

## Limited Tendering and Non-Application Procurement Approval Briefing Note

To: Director, Procurement Services

From:

Date:

Subject: Limited Tendering & Non-Application Procurement Approval Briefing Note

### Definitions:

**Limited Tendering** means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice, provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of any other Party or protects its own suppliers. A procuring entity may use limited tendering under any of the circumstances described in TABLE 1.

**Non-Application Provisions** exempt a given procurement from the application of the government procurement chapter obligations of the applicable agreement (CFTA, CETA or OQTCA.) These are described in TABLE 2.

**Sole Sourcing** is a non-competitive process used to acquire goods or services from a specific supplier because there are no other suppliers available or capable of providing the required goods or services.

**Single Sourcing** is a Non-competitive process used to acquire goods or services from a specific supplier, even though there may be more than one supplier capable of delivering the same goods or services.

### Background

*Explanation of the product or service (what it is, how it is used, where it is used, why it is needed, who made the request) and how it fits with organizational objectives. Describe the circumstances that have created this situation. Describe any risks or implications.*

### Justification

*Explain why approval is requested for a sole or single source award. Need to clearly explain why bypassing the competitive process is necessary and justify why this exception is required. Provide details on what due diligence was performed to confirm the situation. If this is a renewal, explain how the original decision was made (i.e., how this product or service was selected).*

### Actions Taken

*Explain the cost/benefit analysis (if applicable) including details of the value proposition for the organization given the sole/single sourcing circumstances.*

### Required Timing

*State when the product or service is required (helps to ensure sign-offs completed in time).*

Attach the **Limited Tendering & Non-Application Procurement Approval Form** signed by the Department Head and Director, Procurement Services before the Vice President, Finance and Administration (or delegate) signs-off. In instances where multiple orders or payments will be made to the same vendor for a given specific good or service only one form is required. The end user must quote the Limited Tendering & Non-Application Procurement Approval Form Number (noted below) on the documentation submitted for all future payments.

### Procurement Services Use Only

Limited Tendering and Non-Application Procurement Approval Form Number: \_\_\_\_\_

☐ OTO or

Approved copy forwarded to requester:

☐

Yes

Date Sent: \_\_\_\_\_

☐

Ongoing

## Limited Tendering and Non-application

### Procurement Approval Form – Goods and Non-Consulting Services

1. Identify non-competitive procurement type:                      Limited Tendering Exemption                      Non-Application Provision
2. What are you procuring?                      Goods                      Non-Consulting Services                      Construction
3. Specify the exception code:                      (see Limited Tendering & Non-Application Exemption Codes Page 4)
4. Total procurement value:                      Contract base term & extension(s):
5. Name of recommended vendor:
6. Has the recommended vendor previously received a non-competitive award?                      Yes                      No
7. Has the requesting department previously asked for a non-competitive award?                      Yes                      No
8. Goods:    a)    Is the recommended vendor the manufacturer?                      Yes                      No                      N/A
- b)    Does the manufacturer sell the item(s) through distributors?                      Yes                      No                      N/A
9. Services: a)    Is there a ceiling on the contract value?                      Yes                      No
- b)    Construction                      Yes                      No

#### ACKNOWLEDGEMENT

I am aware of York University's competitive procurement process and criteria for approving Non-Competitive Procurement. I am comfortable the necessary due diligence has been conducted to support the recommendation. I have fairly and clearly outlined the background, justification, actions taken and required timing of this purchase in the briefing note.

Briefing note prepared by: \_\_\_\_\_

Title: \_\_\_\_\_

Department: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

#### APPROVAL SIGNATURES

First Sign-off:                      **Department Head**

Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Second Sign-off:                      **Director, Procurement Services**

Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Final Sign-off:                      **Assistant Vice President Finance & CFO or delegate**

Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## Limited Tendering and Non-application

### Procurement Approval Form – Consulting Services

1. Identify non-competitive procurement type:                      Limited Tendering Exemption                      Non-Application Provision
2. Specify the exception code:                      (see Limited Tendering & Non-Application Exemption Codes Page 5)
3. Total procurement value:                      Contract base term & extension(s):
4. Name of recommended vendor:
5. Has the recommended vendor previously received a non-competitive award?                      Yes                      No
6. Has the requesting department previously asked for a non-competitive award?                      Yes                      No
7. Is there a ceiling on the contract value?                      Yes                      No

#### ACKNOWLEDGEMENT

I am aware of York University's competitive procurement process and criteria for approving Non-Competitive Procurement. I am comfortable the necessary due diligence has been conducted to support the recommendation. I have fairly and clearly outlined the background, justification, actions taken and required timing of this purchase in the briefing note.

