

Procurement Standards Involving Conflict of Interest Policy



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Introduction

Conflicts of interest can create unfair advantages in procurement competitions, and negatively affect the public trust in public entities. Public entities have a responsibility to have policies in place to ensure employees and contractors who create, implement and evaluate competitions are obligated to identify and address conflicts of interest. In an effort to further protect and enhance the fairness of procurement competitions, vendors are also to declare any actual, potential or perceived actual conflicts of interest.

Definitions

"Conflict of interest" includes any situation or circumstance where, in relation to a public entity procurement competition, a participating vendor has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including:

- having, or having access to, information in the preparation of its proposal that is not available to other vendors, but does not include information a vendor may have obtained in conjunction with a contract with a public entity that is not related to the creation, implementation or evaluation of this or a related procurement;
- communicating with any person with a view to influencing preferred treatment in the procurement competition (including but not limited to the lobbying of decision makers involved in the procurement competition); or
- engaging in conduct that compromises, or could be seen to compromise, the integrity of the open and competitive procurement competition or renders that competition non-competitive, less competitive, or unfair.

"Public entity" means a ministry, agency, board, commission, or Crown Corporation of the Government of Saskatchewan.

Application

This policy applies to all public entity procurements of goods, services, and construction whether by purchase, contract, or lease.

This policy establishes that in procurement competitions vendors are to declare all actual, potential or perceived conflicts of interest. A perceived conflict of interest can arise where a reasonable person could form the view that a participating vendor has an unfair advantage. There are many situations where a conflict of interest can arise, however the following are some examples:

- a vendor that has a familial or close personal relationship with employees or officials of the public entity;
- a vendor who had past employment with, or served on the board of directors of, the public entity;
- a vendor lobbying public entity decision makers involved in the procurement; or
- a vendor who is or was involved in the creation, implementation or evaluation of the current procurement.

The foregoing is not an exhaustive list but simply outline some examples for illustrative purposes. The provisions in the procurement documents for each competition will govern the description, identification and resolution of conflicts of interest, and vendors are reminded to carefully review these documents prior to responding.

Suggested language that may be incorporated into procurement documents with regard to conflicts of interest is outlined in Appendix 1.

A public entity that receives a disclosure of an actual, potential or perceived conflict of interest from a vendor may in its sole discretion and without limitation take one or more of the following steps:

- require the vendor to address any actual, potential or perceived conflict of interest to the satisfaction of the public entity (e.g. remove or isolate an individual from the procurement);
- disqualify the vendor from further participation; or
- such other steps the public entity may deem appropriate.

A vendor that fails to identify actual, potential or perceived conflicts of interest may be disqualified from the procurement competition and may also be subject to such other sanctions as the public entity may deem appropriate.

Other Forms of Prohibited Vendor Conduct

Vendors are reminded that other forms of vendor conduct are also prohibited by the Procurement Code of Conduct. This policy should be read in conjunction with the Procurement Code of Conduct and nothing in this policy reduces the obligation of a vendor to report and avoid any conduct identified in the Procurement Code of Conduct, or any applicable public entity policy, including any activity that may impact the public entity's ability to run a fair procurement process or which compromises its integrity. Vendors who undertake any activity which is prohibited by policy or by the procurement competition may be disqualified from the competition and possibly from future procurement competitions.

Any decisions or ruling will be communicated in writing to the affected vendor.

Questions

Questions and enquiries regarding this policy may be directed to the relevant public entity or Priority Saskatchewan.

Appendix A

*** The procurement documents should include the same definition of “conflict of interest” as contained in this policy as follows:**

In this section, "conflict of interest" includes any situation or circumstance where, in relation to a public entity procurement competition, a participating vendor has an unfair advantage, a perception of an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including:

- having, or having access to, information in the preparation of its proposal that is not available to other vendors, but such does not include information a vendor may have obtained in the past performance of a contract with a public entity that is not related to the creation, implementation or evaluation of this or a related procurement;
- communicating with any person with a view to influencing preferred treatment in the procurement competition (including but not limited to the lobbying of decision makers involved in the procurement competition); or
- engaging in conduct that compromises, or could be seen to compromise, the integrity of the open and competitive procurement competition or renders that competition non-competitive, less competitive, or unfair.

In addition to the above, one of the following clauses may be included in the procurement documents and/or resulting contracts:

- Vendors are to fully disclose, in writing to the public entity on or before the closing date of the RFP, the circumstances of any actual or potential conflict of interest, as well as what could be perceived as a conflict of interest if the vendor were to become a contracting party pursuant to the RFP. The public entity will review all disclosures made by vendors under this provision and take such steps as it, in its sole discretion, deems necessary to address any conflict, which may include requiring the vendor to take action to address and remedy the conflict of interest to the satisfaction of the public entity or disqualifying the vendor from further participation;
- You represent that neither you, your principals, officers nor employees have any knowledge of any actual, potential or perceived conflict of interest, and you agree that failure to disclose any actual, potential or perceived conflicts of interest may, at the sole discretion of the public entity, render any contract that may result from this procurement competition null and void, and entitle the public entity to terminate the contract immediately and recover any and all of the contract price.
- All proponents should advise the public entity in writing whether it has any actual, potential or perceived conflict of interest, and if so, the nature of each conflict of interest. A proponent may, in the sole discretion of the public entity, be disqualified from this RFP process if a proponent is found to have a Conflict of Interest.