

TITLE

NON-COMPETITIVE PROCUREMENTSCOPE

Provincial

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Alberta Health Services Executive Leadership Team

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Corporate Contracting Policy

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 procedure, please contact the Policy & Forms Department at policy@albertahealthservices.ca. The Policy & Forms website is the official source of current approved policies, procedures, directives, and practice support documents.

This procedure is to be used in conjunction with the *Corporate Contracting Policy*.

OBJECTIVES

- To describe the process and conditions for non-competitive procurement of goods and services.
- To outline the circumstances under which the different types of non-competitive procurements are approved and the analysis used to review whether procurement is exempt from the requirement to hold a fair and equitable competition.

APPLICABILITY

Compliance with this procedure 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).

This procedure only applies to **corporate contracts**.

ELEMENTS**1. Trade Agreements**

- 1.1 As directed by the Government of Alberta, Alberta Health Services (AHS) must comply with the procurement provisions of the following trade agreements:

- a) The *Agreement on Internal Trade* (AIT), being an agreement between the governments of all provinces, territories, and the federal government;
- b) The *New West Partnership Trade Agreement* (NWPTA), being an agreement between the governments of Alberta, British Columbia, and Saskatchewan; and
- c) The *Trade, Investment, and Labour Mobility Agreement* (TILMA), being an agreement between the governments of Alberta and British Columbia.

1.2 These agreements identify procurement thresholds and approaches so that the procuring party cannot avoid competition, discriminate between **vendors**, or give undue advantage to a vendor. These agreements also establish penalties for non-compliance. The failure to adhere to these agreements could have a very serious and detrimental effect to AHS, both financially and to its reputation.

2. Approved Procurement Exception and Sole Source

2.1 There are two categorizations of non-competitive procurement (i.e., a procurement where the vendor is not selected as a result of a competitive process):

- a) an **Approved Procurement Exception (APE)**, being the acquisition of goods/services:
 - (i) without the vendor being selected as a result of an open competition; and
 - (ii) where the procurement is exempt from the requirement to hold a fair and equitable competition in the applicable trade agreements; or
- b) a **sole source**, being the acquisition of goods/services:
 - (i) without the vendor being selected as a result of an open competition; and
 - (ii) where the procurement is not exempt from the requirement to hold a fair and equitable competition in the applicable trade agreements.

2.2 The degree of management approval required is different between an APE and a sole source with more rigorous approval requirements for a sole source.

3. Approved Procurement Exception

3.1 An APE is in compliance with the trade agreements identified in Section 1. The trade agreements set out conditions under which a transaction will be typified as

“exempt” from the requirement to hold a competitive procurement. Although not an exhaustive listing, examples of such determining conditions include:

- a) whether a transaction is considered a procurement in accordance with the trade agreements (see Section 7.1 for details);
- b) whether the value of a procurement exceeds certain dollar thresholds (see Section 7.2 for details);
- c) whether a general exemption is applicable such as the parties involved in a procurement are a public body (see Section 7.3 for details and a listing of exemptions); and
- d) whether an exemption is applicable such as if the specific procurement is considered proprietary, confidential in nature, or required due to unforeseen emergency (see Section 7.4 for details and a listing of exemptions).

- 3.2 It is important to justify the legitimacy of an APE procurement. The end-user/**program group** also has a responsibility in making an assessment as to the nature of the procurement (i.e., being exempt or not), and when considered exempt, performing functions necessary to support the rationale for an APE procurement. In this respect, the end-user/program group is required to provide sufficient written information in order for Contracting, Procurement & Supply Management (CPSM) to make an informed rationale, as described further in Section 7.
- 3.3 The determination of whether a procurement is exempt or not is made utilizing the analysis described in Section 7 of this procedure.
- 3.4 In order to support the analysis as described in this procedure, the timely advance engagement of CPSM is strongly encouraged by program groups. Advance engagement is not only helpful for planning purposes, but is also required in some instances to support the rationale for an APE. For example, advance engagement may allow AHS the opportunity to conduct a compatibility analysis, or allow AHS to conduct other processes to determine if a transaction is exempt or not.
- 3.5 Approval for an APE is limited to, and must be provided by, CPSM. CPSM may approve or reject the recommendation from the end-user/program group or request additional information from the end-user/program group to support the non-competitive procurement strategy rationale. In cases where CPSM rejects the documented rationale, CPSM will provide a brief explanation to the requestor.
- 3.6 For an APE, the approval level required by CPSM to procure a good or service, excluding consulting services, from a specific vendor is as follows:

