



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

PROCUREMENT OF GOODS ACT PROCUREMENT OF GOODS REGULATIONS

PLEASE NOTE

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This document is *not* the official version of these regulations. The regulations and the amendments printed in the *Royal Gazette* should be consulted on the Prince Edward Island Government web site to determine the authoritative text of these regulations.

For more information concerning the history of these regulations, please see the *Table of Regulations* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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PROCUREMENT OF GOODS REGULATIONS

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PROCUREMENT OF GOODS ACT
CHAPTER P-22.1
PROCUREMENT OF GOODS REGULATIONS

Pursuant to section 13 of the *Procurement of Goods Act* R.S.P.E.I. 1988, Cap. P-22.1, Council made the following regulations:

PART I - INTERPRETATION

1. Definitions

In these regulations,

- (a) “**Act**” means the *Procurement of Goods Act* R.S.P.E.I. 1988, Cap. P-22.1;
- (b) “**competitive bidding process**” means a procurement process used to acquire goods through a solicitation for bid submissions that is open to more than one supplier and includes an invitation to tender, a request for proposals and a reverse auction;
- (c) “**construction material**” means asphalt mix, concrete mix, bridge components, gravel, sand, sandstone, and rock and borrow material;
- (d) “**disqualified**” means disqualified from providing goods to Schedule A entities or a Schedule B entity, as the case may be, under section 62;
- (e) “**estimated value**” means the estimated maximum total value of a procurement contract, including the value of all optional renewals, 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 includes transportation costs, tariffs, duties, installation costs, premiums, fees, commissions, interest and any other costs incidental to the purchase of the goods, but does not include taxes;
- (f) “**limited competitive bidding process**” means a competitive bidding process that is limited in some aspect when bid submissions are solicited;
- (g) “**local supplier**” means a manufacturer of goods or vendor of goods that has a place of business in Prince Edward Island;
- (h) “**open competitive bidding process**” means a competitive bidding process open to all suppliers, other than disqualified suppliers, in which bid submissions are solicited by public advertisement;

- (i) “**place of business**” means an establishment where a supplier regularly conducts its activities on a permanent basis, that is clearly identified by name and is accessible during normal business hours;
- (j) “**procurement record**” means a record of all documents related to a procurement, compiled in accordance with section 76;
- (k) “**procurement website**” means the website established by the Minister in accordance with section 11 for the purposes of conducting and facilitating competitive bidding processes;
- (l) “**procuring entity**” means
 - (i) in the case of a Schedule A entity, the Minister or, where the Act or these regulations authorize a Schedule A entity to procure its own goods, the Schedule A entity, or
 - (ii) in the case of a Schedule B entity, the Schedule B entity regardless of whether the procurement is a joint procurement or the Minister procures on its behalf;
- (m) “**solicitation period**” means the period of time during which bids may be received in a competitive bidding process, which closes on the date and time specified in the solicitation documents;
- (n) “**standing offer agreement**” means a procurement contract with a supplier by which a procuring entity agrees to buy goods, when needed, from the supplier for a period specified in the contract and the contract includes all terms applicable to the procurement, including the cost of the goods and delivery requirements;
- (o) “**supplier**” means a manufacturer of goods or a vendor of goods. (EC648/20)

2. Schedule A entities

- (1) For the purposes of clause 1(1)(e) of the Act, the entities listed in Schedule A of these regulations are Schedule A entities.

Schedule B entities

- (2) For the purposes of clause 1(1)(f) of the Act, the entities listed in Schedule B of these regulations are Schedule B entities. (EC648/20)

3. Mixed procurement of goods and services

Where both goods and services are to be obtained by a procurement process, the procurement shall be treated as a procurement of goods if the estimated value of the goods to be obtained is greater than the estimated value of the services to be obtained. (EC648/20)



PART II - PROCUREMENT RULES**Trade Agreements Do Not Apply***Schedule A Entities***4. Schedule A entity may procure itself, under threshold value**

Subject to an applicable standing offer agreement, where the estimated value of goods is less than the lowest applicable threshold value of all relevant trade agreements, a Schedule A entity may procure the goods for itself. (EC648/20)

5. Value under \$5,000

- (1) Where the estimated value of goods is less than \$5,000, a procuring entity may procure the goods for a Schedule A entity by
- (a) mutual agreement with a supplier; or
 - (b) an open or a limited competitive bidding process.

Value \$5,000 to \$9,999

- (2) Where the estimated value of goods is \$5,000 or more but less than \$10,000, a procuring entity may procure the goods for a Schedule A entity by
- (a) mutual agreement with a supplier, after requesting an informal quote in writing from at least three local suppliers; or
 - (b) an open or a limited competitive bidding process.

