18. Procurement Records**

It is imperative that procurement transactions are authorized, properly recorded and supported by the appropriate documentation for auditing and reporting purposes.

A public body shall maintain comprehensive records relating to each procurement by that public body. Procurement records shall be kept individually by procurement, shall relate to all phases of the procurement process, and shall be maintained in a central paper file or electronic file.

- Procurement records shall include the following as applicable:
  - approved requisition;
  - quotation sheets;
  - call for bids;
  - amendments;
  - bid submissions;
  - evaluation documentation;
  - contracts;
  - supplier performance monitoring;
  - change orders and extensions;
  - any other correspondence relating to that procurement process; and
  - those other procurement records which may be required by the Chief Procurement Officer.

- Public bodies, as applicable, shall retain procurement records in accordance with the **Management of Information Act** and all established policies that may be applicable.
- All other public bodies shall retain procurement records a minimum of two years following the procurement of the commodity, or a minimum of two years after the end date of a contract, if applicable.
- All procurement activities shall be subject to review by the CPO and public bodies shall make their records accessible and available upon request.

## 19. Delegation of Authority

The head of a public body may delegate any power, authority, right, duty or responsibility conferred or imposed on him or her under the framework to a person within that public body with the required knowledge, skills and expertise to work effectively within the framework.

Delegation referred to above shall:

- be in writing in the form required by the chief procurement officer;
- identify the person and position to whom the power is delegated;
- specify the monetary limits of the delegation, if any, and
- outline any other conditions of the delegation.

The head of a public body who makes a delegation under this section shall maintain records of that delegation in the required manner, and shall make those records available to the chief procurement officer upon request. The Delegation of Authority Form may be viewed at <https://www.gov.nl.ca/ppa/forms/>.

## 20. Summary of Reporting

A summary of the reporting requirements of public bodies is as follows:

### Open Calls for Bids – Notices, Amendments, and Cancellations

- These should be reported immediately.
- If the public body has its own website, it will post the information there.
- If the public body does not have its own website, it must send the information to be posted on the Agency's website.
- A spreadsheet for reporting this information is available on the Agency's website.
- Send completed spreadsheet to [ppareporting@gov.nl.ca](mailto:ppareporting@gov.nl.ca).

Awards (including Open Calls for Bids, Exceptions to Open Calls, and Limited Calls) at the following thresholds:

- Goods (\$10,000 and above)
  - Services (\$50,000 and above)
  - Public Works (\$100,000 and above)
- 
- Must be reported within 30 days of contract award on the public body's website unless otherwise directed by the Chief Procurement Officer.
  - If the public body does not have its own website, it must send the information within 15 days of contract award, to be posted on the Agency's website.
  - A spreadsheet for reporting this information is available on the Agency's website.
  - Send completed spreadsheet to [ppareporting@gov.nl.ca](mailto:ppareporting@gov.nl.ca).
  - Award information must include: the successful bidder, description of the commodity, date of the award, financial value of the contract, term of the contracts, renewal options of the contract.

- If an exception to an open call was used, the relevant exception clause must also be reported.

#### Change Order Report

- Must be submitted annually within three months of the end of the fiscal year or, in the case of a larger project, following project completion.
- A spreadsheet for reporting this information is available on the Agency's website.
- Send completed spreadsheet to [ppareporting@gov.nl.ca](mailto:ppareporting@gov.nl.ca).

## 21. Procurement Advisory Council

The Procurement Advisory Council consists of representatives of public bodies who have responsibility for providing advice and making recommendations to the Minister respecting matters related to procurement and, in particular, how the purpose of the Act may be achieved.

The CPO is the chairperson of the Council and members of the Council are appointed by the Minister. The Procurement Advisory Council Regulations provide additional information regarding the Terms of Reference, composition and role of the Council.

These regulations may be viewed at

<https://www.assembly.nl.ca/legislation/sr/regulations/rc180033.htm>.

## 22. Supplier Debriefing

Supplier debriefings are an integral part of a transparent and equitable procurement process which permits unsuccessful suppliers in an open call for bids an opportunity to understand why their bid was not successful.

