



**THE NEWFOUNDLAND
AND LABRADOR GAZETTE
EXTRAORDINARY**

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**NEWFOUNDLAND AND LABRADOR
REGULATION**

NLR 13/18



**NEWFOUNDLAND AND LABRADOR
REGULATION 13/18**

Public Procurement Regulations
under the
Public Procurement Act
(O.C. 2018-029)

(Filed February 22, 2018)

Under the authority of section 28 of the *Public Procurement Act*,
the Lieutenant-Governor in Council makes the following regulations.

Dated at St. John's, February 21, 2018.

Ann Marie Hann
Clerk of the Executive Council

REGULATIONS

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Short title **1.** These regulations may be cited as the *Public Procurement Regulations*.

Definitions **2.** In these regulations

(a) "Act" means the *Public Procurement Act*;

(b) "change order" means an amendment within the requirements of an existing contract, or an extension of a contract, that is accessory to and does not change the nature of the contract;

(c) "day", unless otherwise specified, means a calendar day;

(d) "estimated value" means an estimate of the contractual value of a commodity based on current market information;

(e) "limited call for bids" means an invitation to specific suppliers to submit a bid;

(f) "preferred supplier" means the supplier who

 (i) submits the lowest priced bid meeting all terms, conditions and specifications of the invitation to tender, or

 (ii) submits the highest ranking proposal meeting all the criteria in a request for proposals;

(g) "pre-qualified supplier" means a supplier who has

 (i) met the public body qualification requirements in response to a request for qualifications, and

(ii) been approved for participation in a proposed procurement by the public body; and

(h) "request for qualifications" means an open call used for the qualification of commodities or to invite suppliers to seek registration on a pre-qualified supplier list.

Procurement
planning

3. (1) Where a public body requires commodities, that public body shall

(a) prepare complete documentation including

(i) specifications,

(ii) terms and conditions, and

(iii) selection and evaluation criteria, where appropriate;

(b) determine an estimated value for the procurement;

(c) determine the appropriate procurement tool to ensure best value is received; and

(d) ensure documentation is completed in sufficient time to permit the orderly conduct of the procurement in accordance with the framework.

(2) A public body may, before issuing an open or limited call for bids,

(a) issue a request for information to determine what commodities are available in the marketplace or to obtain information required for the effective design and conduct of a proposed procurement; or

(b) issue a request for expressions of interest to determine the level of supplier interest or availability for a proposed procurement.

Other requirements

4. (1) A public body shall not split or underestimate requirements in order to avoid compliance with the framework.

(2) A public body shall ensure that proper controls are in place in accordance with the framework.

Procurement thresholds

5. (1) An open call for bids is required for

- (a) goods with an estimated value of \$10,000 or greater;
- (b) services with an estimated value of \$50,000 or greater;
- (c) engineering services and architectural services with an estimated value of \$100,000 or greater;
- (d) public works with an estimated value of \$100,000 or greater; and
- (e) leases of space with an estimated value of \$100,000 or greater.

(2) All thresholds are exclusive of harmonized sales tax.

(3) A public body may, in its discretion, issue an open call for bids for commodities where the estimated value of those commodities is below the thresholds referred to in subsection (1), and the requirements of the framework respecting an open call for bids shall apply.

(4) In this section "services" does not include engineering services and architectural services.

Open call for bids not required

6. Notwithstanding section 5 a public body is not required to issue an open call for bids where

- (a) the head of the public body determines that
 - (i) the estimated value of the commodity being acquired is less than the thresholds established in section 5,
 - (ii) the commodity is of the nature that an open call for bids could reasonably be expected to compromise security,
 - (iii) the commodity is available from a public body,

- (iv) an emergency or a situation of urgency exists and the acquisition of the commodity cannot reasonably be made in time by an open call for bids,
 - (v) there is only one source reasonably available for the commodity,
 - (vi) a list of pre-qualified suppliers has been established using a request for qualifications and the public body is requesting quotations from all pre-qualified suppliers on the list, or
 - (vii) an acquisition of a commodity is for the purpose of resale or for incorporation into a product for resale; or
- (b) set rates have been established by the Public Utilities Board acting under the *Public Utilities Act* or another Act.

