

Public Procurement Act

CHAPTER 12 OF THE ACTS OF 2011

as amended by

2014, c. 34, ss. 35-38; 2018, c. 1, Sch. A, s. 143; 2024, c. 5, ss. 156-166



© 2024 His Majesty the King in right of the Province of Nova Scotia
Published by Authority of the Speaker of the House of Assembly
Halifax

This page is intentionally blank.

CHAPTER 12 OF THE ACTS OF 2011
amended 2014, c. 34, ss. 35-38; 2018, c. 1, Sch. A, s. 143; 2024, c. 5, ss. 156-166

**An Act Respecting
Public Procurement in Nova Scotia**

Table of Contents

(The table of contents is not part of the statute)

	Section
Short title.....	1
Purpose of Act.....	2
Interpretation.....	3
Application of Act.....	4
Supervision and management of Act.....	5
Appointments in accordance with Civil Service Act.....	6
Chief Procurement Officer.....	7
Power and duties of Chief Procurement Officer.....	8
Domestic review process.....	9
Procurement Advisory Group.....	10
Duties of public sector entity.....	12
Election to not adopt or adapt policies.....	13
Preference for goods, services or construction.....	14
Public tender notice.....	15
Regulations.....	16
Supplier debriefing session.....	17
Supplier complaint.....	18
Regulations.....	19
Government Purchases Act repealed.....	20
Effective date except ss. 12(1)(a), (b), (g), (k), (m), 14, 17 & 18.....	21
Effective date of ss. 12(1)(a), (b), (g), (k), (m), 14, 17 & 18.....	22

Short title

1 This Act may be cited as the *Public Procurement Act*. 2011, c. 12, s. 1.

Purpose of Act

2 The purpose of this Act is to

(a) provide for the procurement of goods, services or construction 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; and

(c) promote sustainable procurement decisions. 2011, c. 12, s. 2; 2024, c. 5, s. 156.

Interpretation

3 In this Act,

“best value” means attributing factors, in addition to purchase price, to select a supplier that includes life cycle cost, supplier capacity to meet cri-

teria in the procurement processes and sustainable procurement considerations;

“bid” means a supplier response to a limited competition, a non-competitive procurement or a public tender;

“Chief Procurement Officer” means the Chief Procurement Officer for the Province appointed under this Act;

“competitive procurement” means a public tender process for soliciting bids from suppliers for the purchase of goods, services or construction;

“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;

“domestic review process” means a review process to decide procurement issues arising under domestic or international trade agreements;

“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;

“limited competition” means a procurement method that is not a public tender whereby a public sector entity invites suppliers to respond to a procurement process;

“Minister” means the Minister of Service Nova Scotia;

“non-competitive procurement” means the procurement directly from a supplier of goods, services or construction outside of a competitive procurement process;

“personal services 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;

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

“procurement portal” means the public procurement website maintained and operated by the Crown in right of the Province;

“Public Procurement Policy” means the Province of Nova Scotia Public Procurement Policy approved by the Treasury and Policy Board of the Province, as amended from time to time;

“public sector entity” means

(a) 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, education entities, health authorities, housing authorities and crown corporations;

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

(c) 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;

“public tender” means a competitive procurement for goods, services or construction;

“public tender notice” means an advertisement of a public tender on the procurement portal;

“services” means 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;

“standards” means the applicable codes, standards or guidelines adopted under this Act or the regulations;

“supplier” means an entity that provides goods, services or construction;

“sustainable procurement” means a procurement process that considers the environmental, economic and social factors related to the procurement of goods, services or construction. 2024, c. 5, s. 157.

Application of Act

4 This Act applies to public sector entities acquiring and suppliers providing goods, services or construction. 2024, c. 5, s. 157.

Supervision and management of Act

5 The Minister is responsible for the supervision and management of this Act and the regulations. 2011, c. 12, s. 5.

5A *repealed 2024, c. 5, s. 158.*

Appointments in accordance with Civil Service Act

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. 2011, c. 12, s. 6.

Chief Procurement Officer

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 Service Nova Scotia.

(3) The Deputy Minister of Service Nova Scotia 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. 2011, c. 12, s. 7; 2014, c. 34, s. 37; 2024, c. 5, s. 159.

