

| Policy History |
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Procurement Procedure

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List of Acronyms and Abbreviations

| | |
|----------|--|
| CETA | Canada-Europe Comprehensive Economic and Trade Agreement |
| CFTA | Canada Free Trade Agreement |
| CISA | Cross-institution supply arrangement |
| CSA | Provincial corporate supply arrangement |
| FOI | Freedom of information |
| FOIPP | <i>Freedom of Information and Protection of Privacy Act</i> |
| HST | Harmonized Sales Tax |
| ITQ | Invitation to quote |
| ITT | Invitation to tender |
| MASH | For trade agreement purposes, municipalities, publicly funded post-secondary academic institutions and school boards, and health regions |
| MSO | Master standing offer |
| NOI | Notice of intent (to make a direct award of contract) |
| NWPTA | British Columbia – Alberta – Saskatchewan –Manitoba- <i>New West Partnership Trade Agreement</i> |
| PO | Purchase order |
| PPS | Privacy protection schedule |
| Province | Government of the Province of British Columbia |
| RFI | Request of information |
| RFP | Request for proposal |
| RFPQ | Request for Pre- Qualifications |
| RFSO | Request for standing offer |
| TILMA | British Columbia – Alberta <i>Trade, Investment and Labour Mobility Agreement</i> |
| KPU | Kwantlen Polytechnic University |
| VCRP | Vendor complaint review process |

Procurement

1. Objectives

The following objectives for KPU procurement activity for goods, services and construction are based on the principles of fair and open sector procurement: competition, demand aggregation, value for money, transparency and accountability.

- a) Acquisitions are managed consistent with KPU policy and requirements of trade agreements.
- b) KPU receives the best value for money spent on contracts.
- c) Vendors have fair access to information on procurement opportunities, processes and results.
- d) Acquisition and disposal opportunities are competed, wherever practical.
- e) KPU only engages in a competitive process with the full intent to award a contract at the end of that process.
- f) KPU is accountable for the results of its procurement decisions and the appropriateness of the processes followed.
- g) KPU's buying power is leveraged wherever practical through demand aggregation and the use of provincial corporate supply arrangements (CSAs), cross-institution supply arrangement (CISAs), lists of qualified suppliers and master standing offers (MSOs) identified by Procurement Services as available to KPU.
- h) The cost of procurement process, to both vendors and KPU, is appropriate in relation to the value, complexity and risk of each procurement.
- i) Assets surplus to the needs of KPU are disposed of in a coordinated way to maximize the dollar return to KPU, and to minimize the risk to the environment.

This policy applies to KPU contracts (i.e. agreements to procure goods, services and construction) and to contract expenditures chargeable to KPU. The government of the Province of British Columbia, is a party to trade-related agreements governing contracting by public sector entities and other matters:

- The federal-provincial intergovernmental Canada Free Trade Agreement (CFTA)
- Canada-Europe Comprehensive Economic and Trade Agreement (CETA)
- The British Columbia-Alberta Trade, Investment and Labour Mobility Agreement (TILMA).

- The British Columbia-Alberta-Saskatchewan-Manitoba New West Partnership Trade Agreement (NWPTA).

These agreements, where noted, apply to the MASH sector that encompasses municipal, publicly funded post-secondary academic institutions and health authorities. For more information about how these apply to KPU's contracting, see section *Compliance with Intergovernmental Trade Agreements*.

2. Roles and Responsibilities

a) Vice Presidents

Vice Presidents are responsible for the procurement activities occurring within their departments:

- i. Planning and fully documenting to established KPU standards, the process to acquire goods, services and construction.
- ii. Ensuring procurement processes are initiated only where signing authority and department budget are available.
- iii. With the support of the Procurement Services, managing solicitation and contract award processes in a prudent and unbiased manner that fairly treats all potential vendors and bidders.
- iv. Using demand aggregation, and provincial CSAs, CISAs and Lists of Qualified Suppliers/MSOs identified by Procurement Services as available to KPU, for goods and services to meet program requirements.
- v. Ensuring that contracts for goods, services and construction are designed to provide the best value to KPU.
- vi. Ensuring that contracts for goods, services and construction are based upon the KPU General Services Agreement, the KPU Purchase Order (PO) or, where appropriate, upon other templates approved for use by Procurement Services.
- vii. Ensuring that all acquisitions and disposals are consistent with policy, applicable legislation, and trade agreements.
- viii. Ensuring compliance with this policy.

Vice Presidents have authority to commit KPU to contracts procured in accordance with this policy, to the value set out in: **KPU Procurement Policy – Exhibit A: Procurement Authority Limits**.

b) Director of Procurement Services

The Director of Procurement Services is responsible for:

- i. Developing and revising KPU procurement policy and providing official communications and interpretations of this procurement policy.
- ii. Developing and revising corporate contract administration and providing official communications and interpretations.
- iii. Monitoring and reporting for compliance with this procurement policy.
- iv. Ensuring solicitation and contract award processes are managed in a prudent and unbiased manner that fairly treats all potential vendors and bidders.
- v. Ensuring that procurement planning is undertaken as part of program/service/goods acquisition process and must take steps to establish multi-disciplinary committee to plan and document the planning process for any procurement opportunity over \$75,000.
- vi. Providing support and advice on KPU procurement and contract management policy, including development and management of a procurement training curriculum.
- vii. Identifying provincial CSAs that will provide best value to KPU.
- viii. Identifying and initiating supply arrangements across other provincial institutions (CISAs) with a view to achieving demand aggregation and best value to KPU.
- ix. Identifying opportunities for supply arrangements across KPU with a view to achieving demand aggregation and best value to KPU and to establish processes (including Lists of Qualified Suppliers and MSOs) to expedite smaller transactions that are repeated throughout the year.
- x. Establishing and maintaining:
 - A central file containing full documentation of all procurement activities undertaken by KPU
 - A central file of all contracts entered into by KPU
 - A central file of all approved waivers of competitive process
- xi. Establishing and maintaining on the KPU internal website, a location for the posting of detailed procurement procedures, supply arrangements, pro-forma documents and award decisions taken by KPU.