Value \$10,000 to threshold

- (3) Where the estimated value of goods is \$10,000 or more but less than the lowest applicable threshold value of all relevant trade agreements, a procuring entity may procure the goods for a Schedule A entity by
- (a) an open competitive bidding process; or
 - (b) a limited competitive bidding process, limited to local suppliers.

Competitive bidding process fails

- (4) Where a competitive bidding process conducted pursuant to this section is not successful, a procuring entity may procure the goods for a Schedule A entity by mutual agreement with a supplier. (EC648/20)

*Schedule B Entities***6. Value under \$250,000**

- (1) Where the estimated value of goods is less than \$250,000, a procuring entity may procure the goods for a Schedule B entity by
- (a) mutual agreement with a supplier; or
 - (b) an open or a limited competitive bidding process.

Value \$250,000 to threshold

- (2) Where the estimated value of goods is \$250,000 or more but less than the lowest applicable threshold value of all relevant trade agreements, a procuring entity may procure the goods for a Schedule B entity by
- (a) an open competitive bidding process; or
 - (b) a limited competitive bidding process, limited to local suppliers.

Competitive bidding process fails

- (3) Where a competitive bidding process conducted pursuant to this section is not successful, a procuring entity may procure the goods for a Schedule B entity by mutual agreement with a supplier. (EC648/20)

Exceptions

7. Exception, specific goods or circumstances

Notwithstanding subsections 5(2) and (3) and 6(2), a procuring entity may procure goods under those provisions by mutual agreement with a supplier where

- (a) the goods are one of the following types:
 - (i) compact discs (CDs), digital video discs (DVDs), film, film strips, pre-recorded tapes, videotapes, recordings,
 - (ii) printed test materials,
 - (iii) subscriptions to magazines, newspapers or periodicals,
 - (iv) textbooks,
 - (v) artifacts, related books and plaques for historical projects and buildings,
 - (vi) works of art,
 - (vii) goods of a confidential nature,
 - (viii) representational goods for use outside the province,
 - (ix) repair parts for road maintenance vehicles and equipment,
 - (x) vehicles provided for the use of Ministers,
 - (xi) construction material used for highway construction and maintenance;
- (b) it is necessary to procure the goods from a particular supplier for the following reasons:
 - (i) to ensure compatibility with present supplies,
 - (ii) to meet technical requirements,
 - (iii) the goods are controlled by a statutory monopoly,
 - (iv) the goods originate from a commodity market,
 - (v) the goods are under warranty or a maintenance contract,
 - (vi) the procurement results from a design contest,
 - (vii) the goods are being liquidated or are otherwise available below usual market prices,
 - (viii) goods with the desired characteristics are only available from a particular supplier; or
- (c) the goods are being procured
 - (i) for the first time,



- (ii) in respect of a leased property,
- (iii) for resale,
- (iv) in emergency circumstances,
- (v) to address compromised security or order,
- (vi) from a philanthropic organization, approved by the Minister, or
- (vii) from a public body or non-profit organization. (EC648/20)

Exempt from Trade Agreements

8. Equal to or above threshold value but exempt

Where the estimated value of goods is equal to or greater than the lowest applicable threshold value of all relevant trade agreements but the goods are exempt under the relevant trade agreements, a procuring entity may procure the goods for a Schedule A entity or a Schedule B entity by

- (a) an open competitive bidding process; or
- (b) a limited competitive bidding process, limited to local suppliers. (EC648/20)

Trade Agreements Apply

9. Equal to or above threshold value, relevant trade agreements apply

Where the estimated value of goods is equal to or greater than the lowest applicable threshold value of all relevant trade agreements and the goods are not exempt under the relevant trade agreements, a procuring entity shall procure the goods in accordance with the relevant trade agreements. (EC648/20)

PART III - COMPETITIVE BIDDING PROCESS

10. Application of Part, subject to trade agreements

This Part applies to a competitive bidding process conducted pursuant to the Act and these regulations, subject to relevant trade agreements. (EC648/20)

Conduct of Competitive Bidding Process

11. Procurement website

The Minister shall establish a procurement website for the purposes of conducting and facilitating competitive bidding processes under the Act and these regulations. (EC648/20)

12. Different stages and processes

- (1) A competitive bidding process may be conducted in different stages and using different processes, which may or may not bind the parties, to
 - (a) enable the procuring entity to better identify the subject of the procurement; and
 - (b) enable suppliers to determine if they wish to participate in the competitive process.

Fair, equal and equitable treatment

- (2) All suppliers shall be treated fairly, equally and equitably throughout a competitive bidding process, subject to any limits or requirements set out in solicitation documents.

Fair, equal and equitable treatment within class

- (3) Where the solicitation documents state that a class of suppliers may be given preferential treatment in a manner authorized in these regulations, the procuring entity shall treat all suppliers in that class fairly, equally and equitably. *(EC648/20)*

Future Procurement Plans and Pre-qualification List

13. Notice of planned procurement

- (1) A procuring entity may publish notice of its future procurement plans and, where it does so, shall
- (a) publish the notice as early as possible in the fiscal year; and
 - (b) post the notice on the procurement website for at least 35 days but not more than 12 months before the solicitation notice is issued.