Position Approval Level (CPSM Staff)	Value of the Procurement*	
Chief Program Officer	Over \$10,000,000	
Executive Director	Up to \$10,000,000	
Director	Up to \$2,000,000	
Manager requirement for sole source documentation is not required in all cases**	goods and services excluding consulting Under \$75,000**	construction excluding consulting Under \$200,000**

*Note: See Section 5 if procurement contemplates a renewal or extension.

** Note: - For procurements of goods and services (excluding consulting services) between \$25,000 and \$74,999.99 and construction (excluding consulting services) between \$25,000 and \$199,999.99, APE documentation is required when the quotation process, or other processes, referenced under Section 7 of the *Basic Procurement Process and Competitive Bid Thresholds* Procedure are not conducted (i.e., if the quotation process is conducted, no APE or sole source documentation is required).

- For procurements under \$25,000 (excluding consulting services), CPSM may require APE or sole source documentation. Please refer to Section 7 of the *Basic Procurement Process and Competitive Bid Thresholds* procedure.

4. Sole Source

- 4.1 Sole source procurements are not permitted as exemptions under the trade agreements and are subject to a high level management approval process. AHS does not encourage the use of sole source 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 does not fit within the interpretation of an APE. It is strongly suggested that program groups engage CPSM as early as possible in the procurement process when a sole source is a possibility. Legal & Privacy may be consulted to ascertain the level of risk to AHS and to see if an exemption is available in the applicable trade agreements.
- 4.2 As set out in Section 4.1 above, circumstances arise in health care where sole source procurements may be approved. Examples of sole sources which may have a reasonable justification include:
- a) Where:
 - (i) there is a personal/clinical need; or,
 - (ii) an extraordinary circumstance exists:

that is supported either internally with a written business or clinical justification, or externally pursuant to a process such as a notice of intent to sole source (see Section 4.7 below), or other external process, as

appropriate, demonstrating that only one vendor can reasonably meet AHS' needs, and that such a procurement is not otherwise an APE; and

- b) where **contract** expiry dates are being extended and aligned with the intent to conduct a consolidated competitive procurement in the future.

4.3 At times there are preventable circumstances where CPSM is requested to approve a sole source. Failure to plan sufficiently in advance of a need or act on the advice of CPSM with respect to a sourcing matter resulting in insufficient time to conduct a fair and open competitive process does not constitute an emergency, is preventable, is discouraged, and approval will be rejected, apart from exceptional cases. Even in circumstances where a preventable sole source is approved, the program group requesting the sole source will be required to take steps to ensure that preventable circumstances are not repeated.

4.4 The circumstances outlined in Section 4.2 and 4.3 are to be avoided where possible. In such circumstances, where approval is sought for a sole source, the approval level required for procuring a good or service, excluding consulting services, from a specific vendor is as follows:

Position Approval Level	Value of the Procurement*	
AHS' Governing Body (Board/Official Administrator)	Over \$90,000,000	
Chief Executive Officer	Up to \$90,000,000	
Vice President, Corporate Services and Chief Financial Officer	Up to \$60,000,000	
Chief Program Officer, CPSM	Under \$30,000,000	
Executive Director	\$500,000	\$500,000
Director - Requirement for sole source documentation is not required in all cases**	Goods and services excluding consulting Under \$75,000**	Construction excluding consulting Under \$200,000**

*Note: See Section 5 if a procurement contemplates a renewal or extension.