Notification - open
call for bids

7. (1) Where a public body requires commodities the estimated value of which meets or exceeds the thresholds referred to in section 5, and section 6 is not applicable, it shall issue an open call for bids to fulfil the requirement in accordance with the framework.

(2) An open call for bids shall be made by publishing a notice on the electronic notification system.

(3) In addition to publication under subsection (2), a public body may publish a notice of an open call for bids in other media, but that notice shall not be published before notification is published on the electronic notification system.

(4) A notice respecting an open call for bids shall contain the following:

- (a) a brief description and location of the commodity;
- (b) the location where information and bid documents may be obtained;
- (c) the conditions for obtaining bid documents;
- (d) the location where bids are to be submitted;
- (e) the date and time of bid closing;

- (f) the date, time and location of the public opening of bids; and
 - (g) a statement that the procurement is subject to trade agreements, if applicable.
- (5) For the purpose of paragraph 4(a), "location" means
- (a) the place where the good or service is to be delivered;
 - (b) the place where the public work is to be executed; or
 - (c) the space required.

Open call for bids

8. (1) An open call for bids shall contain the following:
- (a) a complete and detailed description of the commodity, including all terms, conditions and specifications;
 - (b) all evaluation criteria and processes used to select a preferred supplier;
 - (c) the name and contact information of the public body and official responsible for the open call for bids;
 - (d) the deadline for receipt of bids as well as the location where bids shall be submitted;
 - (e) the date, time and location of the public opening of bids;
 - (f) a statement that the procurement is subject to trade agreements, if applicable;
 - (g) a statement that the procurement process is subject to the *Access to Information and Protection of Privacy Act, 2015*; and
 - (h) a statement that the financial value of the contract will be publicly released as a part of the award notification.

(2) A bid received in response to an open call for bids shall identify any information in the bid that may qualify for an exemption from disclosure under subsection 39(1) of the *Access to Information and Protection of Privacy Act, 2015*.

Public opening of bids

9. (1) All bids received in response to an open call for bids shall be opened publicly.

(2) A public opening of bids shall be conducted by at least 2 representatives of the public body which is responsible for the procurement.

(3) The following information shall be recorded at the public opening of bids by an official of the public body:

- (a) the date, time and location of the public opening;
- (b) the open call for bids reference information;
- (c) the names of the persons in attendance at the opening, including public body representatives; and
- (d) the names of suppliers submitting bids.

(4) The following information shall be provided at public openings:

- (a) the bidders' names; and
- (b) with respect to an invitation to tender only, the bid price.

(5) Notwithstanding paragraph (4)(b), the public body may choose to forward bid prices to suppliers by an electronic or other means, in accordance with the framework, after the public opening instead of reading out bid prices at the public opening.

(6) The bid price information referred to in paragraph (4)(b) and subsection (5) shall be for reference purposes only, and a full bid evaluation is required to determine the preferred supplier.

(7) The information referred to in subsections (4) and (5) shall be disclosed to all persons attending the public opening.

No bids received

10. Where, in an open call for bids,

- (a) no bids are received; or

- (b) no bids which meet the terms, conditions, specifications or other criteria of an open call for bids are received,

the public body may acquire the commodity in the manner referred to in section 11.

Limited call for bids

11. Where a public body requires commodities and an open call for bids is not required because of subparagraph 6(a)(i) or (ii), the public body shall issue a limited call for bids to fulfil the requirement.

Limited call procedures

12. (1) A public body procuring a commodity through a limited call for bids shall do one of the following:

- (a) obtain quotations for that commodity from at least 3 suppliers;
- (b) determine a fair and reasonable price for the commodity based on market conditions; or
- (c) use those other procurement processes that may be determined by the chief procurement officer and established in the general procurement policies.

(2) Notwithstanding subsection (1), the chief procurement officer may identify a preferred approach for use by all or select public bodies for specific commodities or thresholds or both of them.