Contents of notice

- (2) The notice of a planned procurement shall state
- (a) the subject matter of the procurement; and
 - (b) the planned date of the publication of the solicitation notice. *(EC648/20)*

14. Establishment of pre-qualification list

- (1) Subject to subsection (2), a procuring entity may, using a competitive bidding process, establish a pre-qualification list of goods or suppliers to be used in a future competitive bidding process.

Open process to establish list if trade agreement

- (2) Where a procuring entity intends to use a pre-qualification list to procure goods that are subject to a trade agreement, the procuring entity shall use an open competitive bidding process to establish the list.

Solicitation documents - information

- (3) In addition to any other requirements in these regulations respecting solicitation documents, the solicitation documents used to establish a pre-qualification list shall state
- (a) the period for which the list is to be established;
 - (b) the procuring entities that may use the list; and
 - (c) any other conditions governing the use of the list. *(EC648/20)*

15. Pre-qualification list – evaluations on points

Where bid submissions for inclusion on a pre-qualification list are evaluated on a point system, the procuring entity shall place on the pre-qualification list all suppliers with accepted bid submissions that meet the minimum acceptable score as indicated in the solicitation documents. *(EC648/20)*



16. Validity period

- (1) A pre-qualification list is valid only for the period indicated in the solicitation documents.

Division into categories

- (2) A procuring entity may divide into categories the goods and suppliers that have been pre-qualified.

List governs process

- (3) When a pre-qualification list has been established, the procuring entity shall restrict the competitive bidding process to which it applies to
- (a) the suppliers that are on the list or an applicable category of the list;
 - (b) the period for which the list was established; and
 - (c) the procurement of the goods on the list or for which the list was established.

Methods of soliciting competitive bids

- (4) The procuring entity shall solicit competitive bids from the suppliers on a pre-qualification list, or a category of the list, by
- (a) inviting the suppliers on the list to respond to the solicitation; or
 - (b) publicly advertising a solicitation notice that indicates that participation in the competitive bidding process is restricted to suppliers that have been pre-qualified. *(EC648/20)*

Solicitation of Bids

17. Posting and contents of public notice

When a solicitation notice is publicly advertised, the procuring entity shall post the notice on the procurement website for the minimum solicitation period specified under section 20, and the notice shall contain the following information:

- (a) the solicitation number;
- (b) a brief description of the goods being procured;
- (c) where the goods being procured are subject to a trade agreement, the name and relevant chapter number of the trade agreement;
- (d) the place where relevant information and solicitation documents may be obtained;
- (e) the conditions for obtaining the solicitation documents;
- (f) the location where a bid submission shall be submitted;
- (g) the date and time by which a bid submission shall be submitted;
- (h) the date, time and location that bid submissions are to be opened, if the submissions are to be publicly opened. *(EC648/20)*

18. Same information and documents

All suppliers shall be provided with the same information and documents for preparing bid submissions, and the information and documents provided shall be adequate for the preparation of a bid submission. *(EC648/20)*

19. Criteria in addition to price

Where 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 will be evaluated, including the relative weight to be assigned to each criterion. (EC648/20)

20. Minimum solicitation period – open competitive bidding

The minimum solicitation period for an open competitive bidding process is 10 days, unless a longer minimum period is required under a trade agreement that applies to the goods being procured. (EC648/20)

21. Solicitation period – limited competitive bidding

Where a procuring entity is procuring goods using a limited competitive bidding process, the procuring entity shall give suppliers reasonable time to prepare bid submissions. (EC648/20)

Modification and Clarification

22. Amendment of solicitation documents

- (1) At any time before the solicitation period closes, a procuring entity may, for any reason, modify the solicitation documents by issuing an amendment.

Communication of amendment

- (2) Where a procuring entity issues an amendment to solicitation documents, the procuring entity shall
- (a) communicate the amendment promptly and in the same manner as the original solicitation documents; and
 - (b) provide suppliers with sufficient time to modify their bid submissions, if necessary.

Notification on website

- (3) A procuring entity shall post notification of an amendment to a publicly advertised solicitation on the procurement website. (EC648/20)

23. Shortening of solicitation period

Subject to section 20, a procuring entity may shorten the solicitation period for a competitive bidding process where

- (a) it is evident that the original closing date was incorrect; or
- (b) the need for the goods being procured has become more immediate. (EC648/20)

24. Extension of solicitation period

A procuring entity may extend the solicitation period for a competitive bidding process where

- (a) the original solicitation period is clearly of an inadequate length to prepare a bid submission;
- (b) suppliers require additional time to prepare bid submissions as a result of an amendment to the solicitation documents; or



- (c) the procuring entity considers it appropriate to extend the solicitation period in the circumstances. *(EC648/20)*

25. Request for clarification

- (1) A supplier may, in writing, request clarification of the solicitation documents from the procuring entity.

