

# **THE ATLANTIC PROCUREMENT AGREEMENT**

## **A MEMORANDUM OF AGREEMENT ON THE REDUCTION OF INTERPROVINCIAL TRADE BARRIERS RELATING TO PUBLIC PROCUREMENT**

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**NEW BRUNSWICK**

**NEWFOUNDLAND AND LABRADOR**

**NOVA SCOTIA**

**PRINCE EDWARD ISLAND**

**APRIL 17, 1996**

**(Amended August 23, 1996)**

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### **MEMORANDUM OF AGREEMENT**

#### **Among:**

**THE GOVERNMENT OF NEW BRUNSWICK, represented herein by its Premier;**

**THE GOVERNMENT OF NEWFOUNDLAND AND LABRADOR, represented herein by its Premier;**

**THE GOVERNMENT OF NOVA SCOTIA, represented herein by its Premier;**

**THE GOVERNMENT OF PRINCE EDWARD ISLAND, represented herein by its Premier;**

**WHEREAS the Provinces of New Brunswick, Newfoundland, Nova Scotia, Prince Edward Island, (hereinafter referred to as the parties) wish to:**

**- recognize that as a result of the Agreement on Internal Trade and international trade agreements, changing patterns of world trade and commerce, and the strengthening of trading blocs such as the European Community, traditional interprovincial trade barriers must be eliminated or reduced so as to improve productivity and global competitiveness of Atlantic firms;**

- note that at the Council of Maritime Premiers' meeting held at Mont-Carmel, Prince Edward Island on June 27, 1989, the Maritime Premiers agreed to reduce or eliminate trade barriers on public sector procurement of goods, services and construction;
- note the decision by First Ministers at their November 1987 Annual Conference to establish a Committee of Ministers on Internal Trade thereby reaffirming and giving further direction to the initiative to reduce interprovincial barriers to trade;
- support the national efforts of the Committee of Ministers on Internal Trade regarding interprovincial trade barriers reduction and wish to encourage those efforts by accelerating progress at a regional level;
- recognize that greater access to public procurement opportunities may assist in improving the efficiency and competitiveness of Atlantic firms;
- recognize that public procurement may support regional economic development without compromising the objectives of the Atlantic Premiers with respect to trade liberalization in the Atlantic region; and
- recognize that potential cost savings and supplier development may be realized through joint purchasing.

**NOW THEREFORE, in consideration of the premises, the parties agree:**

## **1. PURPOSE OF THE AGREEMENT**

**The purpose of this Agreement is to eliminate all forms of discrimination among the participating governments and public entities within their jurisdiction, subject to the terms and conditions of this Agreement.**

## **2. SCOPE OF THE AGREEMENT**

**i) This Agreement shall apply to public sector procurement for the parties in matters relating to goods, services, and construction. The Agreement shall apply to procurement contracts awarded by government funded bodies including departments, agencies, commissions and crown corporations, as set out in Appendix A attached, and to academic institutions, schools and health and social services organizations hereinafter referred to as the ASH sector, as set out in Appendix B. This Agreement also applies to any newly created department, agency, commission, crown corporation or any new body of a comparable status to those already covered in Appendix A or B established by any party subsequent to the ratification of this Agreement.**

**ii) No party to the Agreement shall require general contractors to favor subcontractors or suppliers from their own provinces.**

**iii) This Agreement shall apply to procurement contracts for goods, services, and construction where the estimated value of the contract is:**

- a) Goods: \$ 25,000 or greater**

**b) Services: \$ 50,000 or greater**

**c) Construction: \$100,000 or greater.**

### **3. SUBJECT MATTER OF AGREEMENT**

**i) Except as otherwise stated in this Agreement, all provisions of the Agreement on Internal Trade apply to public procurement for the bodies referenced in Section 2(i).**

