

## TITLE

**CORPORATE CONTRACTING**SCOPE

Provincial

## DOCUMENT #

**1152**

## APPROVAL LEVEL

Alberta Health Services Executive Leadership Team

## SPONSOR

Contracting, Procurement and Supply Management

## INITIAL EFFECTIVE DATE

May 2, 2016

## CATEGORY

Corporate Accountability

## REVISION EFFECTIVE DATE

Not Applicable

**NOTE:** The first appearance of terms in bold in the body of this document (except titles) are defined terms – please refer to the Definitions section.

---

If you have any questions or comments regarding the information in this policy, please contact the Policy & Forms Department at [policy@albertahealthservices.ca](mailto:policy@albertahealthservices.ca). The Policy & Forms website is the official source of current approved policies, procedures, directives, and practice support documents.

**PURPOSE**

- To set out policy principles and parameters for **corporate contracts** to ensure that processes for contracting are in accordance with Alberta Health Services (AHS) bylaws, policies, procedures, applicable legislation, and trade agreements.

**POLICY STATEMENT**

AHS is committed to ensuring its contracting processes and standards are consistent, transparent, facilitate delivery of quality health care services, and balance efficiency of operations with operational legal and financial risk. AHS shall ensure that all **contracts** and related processes are clear and in accordance with applicable legislation, and AHS bylaws and policies.

**APPLICABILITY**

Compliance with this policy is required by all Alberta Health Services employees, members of the medical and midwifery staffs, Students, Volunteers, and other persons acting on behalf of Alberta Health Services (including contracted service providers as necessary).

**POLICY ELEMENTS****1. Corporate Responsibility – Oversight**

- 1.1 Contracting, Procurement & Supply Management (CPSM) shall have overall responsibility for the management and administration of all AHS corporate contracts, including policy, standards, procedures and guidelines.

- 1.2 CPSM is responsible for all matters related to the implementation and selection of a sourcing strategy, including making all decisions in relation to the **procurement** process and approving all sourcing strategies and conduct of **competitive procurements** and **non-competitive procurements** for corporate contracts pertaining to their areas of responsibility.

## 2. Criteria

- 2.1 Methods of Procurement: AHS may acquire goods, equipment and services by any means including but not limited to purchase, rental, lease, conditional sale, or loan regardless of funding source.
- 2.2 Compliance with Trade Agreements: All procurement corporate contracts shall follow the procurement obligations applicable to health services entities in any trade agreements applicable to AHS. Principally these are the Agreement on Internal Trade (AIT) and New West Partnership Trade Agreement (NWPTA), but shall also include any other agreements as they are introduced by the federal or provincial government which are applicable to AHS.
- 2.3 Contracts in Writing: All corporate contracts entered into on behalf of AHS shall be in writing.
- 2.4 Contract Term: Every corporate contract shall have an **effective date** and defined expiry period. No corporate contract shall have an indefinite term or be subject to automatic **renewals**. In other words any options to renew/extend a contract must require affirmative action by the parties.
- 2.5 Record Management: All corporate contracts including any supporting documentation shall be retained in accordance with the AHS *Records Management* Policy suite and its corresponding schedules and procedure documents.
- 2.6 Contract Splitting: Under no circumstances shall a corporate contract or procurement be divided into multiple contracts or procurements, or be reduced in term or scope with the intent or unintended result of altering the commitment level or the positions which have authority to sign the corporate contract.
- 2.7 Contracting and Procurement Processes: Contracting and procurement processes are outlined in this policy's Procedure Documents and internal departmental guidance documents to provide assistance in following correct procedure and processes.

## 3. Approval Authority

- 3.1 AHS staff with authority to approve sourcing by way of a non-competitive procurement and/or sign corporate contracts, including renewals, **extensions** and **amendments** to corporate contracts, on behalf of AHS shall do so in accordance with the *Corporate Contracting* and *the Delegation of Approval Authority* policies. Authority to approve procurement or sourcing strategy does

not constitute approval for a corporate contract and vice versa. Approvals for procurements and sourcing strategy shall be governed by the *Non-Competitive Procurement* Procedure document to this policy.