Response to clarification request

- (2) A procuring entity shall respond to a written request made under subsection (1) within such reasonable time as to permit the supplier to submit a bid submission.

Communication of clarifying information

- (3) Without identifying the source of a request for clarification, a procuring entity shall communicate the clarifying information to all suppliers at the same time as providing a response under subsection (2) and in the same manner as the original solicitation documents.

Notification on website

- (4) In the case of a publicly advertised solicitation, notification of the clarification shall be posted on the procurement website. *(EC648/20)*

Submission of Bids

26. Requirements for bid submission

- (1) A supplier shall ensure that its bid submission
 - (a) is legible and properly completed;
 - (b) contains the proper solicitation number; and
 - (c) is delivered to the location specified in the solicitation documents by the date and time specified in those documents.

No solicitation number

- (2) Where a procuring entity receives a bid submission in a sealed envelope that does not bear the solicitation number on it, the procuring entity shall open the envelope to match it to a solicitation for bids, while taking all reasonable measures to preserve the confidentiality of the envelope's contents. *(EC648/20)*

27. Amending bid submissions

- (1) A supplier may amend a bid submission that has been submitted to a procuring entity by delivering the amendment to the location specified in the solicitation documents by the date and time specified in those documents.

Requirements for amendment

- (2) A supplier 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 his or her behalf; and
 - (b) clearly indicates the solicitation number applicable to the bid submission being amended.

Bid submission includes amendments

- (3) For the purposes of these regulations, a bid submission includes all amendments to the bid submission that comply with this section, received by the procuring entity. *(EC648/20)*

Receipt of Bid Submissions

28. Date and time of official receipt

- (1) On receipt of a bid submission, including a late bid submission referred to in section 32, 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.

Secure storage

- (2) Subject to subsection 32(3), a procuring entity shall store each bid submission it receives in a secure place until the bid submissions are opened. *(EC648/20)*

29. Confidentiality of bid by facsimile

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

Limitation of liability

- (2) Notwithstanding subsection (1), the confidentiality of information contained in a bid submission received by facsimile transmission is not assured and the procuring entity shall not be held liable if any such information becomes known inadvertently. *(EC648/20)*

30. Close of solicitation period

A solicitation period shall close at the date and time indicated in the solicitation documents. *(EC648/20)*

31. Withdrawal of bid submissions

A supplier may not withdraw a bid submission after the solicitation period closes unless the solicitation documents provide otherwise. *(EC648/20)*

32. Late bid submission

- (1) For the purposes of this section, a “late bid submission” is a bid submission that is received after the solicitation period closes.

Not accepted, exception

- (2) A procuring entity shall reject a late bid submission in a competitive bidding process unless the late receipt of the bid submission was caused solely by the procuring entity.

Returned unopened

- (3) Where a late bid submission is rejected in accordance with subsection (2), it shall be returned, unopened if possible, to the supplier.

Documents on file

- (4) Where a late bid submission is accepted, all documents related to its acceptance shall be maintained in the procurement record. *(EC648/20)*



33. Bid submissions received by facsimile transmission

- (1) Where a procuring entity receives a bid submission by facsimile transmission, the procuring entity may only accept the pages transmitted before the solicitation period closes and shall reject the pages transmitted after the solicitation period closes.

Rejection of bid submission by facsimile transmission

- (2) A procuring entity shall reject a bid submission received by facsimile transmission where all the information required in the bid submission is not transmitted before the solicitation period closes. *(EC648/20)*

Opening Bid Submissions

34. Designated person

- (1) A procuring entity shall designate a person to open bid submissions for a procurement process and only the person designated may open them.

Public opening

- (2) Where bid submissions are to be opened in public, the person designated by the procuring entity shall open them at the location, date and time specified in the solicitation documents. *(EC648/20)*

35. Rejection of bid submissions

- (1) The person designated to open bid submissions shall reject a bid submission that
- (a) is not signed;
 - (b) is not accompanied by a security deposit in the form and in the amount required by the solicitation documents;
 - (c) does not contain a total price, where more than one item is being procured and a total price was required by the solicitation documents; or
 - (d) is not legible.

Multiple bid submissions

- (2) Where a supplier submits more than one bid submission and they are not marked as alternative submissions, the procuring entity shall accept the last bid submission received before the solicitation period closes and all other bid submissions from that supplier shall be rejected. *(EC648/20)*

36. No award on opening

A procuring entity shall not award a procurement contract at the time that bid submissions are opened. *(EC648/20)*

37. Disclosure of information

Following the opening of bid submissions and before awarding a procurement contract, a procuring entity may disclose

- (a) in the case of a competitive bidding process based on price, the name of each supplier who submitted a bid and the total price of the supplier's bid, where a total price was required by the solicitation documents; and

- (b) in the case of a competitive bidding process based on a point system, the name of each supplier who submitted a bid. *(EC648/20)*

Examination and Evaluation of Bid Submissions

38. Examination of bid submission

- (1) Following the opening of bid submissions, the procuring entity shall examine each bid submission.

