

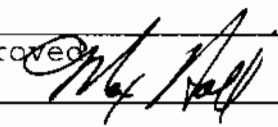
SECTION: Finance  
CHAPTER: Purchasing

SUBJECT: Definitions

In these policies:

- "Acquisition" means the process whereby personal property or a service is borrowed, constructed, foreclosed, leased, leased to purchase, purchased or rented;
- "Agreement" means the mutual understanding of the City and at least one other party. Understanding is usually conveyed through a contract or purchase order;
- "AIT" Agreement on Internal Trade - As it applies to procurement; this is a Federal/Provincial/Territorial agreement which outlines the means and methods by which trade in Canada shall take place. The Agreement's intent is to ensure that open competition is fostered and that discriminatory practices whose spirit restrict competition are negated.
- "Auction Manager" means the individual or organization selected to manage a public auction for the disposal of City property;
- "Bid" means offer to supply personal property or to provide a service under stated terms and conditions. Unless specifically expressed a bid includes an expression of interest, a proposal, a quote, or a tender;
- "Bidder" see proponent;
- "Budget" means budget of the City for the current fiscal year;
- "City" means the Municipal Corporation of the City of Yellowknife;

Date Issued: Jan 24/00 Issued: R. Clark Approved: M. Hall

Revision Date: Jul 27/09 Revised by: C. Hand Approved: 

CITY OF YELLOWKNIFE  
PERSONAL PROPERTY ACQUISITION  
AND DISPOSAL POLICIES

INDEX: 195-P2

SECTION: Finance  
CHAPTER: Purchasing

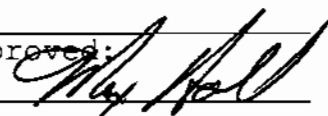
SUBJECT: Definitions

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"City Administrator"	means the Senior Administrative Officer of the City appointed pursuant to the <i>Cities, Towns and Villages Act</i> of the Northwest Territories and includes any Person appointed or designated by the City Administrator to act on his or her behalf;
"City Property"	means real or personal property belonging to the City;
"Contract"	means a written document detailing obligations arising from an agreement between the City and at least one other party and signed by both parties;
"Contract laws"	means the laws derived from Canada's common law system dealing with contracts;
"Cost"	means the actual historical cost, including freight, installation, construction or the appraised value;
"Council"	means the Council of the City;
"Disposal"	means disposing of personal property by sale, lease, grant or donation;
"Formal competitive bid"	means the process whereby an invitation to tender or a request for proposal is solicited by the City by means of an invitation to specific suppliers or by advertising. A closing date and time is clearly stated;
"Holding"	means the care, custody and control by the City of acquired personal property;
"Immediate Family"	means father, mother, brother, sister, spouse (including common-law), child or ward, father-in-law, mother-in-law,

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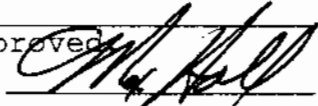
SUBJECT: Definitions

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	grandparent, grandchild of an employee, and a relative permanently residing in the employee's household or with whom the employee permanently resides.
"Local"	means with the municipality;
"Local supplier"	means a supplier which has a current City business license and which owns or leases real property for the purpose of conducting the business of the supplier in the City and which employs or self employs residents of the City in the course of doing business;
"Material"	means goods, supplies or items required for maintenance, repair or operating purposes;
"Negotiation"	means dialogue to reach a common understanding between the City and at least one other party;
"Obsolete"	means personal property which no longer meets current requirements;
"Personal property"	means property other than real property such as, but not restricted to, material and equipment;
"Pre-qualification"	means the process by which the City selects proponents to be invited to submit bids;
"Proponent"	means a supplier who has been invited, or who has submitted a bid, to the City;
"Proposal"	means a bid which is submitted in response to a request for proposal. A proposal is used when it is generally known what, when, and why personal property or a service is required but not

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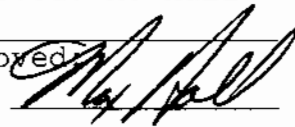
SUBJECT: Definitions

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	how. A proposal seeks creative input from a proponent and is intended to facilitate both objective and justifiable reasons for choices. If pricing is factored at greater than 30% use of a tender should be considered;
"Purchase Order"	means the City's preprinted document used to formalize an agreement with a supplier. The purchase order has the same effect as a contract;
"Purchase requisition"	see requisition;
"Purchasing"	means the act of acquiring personal property or a service;
"Quote or quotation"	means a bid which is submitted in response to a request for quotation. The quotation is used to obtain pricing and delivery information from suppliers in an informal manner rather than using an invitation to tender or a request for proposal. Usually reserved for low value personal property or a service;
"Real property"	means land and buildings, and includes fixtures that are permanently attached to buildings and cannot be removed without damaging the building;
"Requisition"	means the City's preprinted document or on-line form used internally to transmit the needs of a requesting department to Purchasing in writing. It provides a record of the request, indicates where costs are to be allocated, and approves the commitment of funds by allowing for signatures of authorized personnel. The requisition also serves as a reference for generating the purchase order or the

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SECTION: Finance  
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- formal contract;
- "SAO" means the Senior Administrative Officer of the City appointed pursuant to the *Cities, Towns and Villages Act* of the Northwest Territories and includes any Person appointed or designated by the City Administrator to act on his or her behalf;
- "Sole Source" describes the purchasing process used when a source of supply is predetermined to be the only source capable of furnishing the need or performing the service; or the value of the requirement is less than \$20,000; or an emergency situation arises;
- "Supplier" means a source who is capable, or potentially capable, of furnishing personal property or providing a service. A supplier shall be deemed to include a consultant, a contractor, a person, a professional trade or a vendor;
- "Surplus" means personal property which is extra to the City's needs therefore not required;
- "Tender" means a bid which is submitted in response to an invitation to tender. An invitation to tender is used when it is known what, when, why and how personal property or a service is required. The main concern is price. Proponents compete on the pricing for the detailed personal property or service.

The foregoing defined words or any derivative thereof shall have a plural, masculine, feminine or neutral meaning where the text so requires.