**ii) In those instances where a procurement is subject to the provisions of this Agreement but not to those of the Agreement on Internal Trade, the parties agree that no form of discrimination, including but not limited to restrictions or price preferences, except as allowed under Section 4, subsection (iv), shall be used to discriminate between goods or services or the suppliers of goods or services or construction contractors, based on the place of origin of the goods or services or the place of business of the suppliers or contractors within the Atlantic Provinces. In these instances, the procuring entity may, however, give preferential treatment to Atlantic Provinces' goods, services, suppliers or contractors over those from other jurisdictions.**

**iii) Nothing in this Agreement shall prevent any party to this Agreement from negotiating similar agreements with any other jurisdiction.**

**iv) When preferences are used, as allowed in paragraph (ii) above, a value added analysis which includes provisions for Atlantic or provincial content shall be the basis for the preference.**

**v) Bids that clearly involve predatory pricing may be rejected with all such instances reported to the Atlantic Procurement Coordinating Committee.**

### **4. EXEMPTIONS AND EXCEPTIONS**

**i) Except as otherwise specified in this Agreement, the exceptions to and exemptions from the provisions of the Agreement shall be those specified in Article 506 and 507 of the Agreement on Internal Trade.**

**ii) A party may, in support of first-time manufacturing or service facilities, exclude a particular procurement from this Memorandum of Agreement for economic development purposes for a period not exceeding three years. For the purposes of this exception, first-time manufacturing or service facilities refers to the first time such a product is manufactured, processed or assembled or service originated within the region. All such exemptions must be reported to the Atlantic Procurement Coordinating Committee prior to the finalization of the contractual arrangement. The Atlantic Procurement Coordinating Committee will review such exceptions in accordance with appropriate criteria. It is understood that the exemption for first-time services allows the provinces to outsource and privatize government services on a one-time basis for a reasonable period of time to be dictated by the nature of the contract.**

**iii) Professional services listed in Annex 502.1B, subsection (a) of the Agreement on Internal Trade will be exempted from public tendering, but all firms with offices established in the Atlantic Provinces will be given equal opportunities to do business without regard to province of origin. Parties will work toward the development of common procurement practices for these services which will ensure that this provision may be effectively implemented.**

**iv) Notwithstanding Section 4, paragraph (ii), the parties agree that Newfoundland may continue to apply a provincial preference, as defined in its Provincial Preference Act not exceeding 5%, as applied against Maritime firms within the thresholds of the Agreement.**

## **5. PROCUREMENT PROCEDURES AND INFORMATION**

**i) Except as otherwise specified, goods, services and construction procurements covered by the provisions of this Agreement shall be conducted by the public tendering process in accordance with the rules and procedures established by the Agreement on Internal Trade and by this Agreement. Procurements solicited by "Request For Proposals" shall also be subject to all provisions of this Agreement.**

**ii) The tendering body inviting, or causing to be invited, tenders shall open the tenders in a place where the public is permitted to watch and at such time as shall be indicated in the call for tenders.**

**iii) After the award of a contract, any party or any bidder may request and receive, without delay, from the procuring entity, the name and address of the successful bidder and the successful bid price and, if criteria other than price are used in the evaluation of bids, the scoring of all criteria for the successful bidder and the bidder making the inquiry.**

**iv) The parties agree to provide other parties with tender notices for provincial government procurement opportunities in electronic form. Parties agree to make best efforts to extend this electronic exchange of tender notices to ASH sector procurements at the earliest possible date.**

**v) The parties agree, that for the purposes of Article 506 of the Agreement on Internal trade, a "reasonable period of time" will be considered to be not less than 15 calendar days.**

## **6. ATLANTIC PROCUREMENT COORDINATING COMMITTEE**

**i) Each party shall name two (2) officials, one from its purchasing department and one from its economic development department to serve on the ten-member (10) Atlantic Procurement Coordinating Committee.**

**ii) The Conference of Atlantic Premiers shall annually appoint a Chairperson and a Vice-Chairperson of the Atlantic Procurement Coordinating Committee.**

