



**AGREEMENT ON THE OPENING OF
PUBLIC PROCUREMENT FOR
NEW BRUNSWICK AND QUÉBEC
(2008)**

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PREAMBLE

The governments of New Brunswick and Québec (hereinafter referred to as "the governments" or "the parties"):

- wish to increase their cooperation and have concluded the Framework Cooperation Agreement between the Government of New Brunswick and the Gouvernement du Québec;
- adhere to the objective of the Council of the Federation to resolve problems that impede internal trade;
- recognize that interprovincial trade barriers must be reduced or eliminated so as to allow for the growth and the strengthening of the competitiveness of New Brunswick and Québec firms;
- consider that one of the most important ways to reduce trade barriers between provinces is through the opening of public procurement based on reciprocity;
- are signatories to the Agreement on Internal Trade;
- wish to remove the disparities between this Agreement and the Agreement on Internal Trade as well as the resulting administrative complications.

Now therefore, in relation thereto, the governments of New Brunswick and Québec agree as follows.

1. SCOPE

- 1.1 This Agreement applies to the entities covered under Annexes 502.1A, 502.3, and 502.4 of the Agreement on Internal Trade.

To ensure better reciprocity with respect to entities covered, the governments agree to amend their lists of entities under the Agreement on Internal Trade, to their mutual satisfaction, no later than March 31, 2009.

- 1.2 With respect to said entities, the Agreement applies to the procurements that are covered under Chapter Five of the Agreement on Internal Trade. In addition, it applies:
- a) for the entities covered under Annex 502.4 of the Agreement on Internal Trade, to construction procurements of a value of \$100,000 to \$250,000;
 - b) for the entities covered under Annex 502.1A of the Agreement on Internal Trade, to advertising and public relations services of a value of \$200,000 or greater.

2. APPLICABLE RULES

- 2.1 For the procurements covered in this Agreement, the rules that apply to the entities covered and to the parties are, subject to sections 3 and 4 of this Agreement, those of the Agreement on Internal Trade that are applicable to public procurement, with the exception of those dealing with the reports to be published, complaint procedures, dispute resolution, and the mechanisms related to the coordination and updating of the Agreement.

3. TENDERING PROCEDURES

- 3.1 In order to facilitate access to procurement for suppliers, the governments agree that tender notices must be accessible through one electronic tendering system. To this end:

- a) Covered entities are required to post tender notices on the electronic tendering system that their government has designated;
- b) Each government makes available daily to the other government for publication on its own system all tender notices of all entities covered by this Agreement; this exchange is done through the Reciprocal Notice Exchange System developed by the Government of Alberta or a mutually agreed alternative.

3.2 Tender notices must indicate that the procurement is subject to this Agreement.

4. EXCEPTIONS

- 4.1 A Party that invokes the exclusion for regional and economic development shall, in order to inform the other Party, report the required information to the Coordinating Committee prior to the publication of a tender notice or, if there is no such publication, as soon as the decision to invoke the exclusion is taken and prior to awarding the contract.

5. REPORTING

- 5.1 For the procurements identified in paragraph (b) of section 1.2, the governments shall present annually a report that meets with the requirements set out in paragraphs 1, 3, and 4 of Article 511 of the Agreement on Internal Trade, except with respect to the estimated value of the contracts awarded below the applicable threshold value.
- 5.2 Each government shall also present annually a report on the contracts concluded with the suppliers from the other province, along with an overview of the origin of its suppliers. The contents of this report will be established by the Coordinating Committee no later than March 31, 2009.

6. COORDINATING COMMITTEE

- 6.1 Each party shall name two (2) officials to serve on the New Brunswick - Québec Procurement Coordinating Committee, established pursuant to this Agreement, and hereinafter called the "Coordinating Committee". The Coordinating Committee may call on experts in the fields covered by the Agreement as required.
- 6.2 The Coordinating Committee will meet at the request of one of the parties.
- 6.3 The Committee shall be responsible for:
 - a) monitoring compliance of the parties with the terms and conditions of this Agreement;
 - b) evaluating and attempting to resolve complaints made by one of the parties concerning the application of this Agreement by the other Party;
 - c) attempting to resolve a complaint made by a supplier that was not resolved in a satisfactory manner;
 - d) monitoring the implementation of the provisions relative to the posting and the exchange of tender notices;
 - e) evaluating the Agreement and preparing a report on its application, as required;
 - f) analyzing reports prepared by each Party;
 - g) providing recommendations to the parties to improve this Agreement if necessary;
 - h) other matters that are relevant to this Agreement; and
 - i) making minor modifications to the text of the Agreement.