Docs #165725

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Date Issued: Jan 24/00 Issued: R. Clark Approved: M. Hall

Revision Date: Jul 27/09 Revised by: C. Hand Approved: 

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SECTION: Finance  
CHAPTER: Purchasing

SUBJECT: Acquisition Process  
for Given Values

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PURPOSE

To define the acquisition process for given value ranges.

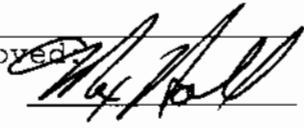
POLICY

(MOTION #0053-00)  
(As amended by Motion #0155-09)

1. Acquisitions may be sole sourced where:
  - a. The total dollar value of the acquisition is less than \$20,000; or
  - b. It has been determined that there is only one source of supply for the goods and/or services required; or
  - c. The goods and/or services are required for emergency purposes.
2. For acquisitions under 1 b and c above, signed authorization from the SAO must be obtained prior to proceeding.
3. Normal contract laws apply when an acquisition is made on a sole source basis. Employees are still encouraged to obtain quotes whenever possible and within reason, for any goods or services.
4. Sole Source acquisitions shall be made with local suppliers unless there is no local supplier capable of fulfilling the requirement.
5. Acquisitions greater than \$20,000 and up to \$50,000 shall be made on the basis of quotes being obtained as follows:
  - a. Responses must be in writing and may be received by fax or e-mail.
  - b. A minimum of two quotes should be obtained.
  - c. Laws of competitive bidding apply.

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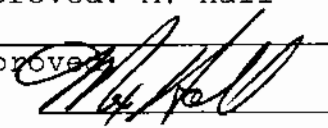
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6. Acquisitions greater than \$50,000 and up to \$200,000 shall be made on the basis of formal competitive bids.
    - a. Bids may be open to the public by advertising or be restricted by invitation.
    - b. Laws of competitive bidding apply.
  7. Acquisitions greater than \$200,000 shall be made on the basis of formal competitive bids.
    - a. Bids shall be open to the public by advertising locally and if warranted outside Yellowknife.
    - b. For construction related acquisitions, the N.W.T. Construction Association shall be notified.
    - c. Laws of competitive bidding apply.

SCOPE

1. The City will conduct its business with the highest level of integrity and in full compliance with the law through:
  - a. ensuring the City's immediate and long term requirements for personal property or service is achieved at optimum value;
  - b. ensuring personal property or service is obtained on a fair and competitive basis at the lowest total costs, considering quality, safety, service and delivery;
  - c. developing qualified and dependable sources of supply and encouraging local economic development; and
  - d. adhering to the law, including all provisions set out by the Agreement on Internal Trade for the MASH sector (Municipalities, municipal organizations, school boards and publicly-funded academic, health and social service entities). Docs #165728

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Date Issued: Jan 24/00 Issued: R. Clark Approved: M. Hall

Revision Date: Jul 27/09 Revised by: C Hand Approved: 

SECTION: Finance  
CHAPTER: Purchasing

SUBJECT: Authority to Commit  
or Expend Funds

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PURPOSE

To establish authority to commit or expend funds.

POLICY

(MOTION #0053-00)  
(As amended by Motion #0155-09)

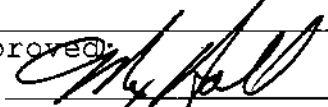
Council delegates to the City Administrator the authority to commit or expend funds for the acquisition of personal property or service, as herein outlined, from the approved budget of the City. The City Administrator may, through express, implied or apparent authority delegate the commitment or expenditure of funds to other City staff. Such delegation will enable staff to initiate expenditures against their approved budget for which they are accountable. Council also delegates to the City Administrator the authority to dispose of surplus or obsolete assets. The City Administrator may delegate the disposal of assets to other City Staff.

SCOPE

1. The authority of this policy is subject to the following conditions:
  - a. personal property or service is identified within the approved budget;
  - b. the invitation to tender is awarded to the lowest proponent;
  - c. the request for proposal is awarded to the highest rated proponent;
  - d. value of the award is equal to or less than \$500,000 annually; and
  - e. contract period is equal to or less than five (5) years.

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Should a deviation of these conditions exist, a resolution of Council authorizing the expenditure shall be required.

2. Notwithstanding the foregoing, in the event of an emergency, the City Administrator has the authority to expend whatever funds are reasonably necessary to deal with the situation. Prior to expending or committing such funds, the City Administrator shall use their best efforts to contact the Mayor or the Deputy Mayor, advise of the nature of the emergency and the amount of funds to be committed or expended and obtain verbal approval. Any such expenditure or commitment shall be reported to Council at the earliest opportunity.

#### APPLICATION

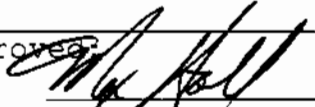
This authority, and that which is delegated, carries with it the responsibility to ensure that:

- a. the personal property or service received is that which was contracted for;
- b. the price charged is that which was agreed;
- c. all terms and conditions of the contract are fulfilled;  
and
- d. the commitment or expenditure is a real charge against the activity to which it is coded.

Docs #165737

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Revision Date: Jul 27/09 Revised by: C Hand Approved: 

SECTION: Finance  
CHAPTER: Purchasing

SUBJECT: Bidding Process

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PURPOSE

To depict the process of bidding to ensure consistent delivery by those delegated the authority to commit or expend funds.

POLICY

Formal competitive bidding, through invitations to tender or requests for proposal, is the preferred method for reaching an acquisition decision where the estimated value exceeds \$50,000.

SCOPE

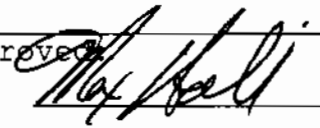
1. The selection of purchasing action is the responsibility of the respective Director, who will consult with the Purchasing Division prior to any procurement action taking place:
  - a. For purposes of acquisition of real property or for a building with or without real property, the selection of purchasing action is the responsibility of Planning and Development.
  - b. For purposes of a construction contract or architectural and engineering services contract, the selection of purchasing action is the responsibility of Public Works. This type of work may be managed with the help of a consultant qualified for the type of work to be done.