- xii. Establishing processes for the development and approval of procurement and contracting documents, which must include seeking the advice of KPU legal counsel, where appropriate. Ensuring legal review is documented.
- xiii. Establishing guidelines for the procurement of environmentally responsible products and services.
- xiv. Ensuring processes used by the Departments to acquire goods, services and construction are documented to KPU standards.
- xv. Establishing and managing policy for a formal KPU vendor complaints resolution process, including an internal escalating complaint resolution procedure.
- xvi. Ensuring that contracts for goods, services and construction, are designed to provide the best value to KPU and are based upon the KPU General Services Agreement, the KPU Procurement Order, or upon other templates approved for use by the Procurement Services .
- xvii. Ensuring that all KPU acquisitions and disposals are consistent with policy, applicable legislation and trade agreements.
- xviii. Disposing of all tangible and intangible assets that are surplus to KPU requirements.
- xix. Providing a sole point of access to BC Bid[®], the official procurement website of the provincial public sector, for KPU and coordination of all postings on that website on behalf of KPU.
- xx. Providing operational procurement advice to Departments for procurement services.

c) Vice President, Administration and Finance

The Vice President, Administration and Finance is responsible for:

- i. Ensuring all procurements initiated with the approval of the Board are procured according to KPU policy, fully negotiated and documented using KPU approved General Services Agreements or other contract templates approved for use by the Procurement Services.
- ii. Providing direction through the Executive Director, Finance and Administration to the Director of Procurement Services respecting the development of procurement policies and presenting recommendations to the Board.
- iii. Approving the form and content of all procurement solicitation and contracting documents placed into standard usage at KPU.

- iv. Ensuring all contracts are fully negotiated and documented using KPU approved General Service Agreement, Procurement Order or other contract templates approved for use by the Procurement Services.
- v. Ensuring legal review of procurement solicitation documents including contract templates and third party contract language where appropriate.
- vi. Reviewing reports on approved waivers.
- vii. Ensuring appropriate approvals are obtained to cover amendments to Contracts
- viii. Ensuring that all approvals within the authority threshold of the Board are recorded accurately and in a sufficient level of detail in the minutes of the Board and are advised in writing to the Director of Procurement Services.

VP Finance and Administration has authority to commit KPU to contracts procured in accordance with this policy, to the value set out in: **AD3 KPU Procurement Policy Exhibit A: Procurement Authority Limits.**

d) Board Of Governors

- i. The Board of Governors of KPU is responsible for the approval of all procurement policies recommended by the VP Finance and Administration.

Approving or rejecting procurement plan/proposal within Board thresholds. If the plan is approved the Board will direct the VP Finance and Administration to initiate the appropriate procurement under KPU Policy.

The Board has authority to commit KPU to contracts procured in accordance with this policy, to the value set out in: **AD3 KPU Procurement Policy Exhibit A: Procurement Authority Limits.**

3. Policy

a) Procurement Planning

- i. Procurement planning must be undertaken as part of the program/service planning process.
- ii. Procurement Services must ensure that procurement planning is undertaken as part of program/service/goods acquisition process and must take steps to establish multi-disciplinary committees to plan and document the planning process for any procurement opportunities over \$75,000.
- iii. Procurement Services should identify opportunities for demand aggregation across provincial educational and government operations that provide overall savings to KPU,

and must make recommendations for their initiation to the Director of Procurement Services.

- iv. Departments must advise Procurement Services of their procurement plans and requirements for common goods, services and construction in advance of program needs.
- v. Departments must participate in provincial CSAs, cross-institution supply arrangements (CISAs), and KPU supply channels identified or initiated by Procurement Services where those arrangements would meet the requirements and provide best value to KPU. A Department requires the specific approval of Procurement Services not to participate in established supply arrangements where such arrangements are available.
- vi. Departments must review alternatives to acquiring new goods, services and construction such as considering repairs to existing assets and transfer of used assets.
- vii. Departments must have the appropriate authority and funding to complete a procurement project prior to soliciting proposals, awarding a contract, or contracting for any goods, services, or construction.

b) Preferred Procurement Processes and Instruments

i. Procurement of Services

Generally, a Request for Proposal (RFP) is the preferred method for soliciting proposals. Such solicitations will be posted on the provincial government's BC Bid® website. Typically, proponents shall have three or four weeks to submit proposals.

The responses received by closing time will then be carefully evaluated in accordance with both the previously disclosed financial and non-financial criteria and weights to produce a ranking. Proposals not meeting stated mandatory criteria will be rejected as soon as they are found materially non-compliant. Negotiations will proceed with the top-ranked proponent(s) on a services agreement drawn up by applying a KPU approved General service Agreement or based upon an alternative contract template approved by the Procurement Services and KPU's legal counsel.

ii. Procurement of Goods

Where the attributes of goods to be acquired can be specified, an invitation to quote (ITQ) will be posted on the BC Bid® website. Responses submitted by closing time will be evaluated in terms of:

- Compliance with stated requirements; and
- Lowest price.

KPU will then submit a purchase order to the respondent that submitted the compliant lowest-price. The contract between KPU and the supplier is formed by acceptance of the purchase order or GSA if appropriate.

iii. Procurement of Construction

Typically, each jurisdiction has an established custom of trade for its construction industry. Larger projects are put to tender with documents and drawings being made available at a central place known to general contractors. The form of solicitation on larger construction projects will be an invitation to tender (ITT). Bids are received and responses are ranked by price. Responses are then submitted to technical consultants for further evaluation. Price will be the main consideration but may be eclipsed by other factors providing the ITT was specific enough as to those additional criteria. Resulting contracts will be industry specific owing to needs to address construction related requirements like bonding, builder's risk insurance and liens.

For smaller, less complex and lower value acquisitions of building and grounds maintenance services, ITTs or RFPs may be employed with the approval of the Procurement Services.

iv. Other Processes and Instruments

For specialized procurement needs, there is a toolbox of instruments that includes Requests for Proposals (RFPs), Master Standing Offers (MSOs), Requests for Pre-Qualification (RFPOs), Request for Information (RFIs) and Requests for Expression of Interest (REOI). These tools may be used only upon the recommendation of KPU's Procurement Services.

c) Conflict of Interest

- i. To ensure transparency and equitability in the completion of all procurements, staff (including Board members involved in the procurement process or the award decision) must strictly adhere to KPU's Conflict of Interest Policy (HR1).
- ii. An employee or Board member must not participate in the evaluation of responses to a procurement if any respondent could involve a direct relative, a person married to a direct relative, or a person sharing the same household as the employee, or respondent where the potential evaluator holds a shareholding or a financial interest. A direct relative means a spouse, parent, grandparent, grandchild, brother, sister, son, or daughter.

