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Agreement on Internal Trade (AIT) – Procurement

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Summary of the Agreement

- The Agreement on Internal Trade (AIT) was signed on July 18, 1994 by the First Ministers of all 10 provinces, two of the territories (Yukon and Northwest Territories) and the federal government (referred to as "Parties" in the context of the AIT) and came into force on July 1, 1995. The AIT was established to provide a framework to reduce and eliminate barriers to the inter-provincial movement of goods, services, labor and investment, and to bring about a more open and stable domestic trade within Canada. The AIT is an evolutionary process that requires ongoing negotiations and adjustments in order to further liberalize trade throughout the Canadian economy.
- Guiding Principles of the AIT were agreed to by all Parties and are included in **Six General Rules** which prevent governments from erecting new trade barriers and which require the reduction of existing rules in areas covered under the Agreement.

Six General Rules

1. Reciprocal Non-Discrimination

- Establishes equivalent treatment by all governments, for all Canadian persons, goods, services and investments.
 - Examples: Parties cannot charge businesses from other provinces higher fees than they charge their own businesses. Or, Provinces cannot require products manufactured in another province to meet higher safety standards than those manufactured within their own.

2. Right of Entry and Exit

- Prohibits governments from adopting or maintaining measures, which prevent or restrict the movement of persons, goods, services or investments across provincial or territorial boundaries.
 - Example: Parties are prohibited from putting in place new measures that restrict investment by Canadians outside their province or territory.

3. No Obstacles

- Requires governments to ensure their policies and practices do not have the effect of creating obstacles to trade.
 - Example: Parties must ensure that the tendering of contracts covered under the Agreement does not favour suppliers of a particular province.

4. Legitimate Objectives

- Recognizes that, in pursuing certain non-trade objectives, such as consumer and environmental protection, public health and safety, it may be necessary for a government to deviate from the three preceding trade rules. In such cases, governments will need to ensure that any legislation or regulation they introduce:
 - does not impair unduly the mobility of persons, goods, services or investments;
 - does not restrict trade, more than absolutely necessary; and
 - does not create a disguised restriction on trade.
 - Example: A province may prohibit the transportation of hazardous goods through its territory in unsafe containers. However, insisting on a particular container design rather than a performance standard for the containers may be more trade restrictive than necessary and could be a disguised trade barrier (i.e. if the only firm manufacturing that particular design is located in-province).

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5. Reconciliation

- Provides the basis for eliminating trade barriers caused by differences in standards and regulations across Canada.
 - Example: Parties are required to harmonize standards and related measures on a range of issues including labelling and direct selling.

6. Transparency

- Assures that information is fully accessible through publication and notification, to interested businesses, individuals and governments. Ensures exposure of potentially unacceptable policies and practices to public scrutiny.
 - Example: Parties must identify a place where businesses and individuals can get information about their policies. All proceedings before dispute resolution panels must be open to the public.

Chapter 5 (Procurement)

▪ Purpose

- Chapter 5 (Procurement) of the AIT sets out a framework and defines the rules for public procurement, which are based on the principles of non-discrimination, transparency, openness and ease of access to tender information. The agreement is national in scope and contains a dispute mechanism for suppliers.

▪ Obligations

- Parties are not permitted to discriminate against suppliers of another province or territory. This includes means such as local price preferences, biased technical specifications, unfair registration requirements or unreasonable time constraints.

▪ Application

- All qualified Canadian suppliers have the right to bid on all contracts tendered by most government departments and agencies, which exceed established thresholds for goods, services or construction. See next section for Procurement Thresholds.
- Procurement by municipalities, municipal organizations, school boards and publicly-funded academic, health and social services entities (MASH entities) is also covered in all jurisdictions except the Yukon.
- While Manitoba has a number of Crown Corporations, only the Manitoba Lotteries Corporation and the Manitoba Liquor Commission are Crowns covered by the AIT.