Reject, does not meet requirements

- (2) A procuring entity shall reject a bid submission that does not meet the mandatory requirements of the solicitation documents.

Exception

- (3) Notwithstanding subsection (2), a procuring entity may accept a bid submission that does not meet the mandatory requirements of the solicitation documents where
 - (a) the solicitation documents authorize the procuring entity to do so;
 - (b) the deficiency in the bid submission
 - (i) affects the form of the bid submission, rather than its substance, and
 - (ii) does not affect price, delivery, quality or quantity in the bid submission; and
 - (c) accepting the bid submission would not give the supplier an unfair advantage over other suppliers who submitted bids. *(EC648/20)*

39. May reject bid submission

A procuring entity may reject a bid submission for reasons that include the following:

- (a) the submission contains substantive qualifications or conditions that are contrary to the terms of the solicitation documents;
- (b) the submission is from a disqualified supplier;
- (c) the submission contains a change in price that was not initialled by the person who signed the submission;
- (d) the procuring entity determines that the information submitted with respect to the qualifications of the supplier is false or misleading. *(EC648/20)*

40. Evaluation standard

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

Same individual or group

- (2) All bid submissions accepted in a competitive bidding process shall be evaluated by the same individual or group of individuals. *(EC648/20)*

41. Evaluation according to solicitation documents

When evaluating a bid submission and determining the successful supplier, a procuring entity shall use only those criteria, weighting and procedures set out in the solicitation documents and shall apply those criteria and procedures only in the manner set out in the solicitation documents. *(EC648/20)*



42. Discrepancy in price

Where there is a discrepancy between the stated unit price and the stated total price in a bid submission, the procuring entity shall use the unit price to calculate the total price for evaluation purposes. (EC648/20)

43. Clarification of bid submission

- (1) A procuring entity may request clarification of a bid submission from a supplier.

No substantive changes

- (2) No changes to the substance of a bid submission may be made, proposed or allowed following a request for clarification under this section. (EC648/20)

44. Abnormally low price

- (1) Subject to subsection (2), a procuring entity may reject a bid submission where it determines that the bid price, in combination with other aspects of the submission, is so abnormally low in relation to the subject matter of the procurement that it raises concerns respecting the supplier's ability to perform the procurement contract.

Clarification

- (2) Before rejecting a bid under subsection (1), a procuring entity shall request and consider clarification of the bid submission from the supplier.

Request in writing

- (3) The request for clarification under subsection (2) shall be in writing and state the deadline for the written submission of clarifying information.

Consideration of information

- (4) A procuring entity may only consider clarifying information received from the supplier by the deadline set out in the request for clarification.

Record

- (5) A procuring entity shall keep a record of a decision to reject a bid submission under this section in the procurement record, including the reasons for rejecting the submission and all written communications between the procuring entity and the supplier.

Notice to supplier

- (6) A procuring entity shall promptly communicate to the supplier a decision to reject a bid submission under this section. (EC648/20)

Negotiation of Terms

45. Negotiations during procurement process

In the context of a competitive bidding process, the terms of a procurement contract may be negotiated between a procuring entity and a supplier if

- (a) the authority to negotiate is set out in the solicitation documents, including the negotiation process to be used and the conditions under which negotiations will take place;

- (b) the negotiations are confidential, and the procuring entity shall not disclose any information with respect to the bid submission of another supplier;
- (c) the solicitation documents do not permit the procuring entity give an unfair advantage to, or discriminate against, a supplier in the course of negotiations; and
- (d) suppliers are eliminated from the process based on the criteria set out in the solicitation documents. *(EC648/20)*

Preferential Treatment

46. Required contents of solicitation documents

To apply preferential treatment in the evaluation of bid submissions, a procuring entity shall clearly indicate on the solicitation documents

- (a) that preferential treatment may be applied; and
- (b) the method to be used in applying the preferential treatment. *(EC648/20)*

47. Supplier may be advantaged only once

A supplier may be advantaged by preferential treatment only once during a procurement process, regardless of whether the procurement is completed in stages or multiple parts. *(EC648/20)*

48. Preferential treatment, local supplier

- (1) Where the estimated value of the goods to be procured is less than the lowest applicable threshold value of all relevant trade agreements, a procuring entity may give preferential treatment to a local supplier.

Evaluation based on price

- (2) Where bid submissions are evaluated on price, a procuring entity may give preferential treatment under subsection (1) by reducing the local supplier's bid price by up to 10% for the purposes of evaluating the bids.