**iii) The Committee shall meet at least semi-annually, or as required.**

**iv) The Committee shall be responsible for:**

**a) monitoring compliance of covered entities with respect to the terms and conditions of this Agreement;**

**b) evaluating and resolving complaints which are registered;**

**c) reviewing the Agreement and forwarding recommendations for amendments to the Conference of Atlantic Premiers;**

- d) evaluating the Agreement and preparing annual reports;**
- e) reviewing threshold levels annually;**
- f) establishing and reviewing reporting requirements;**
- g) examining ways of improving source development;**
- h) implementing directives from the Conference of Atlantic Premiers;**
- i) considering means to use procurement activities to attract investment to the region;**
- j) monitoring interprovincial joint procurement;**
- k) ensuring the effective dissemination of procurement opportunity notices throughout the region including the use of electronic information systems;**
- l) making modifications and adjustments to the Agreement that do not alter the spirit, intent or obligations of the Agreement provided that all decisions of the Committee, with regard to these modifications or adjustments have the unanimous consent of all parties to the Agreement;**
- m) reviewing and making recommendations on the structure of the Committee;**
- n) promoting private and public sector awareness of Atlantic initiatives related to cooperation in the public procurement sector;**
- o) reviewing changes to the list of entities in Appendices A and B;**
- p) other matters which are consistent with the scope of this Agreement.**

## **7. BID PROTEST AND DISPUTE SETTLEMENT**

**The process for resolution of bid protests and disputes between parties to this Agreement is intended to be the same as that defined in Article 513 of the Agreement on Internal Trade with the following modifications and additions:**

- i) Each party shall designate a contact point for receiving and reviewing complaints from parties and suppliers that may arise from the application of this Agreement.**
- ii) For the purpose of a protest initiated by an Atlantic provinces bidder against a procuring entity covered by this Agreement, the review panel referenced in the Agreement on Internal Trade will consist of one of the members of the Atlantic Procurement Coordinating Committee from each of the two parties not directly involved in the dispute. The Chair of the Atlantic Procurement Coordinating Committee will act as Chair of the review panel.**
- iii) When a dispute is referred to a review panel, the Conference of Atlantic Premiers will be notified of the dispute and, when the panel has completed its investigation, a copy of the recommendations will be sent to the Conference of Atlantic Premiers.**

**iv) In the case of disputes or protests involving ASH sector procuring entities, if the protesting bidder cannot resolve the issue directly with the procuring entity, the dispute will be referred to the parties for resolution. Except as provided in Article 5(iii), no party may directly contact an ASH sector entity in another party's jurisdiction for the purpose of resolving a dispute.**

## **8. IMPLEMENTING LEGISLATION AND POLICIES**

### **A. Provincial Legislation and Policies**

**The Provinces will ensure that legislation and policies pertaining to public procurement by those entities listed in Appendix A are consistent with this Agreement and will endeavor to ensure that legislation and policies pertaining to public procurement by those bodies listed in Appendix B are consistent with this Agreement. Each party will provide the other parties with copies of all applicable legislation and policies on request and shall notify the other parties of any changes to legislation or policy which may pertain to the content of this Agreement.**

### **B. ASH Sector Compliance**

**Parties shall disclose to other parties the legislation, regulations, policies or other written documents which are designed to ensure compliance of the ASH sector entities.**

## **9. INFORMATION AND REPORTING**

**Parties will submit quarterly reports to all other parties containing the following information:**

### **(i) For the entities listed in Appendix A:**

**a) A list of all contracts above the thresholds, which, for reasons of expediency due to circumstances such as emergencies or sole source of supply, were not conducted through the public tendering process defined in this Agreement. For each such procurement the list will contain a brief description of the procurement, the name and address of the firm awarded the contract, the total value of the contract, the date of the award and the reasons for the exception.**

**b) A list of all contracts above the thresholds which were awarded through the public tendering process defined in this Agreement, including, for each procurement, a brief description of the procurement, the name and address of the firm awarded the contract, the total value of the contract and the date of the award.**

**(c) The Province of Newfoundland and Labrador will indicate in this report all instances where the 5% Provincial Preference affected the award decision.**