Power and duties of Chief Procurement Officer

- 8** (1) The Chief Procurement Officer may
- (a) promote and encourage competition amongst suppliers of goods, services or construction to public sector entities;
 - (b) *repealed 2024, c. 5, s. 160.*
 - (c) promote the use of sustainable procurement criteria in procurement decisions;
 - (d) *repealed 2024, c. 5, s. 160.*
 - (e) require public sector entities to make public procurement training and certification accessible to their public procurement professionals;
 - (f) identify opportunities and support collaboration leading to greater consistency and efficiencies in the procurement process across the public sector; and
 - (g) require proof that public sector entities have adopted or adapted their procurement policies and practices to conform with this Act.

(2) *repealed 2024, c. 5, s. 160.*

(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 portal. 2011, c. 12, s. 8; 2024, c. 5, s. 160.

Domestic review process

9 The Minister may establish a domestic review process to decide procurement issues arising pursuant to domestic or international trade agreement obligations. 2024, c. 5, s. 161.

Procurement Advisory Group

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

(2) The Chief Procurement Officer shall appoint public sector entity representatives as members of the Procurement Advisory Group.

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

(4) The Procurement Advisory Group may provide advice and recommendations to improve procurement processes to the Chief Procurement Officer.

(5) and (6) *repealed 2024, c. 5, s. 162.*

2011, c. 12, s. 10; 2024, c. 5, s. 162.

11 *repealed 2024, c. 5, s. 163.*

Duties of public sector entity

12 (1) A public sector entity shall

(a) publicly tender for all goods, services or construction for procurements that exceed applicable trade agreement thresholds, in accordance with applicable domestic or international trade agreement obligations and procurement policies;

(b) post public tender notices and contract award information on the procurement portal for procurements that exceed applicable trade agreement thresholds, in accordance with transparency obligations set out in applicable domestic or international trade agreements and procurement policies;

(c) establish and follow appropriate protocols to address conflicts of interest within its procurement processes;

(d) be accountable for its procurement decisions; and

(e) subject to Section 13, adopt or adapt its procurement policies to be consistent with the requirements of this Act.

(2) When evaluating a bid, the public sector entity shall consider best value. 2024, c. 5, s. 164.

Election to not adopt or adapt policies

13 (1) A public sector entity may elect to not adopt or adapt its procurement policies to be consistent with the requirements of this Act.

(2) Where a public sector entity makes an election under subsection (1), the public sector entity is subject to the Public Procurement Policy. 2024, c. 5, s. 164.

Preference for goods, services or construction

14 (1) Public sector entities may apply a preference for goods, services or construction below applicable domestic or international trade agreement thresholds.

(2) Public sector entities may apply a preference for goods, services or construction for procurements above applicable domestic and international trade agreement thresholds within the obligations under the applicable trade agreement.

(3) Public sector entities retain the right within the trade agreement obligations 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 Provincial supplier. 2024, c. 5, s. 164.

Public tender notice

15 (1) Every public tender notice must include the terms and conditions that govern the purchase of goods, services or construction.

(2) Every public tender notice must comply with all applicable legislation and applicable domestic and international trade agreements. 2024, c. 5, s. 164.

Regulations

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

(2) The exercise by the Minister of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2024, c. 5, s. 164.

Supplier debriefing session

17 At the request of a supplier who submitted a rejected bid, the public sector entity shall conduct a debriefing session to provide feedback on the evaluation of the supplier's bid. 2024, c. 5, s. 164.

Supplier complaint

18 (1) A supplier may file a complaint with the Chief Procurement Officer in accordance with the Public Procurement Policy.

(2) The Chief Procurement Officer may make recommendations to a public sector entity after consideration of the supplier complaint.

(3) The Minister may make additional corrective recommendations to the public sector entity and supplier as necessary. 2011, c. 12, s. 18; 2014, c. 34, s. 38; 2024, c. 5, s. 165.

Regulations

- 19 (1) The Governor in Council may make regulations
- (a) respecting alternative procurement practices applicable to 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 a domestic or 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 a regulation within the meaning of the *Regulations Act*. 2011, c. 12, s. 19; 2024, c. 5, s. 166.

Government Purchases Act repealed

20 Chapter 188 of the Revised Statutes, 1989, the *Government Purchases Act* is repealed. 2011, c. 12, s. 20.

Effective date except ss. 12(1)(a), (b), (g), (k), (m), 14, 17 & 18

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. 2011, c. 12, s. 21.

Effective date of ss. 12(1)(a), (b), (g), (k), (m), 14, 17 & 18

22 Clauses 12(1)(a), (b), (g), (k), (m) and Sections 14, 17 and 18 have effect on and after June 1, 2012. 2011, c. 12, s. 22.