

# PROCUREMENT POLICY EXEMPTIONS: LIMITED TENDERING AND NON-APPLICATION JUSTIFICATION FORM

The procurement of goods, services, construction and renovation work at the University of Toronto (whether by purchase, lease or rental) is governed by the University Procurement Policy which includes the Code of Ethics and Approval Authority Schedule. The Policy applies to all funding sources including operating, research, capital, ancillary and funds held in trust.

Procurement activities must reflect the University's commitment to open, transparent, and non-discriminatory access to all suppliers as required by the Canadian Free Trade Agreement (CFTA), the Canada-European Union Comprehensive Economic and Trade Agreement (CETA), the Trade and Cooperation Agreement between Ontario and Quebec (OQTCA), as well as to achieve and demonstrate value for money as required by the Ontario Broader Public Sector (BPS) Procurement Directive.

To meet these regulatory obligations, the University has established dollar thresholds which require either invitational competitive procurement (3 written quotations from selected suppliers where the total purchase price is estimated at \$25,000, but not exceeding \$100,000) **OR** open competitive procurement (call for tenders – or RfX – issued to ALL suppliers where the total purchase price is estimated to be at, or exceeds \$100,000).

## Procurement Policy Exemptions

There may be circumstances where neither invitational nor open competitive procurement can be used as the procurement method. A Procurement Policy Exemption may be permitted provided it meets the criteria in a Limited Tendering (including Sole or Single Source) Exception or Non-Application Provision of the CFTA, CETA, OQTCA or other regulations applicable to the University of Toronto as introduced from time to time. These provisions are defined and listed on the Limited Tendering Exception or Non-Application Provision tables (Table 1 and 2 respectively) [attached](#) to this Form, and the **applicability of the selected Exception(s) or Provision(s) must be justified with sufficient level of detail** in Sections 3 through 5.

This Justification Form must be completed with the necessary one-over-one sign-off (Section 6 and/or 7) **before** an award is made to any Supplier. Once authorized, and for purchases at or exceeding \$25,000, this Justification Form must be submitted to Procurement Services for compliance vetting, tracking and reporting purposes where required by applicable trade agreements.

## Public Disclosure Requirements

Trade Agreements require that when a Limited Tendering exception is used, the conditions and circumstances that justified its use be published and reported as follows:

1. Contract award and value be published on the Procurement Services web site within 72 days of contract signing; and
2. Contract awards and values be reported to the Province of Ontario on an annual basis. This report will be prepared by Procurement Services on behalf of the University

**Note:** Regardless of procurement method or total purchase value, the University has an obligation to comply with the Accessibility for Ontarians with Disabilities Act (AODA). Under the AODA, the University is required to incorporate accessibility design, criteria and features when procuring or acquiring goods, services or facilities. Please be mindful of this obligation and give due consideration to this requirement. When accessibility cannot be accommodated, the reason must be recorded and kept with the procurement decision.

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### Requesting Department Details

Name \_\_\_\_\_ Title \_\_\_\_\_

Department \_\_\_\_\_

Telephone \_\_\_\_\_ Email \_\_\_\_\_

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### Purchase Details

Short description of purchase \_\_\_\_\_

Procurement Category     Goods     Services     Consulting Services     Construction

Procurement Policy Exemption Category    *Referring to the Limited Tendering and Non-Application [Exception/Provision Codes Tables](#), indicate the applicable code and sub-code (A, B-ii, C etc.) :*

TABLE 1:    TABLE 2:

**Limited Tendering Exception**    \_\_\_\_\_    **Non-Application Provision**    \_\_\_\_\_

Name of Recommended Supplier \_\_\_\_\_

Total Estimated Purchase Value    Is this a CFI funded project?     Yes     No  
*(Pre-tax, including full contract term with extension options, warranties, maintenance, training, etc.)*    \_\_\_\_\_

Procurement Frequency     One-Time-Only     Ongoing    If *Ongoing*, anticipated time for completion of all related procurements \_\_\_\_\_

Has the Recommended Supplier previously received a non-competitive award for this request?     Yes     No

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### Background

Describe the good, service or construction: what it is, how and where it's used, why it's needed, and how it fits with your departmental/research objectives. If available, **attach relevant documentation** (e.g. copies of current/previous agreements, quotes, Purchase Order# etc.).