APPLICATION

1. A purchase requisition is to be used to transmit the needs of a requesting Department to Purchasing.
2. Acquisitions under this policy must be committed by use of a Purchase Order or other form of formal written contract.
3. Unless the decision to standardize has previously been made, in cases where the specifications recommended by a department have the result of discouraging or precluding competitive

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bidding, the burden of proof shall rest with the requesting department to justify the need for such restrictive specifications to the City Administrator.

4. In the case of invitational bids, only qualified suppliers with which the City is prepared to do business shall be asked to prepare a submission. A supplier may be disqualified based on past performance, financial capabilities, completion schedule or delivery schedule.
5. Every request for proposal shall express the criteria and rating schedule to be used in evaluating the submission.

#### BID PREPARATION TIME

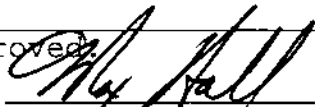
Unless there are valid mitigating circumstances Purchasing must be allowed sufficient time to become familiar with the requesting department's needs and to develop bid packages which reflect the needs accurately.

#### CONTACT WITH PROPONENTS

1. It is preferable that general inquiries from proponents be directed to Purchasing for consistency and continuity.
2. It is preferable that technical inquiries from proponents be directed to a designated representative of the requesting department.
3. Discussion of bids with any of the proponents prior to an award should be limited to clarification and change to scope of work. All proponents must be provided with the same data as nearly as possible at the same time.
4. For the public opening of an invitation to tender, the bid package must state the place where submissions will be opened in addition to the closing date and time.
5. Instructions to proponents must indicate that verbal responses to any inquiry will not be binding on either party.

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TIME EXTENSION

Proponents should be allowed sufficient time to research and develop competitive bids by the established closing date and time. Time extensions may be permitted if conditions warrant, however all proponents must be formally advised.

RECEIPT OF BIDS

All bids submitted will be time and date marked upon receipt by the City's Receptionist.

LATE BIDS

1. Bids will not be accepted after the designated closing time.
2. Where a closing time of 1:30 p.m. has been established bids shall be deemed to be late when the clock reaches 1:30:00 p.m.
3. Bids, received after the closing time, are to be returned unopened with a covering letter explaining the reason for rejection. A record must be kept of those returned. If a late bid must be opened to determine the name/address of the bidder, the proponent must be advised.

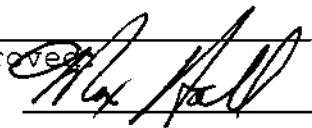
WITHDRAWAL OF BIDS

1. A withdrawal request will be allowed if the request is made prior to the closing time for the competition to which it applies. Requests must be directed to the person named to handle general inquiries and must be in writing. Telephone requests will not be considered. Bids withdrawn will be returned unopened to the proponent.
2. Withdrawal of a bid does not disqualify a proponent from submitting another bid on the same competition within the stipulated time period.

Withdrawal requests received after the competition's closing time

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will not be allowed. The requesting proponent will be informed that the withdrawal request arrived after closing time and will not be considered.

#### OPENING OF BIDS

1. All bids received for the same competition are to be opened at the same time, date and place and must be opened as soon as possible after the closing time.
2. Invitations to tender will be publicly opened whereupon the chairperson shall announce:
  - a. tender number, project name and indication that tenders are closed;
  - b. name of the proponent who made the submission;
  - c. address of the proponent who made the submission;
  - d. whether or not security, if required, was furnished with the bid; and
  - e. value of the bid.
3. Requests for proposals will not be publicly opened.
4. Where it requires that security be furnished with the bid, every bid received without such security must be rejected and returned to the proponent submitting the bid.

#### EVALUATION OF BIDS

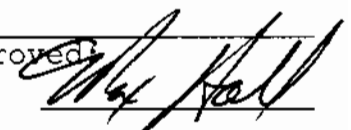
Three criteria must be examined in order to determine who the successful proponent will be.

- a. Are the proponents responsive? Have they submitted a bid which conforms in all material respects to the invitation to tender or request for proposal? If no, the bid is rejected.

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- b. Are the proponents responsible? Are they capable, in all respects, of performing fully the contract requirements and the integrity to assure performance of the contract obligations? If no, the bid is rejected.
- c. Is the bid conditional? Bids from proponents which have conditions attached will be rejected, and the proponent will be informed of the decision.
- d. The award shall be made to the proponent who is responsive, responsible and:
- in the case of tenders, has submitted a bid price lower than that submitted by any other responsive, responsible proponent or
  - in the case of proposals, has been rated higher than any other responsive, responsible proponent.

If identical tenders are received by the City, each of which are not more than \$100,000 for goods and services or \$250,000 for construction, the Director responsible for the contract must take into consideration the location of the suppliers, giving preference to local suppliers.

The successful tender must be chosen by the drawing of lots under the Director of Corporate Services' supervision if identical lowest tenders, each of which are not more than \$100,000 goods and services or \$250,000 for construction, are made by:

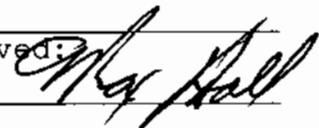
- a. 2 or more local suppliers, or
- b. 2 or more suppliers that are not local suppliers

The SAO must decide whether any tender should be accepted as the successful tender if the City receives identical lowest tenders, each of which are more than \$100,000 goods and services or \$250,000 for construction but less than \$500,000.

If the City receives identical lowest tenders each of which are more than \$500,000, the SAO must make a recommendation for consideration and approval by Council. Docs #165739

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SECTION: Finance  
CHAPTER: Purchasing

SUBJECT: Confidentiality

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PURPOSE

To endorse that most of the transactions relating to the purchasing function are of a confidential nature, especially with regards to suppliers.

POLICY

(MOTION #0053-00)  
(As amended by Motion #0155-09)

Except as expressly outlined, under the scope of this policy, proprietary information contained in bids shall remain confidential.