Pre-qualified supplier list

13. (1) Where a pre-qualified supplier list has been determined as a result of a request for qualifications, a public body shall

- (a) when procuring a commodity where the estimated value of which is below the thresholds referred to in section 5, do one of the following:
 - (i) obtain quotations for that commodity from at least 3 suppliers on the list,
 - (ii) determine a fair and reasonable price from the suppliers on the list for the commodity based on market conditions, or

(iii) use those other procurement processes that may be determined by the chief procurement officer and established in the general procurement policies; or

(b) when procuring a commodity the estimated value of which meets or exceeds the thresholds referred to in section 5, issue a limited call for bids to all the suppliers on the list.

(2) Notwithstanding subsection (1), the chief procurement officer may identify a preferred approach for use by all or select public bodies for specific commodities or thresholds or both of them.

(3) The pre-qualified supplier list shall be valid for one year from the time it is compiled.

(4) Notwithstanding subsection (3), a pre-qualified supplier list may have a validity period that exceeds one year provided that an annual notice is published by the public body and if published by electronic means, made available continuously.

(5) The following may be added to a valid pre-qualified supplier list at any time:

(a) a supplier who initially responded to the request for qualifications but was not selected who now meets the requirements; or

(b) another supplier who meets the requirements.

(6) A pre-qualified supplier list shall be renewed through a request for qualifications.

Evaluation of bids

14. (1) A public body shall evaluate a bid using the framework and

(a) the criteria established in the open call for bids; or

(b) the criteria established in the limited call for bids.

(2) A public body shall document the evaluation completed under subsection (1), and that analysis shall form part of the procurement record.

(3) A public body may require a supplier to provide evidence of its ability to provide the particular commodities required before awarding a contract.

Change orders and extensions

15. (1) A head of a public body may, within the published scope of an open or limited call for bids or a negotiated contract, authorize a change order or an aggregate value of change orders to a value of 10% of the original contract or \$15,000, whichever is greater.

(2) A head of a public body may, within the published scope of an open or limited call for bids or a negotiated contract, authorize a change order or an aggregate value of change orders in excess of the limit allowed under subsection (1) and shall report the change order to the chief procurement officer in the required form.

(3) Notwithstanding the limit allowed under subsection (1), a change order with a value of \$1,000,000 or greater shall be reported to the chief procurement officer in the required form.

Cancellation

16. A public body may cancel an open or limited call for bids or cease negotiations at any time before awarding a contract.

Contract awards

17. (1) A public body, after evaluating bids and determining that an award is to be made, shall award a contract to the preferred supplier in accordance with the framework.

(2) Where, as a result of an open call for bids, only one bid that meets the evaluation criteria is received, the public body may award a contract to the supplier who submitted that bid if it is determined that the price is fair and reasonable.

(3) Where a public body determines that a bid referred to in subsection (2) would not result in best value as the price is not fair and reasonable, the public body may negotiate the price of the contract with the supplier or may cancel the open call for bids.

Lease of space

18. (1) Where a public body reasonably requires a particular space, the Lieutenant-Governor in Council may exempt that procurement from the requirements of an open call for bids.

(2) Where a lease of space is required under subparagraph 6(a)(iv) as a matter of emergency or urgency, the lease shall not exceed 12 months during which time an open call for bids shall be issued.

Exemptions

19. (1) The acquisition of a commodity is exempt from the requirements of the framework where the following requirements are satisfied:

- (a) the minister responsible for economic development has recommended the exemption on the basis that the acquisition of the commodity is for the purpose of economic development;
- (b) the exemption has been approved by the Lieutenant-Governor in Council; and
- (c) the exemption is not precluded by an intergovernmental trade agreement.

(2) Where a public body acquires a commodity that is exempted under subsection (1), the public body shall report the acquisition to the chief procurement officer.

Alternative procurement approaches

20. (1) A public body, with the approval of the Lieutenant-Governor in Council, may establish public-private partnerships, use buying groups or adopt another alternative procurement approach to acquire commodities.

(2) An alternative procurement approach established or used under the authority of subsection (1) shall employ an open and transparent process in accordance with the framework.