Briefing note prepared by: \_\_\_\_\_

Title: \_\_\_\_\_

Department: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

#### APPROVAL SIGNATURES

First Sign-off:                      **Department Head**

Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Second Sign-off:                      **Director, Procurement Services**

Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Final Sign-off:                      **Assistant Vice President Finance & CFO or delegate**

Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**President must sign off for non-competitive award for consulting services < \$1 million**

**Board of Governors must sign off for non-competitive award for consulting services >= \$1 million**

Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**TABLE 1: Limited Tendering & Non-Application Exemption Codes**

A	<ul style="list-style-type: none"> <li>(i) If no tenders or quotations were submitted or no suppliers requested participation;</li> <li>(ii) If no tenders or quotations that conform to the essential requirements of the tender or quotation documentation were submitted;</li> <li>(iii) If no suppliers satisfied the conditions for participation; or</li> <li>(iv) If the submitted tenders were collusive;</li> </ul> <p>Note that in any of the above cases, the exception is only available provided that the requirements of the tender documentation are not substantially modified.</p>
B	<p>If the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:</p> <ul style="list-style-type: none"> <li>(i) the requirement is for a work of art;</li> <li>(ii) the protection of patents, copyrights, or other exclusive rights;</li> <li>(iii) due to an absence of competition for technical reasons;</li> <li>(iv) the supply of goods or services is controlled by a supplier that is a statutory monopoly;</li> <li>(v) to ensure compatibility with existing goods or to maintain specialized goods that must be maintained by the manufacturer of those goods or its representative;</li> <li>(vi) work is 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;</li> <li>(vii) work is to be performed on a leased building or related property, or portions thereof, that may be performed only by the lessor;</li> <li>(viii) the procurement is for subscriptions to newspapers, magazines, or other periodicals.</li> </ul>
C	<p>For additional deliveries by the original supplier of goods or services that were not included in the initial procurement, if a change of supplier for such additional goods or services:</p> <ul style="list-style-type: none"> <li>(i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services, or installations procured under the initial procurement; and</li> <li>(ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity</li> </ul>
D	<p>If strictly necessary, and for reasons of urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering.</p>
E	<p>For goods purchased on a commodity market.</p>
F	<p>If a procuring entity procures a prototype or a first good or service that is developed in the course of, and for, a particular contract for research, experiment, study, or original development. Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but, does not include quantity production or supply to establish commercial viability or to recover research and development costs.</p>
G	<p>For purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership, or bankruptcy, but not for routine purchases from regular suppliers.</p>
H	<p>If a contract is awarded to a winner of a design contest provided that: (i) the contest has been organized in a manner that is consistent with the principles of this Chapter, in particular relating to the publication of a tender notice; and (ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner; and</p>
I	<p>If 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, result in the waiver of privilege, cause economic disruption, or otherwise be contrary to the public interest.</p>

**TABLE 2: Non-Application Provision Codes**

A	Public employment contracts
B	Non-legally binding agreements
C	Any form of assistance such as grants, loans, equity infusions, guarantees, and fiscal incentives
D	A contract awarded under a cooperation agreement between a Party and an international cooperation organization if the procurement is financed, in whole or in part, by the organization, only to the extent that the agreement includes rules for awarding contracts that differ from the obligations of this Chapter
E	Acquisition or rental of land, existing buildings, or other immovable property, or the rights thereon
F	Measures necessary to protect intellectual property, provided that the measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties where the same conditions prevail or are a disguised restriction on trade
G	Procurement or acquisition of: (i) fiscal agency or depository services (ii) liquidation and management services for regulated financial institutions; or services related to the sale, redemption, and distribution of public debt, including loans and government bonds, notes and other securities
H	Procurement of: (i) financial services respecting the management of government financial assets and liabilities (i.e., treasury operations), including ancillary advisory and information services, whether or not delivered by a financial institution (ii) health services (iii) services that may, under applicable law, only be provided by licensed lawyers or notaries; or (iv) services of expert witnesses or factual witnesses used in court or legal proceedings
I	Procurement of goods or services: (i) financed primarily from donations that require the procurement to be conducted in a manner inconsistent with Chapter 5 of CFTA (ii) by a procuring entity on behalf of an entity not covered by Chapter 5 of CFTA/Chapter 19 of CETA/Chapter 9 of OQTC (iii) between enterprises that are controlled by or affiliated with the same enterprise, or between one government body or enterprise and another government body or enterprise; (iv) by non-governmental bodies that exercise governmental authority delegated to them (v) from philanthropic institutions, non-profit organizations, prison labour, or natural persons with disabilities (vi) under a commercial agreement between a procuring entity which operates sporting or convention facilities and an entity not covered by Chapter 5 of CFTA that contains provisions inconsistent with Chapter 5 of CFTA (vii) conducted for the specific purpose of providing international assistance, including development aid, provided that the procuring entity does not discriminate on the basis of origin or location within Canada of goods, services, or suppliers; or (viii) Conducted: (A) Under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project or; (B) Under the particular procedure or condition of an international organization, or funded by international grants, loans, or other assistance, if the procedure or condition would be inconsistent with Chapter 5 of CFTA;
<b>Ontario &amp; Constitutional Non-Application Provision</b>	
J	Article 507.1 and Article 509.1 do not apply to procurement that targets poverty reduction for disadvantaged natural persons if the value of the procurement is below \$200,000. <b>(Please contact Procurement Services if you believe this may apply.)</b>
K	Some procurement with respect to Aboriginal peoples. <b>(Please contact Procurement Services if you believe this may apply.)</b>