SCOPE

1. It is considered unethical as well as damaging to the City's position to allow proprietary information about one supplier's bid pass to another supplier.
  - a. Situations such as overheard phone calls and documents on desks during meetings with supplier's representatives and conversations between employees within hearing of supplier's representatives are to be avoided.
  - b. The concept of playing one supplier against another, through the release of proprietary information, shall not be construed as an acceptable practice.
  - c. During negotiations leading to the making of a contract with a supplier all pertinent information regarding the negotiations are restricted to use by City employees or consultants, working under contract to the City, on a need-to-know basis. Those employees must be security conscious to ensure no leakage of information which might weaken the City's negotiation position.
2. After the closing of a request for quotations, be it for one item or several, the overall cost will be made public.

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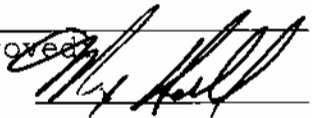
SUBJECT: Confidentiality

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3. After the closing of an invitation to tender, individual line prices will be treated in strict confidence however the overall cost of each submission will be made public.
  4. After the closing and evaluation of a request for proposals, individual line rating will be treated in strict confidence; however, the total rating for each submission may be made public, as will the final contract price for the successful proponent. The City may discuss a proponent's ranking, if there are significant differences, referencing the average of the category in question.

Docs #165740

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SECTION: Finance  
CHAPTER: Purchasing

SUBJECT: Contracts, Formation of

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PURPOSE

To clarify what a contract is and when a contract should be used.

POLICY

A commitment between the City and a third party in excess of \$25,000 shall be by a written contract that is completed in a manner clearly stipulating the understanding reached by both parties.

SCOPE

Contracts may be a utilization of the City's purchase order document or development of a formal contract where the terms and conditions of a purchase order are not appropriate or cannot be readily changed to fit a particular situation.

APPLICATION

1. Purchase orders shall be prepared by the Purchasing Division from a completed and authorized requisition.
2. Formal contracts shall be prepared or reviewed by the Purchasing Division.
3. Purchase orders and formal contracts are intended to assure maximum clarity in communication and provide legal protection for all parties.
4. Purchase orders and formal contracts form legal documents; all employees are responsible to recognize the implications of the commitment being made.

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CHANGES

Alterations to the original scope of the acquisition, which change the original intent or significantly change the dollar amount, must be communicated in writing and signed by both parties. Such changes shall be subject to the required internal approvals prior to the change being made.

EXCEPTIONS

Normally, purchase orders are not generated simply to facilitate payments for the following:

- Books and periodicals
- Conferences
- Courses
- Conventions
- Commitments by departments to suppliers
- Damage claims
- Employee development
- Employee workshops
- Fuels, propane and petroleum
- Insurance premiums
- Insurance settlements
- Licenses, vehicle and radio
- Magazines
- Memberships
- Postage
- Power
- Procurement card payments
- Seminars
- Subscriptions
- Telephone bills
- Water bills

Docs #165744

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Revision Date:            Revised by:            Approved:

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SECTION: Finance  
CHAPTER: Purchasing

SUBJECT: Disposal of Assets

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PURPOSE

To establish responsibility and process for disposing of assets.

POLICY

Disposal of surplus or obsolete assets shall be done only with approval of the City Administrator.

SCOPE

This policy applies to all material and equipment which has no known use in the maintenance, repair or operating functions of the City or has been outright replaced.

APPLICATION

1. Departments having surplus or obsolete material and equipment shall obtain the approval of the City Administrator then advise the Purchasing Division in writing of such assets.
2. The Purchasing Division will dispose of the assets by whichever method is most suitable, at best value to the City.
3. Methods of disposal include:
  - trade-in
  - competitive bids
  - negotiated sales
  - reduction to spare parts
  - public auction
  - destroy
  - donation to a local non-profit organization, or to another NT based community, or to a local educational institution
4. When material and equipment has been declared surplus by a Department, and the value is deemed to be less than \$1,000.00, sales may be made to employees on a first-come-first-serve basis.

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SUBJECT: Disposal of Assets

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5. When material and equipment has been declared surplus by a Department, and the value is deemed to be greater than \$1,000.00, sealed bids may be publicly solicited with the items being sold to the highest qualified bidder. Employees must comply.
  
6. Revenues realized from disposal of assets shall be credited to the 'sundry revenue' account, for small items, and to the 'proceeds on disposal of fixed assets' account for larger items.

Docs #165746

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Date Issued: Jan 24/00    Issued: R. Clark    Approved: M. Hall

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Revision Date:                      Revised by:                      Approved:

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SECTION: Finance                      SUBJECT: Employees, Purchasing from  
CHAPTER: Purchasing

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PURPOSE

To establish when it is acceptable to acquire material, services or equipment from employees.

POLICY

Direct purchase from employees, or an employee's immediate family, of any material, service or equipment is not permitted unless specific exemption has been obtained from the City Administrator.

SCOPE

1. Bids shall not be solicited from, nor any order placed with, a supplier that:
  - a. Is owned, controlled or actively influenced by any City employee or immediate family of said employee.
  - b. Employs in a management, consulting or sales capacity any person who is a City employee.
  - c. Employs in any capacity a City employee who is in a position to influence the selection of or conduct business with such supplier.
2. Exemption may be granted where an employee, an employee's immediate family or a supplier employing a City employee, provides material, services or equipment not available from any other source within the City.

Docs #165747

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Date Issued: Jan 24/00      Issued: R. Clark      Approved: M. Hall

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Revision Date:                      Revised by:                      Approved:

SECTION: Finance  
CHAPTER: Purchasing

SUBJECT: Foreign Purchase

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PURPOSE

To define the responsibility for foreign acquisitions.

POLICY

All acquisitions made from a foreign country in excess of \$1,200 Canadian must go through the Purchasing Division.

SCOPE

Foreign shipments under \$1,200 Canadian do not require a Canada Customs Invoice. A commercial invoice, stating the country of origin of the goods and the currency of settlement, is acceptable and must accompany the shipment. A NAFTA Certificate must also be included.