Evaluation based on points

- (3) Where bid submissions are evaluated on a point system, a procuring entity may give preferential treatment under subsection (1) by reducing the price component of the local supplier's bid by up to 10% for the purposes of evaluating the bids. *(EC648/20)*

49. No preferential treatment, exempt goods

Where the estimated value of the goods to be procured is equal to or greater than the lowest applicable threshold value of all relevant trade agreements but the goods are exempt from the application of the relevant trade agreements, a procuring entity shall not give preferential treatment to any supplier. *(EC648/20)*

Cancellation of Competitive Bidding Process

50. Cancellation of a competitive bidding process

A procuring entity may cancel a competitive bidding process and decline to enter into a procurement contract



- (a) where none of the bid submissions are acceptable;
- (b) where the goods that were the subject of the competitive bidding process are no longer required; or
- (c) in accordance with the solicitation documents, if applicable. *(EC648/20)*

Awarding Procurement Contract

51. Award – evaluations on price

- (1) Subject to subsection (2), where bid submissions are evaluated on price, the procuring entity shall award the procurement contract to the supplier with the accepted bid submission that has the lowest price, subject to any preferential treatment given in accordance with these regulations.

Award to more than one supplier

- (2) A procuring entity may award a procurement contract under subsection (1) to multiple suppliers with the accepted bid submissions with the lowest prices, if that possibility was indicated in the solicitation documents.

Price of good

- (3) For the purposes of this section, the price of a good includes the total cost of ownership of the good or the value of the return on investment to the procuring entity, where the solicitation documents disclosed that these factors would be considered when evaluating bid submissions. *(EC648/20)*

52. Award – evaluations on points

- (1) Subject to subsection (2), where bid submissions are evaluated on a point system, the procuring entity shall award the procurement contract to the supplier with the accepted bid submission that receives the highest score.

Award to more than one supplier

- (2) A procuring entity may award a procurement contract under subsection (1) to multiple suppliers with the accepted bid submissions that have the highest scores, if that possibility was indicated in the solicitation documents.

Points include preferential treatment

- (3) For greater certainty, when bid submissions are evaluated on a point system, preferential treatment given under these regulations is considered in the awarding of points. *(EC648/20)*

53. Award – Tie among bid submissions

Where there is a tie among two or more accepted bid submissions after bid submissions have been evaluated, the procuring entity shall select a fair and transparent method for awarding a procurement contract under section 51 or 52. *(EC648/20)*

54. Authorization for procurement \$25,000 to \$249,999

- (1) Notwithstanding sections 51 and 52, where the value of a procurement contract is \$25,000 or more but less than \$250,000, no person shall award a contract to a supplier or suppliers without the approval of the Minister or the head of a Schedule B entity, as the case may be.

No delegation

- (2) The authority of the Minister or the head of a Schedule B entity to approve a procurement contract under subsection (1) may not be delegated to another person.

Authorization for procurement \$250,000 or greater

- (3) Notwithstanding sections 51 and 52, where the value of a procurement contract is \$250,000 or more, no person shall award a contract to a supplier or suppliers without the approval of the Treasury Board. *(EC648/20)*

55. Award documents

- (1) On awarding a procurement contract following a competitive bidding process, a procuring entity shall issue award documents to the successful supplier or suppliers and the documents shall include all information pertinent to the procurement.

Amendments or alterations

- (2) A procuring entity may only amend or alter award documents issued under this section in the following circumstances:
- (a) on the agreement of the supplier and the procuring entity, to make an addition to or deletion from the contract with respect to a matter not dealt with in the original solicitation documents due to an error or oversight;
 - (b) to correct a clerical error in the award documents to render the award documents consistent with the supplier's bid submission;
 - (c) on the agreement of the supplier and the procuring entity, to renew the contract, where the solicitation documents included a renewal option. *(EC648/20)*

56. Contract substantially similar

The terms of a procurement contract awarded following a competitive bidding process shall be substantially the same as those terms in the solicitation documents. *(EC648/20)*

57. Notice of award, trade agreement

- (1) Where the goods being procured are subject to a trade agreement, a procuring entity shall, within 72 days of awarding a procurement contract for the goods under section 51 or 52, publish an award notice on the procurement website.

Contents of notice

- (2) An award notice published in accordance with subsection (1) shall contain the following information:
- (a) the name and address of the procuring entity;
 - (b) the solicitation number;
 - (c) a description of the goods procured;
 - (d) the name and address of the successful supplier;
 - (e) the total value of the awarded procurement contract;
 - (f) the date the procurement contract was awarded. *(EC648/20)*



58. Disclosure of contract information

On awarding a procurement contract following a competitive bidding process, a procuring entity may disclose the name of the successful supplier and the total value of the contract. (EC648/20)

59. Debriefing

- (1) After a procurement contract has been awarded following a competitive bidding process, on the request of an unsuccessful supplier, the procuring entity shall provide the unsuccessful supplier with a debriefing on the procurement process.

