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Under section 29 of the *Procurement Act*, the Lieutenant-Governor in Council makes the following Regulation:

**Citation**

1 This Regulation may be cited as the *Construction Services Regulation – Procurement Act*.

**PART 1**

**INTERPRETATION**

**Definitions**

2 The following definitions apply in this Regulation.

“Act” means the *Procurement Act*. (*Loi*)

“bid bond” means a bond given by a prospective contractor to guarantee entry into a procurement contract if the contract is awarded to that prospective contractor. (*cautionnement de soumission*)

“bid security deposit” means any of the following forms of security given by a prospective contractor to guarantee entry into a procurement contract if the contract is awarded to that prospective contractor:

- (a) a cheque, money order, bank draft or bill of exchange that is certified or issued by a financial institution and is payable to
  - (i) the Minister of Finance and Treasury Board, or
  - (ii) if the procurement contract is to be awarded by a Schedule 2 entity, the Schedule 2 entity; or
- (b) irrevocable standby letter of credit set out in a form established by the Minister of Transportation and Infrastructure and issued by a financial institution; or
- (c) any other security that the Minister considers appropriate. (*dépôt de garantie de soumission*)

“CFTA” means the Canadian Free Trade Agreement signed in 2017 by the Government of Canada and the governments of the provinces and territories of Canada, including any amendments made to the agreement. (*ALÉC*)

“competitive bidding process” means a procurement method used to acquire construction services through a solicitation for bid submissions that is open to more than one contractor and includes an invitation to tender, a request for proposals and a reverse auction. (*appel à la concurrence*)

“estimated value” means the estimated maximum total value of a procurement contract and any optional renewals of a procurement contract or, in the case of a standing offer agreement, the estimated maximum total value of all procurement contracts anticipated under the

agreement for its original duration and any optional renewals of the procurement contracts and includes transportation costs, maintenance costs, installation costs, tariffs, duties, premiums, fees, commissions, interest and any other costs incidental to the purchase of the construction services but does not include taxes. (*valeur estimée*)

“financial institution” means

- (a) a bank listed in Schedule I, II or III of the *Bank Act* (Canada),
- (b) a credit union as defined in the *Credit Unions Act*, or
- (c) a loan or trust company licensed under the *Loan and Trust Companies Act*. (*institution financière*)

“informal quote” means a request by a procuring entity to one or more contractors for pricing on specific construction services without a solicitation for bid submissions that is not binding on either party. (*demande de prix*)

“limited competitive bidding process” means a competitive bidding process that is limited in some aspect when bid submissions are solicited. (*appel à la concurrence restreinte*)

“New Brunswick contractor” means a contractor of construction services that has a place of business in New Brunswick. (*entrepreneur néo-brunswickois*)

“open competitive bidding process” means a competitive bidding process in which bid submissions are solicited by public advertisement that is open to all interested contractors. (*appel à la concurrence ouverte*)



“place of business” means an establishment where a contractor regularly conducts its activities on a permanent basis, is clearly identified by name and is accessible during normal business hours. (*établissement commercial*)

“procuring entity” means

(a) in the case of a Schedule 1 entity, the Minister or, if the Act and this Regulation authorizes a Schedule 1 entity to procure its own construction services, the Schedule 1 entity, or

(b) in the case of a Schedule 2 entity, the Schedule 2 entity regardless of whether the procurement is a joint procurement or, if the Minister procures construction services on behalf of the Schedule 2 entity, the Minister. (*entité acquéresse*)

“standing offer agreement” means a procurement contract with a contractor by which a procuring entity agrees to buy construction services, when needed, from the contractor for a period specified in the contract and the contract includes all terms applicable to the procurement, including the cost of the construction service and delivery requirements. (*marché à commandes*)

“trade agreement” means a domestic or international trade agreement. (*accord commercial*)

### **Competitive bidding process**

**3** A competitive bidding process may be conducted in different stages and through different processes, which may or may not be binding on the parties, if this allows the procuring entity to better identify the subject matter of the procurement and the prospective contractors to determine whether they wish to participate in the competitive bidding process.

### **Adjustment for inflation**

4(1) The lowest applicable threshold values of any relevant trade agreements referred to in this Regulation shall, if the relevant trade agreement provides for inflation-related adjustments to its threshold values, be adjusted for inflation in accordance with the trade agreement.

4(2) The amount of \$100,000 referred to in sections 9, 10, 35 and 36 and paragraph 137(1)(a) shall be adjusted for inflation in accordance with Annex 504.4 of the CFTA.

## **PART 2**

### **PROCUREMENT FOR SCHEDULE 1 ENTITIES**

#### **Division A**

#### **Procurement Rules**

### **Appropriate authorizations**

5 A Schedule 1 entity shall ensure that appropriate authorizations are obtained before beginning a procurement process, regardless of whether the procurement is done through the Minister.

### **Standing offer agreement**

6 A Schedule 1 entity for which a standing offer agreement has been entered into by the Minister shall obtain the construction services for which the agreement has been entered into through that agreement unless

- (a) the agreement provides for exceptions, or

(b) the Act or this Regulation provides otherwise.

### **Exemption from procuring through the Minister**

7(1) A Schedule 1 entity is exempt from procuring construction services through the Minister when the construction services have an estimated value of less than \$100,000.

7(2) A Schedule 1 entity for which the Minister has entered into a standing offer agreement is not exempt under subsection (1) from procuring through the Minister and shall procure the construction services that are the subject of the standing offer agreement through that agreement in accordance with section 6.

### **Procuring construction services valued below \$50,000**

8 When construction services that have an estimated value of less than \$50,000 are to be procured on behalf of a Schedule 1 entity, the Minister or the entity itself, as the case may be, may use any of the following procurement methods:

- (a) an informal quote;
- (b) a limited competitive bidding process;
- (c) an open competitive bidding process; or
- (d) a mutual agreement, if it is permitted in the circumstances prescribed in this Regulation.

### **Procuring construction services valued between specified amounts**

9 When construction services that have an estimated value that is equal to or greater than \$50,000 and less than the lesser of \$100,000 or the lowest applicable threshold value of any

relevant trade agreements are to be procured on behalf of a Schedule 1 entity, the Minister or the entity itself, as the case may be, may use any of the following procurement methods:

- (a) a limited competitive bidding process;
- (b) an open competitive bidding process; or
- (c) a mutual agreement, if it is permitted in the circumstances prescribed in this Regulation.

### **Procuring construction services valued at or above specified amounts**

**10** When construction services that have an estimated value that is equal to or greater than \$100,000 or the lowest applicable threshold value of any relevant trade agreements, whichever is the lesser, are to be procured on behalf of a Schedule 1 entity, the Minister shall procure the construction services through an open competitive bidding process unless an alternative procurement method is authorized in the circumstances prescribed in this Regulation.

### **Authorized procurement methods**

**11(1)** The Minister may use any procurement method authorized by this Regulation provided that it is not done for the purpose of avoiding competition among prospective contractors or discriminating against a prospective contractor if, in response to a competitive bidding process under section 8, 9, or 10,

- (a) no bid submissions are received or none of the bid submissions is acceptable, or
- (b) no prospective contractors requested participation or no prospective contractors satisfied the conditions for participation.

**11(2)** A Schedule 1 entity may use any procurement method authorized by this Regulation provided that it is not done for the purpose of avoiding competition among prospective contractors or discriminating against a prospective contractor if, in response to a competitive bidding process under section 8 or 9,

- (a) no bid submissions are received or none of the bid submissions is acceptable, or
- (b) no prospective contractors requested participation or no prospective contractors satisfied the conditions for participation.

**New Brunswick contractors**

**12** When the following procurement methods are used under sections 8, 9, 10 or 11, the procurement process, if possible, shall be limited to New Brunswick contractors:

- (a) an informal quote;
- (b) a limited competitive bidding process;
- (c) a mutual agreement; and
- (d) an alternative procurement method.

**Division B**  
**Disqualification of**  
**Prospective Contractors**  
**Subdivision i**  
**Disqualification**

**Disqualification**

**13(1)** If there is supporting evidence, the Minister may disqualify for a period of no more than 24 months a prospective contractor from providing construction services to Schedule 1 entities for the following reasons:

- (a) significant or persistent deficiencies in the performance of any substantive requirement or obligation under a prior contract or contracts;
- (b) false declarations;
- (c) professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the prospective contractor; or
- (d) failure to pay taxes.

**13(2)** If there is supporting evidence, the Minister may disqualify a prospective contractor who has become an insolvent person or a bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada) from providing construction services to Schedule 1 entities for the period during which the prospective contractor is an insolvent person or a bankrupt, as the case may be.

**Commencement of the disqualification period**

**14** The period of disqualification under subsection 13(1) begins on the date determined by the Minister.

**Elements of past performance**

**15** Subject to section 24, a prospective contractor's performance under a contract that occurred within two years before the coming into force of this Regulation may be taken into account in disqualifying a prospective contractor for past performance.

**Conditions precedent**

**16** Before disqualifying a prospective contractor under subsection 13(1), the Minister shall give the prospective contractor notice by registered mail of the intention to disqualify the prospective contractor, and the notice shall include the following information:

- (a) the reasons, with details, for which the Minister is considering disqualifying the prospective contractor;
- (b) the intended length of the disqualification;
- (c) the fact that the prospective contractor, within 15 days after receiving the notice, may object to the intended disqualification by sending a notice of objection to the Minister by registered mail;
- (d) the fact that the prospective contractor has a right to be represented by counsel if the prospective contractor wishes to object to the disqualification; and
- (e) the fact that the prospective contractor may present its objection in person or in writing.

**Objection in writing**

**17** A prospective contractor who chooses to object in writing shall include with the notice of objection all the documents in the prospective contractor's possession that support the objection.

**Objection in person**

**18(1)** If a prospective contractor chooses to have an objection heard in person, the Minister shall set a date, time and place to hear the prospective contractor's objection, and the hearing shall occur within 15 days after the Minister receives the notice of objection sent in accordance with paragraph 16(c).

