

NEW BRUNSWICK
NEWFOUNDLAND AND LABRADOR
NOVA SCOTIA
PRINCE EDWARD ISLAND

THE ATLANTIC PROCUREMENT AGREEMENT

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

JANUARY 18, 2008

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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 and Labrador, 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;
- Augment and extend the positive elements of the APA (amended May 13, 1996) to include promoting both the general confidence in public sector procurement, and in the fair and equitable access to all Canadian public sector opportunities for suppliers in the Atlantic provinces, particularly with respect to responding to federal procurement opportunities that can benefit the region as a whole; 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:

- i) Eliminate all forms of discrimination among the participating governments and public entities within their jurisdiction, subject to the terms and conditions of this Agreement.
- ii) Enhance awareness of Atlantic capabilities by participating in joint regional supplier development activities.

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 municipalities, academic institutions, schools and health and social services organizations hereinafter referred to as the MASH 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 by departments, agencies and organizations listed in Appendix A where the estimated value of the contract is:
 - a) Goods: \$ 10,000 or greater
 - b) Services: \$ 50,000 or greater
 - c) Construction: \$100,000 or greater

- iv) This Agreement shall apply to procurement contracts for goods, services and construction by entities in Appendix B 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
- v) The parties will begin consultations, as required, with municipalities with a view to their inclusion under Appendix B no later than June 30, 2009.
- vi) To ensure fairness and maintain efficiencies for government requirements, this Agreement will permit the establishment of standing offers through a public tender process consistent with Article 506 of the Agreement on Internal Trade. For the scope of this agreement no party shall favour contractors or suppliers from their own province.
- vii) Notwithstanding Section 2, paragraph iii) a), the parties agree that Prince Edward Island will work toward coming into compliance with Section 2, paragraph iii) a) by June 30, 2008.

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) For purposes of this Agreement the parties agree the procurement process will not be structured or used to discriminate between goods, services or the suppliers of goods and services for construction, based on the place of business of the suppliers within the Atlantic provinces.
- iii) Nothing in this Agreement shall prevent any party to this Agreement from negotiating similar agreements with any other jurisdiction.
- iv) Upon approval of all signatories to this Agreement, this Agreement may be extended to parties outside the Atlantic region provided the outside parties are willing to accept the terms of this Agreement.
- v) Bids that clearly involve predatory pricing may be rejected with all such instances reported to the Atlantic Procurement Coordinating Committee.

- vi) Parties may, if they choose to do so and are permitted by their enabling legislation or governing regulations, engage in reciprocal treatment of out-of-region suppliers, pursuant to Appendix C of this Agreement.
- vii) Each party is responsible for monitoring compliance with this Agreement by its covered entities.

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 or 507, or permitted under Article 508 of the Agreement on Internal Trade.
- ii) Professional services listed in Annex 502.1B, subsection (a) of the Agreement on Internal Trade will be exempted from public tendering, with the view of covering additional professional services in the future.

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 parties for their departments listed in Appendix A of this Agreement, shall follow the procurement procedures as referenced in the Atlantic Standard Terms and Conditions to include the Supplementary Terms and Conditions documents for each province and the process established to amend those terms and conditions by the parties (approved by Council of Atlantic Premiers, June 30, 2004).
- iii) The parties agree to update Appendix A and Appendix B each year by June 30th.

6. **ATLANTIC PROCUREMENT COORDINATING COMMITTEE**

- i) A committee, referred to as the Atlantic Procurement Coordinating Committee (APCC), shall be appointed by the parties to this Agreement and be responsible for administration and management of this Agreement, for communication of activities undertaken through this Agreement, and for coordinating this Agreement with other provincial programs.
- ii) Each party shall appoint two (2) voting members to serve on the eight-member (8) APCC.
- iii) The APCC shall operate by consensus and shall establish all procedures in respect to its own meetings, including rules for conduct of meetings, the appointment of alternates for members, methods of facilitating or chairing meetings, establishing sub-committees, and the making of decisions where members are not physically present.
- iv) The Council of Atlantic Premiers' Secretariat will provide support and coordination services to the APCC, and the APCC may develop a budget to conduct its activities, funded by member departments of the parties and, if requested to do so, the Secretariat will administer the budget.
- v) The APCC shall be responsible for:
 - a) annual reporting on the overall performance of this Agreement and providing recommendations to the Council of Atlantic Premiers;
 - b) monitoring compliance with this Agreement;
 - c) reviewing complaints and disputes;
 - d) reporting on the progress of adding professional services (Section 4) in compliance with this Agreement;
 - e) promoting Atlantic supplier development and product/service standards;
 - f) implementing directives from the Council of Atlantic Premiers;
 - g) promoting private and public sector awareness of Atlantic initiatives related to public procurement; and
 - h) other matters which are consistent with the scope of this Agreement.