- Each evaluator is required to provide to the Chair of the Evaluation Committee a declaration that conflict does not exist at the point the identity of the respondents becomes known to the evaluator.
 - The signed declarations of conflict must be appropriately filed.
- iii. An employee or Board member must not participate in a contracting decision if the contracting process or contract could involve a direct relative, a person married to a direct relative, or a person sharing the same household as the employee.
 - iv. An employee or Board member, who is exposed to an actual, perceived or potential conflict of interest in relation to an actual or proposed solicitation, must disclose the matter to his or her supervisor.
 - If, after review, it is determined that there is a conflict, the supervisor must remove the employee from this particular situation.
 - The supervisor must advise the Procurement Services of the issue of potential conflict at the time it is raised as a concern, and of the resolution of the issue once that determination is made.
 - v. An employee or Board member who fails to disclose a conflict of interest is subject to disciplinary action up to and including dismissal or removal from the Board. Any suspected conflicts of interest must be investigated by a KPU manager who is free of any real or perceived conflict and thereafter promptly resolved.
 - vi. In this regard, staff or Board members involved in any capacity with the procurement of goods, service, or construction, or in the management of contracts for the provision of goods, services, or construction may not accept any gifts, special favours, or considerations of any other manner, from potential respondents to procurement opportunities, contractors/suppliers, or individuals associated with contracts/suppliers, unless such gifts are approved in advance by the Vice President, Finance and Administration.
 - vii. This policy directive applies irrespective of the dollar value of such gift, special favour, or other consideration.

d) Internal Provision vs. Procurement Supply Options

- i. Where the outsourcing of an internally provided service is being considered, or where KPU is considering a service that was not previously provided by KPU, and the contract for ongoing services over the anticipated term and extensions is greater than \$200,000 before taking any steps to find a contractor, a Department must ensure that a benefit-cost justification exists for the contract, including, where appropriate, comparing the

cost of contracting out with the cost of providing the service in-house if the in-house resources are readily available.

- ii. The benefit-cost assessment should address risks of reliance on external parties, contract succession challenges and vendor relationship management issues over the term of the contract.
- iii. Contract outcomes must be defined; and the contract must be consistent with policy, applicable legislation, and trade and collective agreements.

e) Contract Award, Management and Extension

- i. Where a contract for the continuation of a service is to be awarded (that is not the result of exercising an option to renew) and the requirements have not changed from those provided under the initial contract, the Department may rely upon the original benefit-cost justification if it is still relevant.
 - The Vice President responsible for the Department may request an update to the original justification where the business situation warrants.
- ii. A contract must not result in the contractor occupying on an ongoing basis, an organizational position, or take the place of work normally conducted or acquired by a central support function within KPU. In addition, a contract must not result in the establishment of an employer/employee relationship. Every contractor engaged by the KPU must be independent and operating at arm's length from KPU.
- iii. Departments and staff must not divulge any information that could impair the negotiating position of the KPU or that could benefit the competitive position of one contractor at the expense of another.

f) Contractor Support by KPU

- i. Where funding is provided to the contractor to acquire assets the contract must identify the assets and the funding provided for the purpose of acquiring the assets. The contract must also state who owns the assets that are provided to a contractor by KPU; the assets created as a result of the contracted services; or the assets that are purchased by the contractor with funds provided by KPU.
- ii. The contract must also state who is responsible for the maintenance of the asset during the period of the contract and the disposition of the assets at the termination of the contract. The specific and prior approval of the VP Finance and Administration is required before KPU enters into any situation where it funds the Contractor acquisition of an asset.

- iii. Where KPU is willing to provide services to a contractor (e.g., office accommodation or computer networking services), this must be disclosed to all prospective respondents to a solicitation and offered in a non-discriminatory manner.
- iv. Departments and the Procurement Services must not bestow a favour on, or grant preferential treatment to, any prospective contractor.

g) Strategic Partnership Agreements

KPU may enter into a Strategic Partnership contract, agreement or alliance with external organizations. A Strategic Partnership agreement is a contractual arrangement between KPU and external entity that sets out an agreed upon exchange of cash, goods and/or services that have a direct measurable mutual benefit including cash donation, product or service in kind and promotional item to KPU and the external organization. A department may recommend to Procurement Services to negotiate a strategic partnership with an external entity if the following conditions exist:

- The request must be consistent with the goals and Vision as articulated in the KPU strategic plan
- The request must be backed by a comprehensive cost benefit analysis outlining the potential costs and benefits to KPU
- The Director, Procurement Services upon review of the initial request will recommend to VP, Finance and Administration to approve or reject the request to enter into a strategic partnership agreement
- The good or services the agreement will cover is exempt from the competitive process, for example, acquisitions primarily for resale and/or
- As a condition of funding from an external source, KPU is required to leverage funding or support from other external sources to maximize benefits to students and KPU

h) Supplier Donations

- To ensure transparency and fairness of the procurement process, procurement decisions and activities except for Strategic Partnership Agreements must not be mixed up or tied to solicitation of supplier donations. Discussions with potential donors including contractors pertaining to donations or support for KPU activities and undertakings must be conducted only through the KPU Marketing Department or KPU Foundation.

i) Supplier Samples

- i. Budget Managers may accept product samples from suppliers providing:

- Samples are delivered under Strategic Partnership Agreement and donation through KPU Foundation (schedule g and h)
- The samples were not solicited in any manner from the supplier,
- The samples are either:
 - distributed equitably to a representative sample of students enrolled in the course for student evaluation, or
 - entirely used in the preparation for or delivery of course content, where the product evaluation will be undertaken, and
- The quantity of samples is reasonable in relation to the evaluation to be conducted on the samples.

j) Environmental Responsibility

- i. Departments must follow guidelines established by the Procurement Services respecting the procurement of environmentally responsible products and services.
- ii. Where KPU environmental policies exist and apply to the goods or services being acquired, those policies should be reflected in the evaluation criteria; the general provisions of the procurement policy requiring open competition and value for money will continue to apply.