- a) All persons who sign a corporate contract are responsible for ensuring that all necessary due diligence has been completed prior to the corporate contract being approved for execution;
- b) All corporate contracts must be signed by two **AHS representatives** with the relevant delegated authority to sign corporate contracts (see *Delegation of Approval Authority Policy*).
- c) All signatures on corporate contracts must be identified with an accompanying execution date which must reflect the actual date of execution.

3.2 Renewal options for procurement and revenue contracts are only to be included in contracts that are the result of an open, public competitive procurement process, but are not to be created in subsequent amendments or extensions to any contract. The inclusion of renewal options must not exceed maximum term contemplated in the competitive procurement process. (see *Renewals and Extensions to Contracts* Procedure document to this policy).

#### 4. Legal Review

4.1 Corporate contracts and the conduct of procurements carry liability and risk factors and are subject to legislation and other legal restrictions, requirements and obligations. Therefore, corporate contracts and procurements are subject to legal review, advice and approval in accordance with related procedures. AHS Legal is responsible for providing advice and making a final determination as to the legality and compliance with laws and trade agreements of matters related to procurement processes, corporate contracts and competitive bid documents (see the *Competitive Bid Processes* Procedure document). In this regard, AHS Legal is to be consulted in the following circumstances:

- a) Development of any new competitive procurement templates and corporate contract templates shall be approved by AHS Legal.
- b) Any changes which are sought to be made to standard legal provisions used in competitive procurement documentation or corporate contracts shall be approved by AHS Legal. The creation and use of corporate contracts that are not an approved form of template, whether developed by AHS or by a **contracting party**, shall be approved by AHS Legal.
- c) Formal contractual notices which are required or permitted to be provided by AHS, or received by AHS, under a corporate contract shall be reviewed by AHS Legal prior to release or upon receipt, as applicable.

- d) AHS Legal shall be consulted and provide advice in connection with the enforcement of terms and conditions of a corporate contract which may have legal implications (including exercising rights of termination) and other circumstances as considered necessary or appropriate by CPSM to mitigate against legal risks or claims against AHS.

## 5. Non-Competitive Procurements.

5.1 AHS may conduct the following types of non-competitive procurements, provided they comply with the relevant trade agreements:

- a) Below Trade Agreement Thresholds – Those procurements that are outside the scope of the trade agreements because their value is below the financial thresholds. The thresholds are:
  - (i) below \$75,000 for goods or services; and
  - (ii) below \$200,000 for construction.
- b) Approved Procurement Exceptions (APE) – An APE is in compliance with the relevant trade agreements. The trade agreements set out conditions under which procurements are typified as an exception from the requirement to hold a competitive procurement process. See Appendix A for listing of APE categories.
- c) Sole Source – Non-competitive procurements not specifically listed in the trade agreements as exceptions to the requirement to hold a competitive procurement process are deemed to be sole source procurements. See Appendix A for a list of potentially acceptable sole source circumstances. The types of circumstances reflected in Appendix A may provide a justification or legitimate objective to conduct a non-competitive procurement. AHS does not encourage the use of sole source procurements and they should be avoided where possible. Sole source procurements will only be approved in extraordinary situations and for legitimate objectives as outlined in Appendix A and program groups should engage CPSM as early as possible in the procurement process when a sole source is a possibility.

## 6. Emergency Procurements

6.1 Only in emergency situations, and when authorized by the appropriate delegated authority, may procurements be made without a written corporate contract. The failure to plan and allow sufficient time for the normal procurement and contracting process does not constitute an emergency.

## 7. Other written forms of confirmation

7.1 An early start letter (ESL) or similar written form of confirmation of agreed contract terms must be used to bridge a potential lapse in time between the

**effective date** of a corporate contract and the **execution date** that is, the date the corporate contract is signed by AHS and contracted party.