- vi) The APCC shall normally meet in person or by conference call at least semi-annually, or as required.
- vii) In the case where the APCC cannot agree on the scope, coverage, or interpretation of this Agreement, a report will be prepared and provided to the Council of Atlantic Premiers for resolution.

7. **BID PROTEST AND DISPUTE SETTLEMENT**

- i) The parties undertake to resolve disputes in a conciliatory, cooperative, and harmonious manner reflecting the spirit and intent of the Agreement. In recognition of the interactive nature of the APA and AIT, the mechanisms are as follows:
 - a) *Bid Protests*: The process for resolution of bid protests arising from supplier complaints is solely provided for in Chapter 5 and Chapter 17 of the AIT. Notwithstanding this, no monetary penalties will be assessed under the Atlantic Procurement Agreement.
 - b) *Other Disputes*: Parties may take any questions of interpretation, scope, and application of the Agreement to the APCC for expeditious resolution. Upon receipt of a request for assistance the APCC will convene within 10 working days to discuss and make recommendations (based on majority opinion) on possible resolution of the dispute. Should a disputing party disagree with the APCC's decision or should the APCC fail to provide same, the party may ask to bring the issue forward to the Council of Atlantic Premiers for decision.

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. MASH Sector Compliance

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

C. Reciprocity Protocol

Parties agree to develop, publish and maintain a Reciprocity Protocol, to be maintained and updated by the APCC. The Protocol forms part of this Agreement as Appendix C. Parties may, if they choose to, and are permitted to do so by legislation or regulation, engage in reciprocal actions in accordance with the provisions of the protocol.

9. INFORMATION AND REPORTING

Each party shall report annually to the other parties and to the Council of Atlantic Premiers' Secretariat, all procurement by its departments listed in Appendix A. The reports shall include the following:

- i) A list of all procurements awarded to Atlantic provinces' suppliers that equal or exceed the applicable threshold.
- ii) The number and total values of the procurements awarded that equal or exceed the applicable threshold. This report shall include a separate total for each of the Atlantic provinces and a combined single entry for procurements awarded to non-Atlantic suppliers. This report shall include separate entries for goods, services and construction.
- iii) The total value of all procurements awarded below the applicable threshold with a separate entry for goods, services and construction.
- iv) Examples of joint procurement activity conducted by the parties.

10. WITHDRAWALS AND MINOR CHANGES

A. Withdrawals

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

B. Minor Changes

The parties agree that the APCC may, from time to time, and in the interests of clarifying the application of the provisions of this Agreement, make modifications and minor changes to this Agreement that do not alter the spirit, intent or obligations of this Agreement, and where such changes shall not be more trade restrictive. Documentation of clarifications or changes may be done through the use of Agreement Addendums, which will be posted along with this Agreement on the Council of Atlantic Premiers' website.

11. EFFECTIVE DATE

This Agreement shall enter into full force and effect at 12:01 A.M., February 18, 2008.

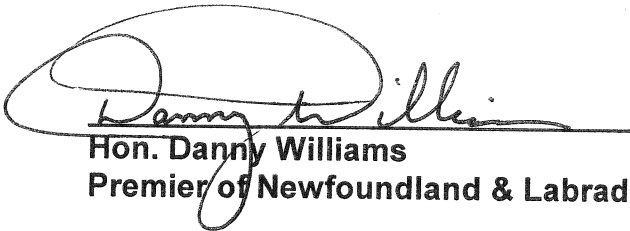
The Premiers of New Brunswick, Newfoundland and Labrador, Nova Scotia and Prince Edward Island have executed this Agreement on behalf of their respective provinces.

On behalf of the Government of New Brunswick

A handwritten signature in black ink, appearing to read "Shawn Graham", written over a horizontal line.

