

Law Reform Commission of Nova Scotia

Procurement Policy

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CONTENTS

1.0 Purpose and Objectives	2
2.0 Definitions	2
3.0 Application.....	4
4.0 Directives	4
4.1 Low Value Procurement	4
4.2 High Value Procurement:	4
5.0 Alternative Procurement Practices.....	5
6.0 Bid Opening, Evaluation, and Award.....	5
6.1 Bid Opening.....	5
6.2 Bid Evaluation.....	5
6.3 Award	5
6.4 Supplier Debriefing.....	5
6.5 Supplier Complaint Process (SCP).....	6
7.0 Fair Treatment for Nova Scotia Suppliers	6
8.0 Other Considerations	6
8.1 Cooperative Procurement.....	6
8.2 Standing Offers	6
9.0 Obligations under the Public Procurement Act.....	6
9.1 Terms and Conditions	6
9.2 Posting Tender Notices and Awards.....	7
9.3 Code of Ethics.....	7
9.4 Other	7
10.0 Amendments.....	7
Appendix 1 - Alternative Procurement Approval, Consultation, and Reporting Process	8
Appendix 2 - Tendering Tools	10

1.0 PURPOSE AND OBJECTIVES

The Law Reform Commission of Nova Scotia (the “Commission”) is committed to:

- Providing for the procurement of goods, services, construction and facilities in a fair, open, consistent, and transparent manner resulting in best value;
- Encouraging competition, innovative ideas and solutions, while respecting all Legislative and Trade Agreement obligations;
- Promoting sustainable procurement in procurement decisions, including identifying and exploring opportunities to work with and support social enterprises and businesses that are owned by and who employ under-represented populations;
- Ensuring that qualified suppliers have equal opportunity to bid on the Commission’s procurement activity;
- Being accountable for procurement decisions.

2.0 DEFINITIONS

For the purposes of this policy, the following definitions are provided:

Atlantic Standard Terms & Conditions

Standard instructions that support public tenders issued by the four Atlantic provinces for goods and services. Supplements may be added if and when required.

Best Value

Evaluating bids not only on purchase price and life cycle cost considerations, but also taking into account items such as environmental and social considerations, delivery, servicing, and the capacity of the supplier to meet other criteria as stated in the tender documents.

Bid

A supplier response to a public tender notice to provides goods, services, construction or facilities.

Construction

The construction, reconstruction, demolition, repair, or renovation of a building, structure, road or other engineering or architectural work, excluding the professional consulting services related to the construction contract unless they are included in the procurement.

Construction Contract Guidelines

Standard instructions developed in consultation with the Construction Association of Nova Scotia that support construction tenders.

Goods

Materials, furniture, merchandise, equipment, stationery, and other supplies required by the Commission for the transaction of its business and affairs, including services that are incidental to the provision of such supplies.

Facilities (also referred to as Building Leases)

All building lease requirements covering the conveyance of the right to use tangible building property for a specified period of time in return for rent.

Procurement Advisory Group

The advisory group established by the *Public Procurement Act* to provide advice and recommendations to advance the outcomes of the *Act*.

Procurement Activity

The acquisition of all goods, services, construction, or facilities procured by purchase, contract, lease, or long-term rental.

Procurement Value

The value of the total contract excluding taxes but including all options whether exercised or not. For Facilities this value is determined by the monthly lease/rent times the term of the contract.

Procurement Web Portal

The public website maintained by the Province where all public tender notices are posted.

Public Advertisement

Advertising a public tender notice on the procurement web portal.

Public Procurement Act (PPA)

An Act outlining the rules related to the procurement activity of all public sector entities in the Province of Nova Scotia.

Public Tender

Procurement for goods, services, construction, or facilities obtained through public advertisement.

Public Tender Notice

Notice of intended procurement for goods, services, construction, or facilities obtained through public advertisement.

Services

Services required by the Commission for the transaction of its business and affairs, excluding services provided by an employee through a personal services contract.

Standing Offer

A standing offer is a contractual arrangement with a supplier to provide certain goods or services on an 'as required' basis, during a particular period of time, at a predetermined price or discount, generally within a predefined dollar limit.