4. Pre-award and Solicitation

a) All Procurement

- i. Departments upon putting in requisition for procurement must assist Procurement Staff by providing detailed specification on what is needed, and by evaluating bids and proposals, as required.
- ii. Procurement Services must control the advertising of procurement processes and the solicitation of quotes and proposals.
- iii. KPU must follow procurement or solicitation methods that are currently available through a CSA, CISA, List of Qualified Suppliers/MSO or KPU supply channel identified or initiated by Procurement Services as discussed in section 3.a.v.
- iv. Procurement Services must publish and maintain up to date a list of available CSAs, CISAs, List of Qualified Suppliers/MSOs and KPU supply arrangements.

- v. Departments may recommend to Procurement Services to directly acquire goods and services when an unforeseen emergency exists. Emergency purchase orders must only be used to meet unforeseeable emergencies (see article 5.a.i.). Emergency purchase orders must be supported by a Waiver of Competitive Process, which must be approved by the Procurement Services prior to the purchase commitment being made. The Waiver is then to be filed centrally with the Procurement Services as part of the Procurement file and Waiver file.
- vi. KPU must use the standard KPU formats for solicitation documents (e.g., ITT, RFP, RFPO, ITQ,) available from the Procurement Services. Departments must obtain the approval of Procurement Services and legal where appropriate for any changes to the standard formats. Only current versions of the solicitation documents may be used.
- vii. When subdivision of a major project into two or more component parts occurs, the Terms of Reference, Business Case, and solicitation document for each component part must clearly disclose the potential combined scope of the project. Approval for the expenditure must be sought on the combined value of all contracts issued for the components of a sub-divided project.
- viii. All standard competitive processes (i.e., ITT, RFP, ITQ, and RFPO) must provide identical information for potential bidders or proponents to the solicitation, to fairly and equally base their response.
- ix. The permitted response time to a solicitation must be sufficient to allow all potential proponents to have a reasonable opportunity to compete, taking into account the time required to disseminate information, the complexity of the procurement, and the time required to prepare an appropriate response.
- x. Objective selection criteria for the awarding of a contract must be established prior to receiving bids and proposals and must be consistent with those specified in the solicitation documents. Selection procedures and timelines must not limit anyone from competing.
- xi. Departments and the Procurement Services must be alert to the potential for bid rigging, and report any suspicious bidding patterns.
- xii. An expired contract must not be retroactively extended. When a contract expires and the original deliverables have not been fully met, one subsequent new contract may be considered in order to complete the work. The approval of the new contract should include consideration of the evaluation of the first contract (see section *Evaluation, Monitoring and Reporting*).

- No additional procurement process is required where the new contract:

- Covers only the balance of the original deliverables that were not fully met under the original contract, and
- xiii. Projects or services opportunities cannot be subdivided to avoid requirements of policy or trade agreements.
- xiv. To establish a pre-qualified supplier list, including a CISA, a process must be undertaken which uses the standard Request for Pre-Qualification template, unless an alternate form is approved by Procurement Services. The process is to include an evaluation of the responses to the identified pre-qualification requirements to determine which respondents will be placed on the list of pre-qualified suppliers.
- xv. The method for selection of a contractor from the pre-qualification list must be specified in the RFPQ document and this selection method must be followed,
 - For opportunities valued at less than \$25,000, the next available contractor on the pre-qualified list (selected in established rotation) will be offered the opportunity. The Procurement Services must retain a record of all such offers to evidence that opportunities were offered in rotation.
 - For opportunities valued between \$25,000 and the limits set by intergovernmental trade agreements, at least the next three contractors of the pre-qualified list will be offered the opportunity to provide a brief written proposal or quotation.
 - As required in accordance with the applicable terms of the CFTA, CETA, TILMA and NWPTA intergovernmental trade agreements, if the expected contract value is over the goods, services or construction threshold (see section *Compliance with Intergovernmental Trade Agreements*), the contractor must be selected through a competitive process open to all suppliers on the pre-qualification list that meet the criteria for a specific project (e.g., specialization). The evaluation shall include assessments of each supplier's proposed approach, pricing, and other elements as identified and documented in the solicitation.
- xvi. Opportunities to be registered on a pre-qualification list must be provided either continuously or at regular intervals. The period for which a pre-qualification list will be valid must be specified in the RFPQ document.
- xvii. If the requirement for goods, services or construction falls within the provisions of the CETA, CFTA, TILMA or NWPTA, the process to identify pre-qualified suppliers of goods, services and construction opportunities which may be over the associated threshold must be advertised annually on the BC Bid® website.

b) Procurement of Goods, Services and Construction

- i. Requests for goods, services or construction valued over \$25,000 that cannot be met through provincial CSAs, CISAs or KPU supply channels identified or initiated by Procurement Services must be directed to Procurement Services and acquired through an approved competitive process.
- ii. Where the Department's requirements can be met through a provincial CSAs, CISAs or KPU supply channels identified or initiated by Procurement Services, goods, services or construction must be purchased through that arrangement.
- iii. Unless the conditions for direct awarding apply (see section *Direct Awards*), all acquisitions and processes to select qualified bidders with an estimated value of:
 - Between \$25,000 and \$75,000 must be competed through a process to solicit proposals or quotation from not less than three qualified suppliers, and
 - Those equal or greater than \$75,000 must be competed through a formal procurement process advertised on BC Bid® (see section *Public Posting of Bid Opportunities and Notices of Contract Awards*).
- iv. When a contract for goods, services or construction valued at \$75,000 or more is intended to be awarded on the basis that there is only one vendor that can provide the goods required, but this cannot be strictly proven as required in subsection concerning waivers of the competitive process, a Notice of Intent must be posted on BC Bid®.
 - All objections received by the indicated response date must be reviewed and if any are substantiated a competitive process must be undertaken. If no objections are received, or the objections received are not submitted, a direct award may be made.
- v. A Notice of Intent is not required if it is clearly determined that a direct award meets one or more of the exceptions specified in subsection permitting waivers of a competitive processes under extraordinary circumstances.