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### **Justification**

Describe in detail how and why the selected Limited Tendering exemption or a Non-Application provision applies to this procurement. Explain why ONLY the selected supplier can meet the requirements while others cannot.

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### **Demonstrated Value**

Describe the process used to obtain value for money, and attach evidence of actions taken. These may include internet searches, negotiated discounts off list price, acknowledgements from suppliers that the price offered is comparable to similar purchases from other clients, benchmarking from other organizations, professional advice, etc.

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### Acknowledgement

I am aware of the requirements of the University's [Procurement Policy](#) including its [Code of Ethics](#) and Approval Authority Schedule. I am comfortable that the required due diligence was conducted and I authorize this Procurement Policy Exemption request.

\_\_\_\_\_

Budget Owner Signature

\_\_\_\_\_

Name

\_\_\_\_\_

Title

\_\_\_\_\_

Date

\_\_\_\_\_

One-Level Higher Signature

\_\_\_\_\_

Name

\_\_\_\_\_

Title

\_\_\_\_\_

Date

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### University President Authorization (For Consulting Services Only)

\_\_\_\_\_

President's Signature

\_\_\_\_\_

Name

\_\_\_\_\_

Date

**Note:** The President of the University must authorize all non-competitive procurements for consulting services, regardless of dollar value.

### For Procurement Services Use Only\*

Vetted by: \_\_\_\_\_

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

\* Vetting of this form by Procurement Services is for review and tracking purposes only and does not constitute approval or authorization of a Procurement Policy Exemption.

Procurement Policy Exemptions: Limited Tendering and Non-Application Codes  
CFTA Chapter 5 / CETA Chapter 19 / OQTCA Chapter 9

**Definitions**

<b>Limited Tendering Exceptions under CFTA Article 513, CETA Article 19.12, OQTCA 9.14</b>	<i>Limited Tendering means a procurement method whereby 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. A procuring entity may use limited tendering under any of the circumstances described in <b>TABLE 1</b>. Limited Tendering now includes Sole or Single Source as defined below.</i>
<b>Sole Source</b>	<i>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.</i>
<b>Single Source</b>	<i>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.</i>
<b>Non-Application Provisions under CFTA, CETA and OQTCA</b>	<i>Non-Application Provisions are provisions that 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 <b>TABLE 2</b>.</i>
<b>Tender</b>	<i>Submission from a supplier in a response to a tender notice for a procurement valued at or greater than \$100,000.</i>
<b>Quotation</b>	<i>Submission from a supplier in response to an "Invitation to Quote" for a procurement valued at or greater than \$25,000 but less than \$100,000.</i>

**TABLE 1: Limited Tendering Exception Codes (Single Source & Sole Source)**

<b>A</b>	<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 (<i>Contact Procurement Services for guidance</i>);</li> <li>iv. If the submitted tenders were collusive (<i>Contact Procurement Services for guidance</i>);</li> </ul> <p><i>In any of the above cases, the exception is only available provided the requirements of the tender documentation are not substantially modified.</i></p>
<b>B</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 (<i>Not available under CETA or the OQTCA. Contact Procurement Services for guidance</i>);</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 (<i>Not available under CETA or the OQTCA. Contact Procurement Services for guidance</i>);</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 (<i>Not available under CETA or the OQTCA. Contact Procurement Services for guidance</i>);</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 (<i>Not available under CETA or the OQTCA. Contact Procurement Services for guidance</i>);</li> <li>viii. the procurement is for subscriptions to newspapers, magazines, or other periodicals (<i>Not available under CETA or the OQTCA. Contact Procurement Services for guidance</i>);</li> </ul>
<b>C</b>	<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: (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 (<i>Both (i) and (ii) must apply</i>);</p>
<b>D</b>	<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 (<i>A failure to plan and allow sufficient time for a competitive procurement does not constitute an unforeseeable situation or urgency</i>);</p>
<b>E</b>	<p>For goods purchased on a commodity market;</p>
<b>F</b>	<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>
<b>G</b>	<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>
<b>H</b>	<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 (<i>Contact Procurement Services for guidance</i>);</p>
<b>I</b>	<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 (<i>Not available under CETA. It is a non-application provision under OQTCA. Contact Procurement Services for guidance</i>).</p>