APPLICATION

1. As many items acquired by the City are entitled to preferential Customs Duty treatment, Purchasing shall be responsible for obtaining the maximum benefit of duty allowed.
2. Purchasing will ensure continuity in planning foreign currency requirements, negotiating terms and conditions, arranging the most expedient method of shipping, and proper customs clearance.
3. Purchasing will also ensure compliance with the law including customs Tarriffs and Regulations.

Docs #165750

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Date Issued: Jan 24/00      Issued: R. Clark      Approved: M. Hall

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Revision Date:                      Revised by:                      Approved:

SECTION: Finance  
CHAPTER: Purchasing

SUBJECT: Sourcing Priorities

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### PURPOSE

To establish sourcing priorities for business preferences.

### POLICY

1. Business will be conducted with Suppliers that are both responsive and responsible. Suppliers must be reliable and competent and have the technical and financial capabilities to provide the required personal property and service.
2. The City, in abiding by the applicable provisions of the Agreement on Internal Trade (AIT) for the MASH sector (Municipalities, municipal organizations, school boards and publicly-funded academic, health and social service entities) does not incorporate a local preference factor.

### APPLICATION

1. Reliable and competent, for purposes hereof, shall mean having the ability to provide the right quality, of the right quantity, for the right price (that which is reasonable and fair to both the City and supplier and not necessarily the lowest price), in the right time, and with the right service.
2. The City does not differentiate between suppliers, or goods and services on the basis of geographic location in Canada. Entities covered by the AIT cannot adopt or maintain any forms of discrimination based on the province of origin of goods, services, construction materials, or the suppliers of same in their procurement practices.
3. Notwithstanding paragraph 2, the City recognizes the economic benefits that accrue to the City when business is conducted with local suppliers. As such, the City will endeavour to conduct business with local suppliers while adhering to the provisions of the AIT and will award a contract to a local supplier where the bid prices or final proposal ratings are equal. The City will also award sole source contracts to local suppliers unless there is no local supplier qualified to provide the goods and/or services. Docs #165765

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Date Issued: Jan 24/00 Issued: R. Clark Approved: M. Hall

Revision Date: Jul 27/09 Revised by: C Hand Approved: 

SECTION: Finance SUBJECT: Disclosure of Bid Information  
CHAPTER: Purchasing

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PURPOSE

To establish the amount and the means by which information will be communicated to bidders and prospective bidders for City of Yellowknife formal competitions (Invitations to Tender and Requests for Proposals).

POLICY

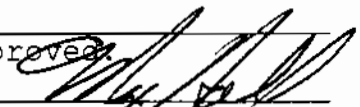
(Motion #0155-09)

It is the policy of the City of Yellowknife to provide information to bidders and prospective bidders in an efficient, open, and transparent manner, while still respecting the protection of all bidders' right to privacy. It is also the policy of the City of Yellowknife to provide information to all bidders on the results of formal competitive bids.

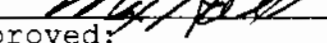
SCOPE

1. The City's Purchasing Policies are available to the Public via the 'Bidding Opportunities' webpage on the City's website [www.yellowknife.ca](http://www.yellowknife.ca)).
2. Following the award of a contract, the City's Purchasing Division staff will notify all participating vendors of the outcome. Staff members must be cautious as to the nature of the information that is released such that the obligation to be 'open and transparent' does not result in the release of protected information. Any necessary vendor debriefings will be the responsibility of the end user department.
3. When releasing information regarding the results of a Request for Quotation (RFQ) or Invitation to Tender (ITT) process, only the following information will be released:
  - a. The name of the successful vendor and corresponding bid price; and
  - b. The names of all other vendors and corresponding bid prices.

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Date Issued: July 27/09 Issued: C. Hand Approved: 

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Revision Date: Revised by: Approved: 

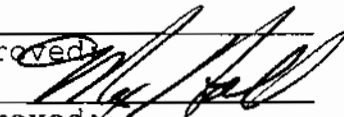
SECTION: Finance      SUBJECT: Disclosure of Bid Information  
CHAPTER: Purchasing

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4. When releasing information regarding the results of a Request for Proposal (RFP) process, only the following information will be released:
- a. The name of the successful vendor;
  - b. The total score of successful vendor; the total score and rank of the vendor being notified; and
  - c. The total price of the contract award.

Docs #165774

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Date Issued: July 27/09      Issued: C. Hand      Approved: 

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Revision Date:                      Revised by:                      Approved:

**CHAPTER FIVE: PROCUREMENT**

**Annex 502.4<sup>1</sup>**

**Procurement - Provisions for municipalities, municipal organizations, school boards and publicly-funded academic, health and social service entities**

**A. Purpose**

This Annex establishes the provisions required to extend coverage of Chapter Five (Procurement) to municipalities, municipal organizations, school boards and publicly-funded academic, health and social service entities.

**B. Application of Chapter Five and Relationship to other Chapters**

1. Chapter Five (Procurement) and the provisions of other Chapters of the Agreement on Internal Trade apply only as specified in this Annex.

2. The following provisions of the Agreement on Internal Trade apply to this Annex: Chapter One (Operating Principles); Chapter Three (Reaffirmation of Constitutional Powers and Responsibilities); Article 502(4) (Scope and Coverage); Article 512 (Contact Point); Article 602(2) (Scope and Coverage); Article 1600 (a), (b), and (d) (Committee on Internal Trade); Article 1603(4) (Secretariat); Article 1802 (Aboriginal Peoples); Article 1803 (Culture); Article 1805 (Taxation); Article 1809 (Relationship to International Agreements); Article 1811 (Accession and Withdrawal); Article 1812 (Language); and Article 1813 (Rules of Interpretation).

**C. Scope and Coverage**

1. This Annex covers all municipalities, municipal organizations, school boards and publicly-funded academic, health and social service entities, as well as any corporation or entity owned or controlled by one or more of the preceding.

2. At the time of its adherence to this Annex, each Province shall provide the Secretariat with a list of its legislation applicable to entities covered by this Annex. Those lists will be attached as Appendix "A" (Legislation applicable to entities covered by Annex 502.4) to this Annex. Thereafter, each province shall advise the Secretariat of any changes to its list and the Secretariat shall maintain an up to date list of all applicable legislation. Each province shall also maintain an up to date list of all its entities covered by this Annex.