(3) A public body which establishes or uses an alternative procurement approach under this section shall maintain records of the procurement in the required manner and shall make those records available to the chief procurement officer upon request.

Group purchasing

21. (1) A public body may delegate its purchasing authority in writing to another public body for the purpose of group purchasing.

(2) Notwithstanding subsection (1), the chief procurement officer may require that public bodies coordinate the group purchasing of commodities in accordance with section 9 of the Act and in this circumstance the public bodies are not required to delegate in accordance with subsection (1).

(3) A public body which delegates purchasing authority under subsection (1) shall inform the chief procurement officer of the delegation in the format determined by the chief procurement officer.

Joint purchasing

22. (1) Where a public body wishes to enter into a joint purchasing agreement, the public body shall send a request to the chief procurement officer.

(2) The province may, under the authority of subsection 5(2) of the Act, enter into a joint purchasing agreement referred to in subsection (1).

Annual
procurement plans

23. (1) A public body shall submit an annual procurement plan in the form required by the chief procurement officer.

(2) The schedule for the submission of annual procurement plans by public bodies shall be determined by the Lieutenant-Governor in Council.

Supplier debriefing

24. (1) An unsuccessful supplier may make a request under section 12 of the Act in writing within 10 business days after the award has been posted.

(2) The public body shall debrief the supplier within 10 business days after a request under subsection (1) is received.

(3) A supplier debriefing shall provide an overview of the supplier's bid and why it was unsuccessful.

(4) A supplier debriefing shall not disclose information regarding another supplier's bid.

(5) Notwithstanding subsection (4), the bid price of the preferred supplier may be disclosed in a supplier debriefing.

Supplier complaint
process

25. (1) A supplier may, following a debriefing, register a complaint in writing with the head of the public body responsible for the procurement.

(2) A complaint referred to in subsection (1) shall be registered within 15 business days of the supplier debriefing.

(3) A complaint shall contain the following information:

- (a) the supplier's name and business contact information;
- (b) reference information respecting the open call for bids; and
- (c) a description of the supplier's complaint.

(4) The head of the public body shall review the complaint and respond to it within 15 business days of receiving it, and shall provide the chief procurement officer with a copy of the response.

Supplier
performance

26. (1) Where a public body identifies an issue that may indicate noncompliant performance or substandard performance by a supplier, the head of the public body may review that supplier's previous performance under contracts issued by that public body.

(2) Where, after a review under subsection (1), the head of the public body determines that the performance of the supplier

- (a) on a single contract is noncompliant performance; or
- (b) cumulatively over several contracts is substandard performance,

the head of the public body may suspend the supplier from bidding on procurement with that public body.

(3) Where the bidding privileges of a supplier have been suspended under subsection (2), the head of the public body shall notify the supplier in writing of that decision and shall outline

- (a) the reasons for the suspension, in detail, and the duration of the suspension; and
- (b) the supplier's right to appeal to the chief procurement officer under section 27.

(4) The head of a public body shall notify the chief procurement officer of a suspension of a supplier's bidding privileges under this section.

(5) For the purpose of this section

- (a) "noncompliant performance" means performance by a supplier which does not satisfy the terms, conditions and specifications of the contract; and
- (b) "substandard performance" means inferior performance by a supplier over the course of 2 or more contracts which does not fulfil the terms, conditions and specifications of the contract to the satisfaction of the head of the public body.

Appeal to chief
procurement officer

27. (1) A supplier may appeal the suspension under section 26 to the chief procurement officer within 15 business days of receiving notification of the suspension.

(2) The chief procurement officer shall review the suspension and decide upon it within 30 business days of receiving the appeal, and may confirm, vary or cancel the suspension.

(3) A person aggrieved by a decision of the chief procurement officer under this section may appeal to a judge of the Trial Division.

Procurement
records

28. (1) A public body shall maintain comprehensive records relating to each procurement by that public body.

(2) Procurement records shall be kept individually by procurement, shall relate to all phases of the procurement process, and shall be maintained in a central file.

