



BILL NO. 23

Government Bill

*3rd Session, 61st General Assembly
Nova Scotia
60 Elizabeth II, 2011*

An Act Respecting Public Procurement in Nova Scotia

CHAPTER 12
ACTS OF 2011

**AS ASSENTED TO BY THE ADMINISTRATOR OF THE PROVINCE
MAY 19, 2011**

The Honourable Percy Paris
Minister of Economic and Rural Development and Tourism

*Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly*

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An Act Respecting Public Procurement in Nova Scotia

Be it enacted by the Governor and Assembly as follows:

- 1** This Act may be cited as the *Public Procurement Act*.

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

- 3** In this Act,
 - (a) “alternative procurement practices” means the conditions set out in the regulations pursuant to this Act, to be considered when a contract is concluded, absent a public tender process;
 - (b) “Atlantic Standard Terms and Conditions” means standard instructions that support public tenders issued by the four Atlantic provinces for goods and services;
 - (c) “best value” means, evaluating bids not only on purchase price and life cycle cost considerations, but also taking into account items such as environmental and social considerations, delivery, servicing and the capacity of the supplier to meet other criteria as stated in the tender documents.;
 - (d) “bid” means a supplier response to a public tender notice to provide goods, services, construction and facilities to a public sector entity;
 - (e) “buying groups” means a procurement organization created for the purchasing requirements and activities of its sole or several member public sector entities and excludes buying groups designated through a public tender process;
 - (f) “Chief Procurement Officer” means the Chief Procurement Officer for the Province appointed pursuant to this Act;
 - (g) “construction” means the construction, reconstruction, demolition, repair or renovation of a building, structure, road or other engineering or architectural work, excluding professional consulting services related to the construction contract unless they are included in the procurement;
 - (h) “Construction Contract Guidelines” means standard instructions developed in consultation with the Construction Association of Nova Scotia that support construction tenders issued by Her Majesty in right of the Province;

(i) “domestic review process” means a review process established by regulation to decide issues arising pursuant to an international trade agreement;

(j) “goods” means materials, furniture, merchandise, equipment, stationery and other supplies required by a public sector entity for the transaction of its business and affairs and includes services that are incidental to the provision of such supplies;

(k) “Minister” means the Minister of Economic and Rural Development and Tourism;

(l) “personal service contract” means an agreement, whether or not in writing, establishing an employment relationship between an individual and a public sector entity and includes an amending or extension agreement;

(m) “Procurement Advisory Group” means the advisory group established by this Act;

(n) “procurement web portal” means the public website maintained and operated by Her Majesty in right of the Province;

(o) “public advertisement” means advertising a public tender notice on the procurement web portal;

(p) “public sector entity” means

(i) government reporting entities as defined in the *Finance Act*, excluding government partnership arrangements and set out annually in the consolidated financial statements of the Province, and for greater certainty includes all government departments, school boards, health authorities, housing authorities and crown corporations,

(ii) municipalities, municipal water utilities and service commissions, as defined in the *Municipal Government Act*,

(iii) post secondary education institutions receiving regular education related operating funding from the Province, and for greater certainty includes universities and the Nova Scotia Community College, and

(iv) buying groups;

(q) “public tender” means procurement for goods, services, construction and facilities obtained through public advertisement;

(r) “public tender notice” means notice of intended procurement for goods, services, construction and facilities obtained through a public advertisement;

(s) “services” mean services required by a public sector entity for the transaction of its business and affairs, excluding services provided by an employee of a public sector entity through a personal services contract;

(t) “standards” means the applicable codes, standards or guidelines adopted pursuant to this Act or the regulations;

(u) “supplier” means a person carrying on the business of providing goods, services, construction and facilities to a public sector entity;

(v) “supplier complaint” means a notice in writing setting out the nature of the complaint;

(w) “sustainable procurement” means obtaining best value for public service entities by integrating environmental, economic and social considerations in the procurement process.

4 This Act applies to public sector entities acquiring and suppliers providing goods, service, construction and facilities.

