

# SUMA

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- **Procurement Bootcamp for Urban Municipal Administrators**

Tuesday June 2, 2026

# Agenda Public Procurement

Introduction – Ice breaker

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Procurement – why it matters – challenges in public sector

Stakeholders

Public Procurement Fundamentals: legislation, procurement in small municipalities, staff vs council rolls, policies and procedures,

Laws of Competitive Bidding

Implications of Failing to adhere to the process

Privilege Clauses

Bid process options

Performance Securities

Specifications/Scope of work

Managing the contract

Debriefing

Local Preference

Conflict of Interest

# Discussion Question

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What are your procurement pain points?

# Why Municipal Procurement Matters

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## If you do it right:

Value for money

Create Efficiencies

Attract the best suppliers

Get the right solutions for the municipality

Public trust

Stakeholder trust

Reputation

Reduce Risk Exposure

Increased complexity of contracts and options

# Challenges in Public Sector Procurement

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Risk aversion can be costly

Reliance on privilege, exclusion and exception clauses is misleading

Contract management practices are weak

Supplier performance evaluations are lacking

Lack of public procurement expertise

Over reliance on competitive bids with a lack of market knowledge

Construction projects require higher levels of experience and expertise (**integrated project delivery model**)

Price-based vs value-based decisions (**unbundling**)