c) Procurement of Used Goods at Auction

- i. KPU may acquire used equipment, to be utilized as teaching aids by the Trades Programs, through an auction; all new equipment must be acquired under standard KPU procurement policy.
 - An eligible auction house must:

- Where the subject asset can be accessed through a government-managed auction, that government auction is the only eligible auction that may be utilized by KPU (e.g., ICBC's auction of automobiles with body damage, which would be government to government exempt transaction).
 - Advertise the assets to be auctioned broadly giving adequate notice to the public.
 - Offer in advance of any purchases, settlement terms acceptable to the Finance Department including at a minimum a 7-day settlement period.
- KPU procurement policy will apply for the selection of an auction house and will be considered in respect of the anticipated commission amount payable to the auction house.
- ii. The Dean of the program area must approve in writing the bid limit for the proposed transaction and the delegation of authority to bid.
- The Department must develop and present to the Dean for approval, a business case justifying the bid limit, providing information including:
 - Defined need for the equipment, setting type and condition,
 - Results of a physical inspection of the subject piece of equipment to confirm state and appropriateness to the purpose.
 - Review of available auction sale information from historic transactions to determine the indication of market value for the piece of equipment, and
 - Recommendation of bid limit.

5. Contract Award – All Procurement

a) Direct Awards

- i. Contracts for acquisitions (of goods, services and construction) may be negotiated and directly awarded without competitive process where one of the following exceptional conditions demonstrably and unequivocally applies:
- The contract is with a public body.

- The department can strictly prove that one and only one supplier is qualified or is available, to provide the goods, services or construction.
- An unforeseeable situation of urgency exists and the goods, services or construction could not be obtained in time by means of open procurement procedures.
- A competitive process would interfere with a KPU's ability to maintain security or order to protect human, animal or plant life or health.
- The acquisition is of a confidential or privileged nature and disclosure through an open bidding process could reasonably be expected to compromise KPU confidentiality, cause economic disruption or be contrary to the public interest.
- The value of the acquisition is below \$25,000

ii. For every direct award, the Director of Procurement Services or their delegate, prior to the grant of the direct award, must:

- Fully document the waiver of competitive process setting out the rationale or the circumstances that supports the use of one or more of the above exceptions,
- Obtain the signature of the Department representative holding signing authority as to the accuracy and completeness of the facts declared in support of the waiver,
- Approvals:
 - for proposed waivers < \$75,000 obtain the approval of the Dean or Director
 - for proposed waivers > \$75,000 obtain the approval of the VP
 - for proposed waivers > \$200,000 that have not been approved through the budgetary process, obtain the approval of the Board
- Appeals must be forwarded to the VP Finance and Administration for resolution.
- File the approved waiver of competitive process in the appropriate files

- Report all approved waivers of competitive process approved to the Vice President, Administration and Finance.

b) Selection and Award of Contract in Competitive Process

- i. KPU will award contracts on the basis of the criteria and relative scoring weights set forth in solicitation documents.
- ii. For each procurement containing an evaluation process (RFPs and RFPQs), the Director of Procurement Services or their delegate will create an evaluation committee responsible for the management of the evaluation of proposals and responses received.
- iii. The Chair of the Evaluation Committee will ensure:
 - A detailed evaluation framework is developed and approved by the Department soliciting the goods, services or construction (ideally before the solicitation is posted on BC Bid®) prior to the closing of the solicitation and the receipt of proposals and responses.
 - The detailed evaluation framework is to include the rationale for the ranking of all proponents and the method by which final scores were determined,
 - Department staff are placed on the evaluation committee and participate in the evaluation process from beginning to end to select the successful contractor.
 - That before the evaluation committee considers a bid or proposal, the bid or proposal meets all mandatory requirements specified in the solicitation documents. If a response is found to be non-compliant, it must immediately be set aside and any further consideration withheld.
 - At the first meeting of the evaluation committee, the identity of all bidders or proponents meeting all mandatory requirements is disclosed to the members of the evaluation committee.
 - Prior to receiving copies of bids, proposals or other confidential information, each member of the evaluation committee must sign a declaration of Conflict of Interest and Non-Disclosure Agreement, confirming the member, under the terms of the KPU Conflict of Interest policy, is not in conflict (see article 3.c.ii.).
 - Signed declarations of Conflict of Interest and Non-Disclosure Agreement must be retained in the Procurement File.
 - The final decision of the evaluation committee to award evaluation points is reached by consensus and is documented showing:

- How the evaluation template was applied consistently to each proponent and
 - The consensus score awarded by the evaluation and selection process must be followed as stated to determine the successful proponent.
- iv. If the solicitation document does not provide for negotiation of the contract with the selected bidder, the top-ranked bidder will be sent a notice of selection asking the bidder to satisfy any conditions of award set out in the solicitation document and enter into the into the form of contract included in the solicitation document.
 - v. If the solicitation document provides for contract negotiations with the selected proponent, the top-ranked proponent will be sent a notice of selection inviting them to enter into contract negotiations in accordance with the process set out in the solicitation document.
 - vi. In the case of ITTs and ITQs with selection requirement based on price, to the top-ranked bidder will be the lowest-priced qualified bidder meeting the terms and conditions of the solicitation document.
 - vii. In the case of an RFP, the top-ranked proponent will be the proponent whose proposal meets all mandatory proposal requirements and achieves the highest overall rating of all evaluation criteria specified in the solicitation documents and based on the relative scoring weights disclosed in the solicitation.
 - viii. Department staff must not do or say anything to create an oral or written agreement on behalf of the KPU prior to a selection and decision to award a contract.
 - ix. Multi-year contracts are permitted when the stability of the longer time frame supports better value to KPU. However, they must not be established through ongoing amendments and extensions of standard term contracts, unless the extensions were planned and included as part of a competitive process.
 - x. Departments and Procurement Services should include due diligence inquiries covering, as appropriate in the situation, contractor history, financial and operating viability, and ownership as part of the information requested and evaluated during RFP and RFPQ processes, reference checks should be requested where appropriate.