**18(2)** Despite subsection (1), the prospective contractor may agree to have its objection heard more than 15 days after the Minister receives the notice of objection, but the hearing shall be held within 30 days after receipt of the notice of objection.

**Decision**

**19(1)** The decision to disqualify a prospective contractor under section 13 shall be in writing and specify the commencement date of the disqualification.

**19(2)** The decision to disqualify a prospective contractor under subsection 13(1) shall be made

(a) if a notice of objection has not been received, within five days after the period for sending a notice of objection has expired,

(b) if a hearing has been held in accordance with section 18, within 15 days after the hearing, or



(c) if an objection has been made in writing under section 17, within 15 days after the documents supporting the objection are received.

### **Terms and conditions**

**20** The Minister may impose any term or condition the Minister considers appropriate on a contractor's disqualification relating to the scope of the disqualification.

### **Automatic reinstatement**

**21** After the period of disqualification determined by the Minister under subsection 13(1) expires, the prospective contractor is reinstated.

### **Application for reinstatement**

**22(1)** A prospective contractor who has been disqualified for more than six months under subsection 13(1) may apply in writing to the Minister to be reinstated

(a) after the expiration of six months following the decision to disqualify the prospective contractor, or

(b) if the prospective contractor is not reinstated under paragraph (a), after the expiration of six months following the decision denying reinstatement.

**22(2)** A prospective contractor who has been disqualified under subsection 13(2) may apply in writing to the Minister to be reinstated if the prospective contractor is no longer an insolvent person or a bankrupt.

**Reinstatement**

**23(1)** On application under subsection 22(1), the Minister may reinstate a prospective contractor who has been disqualified under subsection 13(1) if the Minister is satisfied that the prospective contractor has taken appropriate corrective measures.

**23(2)** On application under subsection 22(2), the Minister shall reinstate a prospective contractor who has been disqualified under subsection 13(2) if the Minister is satisfied that the prospective contractor is no longer an insolvent person or a bankrupt.

**Subsequent disqualification**

**24(1)** A prospective contractor may be disqualified under section 13 more than once.

**24(2)** The facts that gave rise to a prospective contractor's previous disqualification from providing construction services may not be taken into account when considering a subsequent disqualification, but the fact that the prospective contractor has been previously disqualified may be taken into account.

**Disqualification during performance of a procurement contract**

**25(1)** The Minister may disqualify a prospective contractor under section 13 despite the fact that the prospective contractor is in the process of performing a procurement contract for a Schedule 1 entity.

**25(2)** If a prospective contractor is disqualified in the circumstances set out in subsection (1), the Minister may cancel any existing procurement contract that prospective contractor has with the Schedule 1 entity unless it would be too costly for or otherwise detrimental to the Province.

**25(3)** If a procurement contract is not cancelled under subsection (2), the Minister may take any measure that the Minister considers appropriate, including

- (a) inspections,
- (b) measures to prevent delays, and
- (c) close tracking of the stages or different aspects of the contract.

### **Disqualification during procurement process**

**26** The Minister shall not award a procurement contract to a prospective contractor who becomes disqualified under section 13 during the procurement process for that contract.

### **Prospective contractor not an individual**

**27(1)** A prospective contractor is deemed to be disqualified under section 13 when a person who has a controlling interest in that prospective contractor is disqualified under section 13.

**27(2)** A prospective contractor is deemed to be disqualified under section 13 when that prospective contractor has a controlling interest in another prospective contractor who is disqualified under section 13.

## **Subdivision ii**

### **Disqualification for Offences**

#### **Automatic disqualification**

**28** A prospective contractor who is guilty of an offence listed in Schedule 3 is disqualified from providing construction services to Schedule 1 entities for the corresponding period specified in Schedule 3.

**Guilty verdict during performance of procurement contract**

**29(1)** If a contractor is found guilty of an offence referred to in section 28, the Minister shall cancel any existing procurement contract that contractor has with a Schedule 1 entity unless it would be too costly for or otherwise detrimental to the Province.

**29(2)** If a procurement contract is not cancelled under subsection (1), the Minister may take any measure that the Minister considers appropriate, including

- (a) inspections,
- (b) measures to prevent delays, and
- (c) close tracking of the stages or different aspects of the contract.

**Guilty verdict during procurement process**

**30** The Minister shall not award a procurement contract to a prospective contractor who becomes disqualified under section 28 during the procurement process for that contract.

**Commencement of disqualification period**

**31** The period of disqualification under section 28 begins on the expiration of the period to file an appeal with respect to the verdict that gave rise to the disqualification.

**Disqualification not retrospective**

**32** Only an offence committed after this Regulation comes into force shall result in a disqualification under section 28.

**PART 3**

**PROCUREMENT FOR  
SCHEDULE 2 ENTITIES**

**Division A**

**Procurement Rules**

**Appropriate authorizations**

**33** A Schedule 2 entity shall ensure that appropriate authorizations are obtained before beginning a procurement process.

**Procuring construction services valued below \$50,000**

**34** When procuring construction services that have an estimated value that is less than \$50,000, a Schedule 2 entity may use any of the following procurement methods:

- (a) an informal quote;
- (b) a limited competitive bidding process;
- (c) an open competitive bidding process; or
- (d) a mutual agreement, if it is permitted in the circumstances prescribed in this Regulation.

**Procuring construction services valued between specified amounts**

**35** When procuring construction services that have an estimated value that is equal to or greater than \$50,000 and less than the lesser of \$100,000 and the lowest applicable threshold

value of any relevant trade agreements, a Schedule 2 entity may use any of the following procurement methods:

- (a) a limited competitive bidding process;
- (b) an open competitive bidding process; or
- (c) a mutual agreement, if it is permitted in the circumstances prescribed in this Regulation.

### **Procuring construction services valued at or above specified amounts**

**36** When procuring construction services that have an estimated value that is equal to or greater than \$100,000 or the lowest applicable threshold value of any relevant trade agreements, whichever is the lesser, a Schedule 2 entity shall procure the construction services through an open competitive bidding process unless an alternative procurement method is authorized in the circumstances prescribed in this Regulation.

### **Authorized procurement methods**

**37** A Schedule 2 entity may use any procurement method authorized by this Regulation provided that it is not done for the purpose of avoiding competition among prospective contractors or discriminating against a prospective contractor if, in response to a competitive bidding process under section 34, 35, or 36,

- (a) no bid submissions are received or none of the bid submissions is acceptable, or
- (b) no prospective contractors requested participation or no prospective contractors satisfied the conditions for participation.

**New Brunswick contractors**

**38** When the following procurement methods are used under sections 34, 35, 36 or 37, the procurement process, if possible, shall be limited to New Brunswick contractors:

- (a) an informal quote;
- (b) a limited competitive bidding process;
- (c) a mutual agreement; and
- (d) an alternative procurement method.

**Division B****Exemptions****New Brunswick Power Corporation and New Brunswick Energy Marketing Corporation**

**39** The New Brunswick Power Corporation and the New Brunswick Energy Marketing Corporation are exempt from the provisions of the Act and this Regulation with respect to the procurement of electric utility-specific construction services, regardless of their estimated value, that are non-routine capital projects and procurements that have been approved by the New Brunswick Power Corporation's Board of Directors, including joint ventures, strategic partnerships and financing arrangements with third parties.

**Division C**  
**Disqualification of**  
**Prospective Contractors**  
**Subdivision i**  
**Disqualification**

**Disqualification**

**40(1)** If there is supporting evidence, the head of a Schedule 2 entity or the person responsible for its procurement may disqualify for a period of no more than 24 months a prospective contractor from providing construction services to the Schedule 2 entity for the following reasons:

- (a) significant or persistent deficiencies in the performance of any substantive requirement or obligation under a prior contract or contracts;
- (b) false declarations;
- (c) professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the prospective contractor; or
- (d) failure to pay taxes.

**40(2)** If there is supporting evidence, the head of a Schedule 2 entity or the person responsible for its procurement may disqualify a prospective contractor who has become an insolvent person or a bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada) from providing construction services to the Schedule 2 entity for the period during which the prospective contractor is an insolvent person or a bankrupt, as the case may be.



**Commencement of the disqualification period**

**41** The period of disqualification under subsection 40(1) begins on the date determined by the head of a Schedule 2 entity or the person responsible for its procurement.

**Elements of past performance**

**42** Subject to section 51, a prospective contractor's performance under a contract that occurred within two years before the coming into force of this Regulation may be taken into account in disqualifying a prospective contractor for past performance.

**Conditions precedent**

**43** Before disqualifying a prospective contractor under subsection 40(1), the head of a Schedule 2 entity or the person responsible for its procurement shall give the prospective contractor notice by registered mail of the intention to disqualify the prospective contractor, and the notice shall include the following information:

- (a) the reasons, with details, for which the prospective contractor is being considered for disqualification;
- (b) the intended length of the disqualification;
- (c) the fact that the prospective contractor, within 15 days after receiving the notice, may object to the intended disqualification by sending by registered mail a notice of objection to the head of the Schedule 2 entity or the person responsible for its procurement;
- (d) the fact that the prospective contractor has a right to be represented by counsel if the prospective contractor wishes to object to the disqualification; and

(e) the fact that the prospective contractor may present its objection in person or in writing.

### **Objection in writing**

**44** A prospective contractor who chooses to object in writing shall include with the notice of objection all the documents in the prospective contractor's possession that support the objection.

### **Objection in person**

**45(1)** If a prospective contractor chooses to have an objection heard in person, the head of the Schedule 2 entity or the person responsible for its procurement shall set a date, time and place to hear the prospective contractor's objection, and the hearing shall occur within 15 days after receipt of the notice of objection that is sent in accordance with paragraph 43(c).

**45(2)** Despite subsection (1), the prospective contractor may agree to have its objection heard more than 15 days after receipt of the notice of objection, but the hearing shall be held within 30 days after receipt of the notice of objection.

### **Decision**

**46(1)** The decision to disqualify a prospective contractor under section 40 shall be in writing and specify the commencement date of the disqualification.