- a) An ESL, or similar bridging document, may only be in place for a maximum period of 90 days. Furthermore, no corporate contract may have an effective date that is earlier than the date that an ESL has been executed.
- b) An ESL, or similar bridging document, must be signed in accordance with the anticipated value of the total corporate contract.
- c) Any extension of an ESL, or similar bridging document, for any period beyond the initial 90 days, must be approved and signed by the Chief Program Officer (CPO), CPSM or higher level depending on the anticipated value of the corporate contract.

## 8. Purchase Orders

8.1 **Purchase orders** (PO) are the means by which procurements are made and contain terms and conditions which are applicable to the Contracting Party and AHS. Thus, where a PO is issued independent of any existing corporate contract it is also subject to the requirements of the trade agreements.

## 9. Non-Compliance

9.1 Non-compliance with this Policy may result in:

- a) disciplinary action up to and including termination of employment, and/or
- b) termination of a corporate contract.

## DEFINITIONS

**AHS Representative** means AHS employees, members of the medical and midwifery staffs, students, volunteers and others who may act on behalf of AHS.

**Amendment** means any change to the terms and conditions of a corporate contract.

**Competitive Procurement** means the procurement by AHS of goods, equipment and/or services reflected in a corporate contract which is created or arises by means of a competitive process that complies with the trade agreements.

**Contract** means a legally enforceable agreement made between AHS and one or more parties. For the purposes of this policy, a contract shall include such agreements as a memorandum of understanding, letter of intent and early start letter.

**Contracting Party** means an individual or company with whom AHS enters into a contractual arrangement either for the procurement of goods or services or for other purposes or initiative

including, but not limited to, research, clinical trials, inter-governmental relations and non-disclosure.

**Corporate Contracts** means all contracts, except for:

- (i) Medical Services contracts (contracts with non-employee physicians and/or clinicians for medical services),
- (ii) Human Resource contracts (contracts relating to human resources functions which govern AHS employees, students and volunteers, and which do not pertain to goods, services or equipment),
- (iii) Capital Management contracts (contracts for building construction & renovation projects including planning, design, construction, leasing and real estate), and
- (iv) Research contracts (contracts relating to research and innovation, including clinical trials, research-related confidential disclosure, biological material transfers, and data sharing),
- (v) Self-Managed Care contracts are contracts with AHS clients/patients to provide them with funds to pay for their own home care services with a 3<sup>rd</sup> party provider.
- (vi) Purchase Orders (PO).

**Effective date** of a contract means the date on which AHS and other contracting parties commence performance or implementation of the primary business terms and obligations. This is sometimes referred to as the start date or commencement date and it should reflect the agreed upon effective date in the contract regardless of the date the contract has been signed by the respective parties.

**Execution date** of a contract means the date on which AHS and other contracting parties have signed the contract.

**Extension** means an extension to the term of a corporate contract where there are no renewal options or rights contained in the corporate contract (or any existing renewal rights have been fully exercised) and the parties mutually agree to extend the term of the corporate contract.

**Non-Competitive Procurements** means the procurement by AHS of goods, equipment and/or services reflected in a corporate contract which is created or arises by means of a non-competitive process. See Appendix A for details on allowable non-competitive procurements.

**Procurement** means the acquisition by any means, including by purchase, rental, lease or conditional sale, of goods, services, equipment or construction, but does not include:

- (i) any form of assistance that AHS or its procuring entities provides, including cooperative agreements, grants, loans, equity infusion, guarantees or fiscal incentives; or
- (ii) provision by AHS of goods and services to persons or other government organizations, including government entities.

**Purchase Order (PO)** means an order to purchase goods, services or equipment from a Contracting Party subject to the terms and conditions on that order. A PO may be used to purchase items that are subject to a pre-existing corporate contract or not.

**Renewal** means a renewal to the term of a corporate contract, thereby extending the contract's expiry date, by exercising an existing option or right contained in the corporate contract.

