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Agreement on Internal Trade (AIT) – MASH Annex

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■ Introduction

- On July 1, 1999, all Provinces and Territories, except for British Columbia and the Yukon, enacted the MASH Annex covering procurement by their MASH entities. British Columbia MASH entities were covered by the Annex effective March 31, 2002.
- The following provides general procurement information and requirements about the nature of the provisions contained in the MASH Annex. Full details of this Annex are available in the AIT, Chapter 5 – Procurement Annex 502.4.

■ Purpose

- The MASH Annex:
 - *prohibits covered entities from having any procurement practices which discriminate against goods, services construction materials, the suppliers of such goods , services or construction materials, from another province or territory;*
 - *ensures that suppliers can gain ready access to all measures maintained by a province or a MASH entity related to procurement covered under the Annex; and*
 - *requires that covered procurements be subject to a fair acquisition process.”*

■ Who is Covered

- MASH entities covered include 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.
 - Exception: Services related to the delivery of health care and of social services are exempt from the MASH Annex. Common guidelines are being prepared to specify the obligations that entities will assume under the Agreement.

■ What is Covered

- All procurement where the value of the procurement is:
 - \$100,000 or greater in the case of goods or services, or
 - \$250,000 or greater in the case of construction.

■ Fair Acquisition Process

- All covered procurement shall be subject to a tendering process.
- Tendering process includes all methods of tendering including requests for information, requests for quotation, requests for proposals, requests for qualification and requests for tenders.
- A fair acquisition process must be based on the highest degree of competition, efficiency and effectiveness and be consistent with the requirements for no discrimination and for ready access to the procurement measures maintained by MASH entities.
- Entities may continue to use their existing policies and procedures provided they are compatible with the provisions of the MASH Annex.
- Entities may use pre-qualified goods, services or suppliers.
- Long term contractual arrangements between an entity and a supplier are permitted provided they are compatible with the provisions of the MASH Annex.
- Covered entities may continue to participate in buying groups provided the activities of each buying group are compatible with the provision of the MASH Annex.
- Covered entities must post their tender notices on the MERX electronic tendering system or another system which is low cost, easy to use and readily accessible across Canada.

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▪ **Tender Notices**

- A tender notice must include at least the following information to comply with Article 506:4(g):
 - a brief description of the procurement contemplated
 - the place where a person may obtain further information and tender documents
 - the conditions for obtaining tender documents
 - the place where the tenders are to be sent
 - the date and time limit for submitting tenders
 - the time and place of the opening of the tenders in the event of a public opening, and
 - a statement that the procurement is subject to the MASH Annex.

▪ **Bid Evaluation**

- Covered entities can take into account any number of criteria in evaluating bids including:
 - quality
 - quantity
 - delivery
 - price
 - servicing
 - the capacity of the supplier to meet the requirements of the procurement, and
 - any other criteria consistent with the provisions of the MASH Annex.
- The bid document must clearly identify the requirements of the procurement, the criteria that will be used in the evaluation of the bids and the methods of weighing and evaluating the criteria.

▪ **Business Language**

- MASH entities covered by this Annex have the right to specify the language requirements for their respective procurement tendering procedures.

▪ **Exceptions**

- Exceptions to the provisions of the MASH Annex are allowed under certain circumstances which include:
 - situations of urgency
 - where only one supplier is able to meet the requirements of a procurement, or
 - procurement of materials for the construction or repairs of roads.
- There are also procurements which are exempted from the provisions of the MASH Annex including the procurement of goods, services and construction that is financed primarily from donations that are subject to conditions that are inconsistent with the MASH Annex.

▪ **Disputes**

- There are provisions for the resolution of disputes which may arise between a covered entity and a supplier. The dispute resolution process shall not cause delay in the awarding of a contract by an entity covered by the MASH Annex.
- The responsibility for resolving disputes initially rests with each covered entity.
- If there are recurring complaints about a specific entity or if a province or territory feel that there is merit in a specific complaint, then the province where the covered entity is located, and the province where the supplier is located can initiate discussions to try to resolve the conflict.
 - If provinces involved cannot agree on a resolution, there is provision for a panel of experts to consider the matter and report back to the provinces.

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- If all else fails, a province may suspend benefits under this Annex to a province which persists in not complying with the MASH Annex.
- **Reporting Requirements**
 - There are no reporting requirements for covered entities.
- **Other Agreements**
 - If there is another agreement between two or more provinces that covers the procurement of MASH entities, the most trade liberalizing agreement will take precedence in the event of a disagreement.
- **Links**
 - Additional information on the MASH Annex may be obtained from the MARCAN (<http://www.marcan.net/english/index2.htm>), an official website established by the Internal Trade Secretariat, including:
 - Applicable provisions (procurement rules) of the AIT for the MASH sector and Crown corporations
 - Where to find Canadian public sector tender notices
 - Government Procurement contacts
 - How to do business with governments and who to contact
 - Entities covered or excluded from the AIT procurement rules
 - Statistics on government contracting
- **Inquiries**
 - **General Inquiries may also be directed to:**
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