**46(2)** The decision to disqualify a prospective contractor under subsection 40(1) shall be made

- (a) if a notice of objection has not been received, within five days after the period for sending a notice of objection has expired,
- (b) if a hearing has been held in accordance with section 45, within 15 days after the hearing, or
- (c) if an objection has been made in writing under section 44, within 15 days after the documents supporting the objection are received.

### **Terms and conditions**

**47** The head of the Schedule 2 entity or the person responsible for its procurement may impose any term or condition they consider appropriate on a contractor's disqualification relating to the scope of the disqualification.

### **Automatic reinstatement**

**48** After the period of disqualification determined under subsection 40(1) by the head of a Schedule 2 entity or the person responsible for its procurement expires, the prospective contractor is reinstated.

### **Application for reinstatement**

**49(1)** A prospective contractor who has been disqualified for more than six months under subsection 40(1) may apply in writing to the head of a Schedule 2 entity or the person responsible for its procurement to be reinstated

- (a) after the expiration of six months following the decision to disqualify the prospective contractor, or

(b) if the prospective contractor is not reinstated under paragraph (a), after the expiration of six months following the decision denying reinstatement.

**49(2)** A prospective contractor who has been disqualified under subsection 40(2) may apply in writing to the head of a Schedule 2 entity or the person responsible for its procurement to be reinstated if the prospective contractor is no longer an insolvent person or a bankrupt.

### **Reinstatement**

**50(1)** On application under subsection 49(1), the head of a Schedule 2 entity or the person responsible for its procurement may reinstate a prospective contractor who has been disqualified under subsection 40(1) if the head of a Schedule 2 entity or the person responsible for its procurement is satisfied that the prospective contractor has taken appropriate corrective measures.

**50(2)** On application under subsection 49(2), the head of a Schedule 2 entity or the person responsible for its procurement shall reinstate a prospective contractor who has been disqualified under subsection 40(2) if the head of a Schedule 2 entity or the person responsible for its procurement is satisfied that the prospective contractor is no longer an insolvent person or a bankrupt.

### **Subsequent disqualification**

**51(1)** A prospective contractor may be disqualified under section 40 more than once.

**51(2)** The facts that gave rise to a prospective contractor's previous disqualification from providing construction services may not be taken into account when considering a subsequent disqualification, but the fact that the prospective contractor has been previously disqualified may be taken into account.

**Disqualification during performance of a procurement contract**

**52(1)** The head of a Schedule 2 entity or the person responsible for its procurement may disqualify a prospective contractor under section 40 despite the fact that the prospective contractor is in the process of performing a procurement contract for the Schedule 2 entity.

**52(2)** If a prospective contractor is disqualified in the circumstances set out in subsection (1), the head of the Schedule 2 entity or the person responsible for its procurement may cancel any existing procurement contract that contractor has with the Schedule 2 entity unless it would be too costly for or otherwise detrimental to the Schedule 2 entity.

**52(3)** If a procurement contract is not cancelled under subsection (2), the head of the Schedule 2 entity or the person responsible for its procurement may take any measure that the head of the Schedule 2 entity or the person considers appropriate, including

- (a) inspections,
- (b) measures to prevent delays, and
- (c) close tracking of the stages or different aspects of the contract.

**Disqualification during procurement process**

**53** The head of a Schedule 2 entity or the person responsible for its procurement shall not award a procurement contract to a prospective contractor who becomes disqualified under section 40 during the procurement process for that contract.

**Prospective contractor not an individual**

**54(1)** A prospective contractor is deemed to be disqualified under section 40 when a person who has a controlling interest in that prospective contractor is disqualified under section 40.

**54(2)** A prospective contractor is deemed to be disqualified under section 40 when that prospective contractor has a controlling interest in another prospective contractor who is disqualified under section 40.

### **Subdivision ii**

#### **Disqualification for Offences**

##### **Automatic disqualification**

**55** A prospective contractor who is guilty of an offence listed in Schedule 3 is disqualified from providing construction services to Schedule 2 entities for the corresponding period specified in Schedule 3.

##### **Guilty verdict during performance of procurement contract**

**56(1)** If a contractor is found guilty of an offence referred to in section 55, the head of a Schedule 2 entity or the person responsible for its procurement shall cancel any existing procurement contract that contractor has with the Schedule 2 entity unless it would be too costly for or otherwise detrimental to the Schedule 2 entity.

**56(2)** If a procurement contract is not cancelled under subsection (1), the head of the Schedule 2 entity or the person responsible for its procurement may take any measure that the head of the Schedule 2 entity or the person considers appropriate, including

- (a) inspections,
- (b) measures to prevent delays, and
- (c) close tracking of the stages or different aspects of the contract.

**Guilty verdict during procurement process**

**57** The head of a Schedule 2 entity or the person responsible for its procurement shall not award a procurement contract to a prospective contractor who becomes disqualified under section 55 during the procurement process with respect to that contract.

**Commencement of disqualification period**

**58** The period of disqualification under section 55 begins on the expiration of the period to file an appeal with respect to the verdict that gave rise to the disqualification.

**Disqualification not retrospective**

**59** Only an offence committed after this Regulation comes into force shall result in a disqualification under section 55.

**PART 4**

**PROCUREMENT -  
GENERAL PROVISIONS**

**Division A**

**Procurement Rules -  
Competitive Bidding Process**

**Subdivision i**

**Solicitation for Bid Submissions**

**Establishment of prequalification list**

**60(1)** A procuring entity may establish a prequalification list of prospective contractors to be used in a future competitive bidding process, and the list shall be established in accordance with the provisions of this Regulation applicable to a competitive bidding process.

**60(2)** If a procuring entity intends to use a prequalification list to procure construction services for which the procurement is subject to a trade agreement, an open competitive bidding process shall be used to establish the list.

**60(3)** In addition to any other requirements under this Regulation, the solicitation documents for the establishment of a prequalification list shall include the following information:

(a) the period for which the list is to be established, or if the period is not specified, an indication of the method by which the procuring entity shall notify prospective contractors of the expiration of the period;

(b) the Schedule 1 entities, the Schedule 2 entities and the public bodies that may use the list;



- (c) the criteria to be used to prequalify prospective contractors;
- (d) if a limited number of prospective contractors on the prequalification list may submit bid submissions, information concerning the limitation on the number of prospective contractors and the criteria for selecting the limited number of prospective contractors; and
- (e) any other conditions governing the use of the list.

**60(4)** Subject to subsection (5), the solicitation notice to establish a prequalification list shall be published in accordance with section 62 at least once a year.

**60(5)** If a prequalification list is to be valid for a period of not more than three years, the procuring entity shall post the solicitation notice to establish the prequalification list on the New Brunswick Opportunities Network at least once at the beginning of the period for which the list is to be established, and the solicitation notice shall include the following information:

- (a) the period for which the list is to be established;
- (b) a statement that no further solicitation notices are to be posted; and
- (c) the information set out in section 62.

**60(6)** If a prequalification list is to be valid for a period of more than three years, the procuring entity shall post the solicitation notice to establish the prequalification list on the New Brunswick Opportunities Network at least once a year during the period for which the list is to be established, and the solicitation notice shall include the following information:

- (a) the period for which the list is to be established, or if the period is not specified, an indication of the method by which the procuring entity shall notify prospective contractors of the expiration of the period; and
- (b) the information set out in section 62.

### **Use of prequalification list**

**61(1)** A prequalification list is valid only for the period specified in the solicitation documents, or if no period is specified in the solicitation documents, for the period established by the procuring entity.

**61(2)** A procuring entity may divide into categories the prospective contractors that have been prequalified.

**61(3)** When a prequalification list has been established, the procuring entity shall restrict the competitive bidding process to the following:

- (a) the prospective contractors that are on the list, or in an applicable category of the list;
- (b) the period for which the list was established; and
- (c) the procurement of the construction services for which the list was established.

**61(4)** The competitive bidding process of prospective contractors who are on a prequalification list, or a category of the list, shall be done in the one of the following manners:

- (a) a limited competitive bidding process; or
- (b) by publishing a public advertisement that indicates that participation in the competitive bidding process is restricted to prospective contractors that have been prequalified.

**61(5)** When a procuring entity procures construction services for which the procurement is subject to a trade agreement and for which a prequalification list has been established, the following prospective contractors may submit bid submissions:

- (a) all the prospective contractors that are on the list or in an applicable category of the list; or
- (b) if the solicitation documents for the establishment of the prequalification list include information concerning a limitation on the number of prospective contractors who may submit bid submissions and the criteria for selecting the limited number of prospective contractors, a limited number of prospective contractors.

**61(6)** A procuring entity may satisfy the requirements of subsection (5) by complying with paragraph (4)(b).

### **Solicitation notice**

**62** When a solicitation notice is publicly advertised, the procuring entity shall post the notice on the New Brunswick Opportunities Network for the minimum solicitation period referred to in section 68, and the notice shall include the following information:

- (a) the solicitation number;
- (b) a brief description of the construction services being procured, including the nature and the quantity, or estimated quantity, of the construction services being procured, unless that information is included in the solicitation documents;
- (c) the name and address of the procuring entity and other information that is necessary to contact the procuring entity and obtain the solicitation documents, and the costs, if any, to obtain the solicitation documents and the terms of payment;

- (d) a list and brief description of any conditions for the participation of prospective contractors, including any requirements for specific documents or certifications to be provided by prospective contractors, unless those requirements are included in the solicitation documents;
- (e) the duration of the procurement contract;
- (f) a description of any options, unless those options are included in the solicitation documents;
- (g) the procurement method to be used and whether the procurement process involves negotiations or an electronic auction;
- (h) the amount of the bid bond or bid security deposit and the manner in which it is to be submitted, if applicable;
- (i) the amount and type of risk for which the successful contractor is to insure construction services, if applicable;
- (j) the language or languages in which bid submissions or responses to requests for pre-qualification may be submitted, if they may be submitted in a language other than that of the solicitation notice;
- (k) in the case of a competitive bidding process that requires the submission of paper based bid submissions,
  - (i) the location where the bid submission is to be submitted,
  - (ii) the time and date of the closure of the solicitation period for receipt of bid submissions, and

- (iii) the location, date and time that bid submissions are to be opened;
- (l) in the case of a competitive bidding process that requires the submission of bid submissions by electronic means,
  - (i) the requirements for their submission,
  - (ii) the time and date of the closure of the solicitation period for receipt of bid submissions, and
  - (iii) the date and time that bid submissions are to be opened; and
- (m) in the event that the construction services being procured are subject to a trade agreement, the name of the trade agreement and the relevant chapter number in the trade agreement.