## REFERENCES

- Appendix A: *Procurement Exceptions in the Trade Agreements*
- AHS Policies, Procedures, and Bylaws:
  - *Basic Procurement Process and Competitive Bid Thresholds Procedure* (#1152-02)
  - *Code of Conduct*
  - *Collection, Access, Use, and Disclosure of Information Policy* (#1112)
  - *Competitive Bid Processes Procedure* (#1152-03)
  - *Conflict of Interest Bylaw*
  - *Delegation of Authority and Establishment of Controls for Commitments Policy* (#1100)
  - *Delegation of Approval Authority Policy* (#1118)
  - *Information Classification Policy* (#1142)
  - *Non-Competitive Procurement Procedure* (#1152-04)
  - *Records Management Policy* (#1133)
  - *Records Retention Schedule* (#1133-01)
  - *Renewals and Extensions to Contracts Procedure* (#1152-05)
  - *Safe Disclosure/Whistleblower Policy* (#1101)
  - *Travel, Hospitality, and Working Session Expenses Policy* (#1122)
- Non-Alberta Health Services Resources
  - *Agreement on Internal Trade*
  - *Contracting Guidelines for Services* (Alberta Auditor General)
  - *Freedom of Information and Protection of Privacy Act* (Alberta)
  - *New West Partnership Trade Agreement*
  - *Trade, Investment, and Labour Mobility Agreement*

## VERSION HISTORY

Date	Action Taken
April 5, 2016	Initial Approval
May 2, 2016	Initial Effective
May 2019	Scheduled for Review



**APPENDIX A**

**Procurement Exceptions in the Trade Agreements**

As a publicly funded health entity that exercises authority delegated by law with accountability to the Government of Alberta, AHS is obliged to follow the procurement provisions described in certain trade agreements - New West Partnership (NWPTA) and the Agreement on Internal Trade (AIT) (the "Trade Agreements"). As a general principle, procurement must be conducted in a manner that is open, fair, non-discriminatory and non-restrictive to trade, investment and labour mobility amongst the Provinces (the "Procurement Principles"), but the Trade Agreements do allow for exceptions to the Procurement Principles.

The procurements listed in the first two sections below represent exceptions to competitive procurement that apply to AHS that are specifically listed in the Trade Agreements. The procurements conducted under these provisions are called Approved Procurement Exceptions (APE). Section 3 contains a list of potential circumstances under which a non-competitive procurement may be conducted and which are not specifically listed in the Trade Agreements as procurement exceptions but for which there may be a justification or legitimate objective to conduct a non-competitive procurement process. The procurements conducted under these provisions are categorized as Sole Source (SS) procurements.

Category	<u>Below Trade Agreement Procurement Value Thresholds</u>
<b>1. Below Trade Agreement Thresholds</b>	<b>Procurements of goods and services below \$75K and for construction below \$200K.</b> The relevant trade agreement obligations to follow a competitive procurement process do not apply to procurements below these thresholds. Equally procurement value is the cumulative total of all such like procurements for the particular goods and services rather than the individual transaction amount. Thus, AHS will ensure that wherever practical, AHS will use the most appropriate methodology to ensure tax dollars are spent to maximize value and put in place processes to monitor for instances of procurement splitting and repeat extensions to contracts to avoid these thresholds.

Category	<u>Trade Agreement Procurement Exceptions</u>
<b>Approved Procurement Exceptions (APE).</b> Procurements in the circumstance listed below qualify as exceptions from Trade Agreement sourcing requirements:	
<b>2. Procurement Exception</b>	<b>APE1</b> – Where <b>only one supplier</b> is able to meet requirements of a procurement, in one of the circumstances listed below: <ol style="list-style-type: none"> <li>a. 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;</li> <li>b. 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;</li> <li>c. for the procurement of goods or services the supply of which is controlled by a supplier that is a statutory monopoly;</li> <li>d. for work to be performed on or about a leased building or portions thereof that may be performed only by the lessor;</li> <li>e. 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;</li> <li>f. for a contract to be awarded to the winner of a design contest;</li> </ol>