3. This Annex applies to measures related to the procurement, within Canada, of goods, services and construction which are adopted or maintained by the entities covered by this Annex where the procurement value is

- (a) \$100,000 or greater, in the case of goods or services; or

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<sup>1</sup> This annex was added to the Agreement on Internal Trade by the Third Protocol of Amendment, signed April 17, 1999.

## **MASH sector – Applicable provisions of the AIT**

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(b) \$250,000 or greater, in the case of construction.

4. For procurement below the thresholds in paragraph 3, entities covered by this Annex are encouraged to respect the spirit of this Annex.

### **D. Non-Discrimination**

1. Provinces shall not adopt or maintain any measures that would operate to require the entities covered by this Annex to differentiate between suppliers, or goods or services on the basis of geographic location in Canada.

2. Entities covered by this Annex shall not adopt or maintain any forms of discrimination based on the province of origin of goods, services, construction materials or the suppliers of such goods, services or construction materials in their procurement practices.

3. Discriminatory procurement practices which are not allowed under this Annex include, but are not limited to, those listed in Appendix "B" (Discriminatory Practices).

4. Nothing in this Annex is intended to provide, nor shall be construed to provide, directly or indirectly, to any Province not subject to this Annex or to its goods, services, suppliers or entities any right, claim, benefit or remedy pursuant to any provision of this Annex.

### **E. Transparency**

1. Each Province shall ensure that its legislation, regulations, procedures, guidelines and administrative rulings as they apply to matters covered by this Annex are made readily accessible.

2. Each entity covered by this Annex shall ensure that its legislation, regulations, procedures, guidelines and administrative rulings as they apply to matters covered by this Annex are made readily accessible.

3. Each entity covered by this Annex shall ensure that its notices of contract award are made readily accessible.

### **F. Legitimate Objectives**

1. Where it is established that a measure is inconsistent with Section "D" (Non-Discrimination) of this Annex, that measure is still permissible under this Annex where it can be demonstrated that:

- (a) the purpose of the measure is to achieve a legitimate objective;
- (b) the measure does not operate to impair unduly the access of persons, goods, services or investments of a Province that meet that legitimate objective;
- (c) the measure is not more trade restrictive than necessary to achieve that legitimate objective; and
- (d) the measure does not create a disguised restriction on trade.

2. In this Annex, legitimate objective means one of the following objectives:

## **MASH sector – Applicable provisions of the AIT**

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- (a) public security and safety;
- (b) public order;
- (c) protection of human, animal or plant life or health;
- (d) protection of the environment;
- (e) consumer protection;
- (f) protection of the health, safety and well-being of workers; or
- (g) affirmative action programs for disadvantaged groups;

considering, among other things, where appropriate, fundamental climatic or other geographical factors, technological or infrastructural factors, or scientific justification.

The protection of the production of a Province is not a legitimate objective.

### **G. Fair Acquisition Process**

1. Procurements covered by this Annex shall be subject to a tendering process.
2. "Tendering Process" includes all methods of tendering such as requests for information, requests for quotations, requests for proposals, requests for qualification and calls for tenders.
3. Entities covered by this Annex may continue existing policies and procedures to the extent that they are compatible with the provisions of this Annex.
4. Purchasing practices which may depend on a long term arrangement between an entity covered by this Annex and a supplier are permitted provided that each such arrangement is undertaken in a manner consistent with this Annex.
5. Entities covered by this Annex shall ensure that their needs, within Canada, of goods, services and construction are met through a fair acquisition process that is based on the highest degree of competition, efficiency and effectiveness, and is consistent with Sections "D" (Non-Discrimination) and "E" (Transparency) of this Annex.
6. The Provinces recognize that the transparency and non-discrimination of fair acquisition processes necessary to ensure access for all Canadian suppliers to public procurement opportunities can best be promoted through the widespread adoption of an electronic tendering system or systems.
7. Accordingly, Provinces agree that an electronic tendering system or systems which are low cost, easy to use and readily accessible across Canada, shall be made available to the entities covered by this Annex no later than December 31, 1998. The electronic tendering system or systems shall be capable of transmitting notices of contract awards.
8. After the date of entry into force of this Annex, entities covered by this Annex shall be required to post tender notices on the electronic tendering system or systems, referred to in paragraph 7, for all covered procurement.

## **MASH sector – Applicable provisions of the AIT.**

Prior to the date of entry into force of this Annex, entities covered by this Annex are encouraged to use the electronic system or systems, for all covered procurement.

The dates above are subject to review under Section "P" (Review of Provisions and Future Negotiations) by the Committee on Internal Trade to ensure that the electronic tendering system or systems are operational and that an adequate period is provided for their adoption.

9. The information provided in the tender notice shall include at least the following:

- (a) a brief description of the procurement contemplated;
- (b) the place where a person may obtain information and tender documents;
- (c) the conditions for obtaining the tender documents;
- (d) the place where the tenders are to be sent;
- (e) the date and time limit for submitting tenders;
- (f) the time and place of the opening of the tenders in the event of a public opening; and
- (g) a statement that the procurement is subject to this Annex.

10. Consistent with Section "E" (Transparency), entities covered by this Annex may, in evaluating bids, take into account the submitted price, quality, quantity, delivery, servicing, the capacity of the supplier to meet the requirements of the procurement and any other criteria consistent with Section "D" (Non-Discrimination). The tender documents shall clearly identify the requirements of the procurement, the criteria that will be used in the evaluation of bids and the methods of weighting and evaluating the criteria.

11. Subject to Section "D" (Non-Discrimination), an entity covered by this Annex may limit tenders to goods, services or suppliers qualified prior to the close of call for tenders.

### **H. Buying Groups**

1. Entities covered by this Annex that participate in group purchasing activities through buying groups shall ensure that the activities of such buying groups are carried out in a manner consistent with this Annex.