### **Notice of planned procurement**

**63(1)** A procuring entity may publish notice of its future procurement plans, and the notice shall

- (a) be published as early as possible in the fiscal year and not more than 12 months before the solicitation notice is issued, and
- (b) be posted on the New Brunswick Opportunities Network for a minimum of 35 days.

**63(2)** The notice shall include the following information:

- (a) the subject matter of the procurement; and
- (b) the planned date of the publication of the solicitation notice.

**Official solicitation documents**

**64(1)** The official solicitation documents shall be the following:

- (a) for a Schedule 1 entity, the documents specified by the Minister; and
- (b) for a Schedule 2 entity, the documents specified by the head of the Schedule 2 entity or the person responsible for its procurement.

**64(2)** The official solicitation documents may be in an electronic format.

**Same information to all**

**65** All prospective contractors shall be provided with the same information for preparing bid submissions, and the information provided shall be adequate for the preparation of a bid submission.

**Fair, equal and equitable treatment**

**66(1)** A procuring entity shall treat all prospective contractors fairly, equally and equitably throughout the competitive bidding process unless otherwise stated in the solicitation documents.

**66(2)** If the solicitation documents state that a class of prospective contractors may be given preferential treatment in a manner authorized by this Regulation, the procuring entity shall treat all prospective contractors in that class in a manner that is fair, equal and equitable.

**Criteria in addition to price**

**67** If a procuring entity intends to evaluate submissions in a competitive bidding process on criteria in addition to price, the procuring entity shall indicate clearly in the solicitation documents the criteria to be used and the method by which the bid submissions are to be evaluated, including the relative weight to be assigned to each criterion.

**Minimum solicitation period - open competitive bidding process**

**68(1)** The minimum solicitation period for an open competitive bidding process is 10 days, unless

- (a) a longer minimum period is required under a trade agreement that applies to the procurement, or
- (b) the procuring entity determines that a longer minimum period is required for prospective contractors to prepare their bid submissions.

**68(2)** When determining the length of a solicitation period under paragraph (1)(b), a procuring entity shall take into consideration any factor it considers relevant, including:

- (a) the nature and complexity of the procurement;
- (b) the extent of subcontracting anticipated; and
- (c) the time necessary for delivering the solicitation documents by non-electronic means.

**Solicitation period - limited competitive bidding process**

**69** There is no minimum solicitation period for a limited competitive bidding process, but the procuring entity shall give prospective contractors sufficient time to prepare their bid submissions.

**Amendment of solicitation documents**

**70(1)** At any time before the closing of the solicitation period, a procuring entity, for any reason, may modify the solicitation documents by issuing an amendment, and the amendment may be initiated by the procuring entity or may be made as the result of a request for clarification by a prospective contractor.

**70(2)** The amendment shall be communicated promptly and in the same manner as the original solicitation documents were communicated, and, taking into consideration the nature of the amendment, the procuring entity shall provide prospective contractors with sufficient time to modify their submissions if necessary.

**70(3)** In the case of a publicly advertised competitive bidding process, a notice of the amendment shall be posted on the New Brunswick Opportunities Network.

**Shortening of solicitation period**

**71** Subject to section 68, the solicitation period may be shortened in either of the following circumstances:

- (a) it is evident that the original closing date was incorrect; or
- (b) it has become more urgent to obtain the construction services that are the subject matter of the procurement.



**Extension of solicitation period**

**72** The solicitation period may be extended for any of the following reasons:

- (a) the original solicitation period is clearly of an inadequate length to prepare a bid submission;
- (b) prospective contractors require additional time to prepare their bid submissions as the result of an amendment to the solicitation documents; or
- (c) the procuring entity considers it appropriate to extend the solicitation period in the circumstances.

**Request for clarification**

**73** A prospective contractor may request, in writing, a clarification of the solicitation documents from the procuring entity within the period specified in the solicitation documents for requesting a clarification.

**Response to clarification request**

**74** A procuring entity shall respond to a request for clarification made under section 73 within a reasonable period so as to allow prospective contractors to submit their bid submissions.

**Communication of clarifying information**

**75(1)** Without identifying the source of a request for clarification, a procuring entity shall communicate the clarifying information to all prospective contractors at the same time as providing a response under section 74 and in the same manner as the original solicitation documents were communicated.

75(2) In the case of a publicly advertised competitive bidding process, a notice of the clarification shall be posted on the New Brunswick Opportunities Network.

### **Subdivision ii**

#### **Bid Bonds and Bid Security Deposits**

##### **Bid bond**

76(1) If the estimated value of the construction services is equal to or greater than \$500,000, the procuring entity shall require a prospective contractor to submit a bid bond with its bid submission.

76(2) If the estimated value of the construction services is less than \$500,000, the procuring entity may require a prospective contractor to submit a bid bond with its bid submission.

76(3) Nothing in this section shall require the procuring entity to divulge the estimated value of the construction services.

##### **Performance bond and labour and material payment bond**

77(1) In the case where a bid bond is required to be submitted with a bid submission, the successful contractor shall, within the period specified by the procuring entity, submit to the procuring entity a performance bond and a labour and material payment bond in accordance with section 83 of the *Construction Remedies Act*.

77(2) The details of the performance bond and labour and material payment bond shall be included in the solicitation documents.

**Bid security deposit**

**78(1)** If the estimated value of the construction services is less than \$500,000 and the procuring entity does not require a bid bond under subsection 76(2), the procuring entity may require a prospective contractor to submit a bid security deposit with its bid submission.

**78(2)** Despite subsection (1), if a prospective contractor has submitted a bid bond when a bid security deposit was required by the procuring entity, the submission of the bid bond shall not be a reason to reject the bid submission as long as the bid bond meets the requirements of subsection 76(3).

**Security for due performance**

**79** If a bid security deposit is required under subsection 78(1), the bid security deposit of the successful contractor shall, if a procurement contract is entered into with that contractor, be held by the procuring entity as security for the due performance of the construction services and, in the case where the procuring entity is a Schedule 1 entity, the security may bear interest at a rate determined by the Minister of Finance and Treasury Board.

**Refusal to enter into contract**

**80** If the successful contractor refuses to enter into the procurement contract within 14 days after the procuring entity notifies the successful contractor under section 120 that it has been selected as the successful contractor, the procuring entity may

- (a) cash or negotiate the bid security deposit and retain a sum equal to the difference between the value of the bid submission and the value of the next lowest bid submission and shall return an amount equal to the surplus, if any, to the contractor whose bid security deposit was forfeited, or

- (b) notify the surety company if a bid bond was submitted.

### **Price list**

**81(1)** If the solicitation documents specify that a statement shall accompany each bid submission indicating the price at which the prospective contractor would supply any named item from a named manufacturer, the prospective contractor shall submit with its bid submission a separate list showing the prices included in its bid price for the named item and the price for the item if supplied by the named manufacturer.

**81(2)** The procuring entity shall not post on the New Brunswick Opportunities Network the information contained in the separate list.

**81(3)** The procuring entity may request that the successful contractor use the named items supplied by the named manufacturer in the construction services and the bid submission price per unit shall be amended accordingly.

### **Subdivision iii**

#### **Bid Submissions**

### **Bid submissions**

**82(1)** A prospective contractor shall ensure that its bid submission

- (a) is legible and properly completed,
- (b) contains the proper solicitation number, and
- (c) is submitted to the procuring entity in accordance with the requirements set out in the solicitation documents by the date and time specified in those documents.

**82(2)** A paper bid submission in a sealed envelope that does not refer to the solicitation number on the envelope shall be opened by the procuring entity for the purpose of matching it to a competitive bidding process, and the procuring entity shall take all reasonable measures to preserve the confidentiality of the envelope's contents.

### **Amending bid submissions**

**83(1)** A prospective contractor may amend a bid submission that has been submitted to a procuring entity if the amendment is submitted in accordance with the requirements set out in the solicitation documents by the date and time specified in those documents.

**83(2)** A prospective contractor shall ensure that an amendment to its bid submission

(a) is signed by the person who signed the original bid submission or by a person authorized to sign on their behalf, and

(b) clearly indicates the solicitation number applicable to the bid submission being amended.

**83(3)** For the purposes of this Regulation, a bid submission includes any amendments to the bid submission that comply with this section.

### **Subdivision iv**

#### **Receipt of Bid Submissions**

##### **Date and time of official receipt**

**84(1)** On receipt of a paper bid submission under section 82, a procuring entity shall stamp the bid submission with the date and time of its receipt, and this shall be the official date and

time of receipt of the bid submission, which shall be stored in a secure place until the bid submissions are opened.

**84(2)** On receipt of a bid submission by electronic means, including through the New Brunswick Opportunities Network or another approved electronic tendering system, the official date and time of receipt of the bid submission shall be that recorded by the system.

### **Limit to confidentiality**

**85(1)** A procuring entity shall take all reasonable measures to preserve the confidentiality of a bid submission received by fax transmission.

**85(2)** The confidentiality of information contained in a bid submission received by fax transmission is not assured, and the procuring entity shall not be held liable if the information becomes known inadvertently.

### **Closure of solicitation period**

**86** A solicitation period shall close at the date and time specified in the solicitation documents, and a bid submission received after that date and time is a late bid submission.

### **Withdrawal of bid submissions**

**87** A prospective contractor may withdraw a bid submission after the closure of the solicitation period specified in the solicitation documents only if this option was disclosed in the solicitation documents.