Non-disclosure

- (2) During a debriefing, a procuring entity shall not disclose the bid of another supplier, including that of the successful supplier. (EC648/20)

Standing Offer Agreements

60. Standing offer agreement

- (1) A procuring entity may enter into a standing offer agreement with a supplier following a competitive bidding process conducted in accordance with these regulations.

Solicitation documents, additional contents

- (2) In addition to any other requirements under these regulations respecting solicitation documents, the solicitation documents for a standing offer agreement shall include
 - (a) the period for which the agreement will be valid;
 - (b) the terms and conditions of use of the agreement; and
 - (c) the Schedule A entities or Schedule B entities that may obtain goods under the agreement. (EC648/20)

61. Period of validity

- (1) A standing offer agreement is valid only for the period indicated in the solicitation documents.

Identified entities only

- (2) Only a Schedule A entity or a Schedule B entity identified in a standing offer agreement may obtain goods under the agreement.

Goods obtained only per agreement

- (3) Where a standing offer agreement applies to a Schedule A entity or a Schedule B entity, the entity shall only obtain goods covered by the agreement in accordance with the agreement. (EC648/20)

PART IV - DISQUALIFICATION OF SUPPLIERS

62. Disqualification by Minister or Schedule B entity

Subject to section 63, the Minister may disqualify a supplier from providing goods to Schedule A entities or a Schedule B entity may disqualify a supplier from providing goods to the Schedule B entity, where

- (a) the Minister or Schedule B entity, as the case may be, has documented significant or persistent deficiencies on the part of the supplier in fulfilling or performing a substantive requirement or obligation under a prior contract or contracts; or
- (b) the supplier has been found guilty of an offence that, in the opinion of the Minister or Schedule B entity, as the case may be, makes the supplier unsuitable to provide goods to Schedule A entities or the Schedule B entity, as the case may be. *(EC648/20)*

63. Elements of past performance

- (1) A supplier's performance under a prior contract that occurred within two years before, and any time after, the coming into force of these regulations may be taken into account for the disqualification of a supplier for past performance.

Previous disqualification

- (2) The facts that gave rise to a previous disqualification of a supplier may not be considered with respect to a subsequent disqualification, but the fact that the supplier has been previously disqualified may be considered.

Previous offence not relevant

- (3) Only an offence committed after these regulations come into force may result in a disqualification. *(EC648/20)*

64. Notice of intention to disqualify

Before disqualifying a supplier, the Minister or Schedule B entity shall give the supplier notice in writing, which shall state

- (a) detailed reasons as to why the Minister or Schedule B entity is considering disqualifying the supplier;
- (b) that the supplier, within 15 days after receiving the notice, may object to the disqualification by sending a notice of objection to the Minister or Schedule B entity, as the case may be, by registered mail;
- (c) that the supplier has a right to be represented by counsel, at the supplier's own expense, if the supplier wishes to object to the disqualification; and
- (d) that the supplier may present the objection in person or in writing. *(EC648/20)*

65. Objection in writing

Where a supplier chooses to present an objection in writing, the supplier shall include with the notice of objection all the documents in the supplier's possession that support the objection. *(EC648/20)*



66. Objection in person

- (1) Where a supplier chooses to present an objection in person, the Minister or Schedule B entity, as the case may be, shall set a date, time and place to hear the supplier's objection, and the hearing shall occur within 15 days after receipt of the notice of objection.

Extension of time for hearing

- (2) Notwithstanding subsection (1), the supplier may agree to a hearing occurring within 30 days after receipt of the notice of objection. *(EC648/20)*

67. Decision

The Minister or Schedule B entity, as the case may be, shall give notice in writing of the decision, including reasons, respecting the disqualification of a supplier within one of the following time lines:

- (a) where the Minister or Schedule B entity, as the case may be, has not received a notice of objection, within five days after the period for sending a notice of objection has expired;
- (b) where a hearing has been held in accordance with section 66, within 15 days after the hearing;
- (c) where an objection has been made in writing under section 65, within 15 days after the Minister or Schedule B entity, as the case may be, receives the documents under that section. *(EC648/20)*

68. Conditions on disqualification

- (1) The Minister or a Schedule B entity may impose on the disqualification of a supplier conditions relating to the scope of the disqualification.

Total period of disqualification

- (2) The total length of the first disqualification of a supplier shall not be more than 24 months. *(EC648/20)*

69. Disqualification during performance of a procurement contract

- (1) The Minister or a Schedule B entity may disqualify a supplier while the supplier is in the course of fulfilling a procurement contract for a Schedule A entity or the Schedule B entity, as the case may be.

