



Crown Sector Procurement - Conflict of Interest

Issued Date: December 8, 2015

Authority

The Crown Corporations Act, 1993
Cabinet Minute - # 2262
CIC Board Minute - #182/2015

Applicability

This policy applies to CIC and its subsidiary Crown corporations and their subsidiaries for all procurement of goods, services, and construction whether by purchase, contract, or lease.

Purpose

The objective of this policy is to ensure:

- Consistency of procurement processes across the Crown sector; and,
- Fairness and transparency in Crown sector procurement competitions.

Definitions

Conflict of interest - includes any situation or circumstance where, in relation to a Crown corporation's 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 Crown corporation 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.

Perceived Conflict of Interest - Where a reasonable person could form the view that a participating vendor has an unfair advantage.

Policy

Crown corporations shall establish a process in which vendors are to declare all actual, potential or perceived conflicts of interest in all procurement competitions.

Policy guidelines are documented in the attached Minimum Standards/Application Guide.

Administrative Information

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Conflict Of Interest Policy - Minimum Standards/Application Guide

1) Policy Guidelines

Each Crown corporation shall ensure that the framework outlined in this policy is adequately reflected in the Crown corporation's existing procurement policies and procedures no later than March 31, 2016.

1.1) Overview

The provisions in the procurement documents for each competition will govern the description, identification and resolution of conflicts of interest. Vendors shall be reminded to carefully review these documents prior to responding.

Some possible conflicts of interest might be:

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

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

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 Crown corporation may deem appropriate.

1.2) Responding to a Disclosed Conflict

A Crown corporation 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 Crown corporation (e.g., remove or isolate an individual from the procurement);
- Disqualify the vendor from further participation; or
- Such other steps that the Crown corporation may deem appropriate.

1.3) 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 Crown corporation policy, including any activity that may impact the Crown corporation'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 rulings will be communicated in writing to the affected vendor.

Appendix A

Crown Sector Procurement Conflict of Interest - Sample Contract Wording

Sample #1

The procurement documents shall include the following definition of “conflict of interest”:

In this section, "conflict of interest" includes any situation or circumstance where, in relation to a Crown corporation's procurement competition, a participating vendor has an unfair advantage, is perceived to have 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 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.

Sample #2

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 Crown corporation on or before the closing date of the RFQ/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 RFQ/RFP. The Crown corporation 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 Crown corporation 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 Crown corporation 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 Crown corporation, be disqualified from this RFQ/RFP process if a proponent is found to have a conflict of interest.