In accordance with Section 12 of the **Act**, an unsuccessful bidder may request a meeting (debriefing) with the public body that issued the open call for bids following the award of a contract to obtain information concerning the reasons his or her bid was not successful and the public body shall comply with the request and provide the information. Supplier requests for debriefings are to be made in writing within 10 business days after the award has been posted in accordance with Section 24 of the **Regulations**. Requests for supplier debriefings that are received after this time period may be considered on a case by case basis at the sole discretion of the public body.

A public body shall debrief the supplier within 10 business days after a request is received in accordance with Section 24 of the **Regulations**. Public bodies are committed to providing relevant feedback to suppliers on their submissions based on evaluation criteria while at the same time respecting any confidentiality requirements which may be owed to other suppliers. Through this activity suppliers can achieve insight into the procurement and evaluation processes while obtaining specific feedback on their own submissions.

### 22.1 Objectives

The objectives of a supplier debriefing are:

- To provide a supplier with an opportunity to receive feedback on their submission;
- To provide assurance that their submission was treated fairly;
- To maintain a fair, ethical and transparent process;

- To demonstrate the supplier's proposal was evaluated in accordance with the evaluation process and criteria; and
- To better prepare the supplier for future opportunities, which, in turn, strengthens the public sector supply base.

## **22.2 Policy/Procedure**

An unsuccessful supplier may make a request in writing for a debriefing by the public body who issued the open call for bids within 10 business days after the award has been posted on the electronic notification system.

Upon receiving a written request from an unsuccessful supplier, the public body shall debrief the supplier within 10 business days after the request was received. The official responsible for the procurement shall contact the supplier and establish a time and suitable location for the debriefing as well as a list of attendees. A separate debriefing will be held for each supplier who requests one. A debriefing may be held through conference call, video conferencing, in person, or other means acceptable to both parties.

Once the date, time and location for the debriefing have been established, the official shall prepare all materials required for the session and determine who will attend on behalf of the public body. For an Invitation to Tender, the official responsible for the file should attend and depending on the complexity or technical nature of the file, other officials involved in the evaluation process. For Requests for Proposals, the official responsible for the file as well as a member of the evaluation committee, preferably the Chair of the Committee, should attend. If it is deemed necessary that others are required they shall attend as well. If more than one debriefing is requested on a specific file, the same officials should be present for all debriefings, unless an official is unavailable during the timeframe in which the supplier debriefing is required to take place. If necessary, officials may meet prior to the debriefing to prepare for the session.

At the outset of the debriefing the public body official should establish the parameters and indicate that the session:

- is not an opportunity to repair a bid;
- will not be a discussion of, nor shall disclose information regarding another supplier's bid, except that the name and bid price of the preferred supplier may be disclosed in a supplier debriefing;
- is not a challenge to the procurement process (if a supplier is dissatisfied with the outcome of an open call for bids process after the debriefing has taken place, the next step is to file a supplier complaint); and
- is not an adversarial or legal process.

The information to be discussed should include:

- The open call for bids and the evaluation process;
- The strengths and weaknesses of the supplier's submission relative to the evaluation criteria;
- The supplier's evaluation score and supplier's evaluation ranking (e.g., 3rd out of 5);
- Areas where the terms, conditions or specifications were not met;
- Suggestions on how to improve future submissions;
- Feedback from the supplier on any aspect of the procurement or the process; and
- Addressing specific questions and concerns raised by the supplier relative to their submission.

At the conclusion of the debriefing, the public body official shall advise the supplier of the supplier complaint and review process and the option to pursue this process if they are not satisfied with the information provided at the debriefing. Additionally, a record of the debriefing shall be made and attached to the purchasing file. The information contained

in this record shall include the names of all participants, time and date of the debriefing, and details of the discussion. This record is for public body use and is not distributed to the supplier; however, this does not preclude the record from being subject to the Access to Information and Protection of Privacy Act, 2015. (A Supplier Debriefing Record Template may be viewed at <https://www.gov.nl.ca/ppa/forms/>).