Sustainable Procurement

Sustainable Procurement involves taking a holistic approach to obtain best value. This will be done by integrating the following considerations in the procurement process:

- Environmental considerations: e.g. Green House Gas Reduction, Waste Reduction, Toxic Use Reduction;

- Economic considerations: *e.g.* Life Cycle Cost, Fiscal Responsibility, Support for the Local Economy;
- Social considerations: *e.g.* Employee Health and Safety, Inclusiveness and Fair Wage, Health Promotion.

3.0 APPLICATION

This policy applies to all procurement activity of the Commission effective January 1, 2013.

The Executive Director of the Commission is responsible for ensuring compliance with this policy.

All Commission personnel who have responsibility for the procurement of goods, services, construction, or facilities must adhere to this policy. Failure to adhere may result in a temporary or permanent loss of procurement privileges or in more extreme cases result in disciplinary action and/or dismissal.

4.0 DIRECTIVES

4.1 Low Value Procurement

- Goods up to and including \$ 10,000
- Services up to and including \$ 50,000
- Facilities up to and including \$ 50,000
- Construction up to and including \$100,000

For all low value procurement activity with a procurement value as outlined above (excluding taxes), Commission personnel are expected to, as far as practicable, attempt to obtain at least three quotes and award to the supplier offering best value. Exceptions include the Alternative Procurement Practices outlined in section 5.0 of this Policy, or publicly tendered standing offers as outlined in section 8.2 of this policy.

When selecting the list of suppliers to be provided the opportunity to quote, Commission personnel will make every effort to ensure a fair and open process is followed. While Commission personnel are expected to invite only qualified suppliers, they are not to consistently invite bids from only one or a select group of suppliers. Invitations and bidding opportunities are to be equitably distributed among all potential bidders in an area, and all interested and qualified suppliers are to be evaluated on a consistent and equitable basis. Where increased competition is appropriate, Commission personnel may chose to publicly tender for goods, services, construction or facilities that fall within the above thresholds.

4.2 High Value Procurement

- Goods over \$ 10,000
- Services over \$ 50,000
- Facilities over \$ 50,000
- Construction over \$100,000

All procurement activity with a procurement value over the thresholds (excluding taxes) outlined above must be obtained through a public tender. Exceptions include the Alternative

Procurement Practices outlined in section 5.0 of this Policy, or publicly tendered standing offers as outlined in section 8.2 of this policy. All public tender opportunities must be posted on the Province of Nova Scotia Procurement Web Portal. Commission personnel may wish where appropriate to also advertise in local, provincial, or national media; however, there is no obligation to do so. In addition, a notice of tender opportunity may be sent to selected suppliers where required to ensure an adequate degree of competition.

5.0 ALTERNATIVE PROCUREMENT PRACTICES

In order to balance the need for an open, competitive process with the demands of urgent or specialized circumstances, exceptions to the directives in section 4.0 are permitted for Alternative Procurement Circumstances outlined at Appendix 1. Alternative Procurement Practices must be used only for the purposes intended and not to avoid competition or to discriminate against specific suppliers. To ensure appropriate use, each Alternative Procurement Practice must be documented by Commission personnel, stating the applicable Alternative Procurement Circumstance, and signed by the Executive Director. All documents must be filed and maintained for audit purposes.

6.0 BID OPENING, EVALUATION, AND AWARD

6.1 Bid Opening

Bids are accepted in accordance with the closing time, date, and place stipulated in the bid request documents. Members of the public may receive the list of bidders electronically after bid opening.

6.2 Bid Evaluation

All bids are subject to evaluation after opening and before award of contract. The bid request documents must clearly identify the requirements of the procurement, the evaluation method, evaluation criteria based on the purpose and objectives of this policy, and the weights assigned to each criterion.

6.3 Award

The winning bidder and contract award amount for all high value procurement activity must be posted on the Province of Nova Scotia's Procurement Web Portal. After contracts have been awarded, routine access to information at the vendors request shall be provided in the following areas:

- Bidders list
- Name of winning bidder
- Award price excluding taxes of the winning bidder

6.4 Supplier Debriefing

At the request of a supplier who submitted a bid, Commission personnel will conduct a supplier debriefing session to provide feedback on the evaluation of the public tender. Suppliers can find out how their proposal scored against published criteria, obtain comments on their bid, and gather information on how future bids may be improved. The Supplier's bids are not compared to other bids, nor will information on other bids be provided.