Category	<u>Trade Agreement Procurement Exceptions</u>
	<p>g. for the procurement of a prototype of 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;</p> <p>h. for the purchase of goods under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases;</p> <p>i. for the procurement of subscriptions to newspapers, magazines or other periodicals; and</p> <p>j. for the procurement of real property.</p> <p><b>APE2</b> – Procurements in an <b>unforeseeable situation of urgency</b> where the goods, services or construction could not be obtained in time by open procurement procedures. <b>Note this does NOT include urgent situations arising due to a lack of due diligence and/or planning;</b></p> <p><b>APE3</b> – Procurement regarding matters of a <b>confidential nature</b> where an open bidding process could compromise government confidentiality, cause economic disruption or be contrary to public interest. <b>Note: This exemption only applies to goods or consulting services.</b></p> <p><b>APE4</b> - Procurements for <b>health or social services.</b></p> <p><b>APE5</b> – Procurement in <b>absence of receipt of bids</b> in response for a call for tender.</p> <p><b>APE6</b> - Procurements for services provided by <b>lawyers and notaries.</b></p> <p><b>APE7</b> - Procurement contracts with a <b>public body or not-for-profit organization.</b></p> <p><b>APE8</b> - Procurement from <b>philanthropic institutions, prison labour or persons with disabilities</b></p> <p><b>APE9</b> - Procurement of <b>goods intended for resale to public</b></p> <p><b>APE10 – Fully Exempt</b> - Water, energy (renewable/alternative), conservation, aboriginal, treasury, donation funds as these procurements have full exemptions from Trade Agreement sourcing requirements.</p> <p><b>APE11 Legitimate Objectives.</b> The following categories of procurements are listed in the Trade Agreements as legitimate objectives that are exceptions to the Procurement Principles. The onus is on the procuring entity to demonstrate the necessity of the requirement, its non-restrictiveness and that it is not disguised:</p> <ol style="list-style-type: none"> <li>a. Public security and safety;</li> <li>b. Public order;</li> <li>c. Protection of human, animal or plant life or health;</li> <li>d. Protection of the environment;</li> <li>e. Consumer protection;</li> <li>f. Protection of the health, safety and wellbeing of workers; or</li> <li>g. Affirmative action programs for disadvantaged groups (where APE8 does not apply);</li> </ol>
Category	<u>Sole Source</u>
	<p><b>Sole Source (SS)</b> – Non-competitive procurements under the following potential circumstances are deemed to be Sole Source procurement as these exceptions are not specifically listed in the Trade Agreements as exceptions to the Procurement Principles. However, there may be a justification or legitimate objective to conduct a non-competitive procurement in these cases. Where procurements are conducted in these circumstances, a conscious decision is being made not to conduct a competitive procurement despite the existence of more than a single vendor. Consequently, these procurement requests are subject to a high level management approval process (see this Policy and Non-</p>