## **22.3 Informal Debriefing**

In certain instances, suppliers may not be interested in a formal debriefing but may only want to know, in general terms, why they were not successful. Under these circumstances officials may provide information such as whether their bid was too high, if they did not meet specifications, etc. As noted above, no information regarding any other submission shall be revealed.

Officials shall make a record of any informal request indicating the information requested by the supplier and the information provided by the procurement official and place the record on the procurement file.

## **23. Supplier Complaint and Review Process**

### **23.1 Purpose**

The purpose of the supplier complaint and review process is to provide suppliers with an effective, consistent and timely review mechanism where a supplier has an opportunity to register a complaint with a public body, respecting a procurement process in which the supplier participated and after they have received a supplier debriefing, where they feel they have been aggrieved. The intent of this process is to assist public bodies in identifying and responding to potential problem areas in the application of public procurement policy, procedures and legislation.

The supplier complaint and review process is applicable to all public bodies as defined in the **Act** for the acquisition of all commodities under an open call for bids. It is limited to the application of legislation, established procurement policies, procedures in the solicitation of bids and proposals, evaluation of responses and contract award stages of the procurement process. A supplier complaint is to be registered in writing with the head of the public body responsible for the procurement within 15 business days of the supplier debriefing in accordance with Section 25 of the **Regulations**.

The supplier complaint and review process is intended to provide an opportunity for suppliers to voice complaints and to assist public bodies in identifying any gaps or shortcomings in procurement policy or practices. The process is intended to help resolve issues that involve no significant factual or interpretive disagreement between the parties. Fundamental disputes over facts or legal rights and obligations are not intended to be addressed by this process and should be adjudicated by other means.

The complaint process will under no circumstances result in any contract award being set aside by the public body or the Public Procurement Agency. Additionally, no compensation will be awarded to any complainant as a result of this process.

The complaint process set out in this protocol shall not be used to challenge a procurement process in respect of which the supplier has commenced legal proceedings against a public body.

Filing a complaint does not affect the supplier's ability to participate in an ongoing or future procurement.

## **23.2 Objectives**

Supplier complaints and protests originate for any number of reasons, real or perceived; however, all of these reasons have a potential to negatively reflect on the integrity of the procurement process.

Common complaints include:

- rejection of bid submission;
- inconsistent application of procurement procedures;
- contravention of an applicable trade agreement; or,
- contravention of the framework.

The objectives of a supplier complaint and review process to effectively address these instances are:

- To define a process that is accessible, fair and transparent;
- To ensure consistency, impartiality and timeliness of process;
- To identify improvements to the procurement process; and
- To ensure accountability in the procurement process.

## **23.3 Policy/Procedure**

### **1) Complaint Submission**

Suppliers shall submit their complaints in writing to the head of the public body responsible for the procurement. A complaint is to be registered with the head of the public body within 15 business days of the supplier debriefing. A Supplier Complaint Review Process Form template may be viewed at <https://www.gov.nl.ca/ppa/forms/>. A supplier complaint may also be forwarded to the head of the public body in a format other than this template provided all required information has been included in the complaint.

In the case of a group procurement, suppliers shall issue their complaint with the public body responsible for administering the procurement and all issues will be dealt with through that body. That public body may involve any other public body involved in the group procurement in the process, however all correspondence shall be through the procurement administrator.

Only complaints from suppliers that participated in the specific procurement shall be reviewed.

A complaint shall contain the following information:

- (a) supplier's name and business contact information;
- (b) reference information respecting the open call for bids; and
- (c) a description of the supplier's complaint.

## **2) Processing the Complaint**

All public bodies shall have the primary responsibility to review and respond to any supplier complaint regarding their procurement process. The public body shall acknowledge receipt of such complaint in writing to the supplier. The head of the public body shall review the complaint and respond to the supplier within 15 days of receiving the complaint and shall provide the chief procurement officer with a copy of the response in accordance with Section 25 of the **Regulations**.

Upon preliminary review the head of the public body shall consider the complaint and may, in its discretion, dismiss a complaint on grounds including that:

- A debriefing has not yet taken place in accordance with the framework;
- The request was not made within the requirements of Section 25 of the Regulations;
- The supplier was not a participant in the procurement process; and
- The complainant has initiated legal action or has addressed the issue in another manner.