**Note: For procurements of goods and services (excluding consulting services) between \$25,000 and \$74,999.99 and construction (excluding consulting services) between \$25,000 and \$199,999.99, sole source documentation is required when the quotation process, or other processes, referenced under Section 7 of the *Basic Procurement Process and Competitive Bid Thresholds Procedure* is not conducted (i.e., if the quotation process is conducted, no sole source documentation is required).

- For procurements under \$25,000 (excluding consulting services), CPSM may require sole source documentation. Please refer to Section 7 of the *Basic Procurement Process and Competitive Bid Thresholds Procedure*.

- 4.5 The Chief Program Officer (CPO), CPSM shall either approve the sole source or make a recommendation to the Vice President, Corporate Services & Chief Financial Officer (VP, CFO). All requests for approval submitted to the Chief Executive Officer (CEO) or the VP, CFO must be accompanied by a written recommendation from, and signed by, the CPO, CPSM. Legal consultation may be required.
- 4.6 Each approval sought for a sole source is subject to verification as to all aspects of the procurement and CPSM review should be documented.
- 4.7 Notice Advising of AHS' Intent to Sole Source:
- a) As indicated in Section 4.2 (a), CPSM may elect to advise the marketplace of AHS' intentions to enter into a contract with a particular vendor(s) (the "contemplated vendor") by posting a notice on the electronic tendering system (Alberta Purchase Connection) for at least ten (10) working days inviting any person, or entity, who objects to the sole source to notify AHS in writing of their objections. In cases where the contemplated vendor is not to be named in the notice, the approval of the CPO, CPSM is required.
 - b) In the event:
 - (i) no qualified responses are received (either because no vendors have responded or any vendors who have responded do not qualify as meeting AHS' requirements, as set out in the notice and determined by AHS), AHS may sole source the procurement to the contemplated vendor. In cases where a vendor's submission is rejected as being unqualified, the concise rationale for rejecting the submission must be documented by the AHS program group and approval to sole source may possibly be sought as an APE (see Section 3.6); or
 - (ii) one or more qualified vendors reply, AHS should pursue a competitive procurement or, alternatively, in exceptional circumstances where in AHS' assessment it deems a particular vendor's response (either the contemplated vendor or a new vendor) as more favourable in meeting AHS' requirements, then approval to sole source shall be sought as a sole source.
 - c) CPSM, in consultation with Legal & Privacy, shall determine the structure of the notice document including whether or not, and to what extent, a particular notice will set out AHS' requirements. AHS shall not be obligated to change its requirements to accommodate responding vendors provided that AHS does not do so to avoid competition or give an undue advantage to a vendor.

- d) Note that in establishing the content of the notice document and corresponding process as described in Section 4.7, CPSM will establish guidelines in consultation with Legal & Privacy, as updated from time to time.

5. Renewals and Extensions to Contracts

- 5.1 In preparing supporting documentation for a non-competitive procurement approval, the approval value is dependent upon the classification of the procurement as an APE or sole source as well as whether a contract is considered a renewal or extension.
- 5.2 The *Renewals and Extensions to Contracts* Procedure expands on the procedural elements and provides direction specific to procurement matters and the treatment of renewals or extensions.
- 5.3 Non-Competitive Procurement Approvals for Consulting and Professional Services:
- a) Notwithstanding the position approval levels for APE and sole sources (see Sections 3.6 and 4.4), all other non-competitive procurement process requirements outlined in this procedure apply to consulting and professional services contracts, except for the valuation of the procurement when considering a renewal or extension. For the purposes of consulting and professional services contracts, the valuation and the approval level shall be the value of the contract and all renewals and extensions, including the extension being sought (i.e., the value of all past and future estimated expenditures).
- b) All APE or sole source requests for consultant engagement will require a signed recommendation from the Vice President of the program group.