Hon. Shawn Graham
Premier of New Brunswick

On behalf of the Government of Newfoundland and Labrador

A handwritten signature in black ink, appearing to read "Danny Williams", written over a horizontal line.

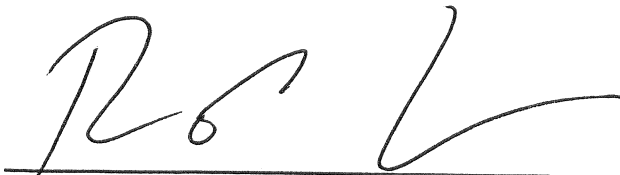
Hon. Danny Williams
Premier of Newfoundland & Labrador

On behalf of the Government of Nova Scotia

A handwritten signature in black ink, appearing to read "Rodney MacDonald", written over a horizontal line.

Hon. Rodney MacDonald
Premier of Nova Scotia

On behalf of the Government of Prince Edward Island

A handwritten signature in black ink, appearing to read "Robert Ghiz", written over a horizontal line.

Hon. Robert Ghiz
Premier of Prince Edward Island

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

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APPENDIX A

Departments, Agencies, Organizations

New Brunswick

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

APPENDIX A

Departments, Agencies, Organizations

Newfoundland & Labrador

Departments

Business
Education
Environment and Conservation
Executive Council
Finance
Fisheries and Aquaculture
Government Services
Health and Community Services
Human Resources, Labour and Employment
Innovation, Trade and Rural Development
Justice
Labrador and Aboriginal Affairs
Municipal Affairs
Natural Resources
Tourism, Culture and Recreation
Transportation and Works

Agencies

Board of Commissioners of Public Utilities
Commissioner of Members' Interests
Electoral Districts Boundaries Commission
Government Purchasing Agency
Government House
Human Rights Commission
Labour Relations Agency
Labour Relations Board
Legal Aid
Multi-Materials Stewardship Board
Newfoundland and Labrador Film Development Corporation
Newfoundland and Labrador Housing Corporation
Newfoundland Liquor Corporation
Newfoundland and Labrador Medical Care Plan – MCP
Office of the Auditor General
Office of the Chief Electoral Officer
Office of the Child and Youth Advocate
Office of the Citizens' Representative
Office of the Information and Privacy Commissioner
Provincial Information and Library Resources Board
Public Service Commission
Royal Newfoundland Constabulary
Workplace Health Safety and Compensation Commission

APPENDIX A

Departments, Agencies, Organizations

Nova Scotia

Departments of Government

Department of Agriculture
Department of Community Services
Department of Economic Development
Department of Education
Department of Energy
Department of Environment and Labour
Department of Finance
Department of Fisheries and Aquaculture
Department of Health
Office of Health Promotion and Protection
Intergovernmental Affairs
Department of Justice
Legislative and Executive Branches
Department of Natural Resources
Public Service Commission
Service Nova Scotia and Municipal Relations
Department of Tourism, Culture and Heritage
Department of Transportation and Infrastructure Renewal

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APPENDIX A

Departments, Agencies, Organizations

Nova Scotia

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

Aboriginal Affairs
Acadian Affairs
African Nova Scotian Affairs
Alcohol and Gaming Authority
Auditor General
Centre for Craft and Design
Chief Electoral Office
Communications Nova Scotia
Crane Operators Appeal Board
Credit Unions, Trust and Loan Companies
Dairy Farmers of Nova Scotia
Disabled Persons Commission
Elections Nova Scotia
Emergency Management Organization
Executive Council Office
Freedom of Information and Protection of Privacy Review Office
Human Rights Commission
Labour Relations Board
Labour Standards Tribunal
Law Reform Commission of Nova Scotia
Natural Products Marketing Council
Nova Scotia Advisory Council on the Status of Women
Nova Scotia Archives and Record Management
Nova Scotia Business Incorporated
Nova Scotia Insurance Review Board
Nova Scotia Legal Aid Commission
Nova Scotia Liquor Commission
Nova Scotia Municipal Finance Corporation
Nova Scotia Office of the Ombudsman
Nova Scotia Securities Commission
Nova Scotia Utility and Review Board
Nova Scotia Youth Secretariat
Occupational Health and Safety Advisory Council
Occupational Health and Safety Appeal Panel
Office of Immigration
Pay Equity Commission