c) Processing of Responses and Follow-up

- i. A written confirmation must be sent to the contractor who was successful on a solicitation. Unsuccessful respondents to a RFP must be notified and offered the opportunity for a debriefing on their proposal.
- ii. Debriefings shall address the response submitted by the debriefed supplier in relation to published evaluation criteria. Details of other responses, including specific scores, must not be disclosed. Detailed minutes of these meetings should not be maintained. The report of the Chair of the Evaluation Committee should reflect that all requirements of FIOPPA were met during these meetings.
- iii. Unsuccessful bidders on an ITQ must be notified of the winning bidder.
- iv. KPU award decisions shall be posted on the KPU public website in the manner directed by the Director of Procurement Services.

d) Pricing

- i. Every contract must have a firm contract ceiling price, exclusive of Taxes. Where a firm contract ceiling price is not possible, a unit price must be predetermined, and KPU must have control over the number of units of service that are delivered within each phase of the contract.
- ii. Fixed price contracts are permitted for service contracts, if the scope of the work can be clearly defined in advance.

e) Procurement Administration

- i. The Procurement Services is the department of record and must maintain a procurement file and a contract file, to KPU standard, containing adequate contract documentation for all phases of the procurement process, including planning, solicitation, evaluation, award, management, amendments, payment schedules, progress reports and contract evaluations. (See section 5.b)
 - The standard procurement file and the standard contract file may be stored in electronic form, providing original signed copies of active contracts and modifications are also maintained on site.
 - Departments should access the electronic version of the documents in the standard procurement file or the standard contract file and may make and hold printed copies of such documents, as required.
 - The Director Of Procurement Services shall maintain a Procurement Process Review Checklist listing all documents required to be kept on file for each stage of the procurement process

- ii. Contracts must be in writing and signed and delivered by all parties prior to the commencement of the work or service (or, in the case of an emergency, as soon as possible thereafter).
 - The Procurement Services must receive written confirmation from the Vice President, Finance and Administration confirming Board approval, before any contract greater than \$200,000 that have not been previously approved in the budget is negotiated and executed.
 - Contracts approved by the Board of Governors must be negotiated and executed by the Vice President, Finance and Administration or by the person authorized by the Vice President, Finance and Administration.
- iii. The Vice President, Finance and Administration shall ensure that all approvals by the Board are recorded accurately and in detail.
- iv. Contracts must be made in the contractor's legal name. Each contract must be approved and signed by the appropriate authority. In no circumstances should an unauthorized employee or agent legally bind KPU with apparent authority.
- v. Subject to provisions of subsections and below an approved General Service Agreement template must be used for service contracts in all instances except the following:
 - contracts with employment agencies for temporary staffing
 - vehicle and equipment rentals;
 - capital construction projects; or
 - Software licensing, subject to section 6.vii.
- vi. No changes should be made to these approved General Service Agreement templates that have not been prepared, or advised on by KPU's legal counsel.
 - Procurement Services will establish a file of legal opinions and approved alternative articles and the business situations where those articles should be used.
 - Procurement Services will make the business decision as to when the alternative articles may be incorporated into the General Services Agreement or Purchase Order.

- vii. If none of the approved General Service Agreement templates is appropriate for a particular transaction or type of transaction, the KPU Procurement Services may develop an alternative contract template with advice from KPU's legal counsel. If an alternative contract template contains an indemnity of the contractor by the KPU, Risk Management must approve the indemnity prior to the template being used.
- viii. Some contractors prefer to use standard contract forms provided by their industry association. If not precluded by the terms of any applicable competitive process documents, KPU may accept the use of such forms after the Director of Procurement Services has assessed the risk to be low and obtains approval from VP, Finance and Administration to accept the form without a review of KPU legal counsel. Where a contractor's form contains an indemnity of the contractor or limitation of its liability, the wording of those terms must be approved under the *Guarantees and Indemnities Regulations* by the Risk Management Branch of the Ministry of Finance or such other person authorized by that regulation prior to KPU entering into a contract using that form.
- ix. Whenever a contract is to be modified, the standard form of modification agreement must be used unless KPU legal counsel has approved an alternative modification process or form.
- x. The justification for all modification agreements must be documented on the contract file. Modifications to a contract must be in writing and signed by both parties. The party that originally approved the contract must approve modifications having a financial impact on the contract.
- xi. A modification agreement to extend the term of the agreement for a reasonable period of time is allowable when an unforeseen event has delayed the delivery of specific contract outputs.
- xii. A modification agreement must not be used to substantially change the nature and intent of the original contract.
- xiii. Signing authority approval, when applied, must reflect the total dollar value of the contract and not just the dollar value of the modification agreement.
- xiv. Annual or multi-year contract renewals are only allowed when the potential for renewal has been explicitly included in the solicitation documents, including the establishment of a limit on the number of renewals.
- xv. KPU must ensure that the contractor's agent or broker completes and signs a Certificate of Insurance acceptable to KPU, in compliance with the insurance requirements of the contract.

- xvi. KPU must ensure that a contractor who will be providing services to KPU provide proof they are covered by WorksafeBC (WCB) unless the contractor is exempted by WCB. The document must be filed on the contract file.
- xvii. A Privacy Protection Schedule (PPS) must be completed and attached as a schedule to any contract between the KPU and a contractor that involves “personal information” as defined in the FOIPPA unless it is not intended that the public body will own or control the personal information.
- xviii. A PPS must be in the form set out in the current version of the General Services Agreement unless an alternative version has been authorized by KPU’s legal counsel.
- xix. KPU and staff must not divulge information regarding a contract unless it is available to the general public or the disclosure has been authorized by KPU Executive based on prior consultation with KPU’s legal counsel.

f) Electronic Posting of GSA and Schedules

- i. The Procurement Services will establish a secure area on the KPU public web site to hold the current and all historic versions of the GSA templates, and Schedules thereto.
 - The site selected must be in a location that can easily be located and accessed by all parties wishing to do business with KPU.
 - The effective date of the version of the contract template is prominently indicated in a footnote in the face of each page of the documents.
 - Changes to the templates will only be authorized by the Director of Procurement Services.