6. Documenting and Evaluating Non-Competitive Procurement Rationale

- 6.1 When submitting a non-competitive procurement request, the end-user/program group is responsible for providing written documentation containing the rationale to justify the non-competitive procurement to CPSM who will then evaluate the documentation to determine whether the non-competitive procurement is justified in accordance with this procedure.
- 6.2 The form of documentation may range from a detailed business case to brief written rationale that is clear, concise, and evidence based, but must provide sufficient information to support the non-competitive procurement evaluation process (see Section 7) allowing CPSM to make an informed assessment of the appropriateness of the non-competitive procurement request in accordance with this procedure.

7. Non-Competitive Procurement Evaluation Process

Note: This section will detail the steps to be performed by CPSM staff when evaluating whether a non-competitive procurement is justifiable under the exemptions provided for in the trade agreements. This process should be followed for each non-competitive procurement request:

7.1 Step 1 – Is the Transaction a Procurement?

Under the trade agreements, only procurements are subject to the need to conduct a competition. Therefore, the first step is to determine if the transaction planned is a procurement. A procurement, as defined under the trade agreements:

- a) is an acquisition by any means, including purchase, rental, lease, or conditional sale or lease;
 - If you are not buying, renting, or leasing something, it is not a procurement.
- b) is paid for by AHS (payment can be cash or other consideration);
 - If it is free, it is not a procurement (in this regard, equipment given free but tied to another commitment (e.g., consumable usage), is not free).
- c) Is for goods, services, or construction;
 - If it is not goods, services, or construction, it is not a procurement.
- d) is not a transaction in nature of government assistance like grants or loans; and
 - Government assistance is not a procurement.
- e) is not a transaction with another governmental body.
 - A transaction with any level of government, even if AHS is buying goods, services or construction, is not a procurement.

The engagement of a distributor should be considered carefully as to whether a procurement has occurred. Typically, distributors act as a conduit for AHS' purchase of a manufacturer's product (e.g., when the manufacturer is selected pursuant to a competitive process, and AHS is later given the option of selecting a distributor). In many cases, a distributor will attempt to obtain AHS' selection by offering a rebate which in turn is related to AHS' purchase of product from the manufacturer. While the name of the distributor appears on an invoice, the true relationship is often not akin to that of a purchase/seller as the true seller is the

manufacturer. In such cases, as AHS is not paying funds for the services of the distributor (it is in fact receiving a discount), no procurement may have occurred.

If the transaction is a procurement as set out above, proceed to Step 2. Otherwise, no competition is required.

7.2 Step 2 – Does the Procurement Exceed the Thresholds?

Generally speaking, the trade agreements require that all procurements which exceed the following thresholds be subject to a competition:

Procurement Type	Threshold
Good	\$75,000
Services	\$75,000
Construction	\$200,000

No competitive process is mandated by the trade agreements if a procurement is under the thresholds; however, AHS' *Basic Procurement Process and Competitive Bid Thresholds Procedure* requires that certain processes be conducted even where a competitive process is not so mandated. If the procurement exceeds the thresholds, proceed to Step 3.

7.3 Step 3 – General Exceptions

The AIT, NWPTA, and TILMA contain general exceptions where a competition is not mandated. While the lists are similar, NWPTA and TILMA are more limiting. As such, the NWPTA and TILMA lists have priority over the list contained in the AIT.

These general exceptions are:

- a) a procurement from a philanthropic institution, prison labour, or persons with disabilities;
- b) a procurement from a public body or not-for-profit organization;
 - (i) This exclusion is one of the most overlooked exemptions. If the goods or services being sought are being supplied by a not-for-profit group, no competitive process is required (e.g., hospice services, community services, some long term care providers). A careful review of the organization should precede any decision to utilize this exemption to ensure it is a not-for-profit.
 - (ii) A competitive bid is required for circumstances where there may be both not-for-profit and for-profit vendors/providers.
- c) where the goods are intended for resale to the public;
- d) a procurement for health and social services;

- (i) For AHS purposes, this exclusion is very narrow and refers only to a procurement of direct health or social services for a particular individual. It does not include general services (e.g., physiotherapy services) offered in a commercial manner. This exclusion is unlikely to occur for AHS procurement purposes.
- e) a procurement of legal or notarial services; and
- f) where a tender, or other competitive process like a request for proposal is released, and there are no bids/responses (often used).

