
Non-Competitive Procurement Provisions

Definition

Limited Tendering: A procurement method where the procuring entity contacts a supplier or suppliers of its choice, provided 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.

Limited Tendering Provisions: Provisions in the applicable trade agreements whereby a procuring entity may use limited tendering.

Non-Application Provisions: Provisions that a given procurement is exempt from the applicable government procurement obligations of the applicable trade agreements.

Single Source: 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.

Sole Source: 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.

Tender: Submission from a supplier in response to a notice of competitive procurement opportunity.

The Non-Competitive Procurement Justification form can be downloaded from [Procurement and Payable Forms page](#) [1]. For an example of completed form, please see [Sample of Completed Non-Competitive Procurement Justification](#) [2].

Limited Tendering Provisions (for Single Source or Sole Source)

1. If no tenders were submitted or no suppliers requested participation provided that the requirements of the tender documentation are not substantially modified;
2. If no tenders that confirm to the essential requirements of the tender documentation were submitted provided that the requirements of the tender documentation are not substantially modified;
3. If no suppliers satisfied the conditions for participation provided that the requirements of the tender documentation are not substantially modified;
4. If the submitted tenders were collusive provided that the requirements of the tender documentation are not substantially modified;
5. 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:
 - a) the requirement is for a work of art;
 - b) the protection of patents, copyrights, or other exclusive rights;
 - c) due to an absence of competition for technical reasons;
 - d) the supply of goods or services is controlled by a supplier that is a statutory monopoly;
 - e) to ensure compatibility with existing goods, or to maintain specialized goods that must be maintained by the manufacturer of those goods or its representative;

- f) 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 work;
- g) work is to be performed on a leased building or related property, or portions thereof, that may be performed only by the lessor; or
- h) the procurement is for subscriptions to newspapers, magazines, or other periodicals;
6. 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: *(below (i) and (ii) must both apply)*
- (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
- (ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;
7. 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; *(A failure to plan and allow sufficient time for a competitive procurement does not constitute an unforeseeable situation or urgency)*
8. For goods purchased on a commodity market;
9. 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;
10. 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 supplier;
11. If a contract is awarded to a winner of a design contest provided that: *(below (i) and (ii) must both apply)*
- (i) the contest has been organized in a manner that is consistent with the principles of Chapter 5 of CFTA or Chapter 19 of CETA, 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;
12. 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.

Non-Application Provisions

13. Procurement of a good, a service, or any combination thereof, with a view to commercial sale or resale, or for use in the production or supply of a good or service for commercial sale or resale;
14. Procurement under the terms of a public-private partnership;
15. Public employment contracts;
16. Non-legally binding agreements or non-contractual agreements;
17. Any form of assistance, such as cooperative agreements, grants, loans, equity infusions, guarantees, and fiscal incentives;
18. 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 Chapter 5 of CFTA;

19. Acquisition or rental of land, existing buildings, or other immovable property, or the rights thereon;

20. 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 Parties where the same conditions prevail or are a disguised restriction on trade;

21. Procurement or acquisition of:

- a) Fiscal agency or depository services;
- b) Liquidation and management services for regulated financial institutions;
- c) Services related to the sale, redemption, and distribution of public debt, including loans and government bonds, notes, and other securities;

22. Procurement of:

- a) 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;
- b) Health services or social services;
- c) Services that may, under applicable law, only be provided by licensed lawyers or notaries; or
- d) Services of expert witnesses or factual witnesses used in court or legal proceedings;

23. Procurement of goods or services:

- a) Financed primarily from donations that require the procurement to be conducted in a manner inconsistent with Chapter 5 of CFTA;
- b) By a procuring entity on behalf of an entity not covered by Chapter 5 of CFTA or Chapter 19 of CETA;
- c) 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;
- d) By non-governmental bodies that exercise governmental authority delegated to them;
- e) From philanthropic institutions, non-profit organizations, prison labour, or natural persons with disabilities;
- f) 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;
- g) 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;
- h) Conducted 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;
- i) Conducted 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 or Chapter 19 of CETA;

24. Any good or service component of a contract awarded by an entity not covered by Chapter 5 of CFTA;

25. Procurement that is part of a small business set-aside program provided that the program is fair, open, transparent, and does not discriminate on the basis of origin or location within Canada of goods, services, or suppliers.

26. Any measure adopted or maintained with respect to aboriginal peoples.

27. Procurements by a procuring entity from a government entity.

28. Procurements between subsidiaries or affiliates of the same entity, or between an entity and any of its subsidiaries or affiliates, or between an entity and a general, limited or special partnership in which the entity has a majority or controlling interest;

29. Procurement in relation to an international crossing between Canada and another country, including the design, construction, operation or maintenance of the crossing as well as any related infrastructure;

30. Procurement in respect of agricultural goods made in furtherance of agricultural support programs or human feeding programs;
31. Procurement of transportation services that form a part of, or are incidental to, a procurement contract;
32. Procurement of services contracts, excluding construction services contracts, which grant to a supplier the right to provide and exploit a service to the public as complete or partial consideration for the delivery of a service under a procurement contract;
33. Procurement for the acquisition, development, production or co-production of programme material by broadcasters and contracts for broadcasting time;

Source URL: <https://www.uoguelph.ca/finance/non-competitive-procurement-provisions>

Links

[1] <https://www.uoguelph.ca/finance/forms/procurement-payables-forms> [2] https://www.uoguelph.ca/finance/system/files/Sample%20of%20Completed%20Non-Competitive%20Procurement%20Justification_0.pdf