**Late bid submissions**

**88(1)** Subject to subsection (2), a late bid submission shall not be accepted in a competitive bidding process and, in the event that the competitive bidding process requires the submission of paper bid submissions, a late bid submission

- (a) shall be stamped or recorded in accordance with section 84,
- (b) if possible, shall be returned unopened to the prospective contractor.

**88(2)** With the approval of the Minister or the head of a Schedule 2 entity, as the case may be, a procuring entity may accept a late bid submission if the fault for the late bid submission is solely attributable to the procuring entity.

**88(3)** If the Minister or the head of a Schedule 2 entity approves the acceptance of a late bid submission, all documents related to the approval shall be maintained in the procurement file.

**Bid submissions received by fax transmission**

**89(1)** If a procuring entity receives a bid submission by fax transmission, only the pages that are fully transmitted by the closure of the solicitation period may be accepted in the competitive bidding process, and all the pages received after the closure of the solicitation period shall be rejected.

**89(2)** A bid submission received by fax transmission shall be rejected if all the information required in the bid submission is not transmitted by the closure of the solicitation period.

**89(3)** If, during the evaluation of a bid submission, it is determined that any required information was not received by the closure of the solicitation period, the procuring entity shall reject the bid submission.

## **Subdivision v**

### **Opening of Bid Submissions**

#### **Who opens bid submissions**

**90** Regardless of whether bid submissions are to be opened in public, only the person designated by a procuring entity to open the bid submissions may open them.

#### **Opening of bid submissions**

**91(1)** If bid submissions are to be opened in public, the procuring entity shall open them at the location, date and time specified in the solicitation documents.

**91(2)** If a competitive bidding process requires the submission of bid submissions by electronic means, the procuring entity shall open them at the date and time specified in the solicitation documents.

#### **Rejection of bid submissions**

**92(1)** Subject to section 93, the person designated to open bid submissions shall reject a bid submission for any of the following reasons:

- (a) the bid submission is not signed;
- (b) the bid submission is not accompanied by a bid bond or a bid security deposit in the form and in the amount required by the solicitation documents;



- (c) if more than one item is being procured, the bid submission does not contain a total price if one was required by the solicitation documents; or
- (d) the bid submission is illegible.

**92(2)** If a prospective contractor submits more than one bid submission and they are not marked as alternative submissions, the last bid submission received prior to closure of the solicitation period shall be accepted, and all other bid submissions from that prospective contractor shall be rejected.

#### **Rectification of bid submission**

**93** If the authority to allow the rectification of a bid submission was disclosed in the solicitation documents and the rectification would not give a prospective contractor an unfair advantage over other prospective contractors who submitted bid submissions, a procuring entity, in accordance with that authority, may allow the prospective contractor whose bid submission would otherwise be rejected for the reasons set out in subsection 92(1) to rectify the bid submission by the date and time specified in the solicitation documents.

#### **No award on opening**

**94** A procuring entity shall not award a procurement contract at the time that bid submissions are opened.

#### **Disclosure of information**

**95(1)** In the case of an open competitive bidding process based on price, a procuring entity may, after the opening of bid submissions and before the award of a procurement contract, disclose the names of the prospective contractors and, if a total price was required by the solicitation documents, the total price of their respective bid submissions.

**95(2)** In the case of an open competitive bidding process based on points, a procuring entity may, after the opening of bid submissions and before the award of a procurement contract, disclose the names of the prospective contractors.

**95(3)** The information disclosed under this section shall be posted on the New Brunswick Opportunities Network within five business days after the opening of the bid submissions.

### **Examination for compliance**

**96(1)** After the opening of bid submissions, a bid submission shall be evaluated to determine whether it complies with the mandatory requirements set out in the solicitation documents and shall be rejected if it does not comply.

**96(2)** A bid submission may be found not to be in compliance for reasons that include the following:

- (a) the submission contains substantive qualifications or is subject to significant conditions that are incompatible with the terms of the solicitation documents;
- (b) the submission is from a disqualified prospective contractor;
- (c) the submission does not comply with the mandatory requirements of the solicitation documents;
- (d) the submission contains a change in price that was not initialled by the person who signed the submission; or
- (e) the procuring entity determines that the information submitted about the prospective contractor's qualifications are false.

**Minor non-compliance**

**97(1)** Despite section 96, if the authority to waive a minor non-compliance with the mandatory requirements set out in the solicitation documents was disclosed in the solicitation documents, a procuring entity may, in accordance with that authority, waive the minor non-compliance and accept the bid submission.

**97(2)** For the purposes of subsection (1), a failure to comply with the mandatory requirements is a minor non-compliance if it

- (a) affects the form of the bid submission, rather than its substance,
- (b) does not affect the bid submission's price, delivery, quality or quantity, and
- (c) if waived, would not give the prospective contractor an unfair advantage over other prospective contractors who submitted bid submissions.

**Subdivision vi****Evaluation of Bid Submissions****Evaluation standard**

**98(1)** A procuring entity shall objectively evaluate a bid submission accepted into the competitive bidding process and shall consider all bid submissions equally, fairly and honestly.

**98(2)** All bid submissions accepted in the same competitive bidding process shall be evaluated by the same individual or group of individuals.

### **Evaluation according to solicitation documents**

**99** When evaluating a bid submission and determining the successful contractor, a procuring entity shall use only those criteria, weighting and procedures set out in the solicitation documents and shall apply those criteria and procedures in only the manner set out in the solicitation documents.

### **Discrepancy in price or miscalculation**

**100** In the event of a discrepancy or miscalculation between the unit price and the total price in a bid submission, the procuring entity shall recalculate the total price for evaluation purposes by taking into account the unit price.

### **Clarification of bid submissions**

**101(1)** A procuring entity may request clarification from a prospective contractor about its bid submission.

**101(2)** A request for clarification shall specify the date on which the information shall be received by the procuring entity and state that only clarifying information received by that date may be considered.

**101(3)** All communication between a procuring entity and a prospective contractor with respect to a clarification shall be in writing.

**101(4)** No changes to the substance of a bid submission may be made, proposed or allowed following a request for clarification.

**Abnormally low price**

**102(1)** If a procuring entity is of the opinion that a bid submission price, in combination with other elements of the submission, is abnormally low in relation to the subject matter of the procurement to the extent that it raises concerns about the prospective contractor's ability to perform the obligations under the procurement contract, the procuring entity may, if the following conditions have been met, reject the bid submission:

- (a) the procuring entity has requested clarification from the prospective contractor about the bid submission under subsection 101(1); and
- (b) after considering the clarifying information provided by the prospective contractor within the period provided for doing so, the procuring entity's concerns with the bid submission remain.

**102(2)** The decision to reject a bid submission, including the reasons for rejecting the submission, and all communication between the procuring entity and the prospective contractor shall be retained in the procurement file.

**102(3)** A procuring entity shall promptly communicate to the prospective contractor the decision to reject a bid submission.

**102(4)** All communication between a procuring entity and a prospective contractor with respect to a clarification shall be in writing.

**Cancellation of a competitive bidding process**

**103** A procuring entity may cancel a competitive bidding process and decline to enter into a procurement contract in any of the following circumstances:

- (a) none of the bid submissions are acceptable;
- (b) the construction services that were the subject matter of the competitive bidding process are no longer required; or
- (c) any other circumstances set out in the solicitation documents if the authority to cancel the procurement was disclosed in those documents.

### **Negotiations during competitive bidding process**

**104(1)** In the context of a competitive bidding process, the terms of a procurement contract may be negotiated between a procuring entity and a prospective contractor if the following conditions are met:

- (a) the authority to negotiate is disclosed in the solicitation documents, including the negotiation process to be used and the conditions under which negotiations are to take place;
- (b) it appears from the procuring entity's evaluation that no bid submission is obviously the most advantageous based on the criteria set out in the solicitation documents;
- (c) the negotiations are confidential, and the procuring entity shall not disclose any information about the bid submission of another prospective contractor;
- (d) the procuring entity may neither give an unfair advantage to nor discriminate against a prospective contractor in the course of negotiations; and
- (e) prospective contractors are eliminated from the competitive bidding process based on the criteria set out in the solicitation documents.

**104(2)** If negotiations are conducted concurrently with multiple prospective contractors, the procuring entity shall provide a common deadline for the participating prospective contractors to submit any new or revised bid submissions.

**104(3)** If negotiations are conducted consecutively with one prospective contractor at a time, the procuring entity shall provide a deadline for the participating prospective contractor to submit any new or revised bid submissions prior to proceeding to negotiate with the next ranked prospective contractor.

### **Subdivision vii**

#### **Preferential Treatment**

##### **Definitions**

**105** The following definitions apply in this Subdivision.

“Atlantic Canadian contractor” means a contractor of construction services that has a place of business in Atlantic Canada. (*entrepreneur du Canada atlantique*)

“Canadian value-added” means

- (a) for a procurement of construction services commenced before July 1, 2017, Canadian value-added as defined in Article 518 of the Agreement on Internal Trade, and
- (b) for a procurement of construction services commenced on or after July 1, 2017, Canadian value-added as defined in Article 521 of the CFTA. (*valeur ajoutée canadienne*)

**Conditions precedent**

**106(1)** In order for a procuring entity to give preferential treatment, the solicitation documents shall indicate clearly that preferential treatment may be given and shall describe the nature and method of giving the preferential treatment.

**106(2)** In addition to the requirements of subsection (1), if preferential treatment is to be given for Canadian value-added, the solicitation documents shall indicate the level of preference to be used in the evaluation and the rules applicable to determine the extent of Canadian value-added.

**Prospective contractor may be advantaged only once**

**107** A prospective contractor may be advantaged by preferential treatment only once during a competitive bidding process, regardless of whether the competitive bidding process is completed in stages or multiple parts.

**Preferential treatment permitted below trade agreement thresholds**

**108** A procuring entity may give preferential treatment to a New Brunswick contractor or an Atlantic Canadian contractor if the estimated value of the construction services to be procured is below the lowest applicable threshold value of any relevant trade agreements.