KPIs and metrics seldom developed

Rogue buyers

Staying current with trade agreements, legislation and best practices

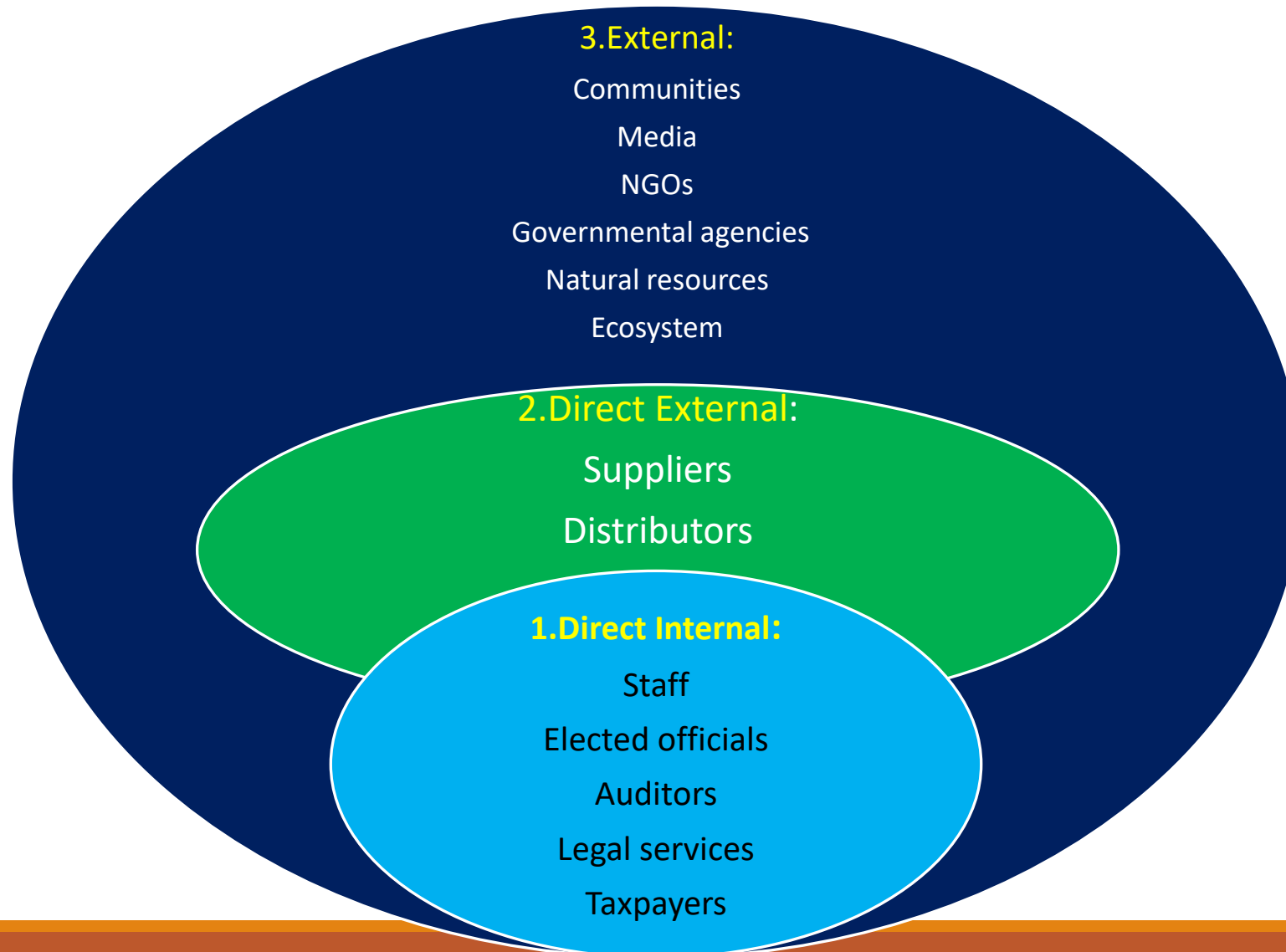
# Discussion Question

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Who are the Stakeholders for  
Municipal Government?

Why should we identify them?

# Organizational Stakeholders



# Public Procurement Fundamentals

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## Open

- Open means anyone can participate
- Restrictions on supplier participation should be limited

## Fair

- Treat all bidders fairly
- Same information, same time
- No bias in evaluation (optics also matter)

## Transparent

- Publish opportunities on the internet
- Disclose how supplier will be selected
- Transparency in evaluation criteria



# Legislation

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Trade Agreements

Municipal Act

Local Procurement By-Laws/Policies

Municipal Freedom of Information

Canada Buys



**CANADIAN  
FREE TRADE  
AGREEMENT**  
**ACCORD DE  
LIBRE-ÉCHANGE  
CANADIEN**



# Trade Agreements

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New West Partnership Trade Agreement (NWPTA) – *applies to BC, Alberta, Saskatchewan, Manitoba*

Canadian Free Trade Agreement (CFTA)

Canada US Mexico Trade Agreement (CUSMA)

Canadian European Trade Agreement (CETA)

Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) *Pacific Rim countries*

<https://www.international.gc.ca/trade-agreements-accords-commerciaux/ressources/fcm/complete-guide-complet.aspx?lang=eng>

# Contract \$ values determine which trade agreement rules to follow

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Cannot intentionally split awards to *avoid* trade agreement thresholds

- i.e. award 1-year contract for HVAC maintenance services @ \$45,000 rather than 3-year contract

Value is based on the # of years x \$ value per year

- i.e. HVAC system maintenance services @ \$45,000 per year for 3 years = \$135,000 contract value
- Exceeds CFTA threshold ∴ **CFTA rules apply**

# Key Trade Agreement Requirements

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Include but not limited to:

Thresholds i.e. CFTA \$133,800 goods and services, \$334,000 Construction

Exclusions

Time limits

Content of documents – including specification requirements

Evaluation

Negotiation

Award

Limited tendering

Buying Groups

Debriefs and Vendor Disputes

# Canada Buys

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Dec 16-25 - +25M

June 15-26 – reduces to \$5M

**Canadian Content & Materials:** Large construction/defense projects must use Canadian-produced steel, aluminum, and wood. Bids are assessed on Canadian value-added content, with additional points or price reductions for higher Canadian content. - +\$250,000 value

**Definition of a Canadian Supplier:** To qualify, businesses must: File taxes in Canada.

Maintain a permanent, registered place of business in Canada.

**Although currently not directly impacted Saskatchewan may be affected if receiving federal funding for a project.**

**Voluntary Adoption:** Municipalities are encouraged to align with the federal "Buy Canadian" policy, but they are not mandated to follow it for all local, non-federally funded procurement.