6. Disposal of Surplus Assets

- i. Where an opportunity exists to replace an outdated asset with a similar asset, details of the potential trade-in must be forwarded to Procurement Services, which will conduct an analysis of the potential trade-in to determine the best overall value to KPU. Departments must only negotiate trade-in arrangements after consultation with Procurement Services.
- ii. Assets that are surplus to the needs of KPU are to be disposed of at fair market value by Procurement Services who will determine the appropriate method for disposal of such assets.
- iii. The disposal of a medium with information capacity must be done in a manner to protect the privacy and security of the stored information in accordance with KPU’s information and records disposal policy.

7. P-Cards

- i. KPU will establish a purchase card program to manage purchases to a monthly limit of either \$1,000, \$2,500, \$5,000 or \$10,000 with no transaction limits (including sales tax, shipping and all associated costs).
- ii. The use of purchase cards is subject to KPU procurement policy.
 - For recurring transactions (greater than \$25,000 per opportunity) KPU will establish a List of Qualified Suppliers for the service or commodity area.
 - Where a List exists for a service or commodity area, P-Cards should not be used to acquire similar goods or services from vendors who are not on the List.
- iii. P-Cards are available only to employees; KPU must not issue P-Cards to non-employees.
- iv. WEBReqs are not required to process P-Card transactions.
- v. The Executive Director of Finance holds overall responsibility for the P-Card program and shall:
 - Designate a P-Card Coordinator,
 - Establish and approve P-Card processes and procedures,
- vi. The P-Card Coordinator is responsible for the administration for the P-Card program and shall:
 - Ensure P-Cards are issued to only employees holding KPU positions eligible for P-Card program participation.
 - Ensure every employee receiving a P-Card:
 - has completed a Request for P-Card form and an acknowledgement of the KPU P-Card Terms of Use
 - has received training in the appropriate usage, reconciliation, and procedures relating to KPU P-cards
 - Maintain custody of P-Cards not in use and proper inventory records for P-Cards issued, including records of P-Cards:
 - received and distributed to P-Card holders

- order of new cards, and
- destruction of cancelled P-Cards
- Monitor P-Card transactions including accounts in dispute, accounts over the credit limit, restricted transactions, transactions > purchase limit,
- Act as liaison between bank and P-Card holders to resolve disputed transactions.
- Follow up to ensure all monthly statements are received in Accounts Payable.
- Follow up to ensure original detailed receipts (which include taxes) are provided to support monthly statements.
- Apply the following sanctions for violations of this policy:

| Type of Exception | 1 st Offense | 2 nd Offense | 3 rd Offense |
|--|---|--|---|
| Statement is not submitted by the posted deadline | Cardholder notified | Cardholder and approver notified | Cardholder, approver, and Executive Director Finance notified. Pcard suspended until statements are received. |
| Purchase made by P-Card holder that is not compliant with policy | Cardholder and approver notified Policy non-compliant transactions are reimbursed by the cardholder by statement submission deadline | Escalated to Director of Finance Operations and Director of Faculty/ Department Policy non-compliant transactions are reimbursed by the cardholder by statement submission deadline | Escalated to Executive Director Finance and P-Card privileges withdrawn or suspended Policy non-compliant transactions are reimbursed by the cardholder by statement submission deadline |
| Potential fraud by P-Card holder | P-Card Coordinator will escalate this directly to Director, Financial Operations | | |

vii. P-Card Holders must:

- Complete P-Card user training if they are new to the program,
- Sign a Cardholder Agreement (part of Purchase Card Application form), including:
 - The sanctions set out in article 5.iv and
 - Transactions non-compliant with policy will be established as a payable to KPU by the P-Card holder and that KPU will exercise its right of offset to recover the amount owing against any and all monies otherwise payable to the P-Card holder, including their pay cheque.
 - Adhere to the provisions set out in the Agreement,
- Ensure the P-Card is not used for personal use,
- Report a lost or stolen P-Card immediately to the issuing bank (number on the back of the P-Card),
- Ensure the P-Card is safeguarded and is not used by others,
- Retain all original purchase documentation (packing slip, paid invoice, receipt, etc.) and match to transactions.
- Complete on-line reconciliation in accordance with the document Editing Transactions in FAST P-Card, and submit a monthly statement to the Department Manager, Dean or Director for approval
- The monthly statement must:
 - Reflect all transactions processed against the P-Card during the month. Adhering to posted deadlines, will ensure this requirement is met, and
 - Each reported transaction must be supported by original purchase documentation (packing slip, paid invoice, detailed receipt which includes taxes, etc.).
 - Include the signing authority's signature for all KPU organization codes

- viii. Approving Department Manager/Dean/Director is responsible for:
- Completing Purchase Card Application form for new cardholders, including determining monthly transaction
 - Following up with P-Card holders in their area to ensure the monthly statement is received
 - Review in detail and approve, on a monthly basis, all P-Card transactions
 - Ensuring each transaction is compliant with KPU policies, notably FM5 Business and Travel Expenses.
 - Ensuring all approved monthly statements-are submitted to the Finance Department by the posted deadline.
- ix. Vice Presidents are responsible for the overall compliance of the P-Card program within their areas.
- x. Accounts Payable staff are responsible for:
- Monitoring P-Card transactions for adherence to KPU policies; appropriate documentation, account code, and signing authority
 - Ensuring P-Card transactions are entered into Banner

8. Information Technology Procurement

- i. Information Technology (IT) goods and services must be procured in accordance with the business requirements of KPU as identified in KPU's consolidated written IT standards, where those standards exist.
- ii. Prior to initiating procurement of IT related products or services, Departments must discuss their IT requirements with the Chief Information Officer (CIO) who will determine whether a university wide solution will be implemented for the requirement.
- iii. Large projects frequently include smaller IT related component projects. These component projects must be considered at the same time as the large project.
- iv. IT goods and services must be procured in accordance with KPU financial and procurement policies and the strategies and standards established by the Director, Information Technology.

- v. IT standards, whenever practical, shall be used in conjunction with an open, competitive process providing qualified prospective suppliers with opportunities to submit proposals.
- vi. All KPU IT hardware and software requirements, including shared devices (e.g., desktop, laptop, server, and printer devices) must be ordered under identified CSAs, CISAs or MSOs or KPU supply channels, where available.
- vii. Vendor specific software license contract forms may be used but only after they have been approved by the Vice President Administration and CFO. In this specific situation, KPU may waive the policy requiring the contractor to pay KPU's legal costs.