The above list is not exhaustive. See Part V(C)(2) of NWPTA, Part V - Government Procurement, Section 2 of TILMA, and Annex 502.4(L) of AIT for further information. If the exclusion is in AIT and not in NWPTA or TILMA, it cannot be used. The applicability of any provision in the trade agreements lies with CPSM in consultation with Legal & Privacy.

No competitive procurement process is mandated under AIT, NWPTA or TILMA if any of the above exceptions apply and the exception is not being used to avoid competition, discriminate between vendors, or to protect a provincial vendor. If these exceptions do not apply, proceed to Step 4.

Although a competitive procurement process is not mandated where the above exceptions apply, AHS may still choose to conduct a competitive process if seeking to evaluate and select amongst multiple vendors. In such case(s), the competitive process will not be subject to the rules and requirements under AIT, NWPTA, and TILMA.

7.4 Step 4 – Specific Exceptions

AIT, NWPTA, and TILMA contain specific exceptions where a competition is not mandated. While the lists are similar, NWPTA and TILMA are more limiting. As such, the NWPTA and TILMA list have priority over the list contained in the AIT.

These specific exceptions include:

- a) where it can be demonstrated that only one vendor is able to meet the requirements of the procurement;
 - This exception applies where only one vendor creates a product with a specific functionality, or a specific product is needed in order to ensure compatibility with existing systems (e.g., consumable supplies for a specific machine, original equipment manufacturer maintenance agreements, or software updates from the original software provider).
- b) where an unforeseeable situation of urgency exists and the goods, services, or construction could not be obtained in time by means of open procurement procedures; and

- This exception applies where an event which is both unforeseen and urgent occurs. The urgency cannot occur as a consequence of AHS failing to plan ahead or make a timely decision.
- c) where the procurement is of a confidential or privileged nature, and having a competition could reasonably be expected to compromise government confidentiality, cause economic disruption, or be contrary to the public interest.

The above list is not exhaustive, but contains the most likely exceptions. See Part V(C)(2) of NWPTA, Part V - Government Procurement, Section 2 of TILMA, and Annex 502.4 (Appendix "C" and "D") of AIT for further information. If the exclusion is in AIT and not in NWPTA, it cannot be used. The applicability of any provisions in the trade agreements lie with CPSM.

No competition is mandated if any of the above exclusions apply and the exception is not being used to avoid competition, discriminate between vendors, or to protect a provincial vendor. A competition is mandated if these exclusions do not apply.

DEFINITIONS

Approved Procurement Exception (APE) means the acquisition of goods/services:

- a) without the vendor being selected as a result of an open competition; and
- b) where the procurement is exempt from the requirement to hold a fair and equitable competition in the applicable 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.

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),
- (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 3rd party provider, and
- (vi) Purchase Orders (PO).

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 of the *Corporate Contracting Policy* for details on allowable non-competitive procurements.

Program group means, but is not limited to, a portfolio, department, division, sector, or group within the AHS organizational structure.

Sole source means the acquisition of goods/services:

- a) without the vendor being selected as a result of an open competition; and
- b) where the procurement is not exempt from the requirement to hold a fair and equitable competition in the applicable trade agreements.

Vendor means an individual or company that supplies, or seeks to provide, goods and/or services to AHS.

REFERENCES

- Alberta Health Services Governance Documents
 - *Basic Procurement Process and Competitive Bid Thresholds Procedure* (#1152-02)
 - *Code of Conduct*
 - *Conflict of Interest Bylaw*
 - *Corporate Contracting Policy* (#1152)
 - *Collection, Access, Use, and Disclosure of Information Policy* (#1112)
 - *Delegation of Approval Authority Policy* (#1168)
- Non-Alberta Health Services Documents
 - *Agreement on Internal Trade*
 - *New West Partnership Trade Agreement*
 - *Trade, Investment, and Labour Mobility Agreement*

VERSION HISTORY

Date	Action Taken
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