# Provincial and Municipal Implications

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**Provincial Initiatives:** While there is no specific "Saskatchewan Buys" policy that mirrors the federal Buy Canadian policy, provincial purchasing generally favors local businesses when practical through competitive bidding, as outlined on the [Saskatchewan government website](#)

## **Key Considerations for Municipal Purchasing in Saskatchewan:**

**Local Prioritization:** Many municipalities include local preference clauses, such as weighted advantages for local suppliers, within their own purchasing bylaws

**Trade Agreements:** Municipalities must adhere to trade agreements like the *New West Partnership Trade Agreement (NWPTA)*, which encourages competitive, open, and transparent bidding

**Provincial Support:** The government encourages economic growth through initiatives like the [Municipal Revenue Sharing program](#)

# Saskatchewan Government

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“Within the context of best value, public entities should make every effort to source from a Saskatchewan supplier for procurements below established thresholds in trade agreements provided there is sufficient value, capabilities and skills in Saskatchewan relative to the business needs of the Government of Saskatchewan.”

# Truth and Reconciliation Commission

## Call to Action #57

### Professional Development and Training for Public Servants

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We call upon federal, provincial, territorial, and municipal governments to provide education to public servants on the history of Aboriginal peoples, including the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills based training in intercultural competency, conflict resolution, human rights, and anti-racism.

## Calls to Action #92 (excerpt)

### Business and Reconciliation

- i. Commit to meaningful consultation, building respectful relationships, and obtaining the free, prior, and informed consent of Indigenous peoples before proceeding with economic development projects.
- ii. Ensure that Aboriginal peoples have equitable access to jobs, training, and education opportunities in the corporate sector, and that Aboriginal communities gain long-term sustainable benefits from economic development projects.

[https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/calls\\_to\\_action\\_english2.pdf](https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/calls_to_action_english2.pdf)

# Purpose of a Procurement Policy

- Applies organizational values to business practices
- Approved by elected officials and is mandate for procurement
- As a means of risk mitigation
- Sets expectations for internal and external stakeholders
- Unity in principles; consistency in practices

# Purpose of a Procurement Policy

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Purpose and Policy statements

Social value principles

Separation of duties

Policy principles

Responsibility

Prohibitions

Exceptions

Selection criteria

Signing authority

Business ethics

Supplier performance

Supplier code of conduct

Debriefing

Dispute resolution

Prequalification

Definitions

Policies should NOT include procedures

# Implications of Failing to Adhere to Process

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Misunderstandings

Non-binding contracts

Performance problems

Increased costs

Litigation

Time delays

Reduced competition – loss of suppliers/contractors

Negative publicity

Harm to reputation i.e.: Bellamy Report

# Implications of Failing to Adhere to the Process



PROJECTS

## Ottawa council's sole source decision

 admin January 28, 2014

**T**n its 2011 judgment in *Friends of Lansdowne Inc. v. Ottawa (City)*, upheld on appearance in 2012, the Ontario Superior Court of Justice rejected an