(continued)

APPENDIX A

Departments, Agencies, Organizations

Nova Scotia

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

Pension Regulation Division

Police Commission

Power Engineers and Operators Appeal Committee

Primary Forest Products Marketing Board

Protocol Office

Provincial Apprenticeship Board

Provincial Tax Commission

Public Prosecution Service

Public Trustee

Seniors' Secretariat

Sherbrooke Restoration Commission

Treasury and Policy Board

Voluntary Planning Board

Workers' Compensation Appeals Tribunal

Workers Compensation Board of Nova Scotia

APPENDIX A

Departments, Agencies, Organizations

Prince Edward Island

Executive Council Office
Legislative Assembly
Government House
Agriculture
Communities, Cultural Affairs and Labour
Development and Technology
Education
Environment, Energy and Forestry
Fisheries and Aquaculture
Health
Office of the Attorney General
Provincial Treasury
Social Services and Seniors
Tourism
Transportation and Public Works
Advisory Council on the Status of Women
Employment Development Agency
Energy Corporation
Human Rights Commission
Island Regulatory and Appeals Commission
Island Waste Management Corporation
Museum and Heritage Foundation
P.E.I. Liquor Control Commission

APPENDIX A

Regional Organizations

Council of Maritime Premiers' Secretariat

Council of Atlantic Premiers' Secretariat

Council of Atlantic Ministers of Education and Training

Maritime Provinces Higher Education Commission

Maritime Forestry Complex

Atlantic Provinces Community College Consortium

Atlantic Lottery Corporation

APPENDIX B

MASH 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

Municipalities as defined in the Municipalities Act

Rural Communities as defined in the Municipalities Act

APPENDIX B

MASH Entities

Newfoundland & Labrador

Schools Act SNL 1997 Chapter S 12.2

Memorial University Act RSN 1990 M-7

College Act SNL 1996 Chapter C 22.1

Hospitals Act RSNL 1990 Chapter H-9

Municipalities Act SNL 1999 Chapter M-24

APPENDIX B

MASH Entities

Nova Scotia

Municipalities

Municipalities covered under the Municipal Government Act of 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.

APPENDIX B

ASH Entities

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 française

APPENDIX C

Reciprocity Protocol

Regional Reciprocity Framework Fair Treatment for Atlantic Canadian Suppliers

The Atlantic Canadian provinces are committed to providing fair and reciprocal access to its business opportunities and to ensuring that the supplier community receives fair treatment in their dealings elsewhere in Canada.

Since not all provincial jurisdictions are prepared to provide reciprocal access to goods, services or construction requirements valued at less than Agreement on Internal Trade thresholds, the principles of fairness demand that the Atlantic provinces reserve the right to apply comparable limitations on access as Atlantic suppliers would encounter in attempting to access that market. At the same time, however, public officials in Atlantic Canada must apply due regard to cost control and value in its purchasing when contemplating actions and options.

As a practice, the Atlantic provinces reserve the right to accept or reject, consider and evaluate bids from other jurisdictions on the same basis that the purchasing authorities in those jurisdictions would treat an Atlantic supplier for a similar requirement. In cases where a province or body would not permit an Atlantic supplier full access to review a tender opportunity and/or subsequently bid in an unrestricted fashion, the Atlantic provinces reserve the right to reject that bid at any time during the tender process on the basis of reciprocal treatment. Out of region suppliers from a non-reciprocating province who choose to respond to a subject opportunity would do so with the understanding their submission may not be considered or if considered may be arbitrarily rejected due to the practices of their home province. Where insufficient competition exists, cost savings warrant, the Atlantic provinces may notwithstanding, at their sole discretion, choose to accept a bid from a non-reciprocating provincial jurisdiction.

For awards valued below thresholds as stated in the Agreement on Internal Trade, the Atlantic provinces may award tenders in the following fashion, Home Province being the province issuing the tender.

Home Province Manufacturing
Home Province Distributor
Other Atlantic Manufacturing
Other Atlantic Distributor

Atlantic provinces may consider and evaluate any bids from other jurisdictions located outside Atlantic Canada on the same basis that the purchasing authorities in those jurisdictions would treat a similar bid from a supplier located in Atlantic Canada. The Atlantic province awarding the bid will be the sole judge of whether these conditions will be used and the extent to which they will be applied.