7. DISPUTE RESOLUTION

7.1 Each government shall assign one person as the point of contact concerning disputes that may arise from the application of this Agreement.

7.2 Complaint of a Supplier

7.2.1. The aggrieved supplier shall first contact the entity responsible for the procurement in writing. If a satisfactory solution is not found, the supplier may then contact its government requesting it to register a complaint on its behalf with the government of the entity responsible for the procurement. Should the supplier's government decide to lodge a complaint, said complaint will be examined by the representatives of the two governments, who may, if necessary, consult the Coordinating Committee.

7.2.2. In cases where the governments are unable to resolve a complaint, the complaining government may request that it be referred to a panel of experts. Usually, such a panel is made up of three members or is constituted in any other manner deemed acceptable by the two governments. The panel acts promptly. Its final report is submitted to the two governments, which shall then consult in order to reach a mutually acceptable resolution, taking into account the recommendations of the report.

7.2.3. If the procedure set out in section 7.2.2 fails to result in a satisfactory resolution of the dispute, the complaining government may then suspend equivalent benefits granted under this Agreement to the non-complying government and to the suppliers in the territory in question.

7.3 Complaint of a Government

7.3.1. If one of the governments believes that an action taken by the other government or by one of its covered entities is inconsistent with this Agreement, it may lodge a complaint with the Coordinating Committee which, after examining the situation, makes a decision or, if necessary, informs the Ministers responsible of the ongoing disagreement.

7.3.2. If the procedure set out in section 7.3.1 fails to result in a resolution of the complaint, the complaining government may avail itself of sections 7.2.2 and 7.2.3, in the manner specified therein.

7.4 Each government or entity involved is responsible for the fees and expenses it incurs with respect to a complaint. The fees and expenses of the expert panel will be shared equally between the two governments. The official points of contact of the governments will agree on providing secretarial and research support to the panel and will maintain the necessary records.

7.5 The dispute resolution mechanism shall not unduly delay the awarding of a public procurement. However, when a specific public procurement is being challenged, the governments and the entity responsible for the procurement must act to resolve the complaint as quickly as possible so as to avoid, or limit to the extent possible, impacts on the suppliers.

8. INTERPRETATION

8.1 In concluding this Agreement, the governments seek the highest possible degree of reciprocity through application of the terms of the Agreement to procurements that are generally comparable, covering equivalent public bodies and using procurement procedures that are consistent with the objectives sought. The interpretation of the provisions of this Agreement and the resolution of all questions not specifically covered shall take into account this principle of reciprocity intended by the parties. However, this principle of reciprocity may not be invoked each time the other party chooses to exempt a procurement using the exclusion for regional and economic development.

9. WITHDRAWAL

9.1 A Party may withdraw from this Agreement by giving ninety (90) days notice in writing to the other Party.

10. MINISTERS RESPONSIBLE

10.1 The following Ministers are responsible for the application of this Agreement on behalf of their respective governments:

- a) for Québec, the Chair of the Conseil du trésor;
- b) for New Brunswick, the Minister of Supply and Services.

11. EFFECTIVE DATE

11.1 So as to comply with Article 1800 of the Agreement on Internal Trade, this Agreement shall come into force sixty days after the last signature is affixed hereto.

11.2 Notwithstanding section 11.1, the following provisions will come into force on June 30, 2009;

- a) paragraph 1.2 a) with regard to municipalities and municipal organizations; and
- b) section 3.1.

11.3 This Agreement supersedes the Agreement on the Opening of Public Procurement for Québec and New Brunswick concluded in 1993.

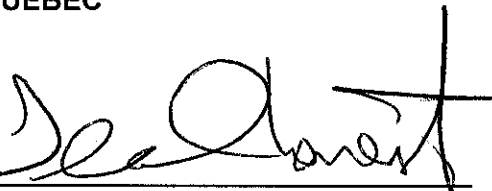
The Premiers sign this Agreement, on behalf of their respective governments, in duplicate in French and in English, both texts being equally valid, at Caraquet, New Brunswick, this 3rd day of October 2008.

**FOR THE GOVERNMENT OF
NEW BRUNSWICK**

**FOR THE GOUVERNEMENT DU
QUÉBEC**



Shawn Graham
Premier



Jean Charest
Premier ministre