If the head of the public body dismisses a complaint, the head of the public body shall respond to the supplier in writing of the dismissal, including the reason(s) for such dismissal. The Chief Procurement Officer shall be copied on the response.

### **3) Public Body Review**

If the complaint is not dismissed following preliminary review, the head of the public body shall review the complaint and procurement file in detail and:

- Discuss the issues with officials of the public body involved in the procurement;
- Seek further information and clarification from the supplier where required;
- Conclude the investigation and respond to the supplier in writing within 15 business days of receiving the complaint and copy the Chief Procurement Officer on the response; and
- Maintain a copy of the results and the response to the supplier for the procurement file.

### **23.4 Records, Documentation and Reports**

Public bodies shall ensure that complete documentation and records on each complaint, including a record of all communications with complainants, are maintained in order to allow later verification to determine whether or not the supplier complaint was handled in accordance with the process framework.

The records on each complaint reviewed by public bodies shall contain a copy of the following:

- The complaint identifying the complainant's name, address and the nature of the complaint;
- The competition documents, including the specifications or portions thereof relevant to the complaint;
- Any other documents that are relevant to the complaint, including the bids received, if judged appropriate;
- A statement setting out the facts, actions and recommendations, and response to the allegations of the complaint; and
- Any additional evidence or information that was necessary to review the complaint.

## **24. Supplier Performance**

### **24.1 General**

In accordance with Section 11 of the **Act**, a public body is responsible for clearly establishing the requirements for fulfilling the terms of a contract, and monitoring the performance of the contractor throughout the duration of the contract to ensure its terms and conditions are met. This is an essential task of the contract administration function and is vital in ensuring that suppliers are fulfilling their contractual obligations and taxpayers are receiving best value for dollars spent.

### **24.2 Purpose**

The purpose and objectives of supplier performance are to:

- Promote effective supplier performance management procedures;
- Encourage effective communications between public bodies and suppliers;
- Outline criteria for evaluating supplier performance;
- Establish procedures to address concerns with supplier performance;
- Improve supplier performance; and
- Establish the process and parameters for supplier suspension.

### **24.3 Supplier Performance Monitoring**

Effective management of a supplier's performance is necessary to minimize future risk to both a public body and the supplier. To be effective, the criteria on which a supplier will be monitored is to be clearly communicated by the public body to the supplier through the contract process and is to be based on the requirements of the contract. The monitoring should be initiated at the onset of the contract and continue through to the end of the contract. The extent of the monitoring would be dependent on the type of commodity being acquired. Additionally, when determining the extent of monitoring required a public

body should consider the value of the acquisition and the degree of risk to the public body associated with the procurement.

Public bodies should utilize a progressive discipline approach when monitoring performance. When a concern has been identified, the initial step would be to communicate with the supplier to discuss the problem and seek to rectify the problem at its onset. Public bodies should not wait until the completion of a contract to identify an issue. Public body officials should keep records on their meetings with suppliers for future reference and for inclusion in the procurement file. If an issue continues to persist, public bodies should engage in further discussions with the supplier and advise the supplier in writing to rectify any deficiencies or address performance issues. Suppliers should be allowed a reasonable period of time to correct any issues and if performance does not improve, escalating the issue may be necessary.

Public bodies should address further issues of non-performance in accordance with the terms and conditions of the contract and take any further action as required. Public bodies are advised to engage legal counsel, as necessary, and particularly when consideration is being given to terminating a contract.

#### **24.4 Suspension of Supplier's Bidding Privileges**

In accordance with Section 26 of the Regulations, where a public body identifies an issue that may indicate noncompliant performance or substandard performance by a supplier, the head of the public body may review that supplier's previous performance under contracts issued by that public body. For the purpose of this section, "noncompliant performance" means performance by a supplier which does not satisfy the terms, conditions and specifications of the contract, and "substandard performance" means inferior performance by a supplier over the course of 2 or more contracts which does not fulfil the terms, conditions and specifications of the contract to the satisfaction of the head of the public body.