**Application of preferential treatment below trade agreement thresholds**

**109** When giving preferential treatment under section 108, a procuring entity shall observe the following order of priority, regardless of whether bid submissions are evaluated based on price or a point system:

- (a) firstly, New Brunswick contractors; and



(b) secondly, Atlantic Canadian contractors.

### **Preferential treatment permitted for New Brunswick contractors**

**110** A procuring entity may give preferential treatment to a New Brunswick contractor for the procurement of construction services if the applicable trade agreements provide an exception for those construction services or those construction services are not subject to trade agreements.

### **Evaluations based on price**

**111** When bid submissions are evaluated on the basis of price, the bid submissions that fall within the applicable price ranges set out in section 113, as compared to the lowest acceptable bid submission, may be given preferential treatment under section 110.

### **Evaluations based on points**

**112(1)** When bid submissions are evaluated based on a point system, preferential treatment under section 110 may be given if the price component of a bid submission, when compared with the price component of the bid submission that receives the highest score before preferential treatment is applied, is within the applicable range set out in section 113.

**112(2)** The additional points that may be given as preferential treatment under this section shall be equal to no more than 5% of the total points that a bid submission is otherwise eligible to receive.

**112(3)** For greater certainty, it is understood that the evaluation of bid submissions based on a point system already takes into account the preferential treatments provided for in this Regulation.

**Price ranges**

**113** For the purposes of giving preferential treatment under sections 111 and 112, the applicable price ranges are the following:

- (a) for a procurement contract with an estimated value of \$250,000 or less, a variation of 10% or \$15,000, whichever is less;
- (b) for a procurement contract with an estimated value greater than \$250,000 and less than \$1,000,000, a variation of 5% or \$25,000, whichever is less;
- (c) for a procurement contract with an estimated value of \$1,000,000 or greater, but less than \$5,000,000, a variation of 2.5% or \$100,000, whichever is less;
- (d) for a procurement contract with an estimated value of \$5,000,000 or greater, but less than \$10,000,000, a variation of 2.5% or \$200,000, whichever is less; and
- (e) for a procurement contract with an estimated value of \$10,000,000 or greater, a variation of 2.5% or \$400,000, whichever is less.

**Preferential treatment for Canadian value-added**

**114(1)** A procuring entity may give preferential treatment for Canadian value-added and the amount of the preferential treatment shall be no greater than 10%.

**114(2)** When the procurement of construction services is subject to only one international trade agreement, preferential treatment may be given under subsection (1) only if the estimated value of the construction services is less than the threshold value of that trade agreement.

**114(3)** When the procurement of construction services is subject to more than one international trade agreement, preferential treatment may be given under subsection (1) only if the estimated value of the construction services is less than the lowest applicable threshold value of the relevant trade agreements.

### **Subdivision viii**

#### **Awarding Procurement Contract**

##### **Authorization for procurement \$1,000,000 or greater**

**115(1)** When the value of a procurement contract is \$1,000,000 or greater, the Minister or the head of a Schedule 2 entity, as the case may be, shall approve the awarding of the contract.

**115(2)** The authority of the Minister under this section may not be delegated to another person.

##### **Award – evaluations based on price**

**116(1)** When bid submissions are evaluated based on price, a procuring entity shall award the procurement contract to the prospective contractor with the compliant bid submission that has the lowest price, subject to any preferential treatment given under this Regulation.

**116(2)** A procuring entity may award a procurement contract to more than one prospective contractor if that possibility was indicated in the solicitation documents, and, in that case, the procurement contracts shall be awarded to the prospective contractors with the compliant bid submissions that have the lowest prices, subject to any preferential treatment given under this Regulation.

**Award – evaluations based on points**

**117(1)** When bid submissions are evaluated based on a point system, a procuring entity shall award the procurement contract to the prospective contractor with the compliant bid submission that receives the highest score.

**117(2)** A procuring entity may award a procurement contract to more than one prospective contractor if that possibility was indicated in the solicitation documents, and, in that case, the procurement contracts shall be awarded to the prospective contractors with the compliant bid submissions that have the highest scores.

**Prequalification list – evaluations based on points**

**118** When bid submissions for inclusion on a prequalification list are evaluated based on a point system, the procuring entity shall place on the prequalification list

- (a) all prospective contractors with compliant bid submissions that meet the minimum acceptable score as indicated in the solicitation documents, or
- (b) a limited number of prospective contractors with compliant bid submissions that have the highest scores if the authority to limit the number of prospective contractors based on their score was disclosed in the solicitation documents.

**Award - tie among bid submissions**

**119** After bid submissions have been evaluated, if there is a tie among two or more bid submissions, the procuring entity shall select a fair and transparent method for awarding a procurement contract under section 116 or 117.

**Notice of successful bid submission**

**120** Subject to section 121, after receiving any required approvals, the procuring entity shall, within 21 days after the closure of the solicitation period or, if a longer period is specified in the solicitation documents, within that period, notify the successful contractor that it has been selected as the successful contractor.

**Extension – notice of successful bid submission**

**121** At any time after the opening of bid submissions and before the expiration of the period referred to in section 120, the procuring entity may request that the prospective contractors agree in writing to an extension of that period and

- (a) if a prospective contractor agrees to the request, the period referred to in section 120 is extended by the amount of time requested by the procuring entity, and
- (b) if a prospective contractor does not agree to the request, the bid submission from that prospective contractor shall be rejected after the expiration of the period referred to in section 120.

**Bid submission is binding**

**122(1)** Unless otherwise stated in the solicitation documents, a bid submission is binding on a prospective contractor

- (a) for a period of 21 days after the closure of the solicitation period,
- (b) if a longer period is specified in the solicitation documents, for that period, or
- (c) if the period referred to in section 120 is extended under paragraph 121(a), for the extended period.

**122(2)** Despite subsection (1), if the procuring entity has entered into a procurement contract with the successful contractor before the expiration of the period referred to in subsection (1), a bid submission is binding on a prospective contractor until the procuring entity notifies the prospective contractor that the procurement contract has been awarded or posts an award notice on the New Brunswick Opportunities Network in accordance with section 126, as the case may be.

### **Other sub-contractor**

**123(1)** A procuring entity may, after notifying the successful contractor under section 120 that it has been selected as the successful contractor but before entering into the procurement contract, request that the successful contractor accept a subcontractor other than one submitted by the successful contractor in its bid submission, in which case

- (a) the successful contractor may refuse, or
- (b) subject to subsection (2), if the successful contractor accepts, its bid submission price shall be adjusted accordingly.

**123(2)** If a bid depository has been specified in the solicitation notice, the substituted subcontractor shall only be used when the substituted subcontractor has submitted a proper bid submission to the successful contractor within the bid depository rules.

### **Obligations of successful contractor**

**124** The successful contractor shall, within 14 days after being notified under section 120 that it has been selected as the successful contractor or within a longer period agreed to by the procuring entity and the successful contractor,

- (a) supply the procuring entity with a performance bond and a labour and material payment bond in accordance with section 83 of the *Construction Remedies Act*,
- (b) provide proof of insurance coverage for the type of risk and in the amount specified in the solicitation documents, and
- (c) execute the procurement contract.

### **Contract substantially similar**

**125** The terms of a procurement contract shall be substantially the same as the terms set out in the solicitation documents.

### **Notice of award**

**126(1)** When a procuring entity procures construction services for which the procurement is subject to a trade agreement and the procurement contract was awarded following a competitive bidding process, the procuring entity shall, after awarding a procurement contract under section 116 or 117, post an award notice on the New Brunswick Opportunities Network.

**126(2)** The award notice shall include the following information:

- (a) the name and address of the procuring entity;
- (b) the solicitation number;
- (c) a description of the construction services that are the subject matter of the procurement;
- (d) the name and address of the successful contractor;

- (e) if an alternative procurement method that is authorized in the circumstances prescribed in this Regulation was used to procure the construction services, the reasons for using the alternative procurement method;
- (f) the total value of the awarded procurement contract; and
- (g) the date the procurement contract was awarded.

**126(3)** A procuring entity shall post an award notice within 72 days after the procurement contract is awarded.

### **Subdivision ix**

#### **Disclosure Following Award**

##### **Disclosure – competitive bidding process**

**127** When a procurement contract has been awarded following a competitive bidding process, a procuring entity may disclose the name of the successful contractor and the total value of the contract.

##### **Disclosure – procurement by mutual agreement**

**128** The name of the contractor with whom the procuring entity has entered into a mutual agreement under section 135 and the total value of the procurement contract shall be disclosed if required by an applicable trade agreement.

##### **Debriefing**

**129(1)** On the request of an unsuccessful contractor following the award of a procurement contract, the procuring entity shall debrief the unsuccessful contractor by providing feedback on the evaluation of its bid submission.



**129(2)** A procuring entity shall not reveal the following information during a debriefing, except as otherwise provided for in this Regulation:

- (a) details concerning another prospective contractor's bid submission, including the successful contractor's bid submission; and
- (b) the score and ranking of another prospective contractor's bid submission, including the successful contractor's bid submission.

### **Confidentiality**

**130** Except as otherwise required by law, a procuring entity shall not disclose any information acquired during a procurement process if the disclosure would

- (a) endanger the security of the Province or the well-being of its residents;
- (b) interfere with the integrity of the procurement process;
- (c) be contrary to the law or otherwise interfere with the enforcement of the law;
- (d) reveal a trade secret or business practice of or otherwise prejudice the legitimate commercial interests of a contractor or prospective contractor; or
- (e) otherwise impede fair competition.

## **Subdivision x**

### **Standing Offer Agreements**

#### **Establishment of standing offer agreement**

**131(1)** Following a competitive bidding process, a procuring entity may enter into a standing offer agreement with a contractor to procure construction services.

**131(2)** A procuring entity that intends to enter into a standing offer agreement to procure construction services for which the procurement is subject to a trade agreement shall procure them through an open competitive bidding process.