5 The Minister is responsible for the supervision and management of this Act and the regulations.

6 Such persons as are necessary for the administration and enforcement of this Act and the regulations shall be appointed in accordance with the *Civil Service Act*, except where this Act provides otherwise.

7 (1) The Minister shall designate from among those persons appointed pursuant to Section 6, a Chief Procurement Officer to perform the duties and functions and exercise the powers and authorities imposed or conferred upon that person by this Act, the regulations and the standards.

(2) The Chief Procurement Officer shall report to the Deputy Minister of Economic and Rural Development and Tourism.

(3) The Deputy Minister of Economic and Rural Development and Tourism may designate a person to act in the place of the Chief Procurement Officer in the Officer’s absence or incapacity or where the position is vacant.

8 (1) The Chief Procurement Officer may

(a) promote and encourage maximum competition amongst suppliers of goods, services, construction and facilities to public sector entities, through outreach programs;

(b) require public sector entities to provide reasonable notice and opportunity to respond to public tender notices;

(c) promote the use of sustainable procurement criteria in all public sector entity procurement decisions;

(d) require public sector entities to include contract and risk-management guidelines in their procurement decisions;

(e) require public sector entities to make public procurement training and certification accessible to their public procurement professionals; and

(f) identify opportunities and support collaboration leading to greater consistency and efficiencies in the procurement process across the public sector.

(2) The Chief Procurement Officer shall

(a) require proof that public sector entities have adopted or adapted their procurement policies and practices so as to conform with this Act;

(b) deem the Province of Nova Scotia Sustainable Procurement Policy to apply to the public sector entities that do not adopt or adapt their policies as required pursuant to clause (a) within twelve months from the date of clause (a) coming into force; and

(c) require all public sector entities be bound by all regional, national and international trade agreement obligations that apply to their sector.

(3) The Chief Procurement Officer shall exercise such other powers and perform such duties as are assigned to the Chief Procurement Officer

(a) pursuant to this Act or the regulations; or

(b) by the Minister.

(4) The Chief Procurement Officer has the power and authority to enforce compliance with this Act, the regulations and the standards.

(5) Where a public sector entity fails to comply with a directive or recommendation of the Chief Procurement Office, the Chief Procurement Officer may notify the Minister in the case of a department or the head of the public sector entity and may thereafter publish the information on the procurement web portal.

9 (1) The Minister may establish a domestic review process to decide issues arising pursuant to any international trade agreement that a public sector entity is subject to as part of a public tender.

(2) The form and scope of the domestic review process will be in accordance with the regulations made pursuant to the Act.

(3) The manner to bring an issue before the domestic review process is in accordance with the procedures set out in the regulations made pursuant to this Act.

10 (1) The Minister shall establish a Procurement Advisory Group.

(2) Members of the Procurement Advisory Group are public sector entity representatives and shall be appointed by the Minister in accordance with the regulations for such terms as the Minister determines.

(3) The Chief Procurement Officer shall chair the Procurement Advisory Group.

(4) The Procurement Advisory Group may advise the Minister respecting

(a) the administration or reform of this Act, the regulations and the standards;

(b) identification of efficiencies and cost savings in procurement processes;

(c) strategies for minimizing risk as part of the procurement process;

(d) standardization of public sector entities procurement policies and practices;

(e) identification of strategic procurement opportunities; and

- (f) any other matter as determined by the Minister.
- (5)** The Procurement Advisory Group, with the approval of the Minister, may
- (a) create one or more subcommittees of the Procurement Advisory Group;
 - (b) appoint members to a subcommittee;
 - (c) seek advice from supplier associations, academia, non-governmental groups, non-members and/or groups who are experts or specialists in the public procurement field; and
 - (d) determine the mandate of the subcommittee.
- (6)** For greater certainty, a person who is not a member of the Procurement Advisory Group may be a member of a subcommittee of the Procurement Advisory Group.

11 (1) The Procurement Governance Secretariat is hereby established.

(2) The Chief Procurement Officer shall appoint staff as necessary to the Procurement Governance Secretariat and the staff shall report to the Officer.