6.5 Supplier Complaint Process (SCP)

When a supplier is not satisfied with the information provided in a supplier debriefing, the supplier may file a complaint in accordance with the Supplier Complaint Process as defined in the Public Procurement Act. The SCP is not a dispute resolution process, but rather is intended to handle supplier complaints and to improve faulty or misleading procurement processes. The SCP is an integral part of a fair and open procurement policy.

7.0 FAIR TREATMENT FOR NOVA SCOTIA SUPPLIERS

Based on the principle of best value for the Commission and when deemed to be in its best interest, Commission personnel may apply a preference for goods valued up to and including \$10,000 that are manufactured or produced in Nova Scotia. The final decision to apply a preference to a Nova Scotia supplier shall be approved by the Executive Director.

Commission personnel may also choose to apply a Nova Scotia preference or restrict the receipt of quotations at or below the low value procurement thresholds to Nova Scotia Suppliers. Any decision made by Commission personnel should be based on budget considerations, and shall be approved by the Executive Director.

8.0 OTHER CONSIDERATIONS

8.1 Cooperative Procurement

Commission personnel are encouraged to look for opportunities to collaborate with government agencies when the arrangement may result in overall cost savings or other substantial advantages. For example, joint procurement may be appropriate to procure commonly used goods, services, fuel oil, natural gas, telecommunications, etc.

8.2 Standing Offers

Commission personnel may access all Province of Nova Scotia standing offers, as well as any standing offer established through the Procurement Advisory Group for the Province should Commission personnel wish to make use of the savings opportunities. Standing offers can be used up to \$25,000 per project for goods, or \$100,000 per project for services. For consulting services, Commission personnel should prepare a Statement of Work and obtain 3 quotes from vendors on the standing offer.

9.0 OBLIGATIONS UNDER THE *PUBLIC PROCUREMENT ACT*

Commission personnel are required to adhere to the following procurement practices:

9.1 Terms and Conditions

Every public tender notice must include or have attached the terms and conditions that govern the purchase of goods, services, construction, or facilities. The terms and conditions of every public tender notice must be consistent with the Atlantic Standard Terms and Conditions for the procurement of goods, services, or facilities and the Construction Contract Guidelines developed in collaboration with the Construction Association of Nova Scotia for the procurement of construction.

9.2 Posting Tender Notices and Awards

All opportunities subject to a public tender must be advertised on the Province of Nova Scotia Procurement Web Portal. Commission personnel must also post on the Procurement Web Portal the name of the successful bidder for the public tender and the contract amount awarded.

9.3 Code of Ethics

Commission personnel and board members must ensure their conduct in relation to procurement activity is consistent with the “Duties of public sector entity employees” in the Public Procurement Act. This includes a request for removal from a procurement activity when a personal conflict of interest is perceived.

9.4 Other

Policy Posting

Commission personnel will ensure this policy is posted on the Commission web site.

Supplier Development Activities

Commission personnel will make every attempt where appropriate to participate in vendor outreach activities as requested by the Procurement Governance Secretariat.

Regulations

Commission personnel will make sure that procurement practices remain consistent with any regulations that are adopted under the *Public Procurement Act*.

10.0 AMENDMENTS

This policy may be amended from time to time with the approval of the Executive Director. Such amendments will be communicated to the public on the Commission website.

APPENDIX 1 - ALTERNATIVE PROCUREMENT APPROVAL, CONSULTATION, AND REPORTING PROCESS

Low Value:

The Executive Director may delegate signing authority for low value alternative procurement transactions to a delegate in his or her absence. No further approvals will be necessary. The Executive Director will ensure persons with delegated signing authority will be held accountable for their actions and that all procurement activities by Commission personnel are properly documented and filed for follow up and audit. The Executive Director shall remain accountable for the proper use of alternative procurement transactions.

High Value:

The Executive Director must approve the use of alternative procurement practices (except in case of emergency) for high value procurements as set out in section 4.2. The Executive Director may, but is not obliged to, confer with provincial government procurement officials.

The Executive Director may delegate signing authority for high value alternative procurement transactions to a delegate in his or her absence. All appropriate documentation will be maintained on file for audit purposes. The Executive Director will ensure persons with delegated signing authority will be held accountable for their actions. The Executive Director shall remain accountable for the proper use of alternative procurement transactions.

