

TO: CITY MANAGER
FROM: DIRECTOR FINANCE

2001 November 26

File: T97

**SUBJECT: AGREEMENT ON INTERNAL TRADE (AIT)
AND THE B.C. MUNICIPALITIES**

PURPOSE: To provide additional information on the potential impacts of the Agreement on Internal Trade.

RECOMMENDATION(S):

1. THAT the Provincial government be informed that the City of Burnaby agrees with the principles but not the need to legislate compliance with the procurement provisions and rules of the Agreement on Internal Trade.
2. THAT the Provincial government be informed that Burnaby and other B.C. municipalities already conduct their purchasing activities under fair, competitive, efficient, effective, non-discriminatory and transparent processes and therefore no discernable benefits are achieved by legislatively forcing municipalities to adhere to the AIT.
3. THAT the Provincial government be informed that the procurement provisions of the AIT open an avenue of challenge to the procurement processes based on creative interpretations of the rules and may place the cities in a position of constantly being required to defend the criteria stated in tenders.
4. THAT the Provincial government be informed that the dispute resolution process denoted in the AIT is contrary to the stated intent and direction of the Community Charter and due to the exclusion of the municipalities by a panel of "trade experts" may lead to decisions that are contrary to the successful achievement of municipal objectives and good governance.
5. THAT a copy of this report be sent to the Union of B.C. Municipalities.

REPORT

At its meeting of 2001 November 05 Council received a report explaining components of the procurement provisions of the Agreement on Internal Trade (AIT) being extended to B.C. municipalities by the Provincial government as of 2002 March 31. The report was tabled pending an informal presentation by Ms. Ellen Gould, an independent researcher under contract to the U.B.C.M.

The U.B.C.M. has asked for municipal comments on the Provincial government's decision to extend the purchasing provisions of the AIT to local municipalities, the comments will be compiled and shared with the provincial Ministers involved.

This report is intended to replace the 2001 November 05 Council report and document additional information received by the presentation of Ms. Gould.

Procurement Provisions of the AIT

The extension of the provisions of the AIT covers all municipalities, regional districts, municipal organizations, school boards, universities, colleges, health and social service agencies. The following are the more significant components of the procurement provisions (rules) dictated by the AIT:

1. Scope

Purchases must be made in compliance with the AIT if they are over the following thresholds:

Goods and Services	\$100,000
Construction	\$250,000

2. Non-Discrimination

A municipality may not restrict its purchases to suppliers in a limited geographic area within Canada. This includes:

- bid qualifications that discriminate between suppliers by province.
- specifications set to circumvent the AIT.
- timing of bid dates to prevent qualified suppliers from submitting bids.
- deliberate setting quantities and delivery schedules to prevent qualified suppliers from meeting the requirements.
- the division of order quantities to circumvent the AIT.
- requiring provincial content or economic benefits to favour a supplier.
- using criteria for selection that is not stated in the tender documents.
- the use of price discounts to favour suppliers of one Province.

- the unjustified exclusion of a qualified bidder.
- the requirement that a construction contractor use materials, suppliers or labour originating from the Province where the work is being carried out.

3. Exceptions

Some types of purchases may be exempted from complying with the AIT, they are:

- an unforeseeable situation of urgency exists for the goods, services or construction.
- purchases regarding a confidential or privileged nature that could be compromised by an open tendering process.
- contracts awarded under agreements financed by an international cooperation organization.
- construction materials that transportation costs or technical considerations impose geographic limits; like: sand, gravel, asphalt, and pre-mixed concrete.
- where compliance would interfere with the ability to protect human, animal or plant health.
- the absence of any bids in response to a call for tenders.

4. Fair Acquisition Process

- Existing methods of procurement may be continued provided they are consistent with the AIT.
- the acquisition processes must be fair, competitive, efficient, effective, non-discriminatory and transparent.
- an electronic tendering system to advertise procurement opportunities must be used. The Province has provided access to its BC Bid web page to allow the municipalities to satisfy this criteria in a cost effective way.
- the method of weighting and evaluating the tender criteria must be stated before hand.

5. Dispute Resolution

Municipalities must document their internal complaint process and provide this to a supplier or a Province upon request.

The Province may enter into disputes with suppliers and resolve the dispute with the supplier or the supplier's Province.

If the dispute is still not resolved a panel of experts will be formed by the two Provinces party to the dispute and a public report will be produced to form the basis of a resolution to be agreed to by the Provinces.

Municipal Issues with the AIT

In 1995/1996 the B.C. Municipalities, U.B.C.M. and the Provincial government reviewed the provisions of the AIT as they were then drafted. At the end of the review the B.C. Government made the decision not to accept the Procurement Provisions of the AIT but agreed to accept the objectives of the agreement and adhere to the principles in a manner consistent with current purchasing principles.

The reasons for the B.C. Government's decision are believed to have included:

1. The original threshold amounts for bid solicitation were:

Goods	\$25,000
Services	\$100,000
Construction	\$100,000

The Goods and Construction thresholds were considered to be much too low, leading to unnecessarily complex tendering processes with little net return associated with the benefits of open tendering.

The thresholds have now been increased to levels not inconsistent with current municipal purchasing practices.

2. The original reporting requirements were extensive and complex, including: annual reports on the number of contracts let with extensive details of each including:
 - purchasing procedures used
 - details of tender advertising
 - contact names for inquiries and complaints

The reporting requirements have been removed from the AIT.

3. The tender procedures that were specified in the original AIT, coupled with the low threshold limits, would have resulted in significant cost and administrative burden, they included:
 - the provision of electronic access to tenders for everyone.
 - the publication of the tenders in at least one daily newspaper accessible to all Canadian suppliers.
 - the inclusion of much more detail in the tenders than we would normally supply.

Access to the B.C Bid website has been provided by the Provincial government, the other requirements have been dropped from the provisions of the AIT. Burnaby has used the B.C Bid web site to advertise tenders for the last several years.

4. The provincial government objected to a rules based approach to tendering practices which would result in restrictive procedures and undue administrative costs. The requirements have been changed to more closely maintain the principles of our current purchasing practice.

Although modified based on previous input, the rules based approach can lead to challenges based on creative, unintended or unthought of interpretations of specific words and phrases. This can have the effect of putting cities in a position of constantly defending their criteria stated in legitimate tenders by comparing with other standards or speculation on unproven alternate product's performance.

5. In 1995 the Federation of Canadian Municipalities endorsed a resolution that supported the stated principles of the AIT but based on the fact that municipalities already use professional purchasing principles in their procurement practices it was felt that the AIT would "have little or no discernable benefit, be costly to implement and be contrary to the stated objective in the Agreement of reducing purchase costs".

Current Municipal Concerns

While the Agreement on Internal Trade has come a long way in addressing the original concerns of the B.C. Municipalities there are a still areas that need to be rationalized:

1. B.C. municipalities already conduct their purchasing activities under fair, competitive, efficient, effective, non-discriminatory and transparent processes and therefore no discernable benefits are achieved by legislatively forcing municipalities to adhere to the AIT.
2. The procurement provisions of the AIT open an avenue of challenge to the procurement processes based on creative interpretations of the rules and may place the cities in a position of constantly being required to defend the criteria stated in tenders.
3. The dispute resolution process denoted in the AIT is contrary to the stated intent and direction of the Community Charter and due to the exclusion of the municipalities by a panel of "trade experts" may lead to decisions that are contrary to the successful achievement of municipal objectives and good governance.



Rick Earle
DIRECTOR FINANCE