CanLII

municipality and tender


Case name, document title, file number, author or c


Noteup/Discussion: cited case names, legislation titl

All CanLII (12,366) Cases (10,321) Legislation (1,6

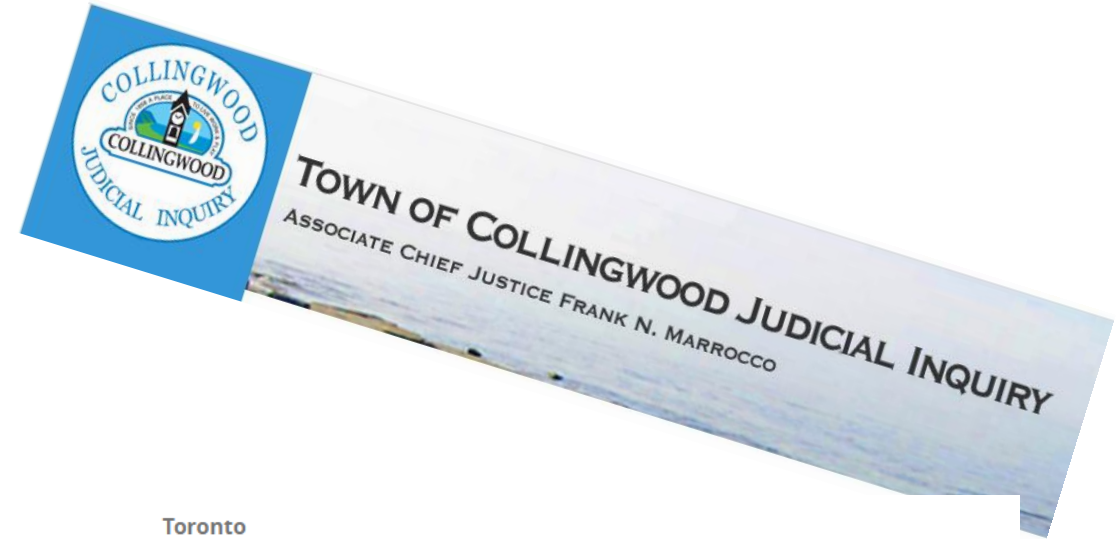
All jurisdictions ▾ All courts and tribunals ▾ Any date

lexbox

 Save this query

 Set up a

1. [Sound Contracting v. City of Nanaimo, 2000 I Supreme Court of British Columbia](#) — British



Toronto

## EHealth scandal a \$1B waste: auditor



CBC News · Posted: Oct 07, 2009 10:34 AM ET | Last Updated: October 7, 2009

# Collingwood Inquiry 2020

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Justice Marrocco:

*Council as a whole develops procurement policies and processes, identifies municipal needs and sets budgets, and makes final procurement decisions informed by staff's non-partisan research and recommendations.*

*There is no appropriate role for individual Council members in the execution of a procurement process.*

***Transparency and the Public Trust: Report of the Collingwood Judicial Inquiry – Volume I***

[www.collingwoodinquiry.ca](http://www.collingwoodinquiry.ca)

# Small Municipality Challenges

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Limited resources

Not a lot of > 100k procurements

Don't need full-time procurement officer

Council/CAO may not see risks

Council thinks it should oversee procurement

Pressure from local vendors

# Are there solutions?

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**Although Not always possible - Hire a full-time procurement officer**

# Are there Solutions?

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## **Policy, procurement, templates + training**

- Best substitute for onsite procurement expert
- Plain language
- Easy to follow
- Roles clearly identified

# Are there Solutions?

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- Staff know what to do
- Suppliers know what to expect
- Council's role is clear
- CAO accountable
- Better value for money
  - vague solicitation documents -> price premiums
- Better planning
- Less time wasted by everyone!

# Are there Solutions: The Superuser

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Can't afford a full-time procurement expert?

Don't have enough high dollar value procurement?

But still need someone that can guide staff who do 1 procurement/year

Someone that will own the policy/procedures/templates

The "Superuser"

# Why a Super User?

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Has other duties beyond procurement

Trained in the basics

Knows the policy/procedure/templates

Knows when to phone-a-friend or phone-an-expert

# Are there Solutions?

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- Leverage someone else's procurement effort
- Piggy-backing
- Purchasing Co-operatives
- 3<sup>rd</sup> Party Buying groups – GPO
- Government SO's open to Municipalities

# What is a GPO

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A group purchasing organization (GPO) is an entity that helps public sector agencies realize savings and efficiencies by aggregating purchasing volume

Shortens the procurement cycle, saves staff time and help entities avoid the risks associated with a public procurement process.