**131(3)** In addition to any other requirements under this Regulation, the solicitation documents for a standing offer agreement shall include the following information:

- (a) the period for which the agreement shall be valid;
- (b) a statement as to how subsequent purchases of construction services shall be made from the contractor under the agreement;
- (c) the terms and conditions of use of the agreement; and
- (d) the Schedule 1 entities, the Schedule 2 entities, the jurisdictions and the public bodies that may procure construction services under the agreement.

#### **Use of standing offer agreement**

**132(1)** A standing offer agreement is valid for only the period specified in the solicitation documents.

**132(2)** Only a Schedule 1 entity, a Schedule 2 entity, a jurisdiction or a public body identified in a standing offer agreement may procure under the agreement.

## **Division B**

### **Alternative Procurement Methods**

#### **Limited competitive bidding process - international trade agreements**

**133(1)** A procuring entity may use a limited competitive bidding process to procure construction services that are strictly necessary and, for reasons of urgency brought about by an event unforeseeable by the following entities, cannot be obtained in a timely manner through an open competitive bidding process:

- (a) if the Minister procures the construction services on behalf of a Schedule 1 entity, the Schedule 1 entity;
- (b) if the Minister procures the construction services on behalf of a Schedule 2 entity, the Schedule 2 entity;
- (c) if a Schedule 2 entity procures the construction services for itself, the Schedule 2 entity;
- (d) if a Schedule 2 entity procures the construction services on behalf of another Schedule 2 entity, the other Schedule 2 entity; or
- (e) if a Schedule 2 entity procures the construction services on behalf of the Minister, the Minister.

**133(2)** If only one international trade agreement applies to the procurement of a construction service, a procuring entity may procure under subsection (1) only if the estimated value of the construction service is less than the threshold value of the trade agreement.

**133(3)** If more than one international trade agreement applies to the procurement of a construction service, a procuring entity may procure under subsection (1) only if the estimated value of the construction service is less than the lowest applicable threshold value of the relevant trade agreements.

### **Procurement restricted to Canadian construction services or Canadian contractors**

**134(1)** The following definitions apply in this section.

“Canadian construction service” means a construction service performed in Canada by

- (a) an individual who is a resident of a province or territory of Canada, or
- (b) an enterprise constituted, established or organized under the law of Canada or the law of a province or territory of Canada. (*service de construction canadien*)

“Canadian contractor” means a contractor of construction services that has a place of business in Canada. (*entrepreneur canadien*)

**134(2)** A procuring entity may use a limited competitive bidding process to restrict a procurement to Canadian contractors or Canadian construction services provided that it is not done for the purpose of avoiding competition among Canadian contractors or discriminating against Canadian construction services or Canadian contractors.

**134(3)** If only one international trade agreement applies to the procurement of a construction service, a procuring entity may procure under subsection (2) only if the estimated value of the construction service is less than the threshold value of the trade agreement.

**134(4)** If more than one international trade agreement applies to the procurement of a construction service, a procuring entity may procure under subsection (2) only if the estimated

value of the construction service is less than the lowest applicable threshold value of the relevant trade agreements.

### **Mutual agreement if only one contractor**

**135** A procuring entity may enter into a procurement contract with a prospective contractor by mutual agreement if only one prospective contractor is able to meet the procurement requirements in any of the following circumstances:

- (a) to recognize exclusive rights, such as exclusive licences or copyright or patent rights;
- (b) there is an absence of competition for technical reasons;
- (c) the supply of the construction service is controlled by a contractor who is a statutory monopoly;
- (d) the procuring entity requires work to be performed on or about a leased building that may be performed only by the lessor; or
- (e) the procuring entity requires work to be performed on property by a contractor according to the provisions of a warranty or guarantee with respect to the property or with respect to the original work of the contractor.

### **Advance contract award notice**

**136(1)** Before entering into a procurement contract with a prospective contractor by mutual agreement under section 135, a procuring entity may post on the New Brunswick Opportunities Network an advance contract award notice indicating that the procuring entity intends to enter into a procurement agreement with a prospective contractor that the procuring entity believes to be the only one able to meet the requirements of the procurement.

**136(2)** An advance contract award notice shall be posted for the minimum solicitation period for an open competitive bidding process set out in section 68 in order to allow interested contractors an opportunity to signal their interest in bidding by submitting a statement of capabilities.

**136(3)** An advance contract award notice shall contain the information listed in section 62.

**136(4)** If a procuring entity receives a statement of capabilities that meets the requirements set out in the advance contract award notice, the procuring entity shall procure the construction services through an open competitive bidding process.

**136(5)** If no other contractor submits a statement of capabilities that meets the requirements set out in the advance contract award notice, the procuring entity may enter into a procurement contract with the prospective contractor by mutual agreement under section 135.

#### **Mutual agreement permitted**

**137(1)** A procuring entity may enter into a procurement contract with a prospective contractor by mutual agreement in order to procure the following construction services:

- (a) construction services with an estimated value of less than \$100,000, if it can be shown that due to a need for specific skills, knowledge or experience, only one contractor or a very limited number of contractors meet the requirements of the procurement;
- (b) construction services procured on behalf of an entity that is subject to neither the Act nor a trade agreement;
- (c) construction services procured from a philanthropic institution or construction services provided by incarcerated persons or persons with disabilities;

- (d) construction services procured from a Schedule 1 entity, a Schedule 2 entity, a government enterprise as defined in the CFTA, another jurisdiction or a public body;
- (e) construction services procured for the specific purpose of providing international assistance, including development aid, provided that the procuring entity does not discriminate on the basis of origin or location within Canada of construction services or contractors; and
- (f) construction services related to culture or cultural industries as defined in the CFTA.

**137(2)** A procuring entity may enter into a procurement contract with a prospective contractor by mutual agreement in order to procure the following construction services provided that it is not done for the purpose of avoiding competition among prospective contractors or discriminating against a prospective contractor:

- (a) construction services that are strictly necessary and, for reasons of emergency brought about by an event unforeseeable by the following entities, cannot be obtained in a timely manner through an open competitive bidding process or a limited competitive bidding process:
  - (i) if the Minister procures the construction services on behalf of a Schedule 1 entity, the Schedule 1 entity;
  - (ii) if the Minister procures the construction services on behalf of a Schedule 2 entity, the Schedule 2 entity;
  - (iii) if a Schedule 2 entity procures the construction services for itself, the Schedule 2 entity;

- (iv) if a Schedule 2 entity procures the construction services on behalf of another Schedule 2 entity, the other Schedule 2 entity; or
- (v) if a Schedule 2 entity procures the construction services on behalf of the Minister, the Minister;
- (b) construction services that, if procured by an open competitive bidding process, would impair the procuring entity's ability to maintain security or order or to protect human, animal or plant life or health;
- (c) a first construction service that is developed at the request of the procuring entity in the course of and for a particular contract for research, experiment, study or original development, including limited production or supply in order to incorporate the results of field testing and to demonstrate that the construction service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs; and
- (d) construction services procured from the winner of a design contest, provided that:
  - (i) the contest is organized in a fair manner;
  - (ii) the procuring entity posts on the New Brunswick Opportunities Network, for a period that the procuring entity considers sufficient to enable prospective contractors to prepare their bid submissions, a notice of the contest containing sufficient information to enable prospective contractors to determine whether they wish to participate in the contest; and
  - (iii) the participants are judged by an independent jury with a view to awarding the design contract to the winner.



**Mutual agreement permitted – international trade agreements**

**138(1)** A procuring entity may enter into a procurement contract with a prospective contractor by mutual agreement in order to procure the following construction services provided that it is not done for the purpose of avoiding competition among prospective contractors or discriminating against a prospective contractor:

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

- (i) if the Minister procures the construction services on behalf of a Schedule 1 entity, the Schedule 1 entity;
- (ii) if the Minister procures the construction services on behalf of a Schedule 2 entity, the Schedule 2 entity;
- (iii) if a Schedule 2 entity procures the construction services for itself, the Schedule 2 entity;
- (iv) if a Schedule 2 entity procures the construction services on behalf of another Schedule 2 entity, the other Schedule 2 entity; or
- (v) if a Schedule 2 entity procures the construction services on behalf of the Minister, the Minister;

(b) if the procuring entity operates a sporting facility or convention centre, construction services procured in order to comply with an agreement that is incompatible with a trade agreement and that was entered into with an entity that is not subject to a trade agreement;

- (c) construction services procured from a non-profit organization, other than a construction service referred to in paragraph 137(1)(c);
- (d) construction services procured for representational or promotional purposes;
- (e) construction services procured for representational or promotional purposes outside the Province; and
- (f) construction services financed primarily from donations.

**138(2)** If only one international trade agreement applies to the procurement of a construction service, a procuring entity may procure under subsection (1) only if the estimated value of the construction service is less than the threshold value of the trade agreement.

**138(3)** If more than one international trade agreement applies to the procurement of a construction service, a procuring entity may procure under subsection (1) only if the estimated value of the construction service is less than the lowest applicable threshold value of the relevant trade agreements.

**Regional economic development – exemption for Schedule 1 entities subject to trade agreements**

**139** After consultation with Treasury Board, the Minister may, on behalf of a Schedule 1 entity that is subject to a trade agreement, enter into a procurement contract with a prospective contractor by mutual agreement in order to promote regional economic development if the procurement complies with the applicable trade agreements.

### **Regional economic development – exemption for Schedule 2 entities subject to trade agreements**

**140** After consultation with Treasury Board, the Minister may grant to a Schedule 2 entity that is subject to a trade agreement a temporary exemption under section 18 of the Act in order to promote regional economic development if the procurement complies with the applicable trade agreements.

### **Regional economic development – exemption for Schedule 1 entities and Schedule 2 entities not subject to trade agreements**

**141(1)** After consultation with Treasury Board, the Minister may, on behalf of a Schedule 1 entity that is not subject to a trade agreement, enter into a procurement contract with a prospective contractor by mutual agreement in order to promote regional economic development if the Minister is satisfied that a region of the Province may gain a significant economic benefit from doing so.

**141(2)** If a Schedule 2 entity is not subject to a trade agreement, the Minister may, after consultation with Treasury Board, grant to the Schedule B entity a temporary exemption under section 18 of the Act for the purposes of promoting regional economic development if the Minister is satisfied that a region of the Province may gain a significant economic benefit from granting the exemption.

