

Open Competitive Procurement Policy



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Approval:
Chief Executive Officer  2022-03-31

Review Frequency: **As necessary**

President, Board of Directors  2022-03-31

Applies to: **All Programs**

Replaces: **N/A**

Purpose

This policy ensures that publicly funded goods and services with procurement value of \$100,000 or greater are acquired through an open competitive process that is fair, transparent, and seeks to achieve the best value for the funds expended.

Application

This policy applies to all Kenora Association for Community Living (KACL) Board of Directors, employees, independent contractors, consultants, students, volunteers, and vendors.

Policy

KACL will undertake a planning process related to the open competitive process, as follows:

These planning requirements will be addressed and documented for all procurement activities:

- Early identification of needs;
- Clear definition of requirements;
- Justification for the acquisition;
- Availability of necessary human, financial, technical and accommodation resources;
- Consideration of alternative ways to satisfy the needs and selection of the most appropriate procurement option;
- An estimate undertaken of the procurement value, and;
- Necessary authorization to proceed in accordance with the agency's delegation of authority.

Conflict of Interest

KACL will include the following provisions in the open competitive documents

- Define conflict of interest to include situations or circumstances that could
 - Give a vendor an unfair advantage during a procurement process; or
 - Compromise the ability of a vendor to perform its contractual obligations
- Reserves the right of the agency to determine whether any situation or circumstance constitutes a conflict of interest;
- Requires prospective vendors to participate in a procurement process to declare any actual or potential conflict of interest;
- Reserves the right to disqualify prospective vendors from a procurement process due to conflict of interest;
- Requires vendors to avoid any conflict of interest during the performance of their contractual obligations;
- Requires vendors to disclose any actual or potential conflict of interest arising during the performance of a contract;
- Reserves the right to prescribe the manner in which a vendor should resolve a conflict of interest;
- Allows the termination of a contract where a vendor fails to disclose any actual or potential conflict of interest or fails to resolve its conflict of interest as directed by the agency, and;
- Allows the termination of a contract where a conflict of interest cannot be resolved.

Information Gathering

Where results of an informal supplier or product research are insufficient, formal processes such as a Request for Information (RFI) or Request for Expression of Interest (RFEI) may be used if warranted, taking into consideration the time and effort required to conduct them.

A response to RFI or RFEI must not be used to pre-qualify a potential supplier and must not influence the chances of the participating suppliers from becoming the successful proponent in any subsequent opportunity.

Supplier Pre-Qualification

Request for Supplier Qualification (RFSQ) enables information about the supplier's capabilities and qualifications to be gathered in order to pre-qualify a supplier for an immediate product or service need or to identify qualified candidates in advance of expected future competitions.

Terms and conditions of the RFSQ document must contain language that disclaims any obligation of KACL to call on any supplier to provide goods or services as a result of pre-qualification.

Posting Competitive Procurement Documents

Calls for open competitive procurements must be made through an electronic tendering system that is readily accessible by all Canadian suppliers.

Timelines for Posting Competitive Procurements

Suppliers must be provided a minimum response time of 15 calendar days for procurement of goods and services valued at \$100,000 or more. For procurements of high complexity, risk and/or dollar value, allow a minimum response time of 30 calendar days.

Bid Receipt

The bid submission date and closing time must be clearly stated in competitive procurement documents. The closing date must be on a normal working day (Monday to Friday, excluding provincial and national holidays). Submissions that are delivered after the closing time must be returned unopened.

Evaluation Criteria

- Evaluation criteria is developed, reviewed and approved by the appropriate authority prior to commencement of the competitive procurement process.
- Competitive procurement documents clearly outline mandatory, rated and other criteria that will be used to evaluate submissions, including weight of each criterion.
- Mandatory criteria (e.g. Technical standards) should be kept to a minimum to ensure that no bid is unnecessarily disqualified.
- Maximum justifiable weighting must be allocated to the price/cost component of the evaluation criteria.
- KACL will not discriminate or exercise preferential treatment in awarding a contract to a supplier as a result of a competitive procurement process.
- The evaluation criteria are to be altered only by means of addendum to the competitive procurement documents.
- KACL may request suppliers to provide alternative strategies or solutions as a part of their submission. Criteria to evaluate alternative strategies or solutions must be established prior to the commencement of the competitive procurement process. Alternative strategies or solutions must not be considered unless they are explicitly requested in the competitive procurement documents.

Evaluation Process Disclosure

Competitive procurement documents must fully disclose the evaluation methodology and process to be used in assessing submissions, including the method of resolving a tie score.

Competitive procurement documents must state that submissions that do not meet the mandatory criteria will be disqualified.

Evaluation Team

Competitive procurement processes require an evaluation team responsible for reviewing and rating the compliant bids.

Evaluation team members are aware of the restrictions related to utilization and distribution of confidential and commercially sensitive information collected through the competitive procurement process and refrain from engaging in activities that may create or appear to create conflict of interest.

Evaluation team members must sign a conflict-of-interest declaration and non-disclosure of confidential information agreement.

Evaluation Matrix

Each evaluation team member must complete an evaluation matrix, rating each of the submissions. Records of evaluation scores must be retained for audit purposes. Evaluators must ensure that everything they say or write about submissions is fair, factual, and fully defensible.

Winning Bid

The submission that receives the highest evaluation score and meets all mandatory requirements set out in the competitive procurement document must be declared the winning bid.