2. No Province shall direct the procurement activities of buying groups in a manner inconsistent with this Annex.

3. Buying group means a group of two or more members which combines the purchasing requirements and activities of the members of the group into one joint procurement process. Buying groups include cooperative arrangements in which individual members administer the procurement function for specific contracts for the group, and more formal corporate arrangements in which the buying group administers procurement for group members. Buying groups may involve a variety of entities, including public sector, private sector and not-for-profit organizations.

## **MASH sector – Applicable provisions of the AIT**

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### **I. Exceptions**

1. An entity covered by this Annex may exclude a procurement from the application of this Annex in the circumstances listed in Appendix "C" (Exceptions - Circumstances for Exclusions) provided that it does not do so for the purposes of avoiding competition between suppliers or in order to discriminate against suppliers of any other Province.
2. Where only one supplier is able to meet the requirements of a procurement, an entity covered by this Annex may exclude a procurement from the application of this Annex in the circumstances listed in Appendix "D" (Exceptions - Circumstances for Sole Supplier Procurement), provided it does not do so for the purpose of avoiding competition or in order to discriminate against suppliers of any other Province.

### **J. Canadian Content**

1. Entities covered by this Annex may accord a preference for Canadian value-added, provided that the preference is no greater than 10 percent.
2. An entity covered by this Annex may limit its tendering to Canadian goods or suppliers, provided the procuring entity is satisfied that there is sufficient competition among Canadian suppliers and the requirement for Canadian content is no greater than necessary to qualify the procured good as a Canadian good.

### **K. Regional Economic Development**

A Province may, under exceptional circumstances, exclude a procurement of an entity covered by this Annex from the application of this Annex for economic development purposes provided that all such exclusions are reported, prior to the commencement of any procedure leading to the award of a contract, to the other Provinces with an explanation of the reasons justifying the decision. A Province invoking this provision will seek to minimize the discriminatory effects of the exclusion on the suppliers of the other Provinces.

### **L. Non-Application**

This Annex does not apply to:

- (a) procurement of goods intended for resale to the public;
- (b) contracts with a public body or a non-profit organization;
- (c) procurement of goods, services or construction purchased on behalf of an entity not covered by this Annex;
- (d) procurement from philanthropic institutions, prison labour or persons with disabilities;
- (e) procurement of any goods the interprovincial movement of which is restricted by laws not inconsistent with the Agreement on Internal Trade;
- (f) procurement of goods, services and construction that is financed primarily from donations that are subject to conditions that are inconsistent with this Annex;

## **MASH sector – Applicable provisions of the AIT**

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- (g) procurement of goods and services related to cultural or artistic fields and computer software for educational purposes;
- (h) procurement of services that in the province of the entity issuing the tender may, by legislation or regulation, be provided only by any of the following licensed professionals: medical doctors, dentists, nurses, pharmacists, veterinarians, engineers, land surveyors, architects, accountants, lawyers and notaries;
- (i) procurement of services of financial analysts or the management of investments by organizations who have such functions as a primary purpose;
- (j) procurement of financial services respecting the management of financial assets and liabilities (i.e. treasury operations), including ancillary advisory and information services, whether or not delivered by a financial institution;
- (k) procurement of goods and services for use outside Canada as well as construction work done outside Canada; and
- (l) health services and social services.

### **M. Dispute Resolution**

1. Entities covered by this Annex shall document their non-judicial complaint process and provide this information to suppliers or Provinces upon request.
2. Entities covered by this Annex shall provide suppliers from other Provinces the opportunity and process to challenge contract decisions that are equal to those available to local suppliers.
3. If a supplier, after completing the non-judicial complaint process of the entity, continues to believe that the entity has not adhered to the provisions of this Annex, the supplier may register a complaint with the designated contact point in the Province where the supplier is located.
4. If a Province has received recurring complaints about a specific entity, or if a Province agrees that an individual supplier's complaint has merit, that Province may inform the Province of the entity. Both Provinces shall make every effort to work with the affected suppliers and entities to resolve the complaints in a satisfactory manner.
5. Where the Provinces fail to resolve a complaint, one of them may require that the complaint be considered by an expert panel. A panel shall usually consist of three members or any other composition acceptable to both Provinces. The panel's report shall be made public and shall be provided to both Provinces. The Provinces shall consult each other in order to reach a mutually acceptable settlement based on the panel's report.
6. Each Province shall be responsible for costs incurred by itself and any entity within its jurisdiction involved in a dispute referred to a panel. Both Provinces shall share the fees and expenses of any panel equally.
7. The dispute resolution process shall not cause delay in the awarding of a contract by an entity covered by this Annex.

## **MASH sector – Applicable provisions of the AIT**

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8. If a Province considers, as a result of a panel's report and subsequent consultations, the other Province is not complying with the terms of this Annex, the Province may temporarily suspend the application of equivalent benefits under this Annex to the non-complying Province and its resident suppliers, until such time as a mutually satisfactory solution is reached.

### **N. Language**

Entities covered by this Annex shall specify the language requirements for their respective procurement procedures.

### **O. Confidentiality**

Nothing in this Annex requires an entity covered by this Annex to breach confidentiality obligations imposed by law or to compromise security or commercially sensitive or proprietary information identified by a supplier in its tender documents.

### **P. Review of Provisions and Future Negotiations**

1. The Secretariat shall prepare a progress report on the development of the electronic tendering system or systems referred to in Section "G" (Fair Acquisition Process) by the entry into force of this Annex. The progress report shall assess the provisions of this Annex in light of progress in the implementation of the electronic tendering system or systems and make appropriate recommendations, if necessary, to the Committee on Internal Trade.

2. Entities covered by this Annex may report to their respective Province any concerns or problems they encounter in the implementation of this Annex.

3. The Secretariat shall prepare a report for the Committee on Internal Trade based on any concerns or problems with the implementation of this Annex reported by the Provinces.

4. This Annex may be reviewed, as required, by the Ministers as part of the annual meetings of the Committee on Internal Trade. Opportunities for progress related to public procurement not covered by this Annex, or excluded from this Annex by virtue of paragraph L (h), shall be part of that review.