Meets all trade agreement requirements

Examples:

Canoe

OECM

Health Pro

Med Buy

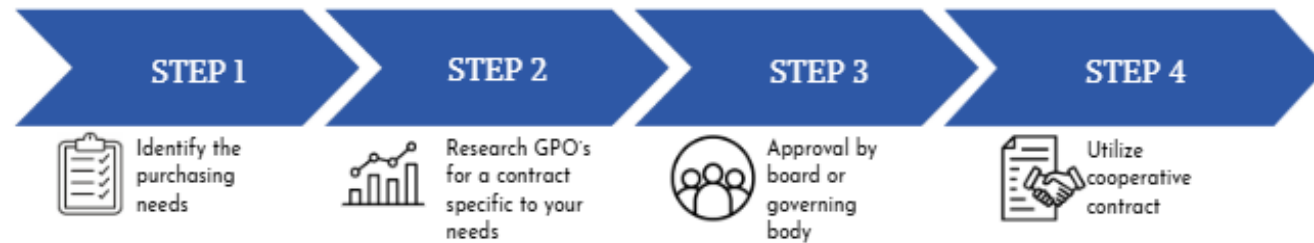
Kinetic

LAS/AMO

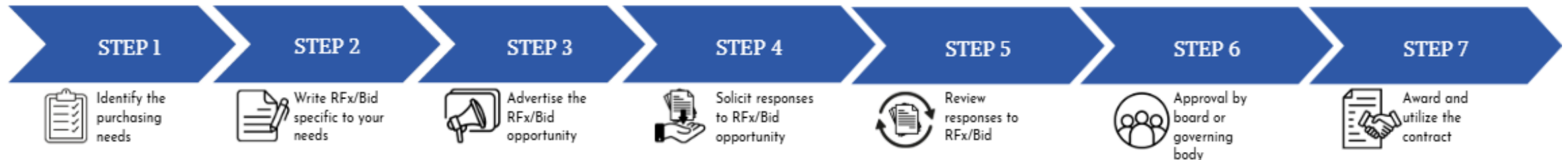
# Traditional Procurement vs GPO

Instead of running the entire procurement on your own a GPO handles the competitive process on your behalf. Kinetic GPO ensures compliance with all Canadian trade agreements, national and regional. Not only meeting but exceeding compliance requirements. Instead of taking months, you can go directly into negotiation with the awarded supplier to secure your goods and services.

## GROUP PURCHASING: EFFICIENT, EAST 4-STEP PROCESS



## TRADITIONAL PROCUREMENT: LENGTHY PROCESS (OFTEN 8+ WEEKS)



# Council Role

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Oversee policy compliance by management

- Obtain CAO assurance that policy and procedures were followed
- Should be no need to double-check staff's work

Fulfil Council approval role

Respect the outcome of the RFX process

Intervene only in exceptional circumstances, e.g. for public interest considerations (cancel process / disqualify bidder)

# Council Role

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- Keep politics out of procurement decisions
- Council members should not intervene in any ongoing procurement process



Could invalidate a contract award and cause significant loss of public trust

# Staff Role

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CAO should be accountable for compliance

Council has an oversight and approval role

Senior Staff member i.e.; Treasurer needs to be accountable for implementing the procedures

Department Heads/Staff responsible for adhering to the policy

# Working with elected officials\*

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Be a resource

Fairness and transparency at all times

Awareness of Municipalities Act, The Northern Municipalities Act

Present balanced perspectives

Confidentiality of information

Business ethics

Follow *your* municipal policies

Avoid conflicts of interest

- Objective evaluations
- Use of fairness commissioners or trusted 3<sup>rd</sup> party advisors
- Role of Ombudsman Saskatchewan



# Competitive Bidding

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# Laws of Competitive Bidding – Contract A/Contract B

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“The Queen (Ont) vs Ron Engineering (1981) S.C.R./11, The Supreme Court of Canada”

- Tenders deemed to be contract A's

# Laws of Competitive Bidding Contract A/Contract B Cont'd

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When a competitive bid is issued and bids received the bids are referred to as contract A's

Legal obligations to all contract A's

Once an award made contract B is formed and all other contract A's expire

Any legal obligations are at that point only to contract B

# Implied Obligations of Owner

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Duty of full disclosure:

- Nature of work
- Contract
- Bidders must know what they are bidding on and selection process

# Implied Obligations of Owner Cont'd

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## Duty of Fairness and Good Faith:

- Late bids rejected
- Non-compliant bids rejected
- Bidders must all receive the same information
- Must only be evaluated on stated criteria

# Obligations of Bidders

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Legally bound to bid submitted

Must enter into contract if offered

Can not withdraw bid even if a mistake

# Conditions for Contract A

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Bids are irrevocable

Late or non-compliant bids will be rejected

No negotiation

Bid deposit required

Form of contract attached to bid request

Owners privilege clause

# Bidder Remedies

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The Bidder has remedies available to address an Owner's failure to follow the procurement rules.

Typically, the unsuccessful bidder is entitled to claim lost profit as a result of the Owner's failure to adhere to the rules applicable to its procurement.

# Owner Remedies

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Owner may retain the bid deposit if the successful bidder fails to accept and enter into the contract

# Contract “A” and “B” What Does this Mean?

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The choice of whether to utilize a contract “A” needs to be considered

A more flexible option such as a non binding process may be more appropriate based on the need

# Case Study

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# Competitive bidding and case law

The *Big Six* cases from the Supreme Court of Canada

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1. **Ron Engineering 1981** – Contract A and Contract B; and  
Lowest compliant bid *should* be awarded; lowest compliant bidder must enter into a Contract B
2. **Tercon** – exclusion clause
3. **MJB** – only compliant bids will be accepted
4. **Martel Building** – bids must be evaluated fairly, equally and consistently
5. **Double N Earthmovers** – Contract A ends after buyer completes evaluation and awards – no obligations to unsuccessful bidders after Contract A phase
6. **Chinook Aggregates** – no *hidden* preferences. All trade agreements prohibit local preferences

# Privilege Clauses

## Tercon case ruling

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The RFP also contained an exclusion of liability clause which precluded proponents from lodging claims for compensation "of any kind whatsoever" as a result of participating in the RFP. This clause had the effect of preventing proponents from suing the Province for damages in the event that it breached the terms of the RFP.

**Ruling:** The exclusion clause contained within the RFP *cannot* bar Tercon from bringing an action in damages against the Province for breach of the terms of contract of tender.

# Privilege clauses

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*Clause: The lowest or any tender shall not necessarily be accepted*

1. Does this clause fully protect a Municipality?

# Contract A vs Non-Binding

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## Contract A:

- Bidders must honor their submission and accept the contract if offered
- Municipality is assured of a firm price

## Non-Binding:

- more flexibility
- both bidders and Municipality can back out of the process

# How to Avoid Contract “A”

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- All binding language to be excluded i.e.:
  - Must, shall
  - Irrevocability period
  - Mandatory evaluation criteria
  - Rejection of late bids
  - Contract to be executed included and firm

# Rfx Process Options

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Informal Quotation

Formal Quotation

Tender

Request for Proposal – Binding

Request for Proposal – Non-Binding

Prequalification

Request for Information/Expression of Interest

# Request for Quotation

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- Invites suppliers to bid on specific products or services
- Best suited for standardized commodities or services of relatively small value
- Includes standard terms and conditions of bidding as well as specifications

# Quotation Process

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## Informal Quotation:

- Small dollar value
- Can be verbal or written

## Formal Quotation:

- Small dollar value
- Written request

# Tender or Proposal?

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## Request for Tender

- Project of significant size (ie.\$125,000)
- We identify the “ what and the how”
- Primary criteria for evaluating is price & qualifications
- Low responsive and acceptable bidder awarded contract
- Treat all bidders fairly and equally, while encouraging
- No negotiation
- Commodity purchase

## Request for Proposal

- Evaluation Criteria is basis for award
- We identify the “why”, the vendor identifies the “how”
- Allows for various solutions
- Best overall value
- Goal/result within a scope of work
- Creativity and innovation required
- Combination - abilities, experience, technical solution and pricing