▪ Procurement Thresholds

- The AIT covers only those tenders where the procurement value is equal to or exceeds the following thresholds designated for a range of public sector Parties:

AIT Thresholds	Goods	Services	Construction
Federal/ Provincial/ Territorial	\$25,000	\$100,000	\$100,000
MASH sector	\$100,000	\$100,000	\$250,000
Crown Corporations	\$500,000	\$500,000	\$5,000,000

- While the AIT provides for a minimum threshold some Parties have established lower thresholds that result in openly tendering opportunities on electronic tendering systems.
- Manitoba has lowered some thresholds and will publicly tender opportunities for goods over \$5,000 and requirements for Information Technology over \$5,000.
- **Exceptions**
 - A number of federal and provincial agencies and Crown corporations, as well as some professional services, are currently excluded from the Agreement.
 - The AIT recognizes certain exceptions for reasons of public interest.
 - The federal government may take any action necessary to protect national security or to maintain international peace and security.
 - Under Article 1802, the AIT does not apply to any measure adopted or maintained with respect to Aboriginal peoples and it does not affect existing aboriginal and treaty rights of any of the Aboriginal peoples of Canada under section 35 of the Constitution Act, 1982.
 - Measures relating to culture or cultural industries are exempt.
 - Measures relating to a general framework of regional economic development are exempt, subject to a number of conditions, including:
 - when the measure is used, it cannot be more trade restrictive than necessary to achieve its goal;
 - the measure does not unduly impair the access of persons, goods, or services of another province or territory; and
 - public scrutiny and evaluation of regional development programs on a regular basis.
- **Electronic Tendering**
 - Parties must make tender opportunities known to all Canadian suppliers through the use of an electronic tendering system, but may also advertise in daily newspapers or use of source lists.
 - Manitoba advertises tender opportunities on MERX, an Internet-based electronic tender and distribution service owned and operated by Mediagrif Interactive Technologies of Montreal, Canada.
- **Dispute Resolution Procedures**
 - The AIT has been designed to maximize cooperation and minimize conflict. However, dispute resolution procedures have been put in place to address the differences that may arise among governments, as well as those between governments and individuals.
 - Chapter 5 (Procurement) provides a dispute settlement mechanism to resolve conflicts and lays out the steps governments or individuals must follow to pursue a complaint. When a dispute arises, the procedures contained in Chapter 5 are to be used first. Procedures have been updated through the Seventh Protocol of Amendment found on MARCAN.
 - If those processes fail to resolve the problem, the formal dispute resolution procedures in Chapter Seventeen may be used.
- **Application provisions of Chapter 5**
 - Additional application provisions on the Chapter 5 of the AIT and related procurement information, are published on MARCAN, <http://www.marcan.net/en/chapter5.php> a host site maintained by the Internal Trade Secretariat and includes, but is not limited to:
 - Covered entities by jurisdiction (Annex 502.1A)
 - Excluded entities (Annex 502.2A)
 - Excluded entities (non-intervention) (Annex 502.2B)

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- Links to the individual Internet sites used by governments to publish their tender notices and procurement contacts.
- **Accessing the AIT**
 - Consolidated Version of Chapter 5 (Procurement) is available on [MARCAN](#).
 - Full text on all chapters of the AIT, may be obtained by contacting the Internal Trade Secretariat, or available online: http://www.ait-aci.ca/index_en.htm
- **Publication of Tender Notices**
 - The [MARCAN](#) website provides the location of public sector internet sites that advertise tender opportunities. MARCAN is an initiative of the federal, provincial and territorial governments under the Agreement on Internal Trade.
- **Inquiries**
 - **Inquires on Chapter 5 (Procurement) may be directed to:**

David Ash
Director, Procurement Services
2nd floor – 270 Osborne Street North
Winnipeg, Manitoba R3C 1V7
Ph: 204-945-6380
Fax: 204-945-1455
David.Ash@gov.mb.ca
 - **General Inquires on all Chapters of the AIT may be directed to:**

Alan Barber
Director, Policy, Planning and Coordination
Manitoba Entrepreneurship, Training and Trade
910-259 Portage Avenue
Winnipeg MB R3B 3P4
Ph: 204-945-8714
Fax: 204-945-1354
Alan.Barber@gov.mb.ca
 - **General Inquires may also be directed to:**

<p>Patrick Caron Internal Trade Officer, Internal Trade Secretariat Suite 850, 444 St. Mary Avenue Winnipeg, MB R3C 3T1 Ph: 204-987-8092 Fax: 204-942-8460 pcaron@ait-aci.ca</p>	<p>Anna Maria Magnifico Executive Director Internal Trade Secretariat Suite 850, 444 St. Mary Avenue Winnipeg, MB R3C 3T1 Ph: 204-987-8094 Fax: 204-942-8460 amagnifico@ait-aci.ca</p>
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