5. Each Province shall establish a process and guidelines leading to the harmonization of standard terms and conditions in the tender documents and to standardized procedures for complaint processes used by their entities covered by this Annex. The Provinces shall establish a Working Group to review the work of the Provinces with the perspective of harmonization. The Working Group shall report regularly through the Secretariat and shall report progress to the Committee on Internal Trade by July 1, 2000.

6. The Provinces shall review the application of Section "J" (Canadian Content) and of Section "K" (Regional Economic Development) and shall conclude such a review within two years of the entry into force of this Annex. If, as a result of that review, the Provinces agree that there is no justification for those Sections or for one of them, then the Section or Sections shall no longer apply to the procurement of entities covered by this Annex.

7. The Provinces shall review the operation of Section "M" (Dispute Resolution) following the review of standardized procedures for complaint processes noted in paragraph 5 and shall

## **MASH sector – Applicable provisions of the AIT**

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conclude the review within one year. In particular, the Provinces shall review whether Section "M" (Dispute Resolution) provides adequate access for private parties to the dispute resolution process.

### **Q. Relationship to Other Agreements**

1. Provinces may continue or enter into additional agreements covering procurement by entities covered by this Annex. In the event of an inconsistency between such an agreement and this Annex, the agreement more conducive to trade liberalization prevails to the extent of the inconsistency.

2. Other Provinces will be provided the opportunity to gain access to any such agreement referred to in paragraph 1 within a reasonable time if they are prepared to accept the terms of the agreement.

### **R. Implementation**

1. This Annex enters into force July 1, 1999.

2. This Annex does not apply to contracts entered into before July 1, 1999 or to calls for tenders or other procurement procedures initiated before such date.

3. Each Province shall not establish new trade barriers or increase the non-conformity of existing non-conforming measures in the areas to be covered by this Annex between the date it adheres to this Annex and the entry into force of this Annex.

4. Each Province is responsible for compliance with this Annex by its entities covered by this Annex.

### **S. Definitions**

1. The definitions in Article 200 (Definitions of General Application) and in Article 518 (Definitions) of the Agreement on Internal Trade apply to this Annex insofar as any of the terms in those Articles are used in this Annex, except for the definition of "legitimate objective" in paragraph F2.

**APPENDIX "A"**

**Legislation Applicable to Entities Covered by Annex 502.4**

*Note: A current list can be found by returning to the "MASH sector" menu and clicking on "Legislation applicable to covered entities".*

**APPENDIX 'B'**

**Discriminatory Practices**

For the purposes of D3, discriminatory procurement practices which are not allowed under this Annex include, but are not limited to:

- (a) registration requirements and restrictions on calls for bids based upon the location of a supplier and its subcontractors, or the place where the goods or services are produced and, generally, qualification procedures that discriminate between suppliers by province of origin;
- (b) the biasing of specifications in favour of, or against, a particular good or service for the purpose of circumventing this Annex;
- (c) the timing of bid opening and closing dates so as to prevent qualified suppliers from submitting bids;
- (d) the specification of quantities and delivery schedules of a scale and frequency that may reasonably be judged as deliberately designed to prevent qualified suppliers from meeting the requirements of the procurement;
- (e) the division of required quantities or the diversion of budgetary funds to subsidiary agencies in a manner designed to circumvent this Annex;
- (f) the consideration, in evaluating bids, of provincial content or economic benefits that favour a supplier or good of one of the participating Provinces;
- (g) the giving of preference to selected bids after bids have been submitted and without any mention of the intended preference in the tender documents;
- (h) the use of price discounts or preferential margins to favour suppliers of one Province;
- (i) the unjustifiable exclusion of a qualified supplier from bidding;
- (j) the requirement that a construction contractor or subcontractor use workers, materials or suppliers of materials originating from the Province where the work is being carried out.

**APPENDIX "C"**

**Exceptions - Circumstances for Exclusions**

The following are the exceptions for the purposes of paragraph I(1):

- (a) where an unforeseeable situation of urgency exists and the goods, services or construction cannot be obtained in time by means of open procurement procedures;
- (b) where goods or consulting services regarding matters of a confidential or privileged nature are to be purchased and the disclosure of those matters through an open tendering process could reasonably be expected to compromise government confidentiality, cause economic disruption or otherwise be contrary to the public interest;
- (c) where a contract is to be awarded under a cooperation agreement that is financed, in whole or in part, by an international cooperation organization, only to the extent that the agreement between the entity and the organization includes rules for awarding contracts that differ from the obligations set out in this Annex;
- (d) where construction materials are to be purchased and it can be demonstrated that transportation costs or technical considerations impose geographic limits on the available supply base, specifically in the case of sand, stone, gravel, asphalt, compound and pre-mixed concrete for use in the construction or repair of roads;
- (e) where compliance with the open tendering provisions set out in this Annex would interfere with the entities' ability to maintain security or order or to protect human, animal or plant life or health; and
- (f) in the absence of a receipt of any bids in response to a call for tenders made in accordance with this Annex.

**APPENDIX "D"**

**Exceptions - Circumstances for Sole Supplier Procurement**

The following are the exceptions for the purposes of paragraph 1(2):

- (a) to ensure compatibility with existing products, to recognize exclusive rights, such as exclusive licences, copyright and patent rights, or to maintain specialized products that must be maintained by the manufacturer or its representative;
- (b) where there is an absence of competition for technical reasons and the goods or services can be supplied only by a particular supplier and no alternative or substitute exists;
- (c) for the procurement of goods or services the supply of which is controlled by a supplier that is a statutory monopoly;
- (d) for the purchase of goods on a commodity market;
- (e) for work to be performed on or about a leased building or portions thereof that may be performed only by the lessor;
- (f) for work to be performed on property by a contractor according to provisions of a warranty or guarantee held in respect of the property or the original work;
- (g) for a contract to be awarded to the winner of a design contest;
- (h) for the procurement of a prototype of a first good or service to be developed in the course of and for a particular contract for research, experiment, study or original development, but not for any subsequent purchases;
- (i) for the purchase of goods under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases;
- (j) for the procurement of original works of art;
- (k) for the procurement of subscriptions to newspapers, magazines or other periodicals; and
- (l) for the procurement of real property.