Cancellation of procurement contract

- (2) Where the Minister or a Schedule B entity disqualifies a supplier in the circumstances set out in subsection (1), the Minister or Schedule B entity, as the case may be, may cancel the existing procurement contract unless to do so would be too costly or otherwise detrimental.

Oversight measures

- (3) Where the Minister or Schedule B entity does not cancel a procurement contract pursuant to subsection (2), the Minister or Schedule B entity, as the case may be, may take oversight measures with respect to the contract including, inspections, measures to prevent delays and tracking of the stages or different aspects of the contract. *(EC648/20)*

70. Disqualification during procurement process

The Minister or a Schedule B entity shall not award a procurement contract to a supplier whom the Minister or Schedule B entity, as the case may be, disqualifies during the procurement process for that contract. (EC648/20)

71. Person with controlling interest disqualified

- (1) A supplier is deemed to be disqualified when a person who has a controlling interest in that supplier is disqualified.

Supplier with controlling interest disqualified

- (2) A supplier is deemed to be disqualified when that supplier has a controlling interest in another supplier that is disqualified. (EC648/20)

72. Application for reinstatement

A supplier who has been disqualified may apply in writing to the Minister or Schedule B entity, as the case may be, to be reinstated after the expiration of

- (a) in the case of an initial disqualification, the six-month period following the disqualification; and
(b) in the case of any subsequent disqualification, the twelve-month period following the disqualification. (EC648/20)

73. Reinstatement

- (1) The Minister or a Schedule B entity, as the case may be, may reinstate a supplier if satisfied that the supplier has taken appropriate corrective measures and is suitable to provide goods to Schedule A entities or the Schedule B entity, as the case may be.

Decision

- (2) The Minister or Schedule B entity, as the case may be, shall give notice in writing of the decision, including reasons, respecting the application within 15 days of receiving the application. (EC648/20)

74. Subsequent applications for reinstatement

Where a supplier is not reinstated under section 73, the supplier may reapply in writing to be reinstated only after the expiration of the six-month period following the decision not to reinstate. (EC648/20)

75. Notice by registered mail

- (1) A notice required to be given under this Part shall be served on the appropriate party by registered mail to the last known mailing address of the recipient.

Deemed receipt

- (2) A notice sent by registered mail in accordance with subsection (1) is deemed to have been received five days after mailing. (EC648/20)



PART V - GENERAL**76. Procurement record**

Regardless of the value of a procurement contract or the procurement method used, a procuring entity shall maintain a record of all documents related to a procurement of goods, including those necessary to justify the procurement method used. *(EC648/20)*

77. Prohibition, design of procurement process

- (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 these regulations or to avoid the rules set out in a relevant trade agreement.

Prohibition, method of evaluating bids

- (2) No person shall select a method for evaluating bid submissions in order to avoid the requirements of the Act or these regulations. *(EC648/20)*

78. Prohibition, disclosure of information

Notwithstanding any other provision of these regulations, except as otherwise required by law, a procuring entity shall not disclose any information collected during a procurement process if disclosure of the information 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 supplier; or
- (e) otherwise impede fair competition. *(EC648/20)*

79. Joint procurement

When an organization or jurisdiction that is not subject to the Act and these regulations procures goods on behalf of a Schedule A entity or a Schedule B entity, the Minister shall ensure that the goods are procured in compliance with Part 2 and, where applicable, sections 17 and 20. *(EC648/20)*

SCHEDULE A

Department of Agriculture and Land
Department of Economic Growth, Tourism and Culture
Department of Education and Lifelong Learning
Department of Environment, Water and Climate Change
Department of Finance
Department of Fisheries and Communities
Department of Health and Wellness
Department of Justice and Public Safety
Department of Social Development and Housing
Department of Transportation, Infrastructure and Energy
Executive Council
Legislative Assembly
Office of the Auditor General
Public Service Commission

(EC648/20; 687/20)

SCHEDULE B

Charlottetown Area Development Corporation
Finance PEI
Health PEI
Innovation PEI
Island Investment Development Inc.
Island Regulatory and Appeals Commission
Island Waste Management Corporation
La Commission scolaire de langue française
P.E.I. Marine Science Organization
P.E.I. Advisory Council on the Status of Women
Prince Edward Island Agriculture Insurance Corporation
Prince Edward Island Cannabis Management Corporation
Prince Edward Island Crown Building Corporation
Prince Edward Island Employment Development Agency
Prince Edward Island Energy Corporation
Prince Edward Island Grain Elevators Corporation
Prince Edward Island Housing Corporation
Prince Edward Island Human Rights Commission
Prince Edward Island Liquor Control Commission
Prince Edward Island Lotteries Commission
Prince Edward Island Museum and Heritage Foundation
Prince Edward Island Student Financial Assistance Corporation
Public Schools Branch
Summerside Regional Development Corporation
Tourism PEI
Workers Compensation Board of Prince Edward Island

(EC648/20; 687/20)