### **(ii) For those entities listed in Appendix B:**

**a) a list of all contracts above the thresholds, which, for reasons of expediency due to circumstances such as emergencies or sole source of supply, were not conducted through the public tendering process defined in this Agreement, shall be reported on a quarterly basis. For each such procurement, a brief description of the procurement, the name and address of the firm awarded the contract, the total value of the contract, the date of the award and the reasons for the exception.**

**b) The Province of Newfoundland and Labrador will include in its exception reporting all instances where the 5% Provincial Preference affected the award decision.**

**c) Reporting obligations in 9(ii) will commence no later than one year after the date on which this Agreement comes into force.**

**(iii) Notwithstanding the foregoing, each party shall ensure that each procuring entity within their jurisdiction maintains all documents related to each procurement covered by this Agreement for a period of at least one year from the date of award. In the event of a bid protest or dispute, any party may request from any other party to review the information for any individual procurement or related procurements.**

**10. WITHDRAWALS**

**A party may withdraw from this Agreement by giving ninety (90) days notice in writing to all other participating Provinces.**

**11. EFFECTIVE DATE**

**This Agreement shall enter into full force and effect at 12:01 A.M., May 13, 1996.**

**The Premiers of the Provinces of New Brunswick, Newfoundland and Labrador, Nova Scotia and Prince Edward Island have executed this Agreement on behalf of their respective Provinces.**

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**Hon. Frank McKenna, Premier of New Brunswick**

**Date:** \_\_\_\_\_

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**Hon. Brian Tobin Witness, Premier of Newfoundland**

**Date:** \_\_\_\_\_

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**Hon. John Savage, Premier of Nova Scotia**

**Date:** \_\_\_\_\_

\_\_\_\_\_

**Hon. Catherine Callbeck, Premier of Prince Edward Island**

**Date:** \_\_\_\_\_

## **APPENDIX A - Departments, Agencies, Organizations**

### **New Brunswick**

**Advisory Council on the Status of Women, Chief Electoral Officer, Communications New Brunswick, Board of Commissioners of Public Utilities, Department of Advanced Education and Labour, Department of Agriculture, Department of Economic Development and Tourism, Department of Education, Department of Environment, Executive Council, Department of Finance, Department of Fisheries and Aquaculture, Department of Health and Community Services, Department of Human Resources Development, Department of Intergovernmental Affairs, Department of Justice, Department of Municipalities, Culture and Housing, Department of Natural Resources and Energy, Department of the Solicitor General, Department of Supply and Services, Department of Transportation, Kings Landing Corporation, Language Training Centre, Legislative Assembly, Liquor Licensing Board, Lotteries Commission of New Brunswick, Maritime Provinces Higher Education Commission, Mental Health Commission of New Brunswick, New Brunswick Crop Insurance Commission, New Brunswick Geographic Information Corporation, New Brunswick Harness Racing Commission, New Brunswick Housing Corporation, New Brunswick Municipal Finance Corporation, New Brunswick Liquor Corporation, New Brunswick Police Commission, New Brunswick Transportation Authority, 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 Ombudsman, Office of the Premier, Policy Secretariat, Premier's Council on Health Strategy, Premier's Council on the Status of Disabled Persons, Public Service Labour Relations Board, Labour and Employment Board, Kings Landing Corporation, New Brunswick Housing Corporation, Regional Development Corporation, Representations and Electoral Boundaries Commission, Round Table on the Environment and the Economy, The New Brunswick Museum, Workers' Compensation Board of the Province of New Brunswick, Workplace Health, Safety and Compensation Commission of New Brunswick, Youth Council of New Brunswick.**

**(Amended February 14, 1997)**

### **Prince Edward Island**

**Department of Agriculture and Forestry, Department of Economic Development and Tourism, Department of Education, Department of Fisheries and Environment, Department of Health and Social Services, Department of Community Affairs and Attorney General, Department of the Provincial Treasury, Department of Transportation and Public Works, Executive Council Office, Office of the Auditor General, Staffing and Classification Board, PEI Housing Corporation, PEI Employment Development Agency, PEI Liquor Control Commission, PEI Health & Community Service Agency, Workers Compensation Board, PEI Museum and Heritage Foundation, Island Regulatory and Appeals Commission, PEI Human Rights Commission.**