(3) The duties of the Procurement Governance Secretariat are to

- (a) provide secretariat services to the Procurement Advisory Group;
- (b) develop and conduct supplier and public sector entity outreach programs;
- (c) develop and promote procurement professional-development programs;
- (d) update and keep current the procurement web portal;
- (e) develop additional electronic tools as required;
- (f) undertake sustainable procurement specification research and development as well as general procurement research;
- (g) implement trade agreements; and
- (h) perform any other duties assigned by the Chief Procurement Officer.

12 (1) A public sector entity shall

- (a) publicly tender for all goods, services, construction and facilities in accordance with the applicable regional, national or international trade agreements by public advertisement on the procurement web portal;
- (b) post on the procurement web portal the name of the successful bidder and the contract amount awarded;
- (c) post on its public website its procurement policies;
- (d) abide by the acceptable alternative procurement exemptions and practices set out in the regulations;
- (e) participate in supplier and public sector entity outreach programs conducted by the Procurement Governance Secretariat;

- (f) participate in professional development programs conducted by the Procurement Governance Secretariat;
- (g) incorporate into their procurement processes, contract and risk-management guidelines;
- (h) be accountable for its procurement decisions;
- (i) insure its procurement employees abide by the standards set out in Section 15;
- (j) respect all supplier standards, rights and responsibilities established pursuant to Section 16;
- (k) provide an annual report, no later than ninety days after the fiscal year end, to the Chief Procurement Officer in the form and manner prescribed by the regulations made pursuant to this Act;
- (l) become familiar with Competition Bureau of Canada bid rigging awareness and prevention guidelines and adopt applicable practices; and
- (m) adopt or adapt its procurement policies to be consistent with the requirements of this Act.

(2) Public sector entities may choose to tender for goods, services, construction and facilities for amounts that are lower than the thresholds set out in the applicable trade agreements.

(3) When evaluating a bid, the public sector entity shall obtain best value and is not limited solely to purchase price and life-cycle cost considerations, but may also consider environmental and social factors, delivery, servicing and capacity of the bidder to meet criteria as stated in the bid received.

13 (1) Public sector entities may apply a preference for goods valued up to the thresholds of the Atlantic Procurement Agreement, which are manufactured or produced in the Province.

(2) For goods valued up to the thresholds in subsection (1), a public sector entity may obtain quotes and choose to award to or source directly for products manufactured or produced in Nova Scotia.

(3) Public sector entities retain the right to accept or reject, consider and evaluate bids from other jurisdictions on the same basis that the purchasing authorities in those jurisdictions would treat a bid from a Nova Scotia supplier.

(4) In accepting bids from a non-reciprocating jurisdiction, a public sector entity may consider best overall value as the determining factor.

14 (1) Every public tender notice must include or have attached the terms and conditions that govern the purchase of goods, services and constructions.

(2) The terms and conditions of every public tender notice must be consistent with the Atlantic Standard Terms and Conditions for the procurement of goods and services and Construction Contract Guidelines for the procurement of construction.

(3) Every public tender notice must comply with all legislation affecting the scope of the tender.

15 (1) Public sector entity procurement employees shall

- (a) ensure their procurement activities are conducted according to policies, provincial and federal legislation, trade agreements and ethical business practices;
- (b) encourage and support collaborative procurement amongst public sector entities;
- (c) follow leading procurement practices;
- (d) in good faith, conduct business with current and prospective suppliers and be fair in all business dealings;
- (e) strive to obtain the best value for each expenditure;
- (f) require suppliers provide accurate representations of goods, services and construction;
- (g) encourage suppliers to consider sustainability in their product or service offerings;
- (h) encourage the negotiation of an equitable and mutually acceptable settlement when a dispute arises; and
- (i) request removal from a procurement process when a personal conflict of interest is perceived.

(2) The Minister may make regulations amending the standards set out in subsection (1) or establishing new standards respecting the work of public sector entity procurement employees.

(3) Where a standard is amended or established and adopted by regulation made under this Section, the Minister shall provide direction on where it is available.