### **Procurement set-aside for small businesses**

**142(1)** In this section, “small business” means a business that employs fewer than 100 person.

**142(2)** If the Province establishes a procurement set-aside program for small businesses that is fair, open and transparent and does not discriminate on the basis of origin or location of construction services or prospective contractors, a procuring entity may restrict all or a portion of a solicitation for bid submissions to small businesses in accordance with the program.

## **PART 5**

### **GENERAL PROVISIONS**

#### **Procurement contract**

**143(1)** A procurement contract for construction services shall be made

- (a) in the Short Form Contract or the Standard Construction Contract, if the value of the procurement contract does not exceed \$100,000, or
- (b) in the Standard Construction Contract, if the value of the procurement contract is greater than \$100,000.

**143(2)** The Minister of Transportation and Infrastructure may establish the form and content of the Short Form Contract and the Standard Construction Contract, which may vary according to the class of contracts.

**143(3)** Despite subsection (1), if, in the opinion of the Minister of Transportation and Infrastructure, it is not appropriate to use the Short Form Contract or the Standard Construction Contract for the making of a procurement contract, the Minister may approve the form and content of an alternate form.

**143(4)** The Minister of Transportation and Infrastructure shall cause the Short Form Contract, the Standard Construction Contract and any alternate form made under subsection (3)

to be made available to the public in the form and the manner that the Minister considers appropriate.

**143(5)** In the Short Form Contract, the Standard Construction Contract and any alternate form made under subsection (3), a procuring entity may collect personal information either directly from an individual to whom the information relates or indirectly from another person.

**143(6)** The *Regulations Act* does not apply to the form and content of the Short Form Contract, the Standard Construction Contract and any alternate form made under subsection (3).

**143(7)** If there is a conflict or an inconsistency between the Short Form Contract, the Standard Construction Contract or an alternate form made under subsection (3) and this regulation, this regulation prevails.

### **Insurance**

**144** If a procuring entity requires the successful contractor to provide proof of insurance, the solicitation documents shall specify the amount and type of insurance.

### **Procurement documented**

**145** Regardless of the estimated value of a procurement contract or the procurement method used, a procuring entity shall maintain all the documents related to a procurement, including those necessary to justify the procurement method used.

## **Prohibitions**

**146(1)** No person shall prepare, design or otherwise structure a procurement or separate procurement requirements in order to avoid the requirements of the Act or this Regulation or to avoid the rules set out in a trade agreement.

**146(2)** No person shall select a method for evaluating bid submissions in order to avoid the requirements of the Act or this Regulation.

## **Joint procurement**

**147(1)** In the case of a joint procurement of construction services by a Schedule 1 entity and a Schedule 2 entity, the provisions of the Act and this Regulation that are the most restrictive between those provisions that apply to the Schedule 1 entity and those provisions that apply to the Schedule 2 entity shall be complied with.

**147(2)** When an organization or jurisdiction that is not subject to the Act and this Regulation procures construction services

- (a) on behalf of a Schedule 1 entity, the Minister shall ensure that sections 10, 62 and 68 are complied with, and
- (b) on behalf of a Schedule 2 entity, the Schedule 2 entity shall ensure that sections 36, 62 and 68 are complied with.

## **PART 6**

### **COMMENCEMENT**

## **Commencement**

**148** *This Regulation comes into force on December 1, 2022.*

**SCHEDULE 1**

Department of Aboriginal Affairs  
Department of Agriculture, Aquaculture and Fisheries  
Department of Education and Early Childhood Development  
Department of Environment and Local Government  
Department of Finance and Treasury Board  
Department of Health  
Department of Justice and Public Safety  
Department of Natural Resources and Energy Development  
Department of Post-Secondary Education, Training and Labour  
Department of Social Development  
Department of Tourism, Heritage and Culture  
Department of Transportation and Infrastructure  
Elections New Brunswick  
Executive Council Office  
Labour and Employment Board  
Language Training Centre  
Legislative Assembly  
New Brunswick Police Commission  
New Brunswick Women's Council  
Office of the Attorney General  
Office of the Auditor General  
Office of the Comptroller  
Office of the Leader of the Opposition  
Office of the Lieutenant-Governor  
Office of the Premier

Opportunities New Brunswick

Service New Brunswick

Anglophone North School District

Anglophone East School District

Anglophone South School District

Anglophone West School District

Francophone nord-ouest school district

Francophone nord-est school district

Francophone sud school district

DRAFT  
ÉBAUCHE



**SCHEDULE 2**

Collège communautaire du Nouveau-Brunswick (CCNB)

EM/ANB Inc.

Financial and Consumer Services Commission

Kings Landing Corporation

New Brunswick Community College (NBCC)

New Brunswick Economic and Social Inclusion Corporation

New Brunswick Energy Marketing Corporation

New Brunswick Health Council

New Brunswick Housing Corporation

New Brunswick Liquor Corporation

New Brunswick Power Corporation

New Brunswick Research and Productivity Council

Regional Development Corporation

Regional Health Authority A

Regional Health Authority B

Workplace Health, Safety and Compensation Commission

## SCHEDULE 3

<b>Offences Resulting in Disqualification</b>		
<b>Provision</b>	<b>Description of offence</b>	<b>Period of Disqualification</b>
<i>Criminal Code</i> (Canada)		
119	Bribery of judicial officers	5 years
120	Bribery of officers	5 years
121(1)	Frauds on the government	5 years
122	Breach of trust by public officer	5 years
123	Municipal corruption	5 years
124	Selling or purchasing office	5 years
125	Influencing or negotiating appointments or dealing in offices	5 years
132	Perjury (in connection with a public contract)	5 years
136	Witness giving contradictory evidence (in connection with a public contract)	5 years
139	Obstructing justice	1 year

220	Causing death by criminal negligence (in connection with a public contract)	5 years
221	Causing bodily harm by criminal negligence (in connection with a public contract)	5 years
236	Manslaughter (in connection with a public contract)	5 years
336	Criminal breach of trust	5 years
346	Extortion	2 years
362	False pretence or false statement	5 years
366	Forgery	5 years
368	Use, trafficking or possession of forged document	5 years
374	Drawing document without authority	1 year
375	Obtaining something by instrument based on forged document	5 years
380	Fraud – property, money or valuable security or service	5 years
382	Fraudulent manipulation of stock exchange transactions	2 years
382.1	Prohibited insider trading and tipping	2 years
388	Misleading receipt or acknowledgment	5 years

390	Fraudulent receipts, certificates or acknowledgments under the <i>Bank Act</i>	1 year
392	Disposal of property to defraud creditors	1 year
397	Falsification of books and documents	5 years
398	Falsifying employment record	5 years
402	Trader failing to keep accounts	1 year
422	Criminal breach of contract	2 years
423	Intimidation (in connection with a public contract)	2 years
423.1	Intimidation of a justice system participant or a journalist	2 years
425	Offences by employers	2 years
425.1	Threats and retaliation against employees	2 years
426	Secret commissions	2 years
430(2)	Mischief causing actual danger to life	2 years
430(5.1)	Act or omission likely to constitute mischief	2 years
462.31	Laundering proceeds of crime	5 years
463	Attempts and accessories	Period identical to

		the period relating to the offence concerned
464	Counselling offence that is not committed	Period identical to the period relating to the offence concerned
465	Conspiracy	Period identical to the period relating to the offence concerned
467.11	Participation in activities of criminal organization	5 years
467.12	Commission of offence for criminal organization	5 years
467.13	Instructing commission of offence for criminal organization	5 years
<b><i>Competition Act (Canada)</i></b>		

45	Conspiracies, agreements or arrangements between competitors	5 years
46	Implementation of foreign directives	5 years
47	Bid-rigging	5 years
<b><i>Corruption of Foreign Public Officials Act</i></b> (Canada)		
3	Bribing a foreign public official	5 years
<b><i>Controlled Drugs and Substances Act</i></b> (Canada)		
5	Trafficking in substance and possession for purpose of trafficking	5 years
6	Importing or exporting substances and possession for the purpose of exporting	5 years
7	Production of substance	5 years

<b><i>Income Tax Act</i></b> <b><i>Act (Canada)</i></b>		
239(1)(a)	Making, or participating in, assenting to or acquiescing in the making of, false or deceptive statements in a return, certificate, statement or answer	5 years
239(1)(b)	Destroying, altering, mutilating or otherwise disposing of records or books of account to evade payment of taxes	5 years
239(1)(c)	Making, or assenting to or acquiescing in the making of, false or deceptive entries, or omitting to enter, or assenting to or acquiescing in the omission of, a material particular, in records or books of account of a taxpayer	5 years
239(1)(d)	Wilfully evading or attempting to evade compliance with the Act or payment of taxes	5 years
239(1)(e)	Conspiring with any person to commit an offence described in paragraphs 239(1)(a) to (d)	5 years
<b><i>Excise Tax Act</i></b> <b><i>(Canada)</i></b>		
327(1)(a)	Making, or participating in, assenting to or acquiescing in the making of, false or deceptive statements in a return, application, certificate, statement, document or answer	5 years

327(1)(b)(i)	Destroying, altering, mutilating, secreting or otherwise disposing of documents for the purpose of evading payment or remittance of any tax or obtaining a refund or rebate to which the person is not entitled	5 years
327(1)(b)(ii)	Making, or assenting to or acquiescing in the making of, false or deceptive entries, or omitting, or assenting to or acquiescing in the omission, to enter a material particular in the documents of a person for the purpose of evading payment or remittance of any tax or obtaining a refund or rebate to which the person is not entitled	5 years
327(1)(c)	Wilfully evading or attempting to evade compliance with the Act or payment or remittance of tax or net tax imposed under the Act	5 years
327(1)(d)	Wilfully, in any manner, obtaining or attempting to obtain a rebate or refund to which the person is not entitled	5 years
327(1)(e)	Conspiring with any person to commit an offence described in paragraphs 327(1)(a) to (c)	5 years