### **Nova Scotia**

#### **Departments of Government**

**Agriculture and Marketing, Auditor General, Community Services, Economic Renewal Agency, Education and Culture, Environment, Finance, Fisheries, Health, Housing and Consumer Affairs,**

**Human Resources, Intergovernmental Affairs, Justice, Labour, Legislative and Executive Branches, Municipal Affairs, Natural Resources, Supply and Services, Transportation and Communications.**

**Boards, Agencies, Commissions, etc. of the Public Service**

**Art Gallery of Nova Scotia, Chief Electoral Office, Emergency Measures Organization, Human Rights Commission, Nova Scotia Municipal Finance Corporation, Nova Scotia Business Development Corporation, Nova Scotia Gaming Control Commission, Nova Scotia Housing Development Corporation, Nova Scotia Utilities and Review Board, Nova Scotia Legal Aid Commission, Nova Scotia Liquor License Board, Nova Scotia Securities Commission, Nova Scotia Sport and Recreation Commission, Office of the Ombudsman, Public Archives of Nova Scotia, Sydney Tarponds Cleanup Inc., Waterfront Development Corporation Ltd., Workers Compensation Board of Nova Scotia, Nova Scotia Liquor Commission**

## **Newfoundland & Labrador**

**Advisory Council on the Economy, Alcohol and Drug Dependency Commission, Auditor General, Department of Education and Training, Department of Employment and Labour Relations, Department of Environment, Department of Executive Council, Department of Finance, Department of Fisheries, Food and Agriculture, Department of Health, Department of Industry, Trade and Technology, Department of Justice, Department of Municipal and Provincial Affairs, Department of Natural Resources, Department of Social Services, Department of Tourism, Culture and Recreation, Department of Works, Services and Transportation, Economic Recovery Commission, Enterprise Newfoundland and Labrador Corporation, Government House, House of Assembly, Legal Aid, Newfoundland Liquor Corporation, Newfoundland and Labrador Housing Corporation, Premier's Office, Provincial Advisory Council on the Status of Women, Public Service Commission, Workers' Compensation Commission.**

**Regional Organizations**

**Council of Maritime Premiers' Secretariat, Land Registration and Information Service, Maritime Geomatics Board, Maritime Municipal Training and Development Board, Maritime Provinces Higher Education Commission, Maritime Provinces Education Foundation, Maritime Forestry Complex.**

## **APPENDIX B -ASH Entities**

### **New Brunswick**

**School boards established under the Schools Act Hospital corporations as defined in the Hospital Act The University of New Brunswick - Fredericton and Saint John, St. Thomas University, Université de Moncton, Mount Allison University.**

### **Prince Edward Island**

**The following entities voluntarily agree to comply with the Atlantic Procurement Agreement:**

**University of Prince Edward Island, Holland College, Western School Board, Eastern School Board, La Commission Scolaire de Langue Francaise, East Prince Health, Eastern Kings Health, Queens Region Health and Community Services, Southern Kings Health, West Prince Health.**

## **Nova Scotia**

**Academic Institutions. This group is defined in two parts:**

- (a) Universities that come under the jurisdiction of the Universities Assistance Act;**
- (b) Community Colleges established pursuant to the Community Colleges Act.**

**School Boards - This group is defined as all those entities that come under the jurisdiction of the Education Act and the School Boards Act, and includes all provincially funded elementary, junior high and high schools.**

**Health Care Facilities - This group is defined as all those entities that come under the jurisdiction of the Hospitals Act and those provincially funded health care facilities regulated by the Department of Health.**

**Listing A - list of all ASH sector organizations is available from the Nova Scotia Purchasing Agency. (Amended August 23, 1996)**

## **Newfoundland & Labrador**

**Academic Institutions, School Boards and Schools as established under the: Schools Act - RSN 1990, chS-12, as amended Memorial University Act - RSN 1990, M-7, as amended Colleges Act - SN 1991, as amended**

**Hospital Corporations as defined in the: Hospitals Act - RSN 1990, H-9, as amended**

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