(4) Any new regulation or any substantive amendment to a regulation under this Section comes into effect only after the new regulation or amendment has been subject to such public review as the Minister considers appropriate.

(5) The exercise by the Minister of the authority contained in subsection (2) is regulations within the meaning of the *Regulation Act*.

16 (1) The Minister may make regulations establishing or amending supplier standards, rights and responsibilities in the procurement process.

(2) Where a standard is amended or established and adopted by regulation made under this Section, the Minister shall provide direction on where it is available.

(3) Any new regulation or any substantive amendment to a regulation under this Section comes into effect only after the new regulation or amendment has been subject to such public review as the Minister considers appropriate.

(4) The exercise by the Minister of the authority contained in subsection (2) is regulations within the meaning of the *Regulation Act*.

17 (1) At the request of a supplier who submitted a rejected bid, the public sector entity shall conduct for that supplier a debriefing session to provide feedback on the evaluation of the public tender.

(2) For greater certainty, the debriefing session referred to in subsection (1) shall provide reasons for disqualification or in the case where evaluation scoring was used, provide an overview of the supplier's score in each category along with the evaluation committee's decision.

(3) The debriefing shall provide information to the supplier on how to improve future submissions without disclosing any information regarding other bidders or their submissions.

18 (1) Where a supplier is not satisfied with the information provided by the public sector entity pursuant to Section 16, the supplier may file a supplier complaint with the Chief Procurement Officer in accordance with the regulations.

(2) The Chief Procurement Officer, shall

(a) upon receipt of the supplier complaint, determine whether the complaint will be investigated;

(b) carry out an investigation of the supplier complaint if necessary;

(c) report the investigation findings and make recommendations to both the public sector entity and the supplier as appropriate;

(d) request a response and detailed actions to be taken from the public sector entity to the recommendations, within thirty days of receipt of the recommendations;

(e) report annually in writing to the Minister on the number of complaints received, the number of investigations conducted, the recommendations made as a result of the investigations; and

(f) publish the annual report referred to in clause (e) on the procurement web portal sixty days after it is provided to the Minister.

(3) The Minister may make additional corrective recommendations to the public sector entity and supplier as necessary.

19 (1) The Governor in Council may make regulations

(a) respecting the alternative procurement exemptions applicable to the public sector entities;

(b) respecting the duties, functions, powers and authorities of the Chief Procurement Officer;

(c) respecting the composition, terms and conditions including remuneration of the members, jurisdiction, structure, role and functioning of the domestic review process;

(d) respecting procedures on advancing an issue for determination before the domestic review process and prescribing additional matters that may be the subject of a review arising from an international trade agreement;

(e) respecting the composition, terms and conditions including remuneration of the members of the Procurement Advisory Group;

(f) prescribing the form and manner of an annual report to be presented by a public sector entity;

(g) prescribing the form, manner and procedure to bring a supplier complaint;

(h) defining any word or expression not defined in this Act;

(i) further defining any word or expression defined in this Act;

(j) generally respecting any matter or thing the Governor in Council considers necessary or advisable to effectively carry out the intent and purpose of this Act.

(2) A regulation under this Act may adopt or incorporate by reference, in whole or in part or with modifications, a written standard, rule, regulation, guideline, designation, code or document relating to any matter in respect of which a regulation may be made under this Act.

(3) A standard, rule, regulation, guideline, designation, code or document that is adopted or incorporated by reference under subsection (2) may be adopted or incorporated as it reads on a prescribed day or as it is amended from time to time.

(4) Where a standard, rule, regulation, guideline, designation, code or document is adopted or incorporated by reference under subsection (2), the Minister shall ensure that a copy of the standard, rule, regulation, guideline, designation, code or document is made publicly available.

(5) The exercise of the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*.

20 Chapter 188 of the Revised Statutes, 1989, the *Government Purchases Act* is repealed.

21 This Act except clauses 12(1)(a), (b), (g), (k) and (m), Sections 14, 17 and 18, has effect on and after June 1, 2011.

22 Clauses 12(1)(a), (b), (g), (k), (m) and Sections 14, 17 and 18 have effect on and after June 1, 2012.