Category	<b><u>Trade Agreement Procurement Exceptions</u></b>
	<p><i>Competitive Procurement Procedure</i> document #1152-04).</p> <p>In determining approval of contract requests, the cumulative value of the procurement or contract will be taken into consideration as opposed to the individual value of each commitment. AHS does not encourage the use of Sole Sources and they should be avoided where possible. Sole Source procurements will only be approved in extraordinary situations, including where critical patient care may be directly or indirectly impacted and the procurement is not otherwise an Approved Procurement Exception (APE). Programs <b>MUST</b> engage with CPSM as early as possible in the procurement process when a Sole Source is a possibility. CPSM will consult with Legal and Privacy where necessary to ascertain the level of risk to AHS and to see if the intended Sole Source procurement may be an Approved Procurement Exception (APE).</p>
<p><b>3. Sole Source</b></p>	<p><b>For all procurements that fall into the SS category, the onus to provide a written rationale justifying the requirement to sole source lies with the end-user/program group. However it will be CPSM's responsibility to validate this justification.</b></p> <p>The following circumstances offer examples, either individually or as a combination, that may contribute to justify Sole Source procurements:</p> <ol style="list-style-type: none"> <li>1. <b>SS1 - Clinical/Corporate Need to Prevent a Disruption of Operations.</b> Extraordinary circumstances which require a Sole Source procurement to prevent a disruption to the provision of health care delivery or services in Alberta. The level of disruption and likely impact to service quality and patient safety needs to be taken into consideration to justify the Sole Source in any given situation. The following criteria should be considered and applied when describing the level of disruption and impact in the written rationale to support the justification for a Sole Source procurement not otherwise qualifying as an Approved Procurement Exception:             <ol style="list-style-type: none"> <li>a. Does the service disruption apply across significant areas or services or is it localized?</li> <li>b. Does the service disruption cause significant or minor impact?</li> <li>c. Does the service disruption have long term or short term effects?</li> <li>d. Does the service disruption cause a threat to efficiency and/or effectiveness of services?</li> </ol> </li> <li>2. <b>SS2 Economic Impact.</b> There may be instances where, as part of AHS' responsibility and accountability in use of taxpayer funds, it would not be economically logical or justifiable to conduct a competitive process. Some examples:             <ol style="list-style-type: none"> <li>a. The cost of conducting a competitive procurement would likely exceed any anticipated savings that would be gained through the competitive process, provided the procurement is not otherwise non-discriminatory or unduly restrictive to trade and investment. This may also be impacted by the availability and timing of funding and budget, especially if dependant on Ministry approval or release of funds;</li> <li>b. Long term and/or strategic impact such as implementing province wide strategies for consistent standards and common clinical/frontline equipment use or standardization of operations (i.e. technology platforms) which will result in economic savings.</li> <li>c. Integration or conversion issues resulting from changes in a provider and/or goods/services where such a change would result in significant costs to AHS.</li> </ol> <p>In determining the validity of economic impact as a justification for a Sole Source procurement, the following factors should be considered:</p> <ul style="list-style-type: none"> <li>• Historic investment by AHS and current value of investment (i.e. investment to date is \$ approx) where that investment would be lost by changing providers;</li> <li>• The estimated replacement cost of a system that would be required by going to market versus remaining with current vendor's system (i.e. value of current assets</li> </ul> </li> </ol>

Category	<u>Trade Agreement Procurement Exceptions</u>
	<p>that would need to be replaced if go to market, because of compatibility issues or similar);</p> <ul style="list-style-type: none"> <li>• Cost of conversion to new system versus status quo (significance and analysis to substantiate);</li> <li>• If there are likely significant soft costs, (i.e. human or public factors that may negatively impact AHS financially or operationally in its mandated services);</li> <li>• Existing funding issues (e.g. envelop or grant dependant funding);</li> <li>• Integration analysis (e.g. with existing systems/ procedures, government).</li> </ul> <p>A business case to confirm the justification that a change or competitive process would be contrary to the organization and/or public interest is required.</p> <p>3. <b>SS3 Standardization Initiatives.</b> AHS seeks widespread improvements in quality, efficiency, consistency and accessibility of service to patients by way of province wide strategies. Some of these initiatives have long term and/or strategic impact such as implementing consistent standards and common clinical/frontline use of goods and services.</p> <p>4. <b>SS4 Legislative or Governance Changes.</b> Where there is a change in government policy, direction or governance changes:</p> <ol style="list-style-type: none"> <li>a. that results in AHS having to undertake a procurement process which has an impact (whether clinically, financially or otherwise) on AHS' ability to utilize a standard procurement process, or</li> <li>b. that affects AHS, its operations or any aspect of the provision or delivery of health care services that would reasonably require AHS to procure through a Sole Source to avoid any type of economic, operational, clinical or reputational risk to AHS</li> </ol> <p>5. <b>SS5 Capacity/Timeline Constraints</b> AHS may temporarily find itself in a situation where it is not able to commence a competitive process due to either organizational capacity or timeline constraints, but its intent is to enter into a competitive process as soon as it is able to do so. In such circumstances, <b>short term</b> Sole Source procurement may be appropriate as a tactical measure prior to commencing a competitive process. This may also apply to situations in which resource capacity to support a comprehensive competitive procurement process may not be available due to multiple priorities that clinical and frontline staff are involved in.</p> <p>All Sole Source procurements that fall into the above categories are to be forwarded, along with any supporting and background information, to the Chief Program Officer, CPSM or relevant CPSM contracts Executive Director for approval prior to contract initiation and implementation.</p>