# Request for Pre-Qualification (RFPQ)

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- Issued as an “Open” bid to the marketplace
- Requires public notification
- Used to establish a QUALIFIED “list” of bidders
- Discloses all required evaluation criteria based on the requirement – other criteria may not be used

# Request for Pre-Qualification (RFPQ)

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- Formal evaluation process of the technical abilities, experience, qualifications and financial capacity of the bidder
- Does not ask for pricing
- Those who prequalify would then be invited to submit on a secondary process

# Expression of Interest (EOI) Request for information (RFI)

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- Used to determine the availability of any goods, services or construction
- No contractual obligations
- Does not result in a restricted or pre-qualified bid list for a future procurement procedure
- Includes a brief description of the work
- Does not request pricing
- EOI/RFI may lead to another procurement procedure RFT / RFP / RFPQ

# Exercise – What is the Proper Bidding Process to Use?

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# Bid Sureties

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## Bid Bond:

Guarantees that the bidder will enter into a formal contract and provide required performance securities and insurance certification

## Agreement to Bond:

Guarantee that a Performance Bond will be provided by the Bidder's surety on award of contract

## Alternatives:

Irrevocable letter of credit, certified cheques

# Performance Securities

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Performance Bond

Indemnify the owner to the amount of the bond for any loss suffered by reason of the contractor's default

Labour and Material Bond

Indemnify the owner if the contractor defaults on payments to his/her suppliers/sub contractors

# Non-Competitive Contracting

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Directed contract

No competition

Can attract negative media / public attention

Can impair trust in municipality

No assurance of lowest price

Trade agreements require publishing a notice of directly awarded >\$100,000

# Non-Competitive Procurement

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**Non-competitive procurement should be justified in writing why** only one supplier can supply good/service

- a) additional delivery goods where a competitive process not possible due to economic/technical constraints
- b) commodity type purchase e.g. hydro
- c) prototypes
- d) exceptionally advantageous conditions – usual disposals
- e) winner of design contest
- f) confidential or privileged goods or services
- g) Emergency
- h) Schedule A – excluded contacts

# Managing the Contract

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# Managing the Contract

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Contract Manager Role:

Responsible to ensure the following remains current throughout the contract:

- insurance certificates, WSIB, bonds
- any specified licenses

Must ensure:

- contract oversight
- inspection
- report and address to Contractor any performance deficiencies – needs to be in writing
- maintain any written records
- If performance bond – Bonding Company should be advised of any ongoing issues

# Group Activity - Case Study – Contractor Performance

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# Managing the Contract

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## Contract Termination

Where it appears clear that poor performance is not being corrected:

- Termination of a Contract should only be pursued in consultation with the legal counsel as there may be legal implications
- Poor performance may also result in Contactor being suspended from participating in future works

# Debriefing

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For procurements over \$100,000 organizations must inform all unsuccessful suppliers about their entitlement to a debriefing

Purpose:

To explain the process, identify any strong or weak areas in their submission

The intent is not to adjust the score but rather to pass on information to assist them in improving their next submission as well as to obtain their feedback on the process.

# Local Preference

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Local Preference: Favoring local company for award of contract

Making decisions based on geographical discrimination prohibited by the Trade Agreements

# Alternatives to Local Preference

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Train potential vendors on the bidding process

Increase \$ values for advertising requirement

Reduce bonding or insurance requirements where practical

# Conflict of Interest

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Any situation in which your judgment, action or inaction benefits you, whether you are an employee or a consultant acting on behalf of your organization

Conflict of Interest Declaration and Confidentiality Undertaking forms are recommended

# Conflict of Interest Cont'd

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Three types of conflicts of interests

- Actual
- Potential
- Apparent or Perceived
  
- Need to resolve the conflict:
  - Immediate action is required; transfer responsibility if conflict exists
  - Refer to your organizations Code of Conduct re gifts, gratuities, conflicts

# Summary

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“We can not solve our problems with the same thinking we used when we created them”

Albert Einstein

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QUESTIONS????