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

<b>A</b>	Public employment contracts ( <i>Contact Human Resources for guidance</i> );
<b>B</b>	Non-legally binding agreements ( <i>Contact Procurement Services for guidance</i> );
<b>C</b>	Any form of assistance such as grants, loans, equity infusions, guarantees, and fiscal incentives ( <i>“Grants” refers to granting of money by the University of Toronto. It does not refer to the spending of granting money - i.e. research grants</i> );
<b>D</b>	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 ( <i>Not available under CETA or OQTCA. Contact Procurement Services for guidance</i> );
<b>E</b>	Acquisition or rental of land, existing buildings, or other immovable property, or the rights thereon;
<b>F</b>	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;
<b>G</b>	Procurement or acquisition of: <ul style="list-style-type: none"> <li>i. fiscal agency or depository services (<i>Not applicable for the University of Toronto</i>);</li> <li>ii. liquidation and management services for regulated financial institutions (<i>Not applicable for the University of Toronto</i>);</li> <li>iii. services related to the sale, redemption, and distribution of public debt, including loans and government bonds, notes and other securities (<i>Not applicable for the University of Toronto</i>);</li> </ul>
<b>H</b>	Procurement of: <ul style="list-style-type: none"> <li>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 (<i>“Financial service” means any service or product of a financial nature and a service incidental or auxiliary to a service of financial nature, and includes: deposit taking; loan and investment services; insurance; estate, trust and agency services; securities; and all forms of financial or market intermediation including the distribution of financial products</i>);</li> <li>ii. health services (<i>Contact Procurement Services for guidance</i>) or social services (<i>“Social services” generally includes the following services to the extent that they are established or maintained for a public purpose: income security or insurance; social security or insurance; social welfare; public education; public training, health, and child care</i>);</li> <li>iii. services that may, under applicable law, only be provided by licensed lawyers or notaries;</li> <li>iv. services of expert witnesses or factual witnesses used in court or legal proceedings (<i>Not available under OQTCA. Contact Procurement Services for guidance</i>);</li> </ul>
<b>I</b>	Procurement of goods or services: <ul style="list-style-type: none"> <li>i. financed primarily from donations that require the procurement to be conducted in a manner inconsistent with Chapter 5 of CFTA (<i>Not available under CETA. Contact Procurement Services for guidance</i>);</li> <li>ii. by a procuring entity on behalf of an entity not covered by Chapter 5 of CFTA/Chapter 19 of CETA/Chapter 9 of OQTCA (<i>Contact Procurement Services for guidance</i>);</li> <li>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;</li> <li>iv. by non-governmental bodies that exercise governmental authority delegated to them (<i>Not applicable for the University of Toronto</i>);</li> <li>v. from philanthropic institutions, non-profit organizations, prison labour, or natural persons with disabilities (<i>Not available under CETA. Contact Procurement Services for guidance</i>);</li> <li>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 (<i>Not available under CETA or OQTCA. Contact Procurement Services for guidance</i>);</li> <li>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</li> <li>viii. Conducted: <ul style="list-style-type: none"> <li>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 (<i>Not applicable for the University of Toronto</i>);</li> <li>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;</li> </ul> </li> </ul>
<b>J</b>	Procurement with respect to Aboriginal peoples.