Alternative Procurement Circumstances

A. No Threshold Restrictions

Commission personnel may use Alternative Procurement Practices as described in section 5.0 in the following circumstances:

1. Where an unforeseeable situation of urgency exists and the goods, services, or construction cannot be obtained in time by means of open procurement procedures (Commission personnel must ensure inadequate planning does not lead to unnecessary use of this exemption);
2. Where goods or consulting services regarding matters of a confidential or privileged nature are to be purchased and the disclosure of those matters through an open tendering process could reasonably be expected to compromise government confidentiality, cause economic disruption, or otherwise be contrary to the public interest;
3. Where compliance with the open tendering provisions set out in this Policy would compromise or threaten security or order, or human, animal, or plant life or health;
4. In the absence of tenders in response to an open or selective tender, or when the tenders submitted have been collusive, or not in conformity with the essential requirements in the tender;
5. To ensure compatibility with existing products, to recognize exclusive rights, such as exclusive licenses, copyright, and patent rights, or to maintain specialized products that

must be maintained by the manufacturer or its representative;

6. Where there is an absence of competition for technical reasons and the goods or services can be supplied only by a particular supplier and no alternative or substitute exists;

7. For the procurement of goods or services the supply of which is controlled by a supplier that is a statutory monopoly;

8. For the purchase of goods on a commodity market;

9. For work to be performed on or about a leased building or portions thereof that may be performed only by the lessor;

10. For work to be performed on property by a contractor according to provisions of a warranty or guarantee held in respect of the property or the original work;

11. For the procurement of a prototype or a first good or service to be developed in the course of and for a particular contract for research, experiment, study or original development, but not for any subsequent purchases;

12. For the purchase of goods under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases;

13. For the procurement of original works of art;

14. For the procurement of subscriptions to newspapers, magazines, or other periodicals;

15. For the procurement of real property;

16. For the procurement of goods intended for resale to the public;

17. For the procurement from philanthropic institutions, prison labour, persons with disabilities, sheltered workshop programs, or through employment equity programs;

18. For the procurement from a public body or a non-profit organization;

19. For the procurement of services of expert witnesses, specifically in anticipation of litigation or for the purpose of conducting litigation'

B. Low Value Threshold Restrictions

Commission personnel may use Alternative Procurement Practices as described in section 5.0 in the following circumstances, up to the high value thresholds set out in s 4.2 of this Policy:

1. For the procurement of goods or services for the purpose of evaluating or piloting new or innovative technology with demonstrated environmental, economic, or social benefits when compared to conventional technology, but not for any subsequent purchases.

2. For procurement that fosters the development of minority businesses.

APPENDIX 2 - TENDERING METHODS

A public tender may be issued by way of a variety of methods, including:

Request for Proposal (RFP)

Used when a supplier is invited to propose a solution to a problem, requirement, or objective. Suppliers are requested to submit detailed proposals (bids) in accordance with predefined evaluation criteria. The selection of the successful proposal is based on the effectiveness, value, and price of the proposed solution. Negotiations with suppliers may be required to finalize any aspect of the requirement.

Request for Construction (RFC)

Used to publicly tender for a construction, reconstruction, demolition, remediation, repair, or renovation of a building, structure, road, bridge, or other engineering or architectural work. When a supplier is invited to bid on a construction project the tender documents usually contain a set of terms and conditions and separate bid form that apply to that specific project. Suppliers are requested to submit a response (bid) in accordance with predefined criteria. The selection of the successful proposal is based on a number of factors as described in the tender documents. A request for construction usually does not include professional consulting services related to the construction contract, unless they are included in the specifications.

Request for Quotation (RFQ)

A request for quotation on goods or products with a minimum specification. Award is usually made based on the lowest price meeting the specification. An RFQ does not normally but may sometimes include evaluation criteria.

Request for Standing Offer (RSO)

A public tender to provide commonly used goods or services. The term of the standing offer can vary in duration but will be clearly defined in the tender documents. RSO's may include evaluation criteria depending on the requirement.

Request for Expression of Interest (REI)

The Request for the Expression of Interest is similar to the Request for Proposal and is sometimes referred to as a Pre-Qualification, where suppliers are invited to propose a solution to a problem. The REI, however, is only the first stage in the procurement process. Bidders responding to the REI will be short listed according to their scoring in the evaluation process. The short listed firms will then be invited to respond to a subsequent Request for Proposal. A REI does not normally include pricing as price is a key evaluation criteria used in the second stage RFP process.