(3) Procurement records include the following:

- (a) approved requisitions;
- (b) quotation sheets;
- (c) call for bids;
- (d) amendments;
- (e) bid submissions;
- (f) evaluation documentation;
- (g) contracts;

- (h) supplier performance monitoring;
- (i) change orders and extensions;
- (j) any other correspondence relating to that procurement process; and
- (k) those other procurement records which may be required by the chief procurement officer.

(4) Procurement records may be created and stored electronically.

Delegation of authority

29. (1) The head of a public body may delegate any power, authority, right, duty or responsibility conferred or imposed on him or her under the framework to a person within that public body with the required knowledge, skills and expertise to work effectively within the framework.

(2) Delegation referred to in subsection (1) shall

- (a) be in writing in the form required by the chief procurement officer;
- (b) identify the person and position to whom the power is delegated;
- (c) specify the monetary limits of the delegation, if any; and
- (d) outline any other conditions of the delegation.

(3) The head of a public body who makes a delegation under this section shall maintain records of that delegation in the required manner, and shall make those records available to the chief procurement officer upon request.

Electronic notification system

30. The following information shall be posted on or shall be accessible through the electronic notification system maintained by the agency in the manner determined by the chief procurement officer:

- (a) notification of all open calls for bids for all public bodies;
- (b) notification of amendments to open calls for bids;

- (c) notification of cancellations of open calls for bids;
- (d) the successful bidder and the award information, including a description of the commodity, the date of the award, the financial value of the contract, the term of the contract and the renewal options of the contract;
- (e) the framework, including the Act and regulations and the policies that govern the procurement of commodities;
- (f) intergovernmental trade agreements to which the province is a party;
- (g) links to other provincial procurement opportunities; and
- (h) other information as may be determined by the chief procurement officer.

Transitional - open
call for bids

31. (1) Where a public body issues an open call for bids after the coming into force of these regulations and before the electronic notification system is operational, the public body shall

- (a) at the time the open call for bids is issued, provide the chief procurement officer with information required by him or her respecting the open call for bids; and
- (b) within 15 days of awarding a contract from an open call for bids, provide the chief procurement officer with information required by him or her respecting the award including the name of the successful bidder and the amount of the contract.

(2) The chief procurement officer shall make the information submitted under subsection (1) available upon request.

(3) Where a public body awards a contract from an open call for bids, the public body shall provide confirmation to the chief procurement officer that the contract was awarded in accordance with the Act and these regulations.

(4) Information provided under this section shall be provided to the chief procurement officer in the form and manner required by the chief procurement officer.

Transitional -no
open call for bids

32. (1) Where a public body awards a contract without an open call for bids in accordance with an exception prescribed in subparagraph 6(a)(ii), (iii), (iv), (v), (vi) or (vii) or paragraph 6(b) after the coming into force of these regulations and before the electronic notification system is operational, the public body shall, within 15 days of awarding the contract, provide information to the chief procurement officer in the form and manner required by the chief procurement officer, regarding the specific exception under which the contract was awarded without an open call for bids.

(2) Where a public body acquires a commodity that is exempted under subsection 19(1) after the coming into force of these regulations and before the electronic notification system is operational, the public body shall, within 15 days of awarding the contract, provide information regarding the acquisition of the commodity to the chief procurement officer in the form and manner required by the chief procurement officer.

(3) The chief procurement officer shall make information received under subsections (1) and (2) publicly available within 15 days of receipt of the information.

Commencement

33. (1) These regulations come into force on the day the *Public Procurement Act* comes into force.

(2) Notwithstanding subsection (1)

(a) sections 24 to 27 come into force 6 months after the date these regulations come into force; and

(b) Paragraph 30(d) comes into force on April 1, 2019.

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Extraordinary Gazette Index

Title of Act and Subordinate Legislation made thereunder	CNLR or NL Reg.	Amendment	NL Gazette Date & Page No.
Public Procurement Act			
Public Procurement Regulations [In force on the date the Public Procurement Act comes into force]	NLR 13/18	New	February 22/18 p. 3