Bid Dispute Resolution

Competitive procurement documents must outline bid dispute resolution procedures to ensure that any dispute is handled in an ethical, fair, reasonable, and timely fashion. Bid dispute resolution procedures must comply with bid protest or dispute resolution procedures set out in the applicable trade agreements.

Executing the Contract

The agreement with the successful supplier must be formally defined in a signed written contract before the provision of supplying goods and services commences. Where an immediate need exists for goods or services, and the contract cannot be finalized as described, an interim purchase order may be used. The justification of such decision must be documented and approved by the CEO.

Establishing the Contract

The contract must be finalized using the form of agreement that was released with the procurement documents.

In circumstances where an alternative procurement strategy has been used (e.g. form of agreement was not released with the procurement document), the agreement with the successful supplier must be defined formally in a signed written contract before the provision of supplying goods or services commences.

Termination Clauses

All contracts must include appropriate cancellation or termination clauses.

Consider the use of contract clauses that permit cancellation or termination at critical project life cycle stages when conducting complex procurements.

Term of Agreement Modifications

The term of the agreement and any options to extend the agreement must be set out in the competitive procurement documents. An approval by an appropriate authority must be obtained before executing any modifications to the term of the agreement.

Extending the term of agreement beyond that set out in the competitive procurement document amounts to non-competitive procurement where the extension affects the value and/or stated deliverables of procurement.

Contract Award Notification

Contract award notification for procurements valued at \$100,000 or more must be posted in the same manner as the procurement documents. The notification must be posted after the agreement with the successful supplier is executed. Contract award notification must list the name of the successful supplier, agreement start and end dates, and any extension options.

Supplier Debriefing

For procurements valued at \$100,000 or more, all unsuccessful suppliers must be informed about their entitlement to a debriefing.

Unsuccessful suppliers have up to 60 calendar days following the date of the contract award notification to request a debriefing.

Contract Management

- **Payments are made in accordance with the provisions of the contract.**
- **All invoices must contain detailed information – see purchasing policy.**
- **Overpayments must be recovered in a timely manner.**
- **Assignments must be properly documented.**
- **Supplier performance must be managed and documented; any performance issues must be addressed.**
- **A dispute resolution process must be included in the contract.**
- **For services:**
 - **Establish clear terms of reference for the assignment. The terms should include objectives, background, scope, constraints, staff responsibilities, tangible deliverables, timing, progress reporting, approval requirements and knowledge transfer requirements.**
 - **Establish expense claim and reimbursement rules compliant with the Broader Public Sector Expenses Directive and ensure all expenses are claimed and reimbursed in accordance with these rules.**
 - **Ensure that expenses are claimed and reimbursed only where the contract explicitly provides for reimbursement of expenses.**

Documentation Requirements

All approvals, procurement and contract management documentation must be compiled and retained by the Manager, Property & Facilities for a minimum of seven years from the end of a contract as follows:

- **Copy of the procurement justification or business case;**

- Information regarding all vendor consultations, including any requests for information, undertaken in the development of the procurement justification or business case or request for qualifications, quotations, proposals or tenders;
- Documentation that all required approvals were obtained by the appropriate delegation of authority;
- Copies of all requests for qualifications, quotations, proposals or tenders used to qualify and select the vendor;
- For the successful vendor(s), conflict of interest declaration in accordance with this best practice;
- Information regarding any issues that arose during the procurement process, and how the issues were resolved;
- Information regarding all vendor debriefings;
- Copies of all contract award notifications;
- Copies of purchase order which outlines the scope of work including details such as make and model numbers, dimensions, drawings, materials and other descriptions;
- Copies of all approved contracts including which goods, services, or consulting services are to be provided and paid;
- Information and approval by the appropriate delegation of authority regarding all uses of any exceptions to the service provider's policy pertaining to the procurement of goods, services and consulting services;
- Justification for the use of any exception, the recipient of the contract, the date of award and the total contract value;
- Information regarding all changes to the terms and conditions of a contract, including any changes that resulted in an increase in the contract price;
- Information regarding the management of the vendor, including how the vendor's performance was monitored and managed and, where applicable, mechanisms used to transfer knowledge from the vendor to service provider staff;
- Information regarding all disputes or vendor complaints regarding the procurement and the resolution of the disputes or vendor complaints;
- Evidence of receipt of deliverables; and
- Detailed invoices that allow the assessment of the appropriateness and reasonableness of amounts billed.

Exceptions from Competitive Procurement

A competitive procurement process should be used to achieve optimum value for money. However, it is recognized that special circumstances may require use of a non-competitive procurement. Prior to commencement of non-competitive procurement, supporting documentation must be completed and approved by the CEO to ensure it is not being done to avoid competition between suppliers or to discriminate against suppliers.

A non-competitive procurement may be used in situations outlined in the exemption, exception, or non-application clauses of the Agreement on Internal Trade, or other trade agreement.

A non-competitive procurement may also be used where only one supplier is able to meet the requirements of procurement - known as sole-source situations. Some examples of these situations would be for product compatibility, procurement of real property, for work to be performed on a leased building where work must be done by lessor, for the purchase of original works of art.

There are also exceptions known as single-source situations. One circumstance considered a single-source situation would be where an unforeseeable situation of urgency exists and goods or services cannot be obtained in time by means of open procurement - note, failure to plan and allow sufficient time for a competitive procurement process does not constitute an unforeseeable situation of urgency

Non-Compliance of the Policy

Any breach of this policy or the components contained herein will be treated as misconduct. Misconduct will be reviewed and may result in disciplinary action including dismissal from employment