Where, after such a review, the head of the public body determines that the performance of the supplier on a single contract is noncompliant performance or cumulatively over several contracts is substandard performance, the head of the public body may suspend the supplier from bidding on procurement with that public body.

When determining the length of the suspension, consideration should be given to the past bidding history of the supplier and the contract on which they underperformed. The supplier performance system and the ability to suspend a supplier is dependent upon documentary records that identify any issues or concerns.

### **24.5 Issue of Suspension**

When the head of the public body decides to suspend a supplier, the head of the public body shall notify the supplier in writing of the decision and outline the reasons for the suspension, in detail, and its duration. Additionally, the supplier shall be advised of their right to appeal the suspension decision to the Chief Procurement Officer within 15 business days of receiving notification of the suspension in accordance with Section 27 of the **Regulations**. The head of the public body shall notify the Chief Procurement Officer of a suspension by copy of the letter to the supplier.

### **24.6 Appeal of Suspension**

A supplier may appeal a suspension by a public body to the Chief Procurement Officer within 15 business days of receiving notification of the suspension. If a supplier appeals a suspension, the Chief Procurement Officer shall notify the head of the public body and the head of the public body shall provide the Chief Procurement Officer with all pertinent information and records regarding the suspension within the time frame identified by the Chief Procurement Officer. The Chief Procurement Officer shall review the suspension and decide upon it within 30 business days of receiving the appeal and may confirm, vary or cancel the suspension. A suspension of bidding privileges remains in effect until such time that the CPO renders a final decision. If the supplier is aggrieved by the decision of

the Chief Procurement Officer they have the right to appeal to the judge of the Trial Division.

## **24.7 Extension of Suspension**

In order to ensure that a suspension is not circumvented, the suspension of bidding privileges may be extended to new or existing businesses of the principals of the suspended supplier engaged in the same or similar business activities of the suspended supplier.

## **24.8 Maintenance of Documents**

Public bodies shall maintain all documents regarding the performance and suspension of a supplier in the procurement file for the specific contract. Also, the public body should maintain a separate file on a supplier's performance that shall be utilized in future evaluations and review purposes.

## **25. Sustainable Procurement**

### **25.1 General**

The idea of value-added purchasing is growing as corporations, governments and other public institutions recognize the power they have to leverage existing spending to create positive impact in their communities. Given the purchasing power of public bodies, sustainable procurement provides the potential to use purchasing to help drive the availability and use of environmentally responsible products and services, support the achievement of social goals, and enhance local economic benefits.

In accordance with Section 16(2) of the Act, a Sustainable Procurement Strategy and Policy has been developed to provide direction and guidance to departments and large public bodies to help enhance sustainable procurement practices.

## **25.2 Sustainable Procurement Policy**

The Sustainable Procurement Policy requires that departments and large public bodies consider and incorporate sustainability measures in the procurement of commodities where practicable and where they comply with trade agreement obligations.

For the purposes of the policy, “large public bodies” are defined as: Newfoundland and Labrador Health Services; Memorial University; College of the North Atlantic; Newfoundland and Labrador Hydro; Newfoundland and Labrador Housing Corporation; Multi-Materials Stewardship Board; and Newfoundland and Labrador Liquor Corporation.

## **25.3 Implementation**

The Sustainable Procurement Strategy is defined and guided by three pillars: (1) Social; (2) Local Economic, and; (3) Environmental. While each of these pillars is presented separately, there may be overlap between them. The policy provides the flexibility for departments and relevant public bodies to consider those sustainability measures that best align with their mandates and the commodity being purchased.

In undertaking sustainable procurement activity, departments and relevant public bodies will still need to ensure and demonstrate in accordance with the Public Procurement Framework, that they are obtaining best value and that the procurement approach is consistent with trade agreement obligations. All measures relating to transparency and accountability must still be adhered to in sustainable procurement.

For further information and guidance, the Sustainable Procurement Strategy may be viewed on the Public Procurement Agency website at: <https://www.gov.nl.ca/ppa>.