9. Unsolicited Proposals

- i. An "unsolicited proposal" is defined as a supplier initiated offering of goods, services, or solutions to KPU. The aim of such a proposal is to enable a supplier to establish a sales contract or business alliance partnership with KPU that is neither the result of a competitive solicitation nor the result of a KPU initiated direct award.
- ii. Departments can receive unsolicited proposals from the private sector. If KPU determines that the proposal warrants consideration, then the proposal must be submitted to an ad hoc review panel formed by the Vice President, Finance and Administration for review.
- iii. The proposal must indisputably demonstrate that:
 - It is unique; and
 - It addresses the current or future needs of KPU; and
 - The goods or services are not otherwise available in the marketplace.
- iv. The review panel will be chaired by the Vice President and comprised of:
 - Director of Procurement Services;
 - Directors from the interested/impacted Departments, selected by the Chair based on the nature of the proposal; and
 - Executive Director of Finance.
- v. The panel must ensure that the unsolicited proposal unambiguously meets the criteria stated in subsection iii above, and that its acceptance is clearly in the best interest of KPU with this being done before contract negotiations commence.

- vi. Departments must not enter into contract negotiations before the panel review is complete. If there is any doubt that an otherwise acceptable proposal is unique, the Procurement Services shall issue a Notice of Intent prior to KPU entering contract negotiations.
- vii. Any proposal not meeting the criteria stated in subsection iii above must be rejected. If the proposal is accepted and approved by the Panel, KPU may enter into contract negotiations, subject to funding availability and any required approvals.
- viii. Notwithstanding the reference to Notices of Intent with subsection vi above, all contracts resulting from unsolicited proposals must be subject to this procurement policy, including policies related to direct awards.
- ix. Funding for contracts resulting from unsolicited proposals must be drawn from within the existing budget of the contracting Department.
- x. Departments must not use the unsolicited proposals process to bypass the competitive tendering process for goods or services requirements that are initially identified by KPU.
- xi. In the event that the Panel approves an unsolicited proposal, KPU must ensure that all contracts resulting from unsolicited proposals comply with all applicable trade agreements:
- xii. A waiver of competitive process must be recommended and approved for every unsolicited proposal.

10. Contract Administration and Monitoring

a) Receipt of Goods

- i. Departments must ensure that adequate receiving processes are in place to certify that goods are received as ordered (i.e., correct quantity and suitable quality).
- ii. KPU receiving staff may sign for goods presented by the shipper, without detailed inspection. Receiving staff should inspect the shipment for damage and/or missing or incorrect items as soon as practicable. Inspection should include a comparison of goods received to packing slips and a comparison of packing slips to purchase orders or requisitions.
- iii. KPU receiving staff will rely on the user department updating requisitions for all approved changes in orders. Discrepancies between goods received and goods ordered (as reported in Banner) and damaged goods must be reported immediately to the end user who will work with the Procurement Services to rectify the situation.

- KPU receiving staff must sign/initial the packing slip to provide confirmation of the inspection and the certification that goods have been received.
 - KPU receiving staff must note all damaged goods and discrepancies on the packing slip.
- iv. KPU receiving staff will rely on the user Department updating requisitions to approve all substitution items. Receiving staff will not accept product substitutions by suppliers without prior Department approval. Purchase Order Amendments or Change Orders are required to cover any substantial changes to the original purchase order.
 - v. Departments must maintain adequate receipt records or other documentation to support account verification and payment.

b) Payment

- i. A contract summary record must be maintained for all service contracts, either by using a contract summary sheet or equivalent electronic record. Vendor payment records must be used to assess amount paid on the contract's Purchase Order. Once a Purchase order is completely drawn down no further payments can be made on the contract.
- ii. A contract cannot include a cost overrun clause. If a cost overrun is unavoidable, ensure the costs are justified. Any overrun is to be authorized in advance using a modification agreement form. There may be additional approval requirements triggered by cost overruns.
- iii. Commercial arrangements regarding chargeable fees and rates, expense reimbursement limits, aggregate contract prices, pro forma statements of account, and payment schedules must be set forth in a KPU prescribed contract schedule. These requirements apply whether a contract is established on the basis of a per diem rate, hourly rate, a fixed price per unit or deliverable, or a flat rate or price.
- iv. All contract quotations must exclude applicable sales taxes. Statements of accounts must include a calculation of fees plus applicable sales taxes and expenses.
- v. Departments must ensure that payments made to contractors who are non-residents of Canada comply with the withholding tax provisions of the federal Income Tax Act.
- vi. Contracts may not provide for payment in advance of goods or services being received, unless the Vice President, Finance and Administration approves the variance to payment policy prior to the negotiation of the contract. Where a payment is to be made in advance the contract must specify how the advance is:

- to be deemed to be earned; or
- if the services are not subsequently rendered, to be repaid; and
- what interest rate, if any, must apply?

c) Evaluation, Monitoring and Reporting

- i. For every contract, Departments must clearly establish the outputs and/or outcomes required, together with their quality and quantity, against which the performance of the contract can be monitored throughout the duration of the contract. These output and outcome requirements must be included in the contract.
- ii. Departments must ensure timely and consistent monitoring of the contractor's performance as the assignment progresses in accordance with the terms and conditions of the contract.
- iii. A post-completion evaluation is required on every contract of \$200,000 or more to provide a record of the contractor's performance and to assist in future contracting activity.

d) Deficient Performance and Breach

- i. Where a contractor deviates from the terms and conditions of a contract, the contract manager must immediately take one or more of the following steps:
 - Step 1: Notify the contractor in writing of the deficiency and arrange to discuss the problem. A record should be kept of such discussions. The discussions could result in an agreement to amend the terms of the contract.
 - Step 2: Issue a notice to comply, if the contractor persists in deviating from the terms and conditions of the contract.
 - Step 3: Issue a stop work order if the contractor ignores the notice to comply.
 - Step 4: Terminate the contract, subject to the advice of KPU's Procurement Director and/or legal counsel.
- ii. Where the breach or deficiency puts public safety at risk, KPU must proceed immediately to Step 2 and issue a notice to comply, or to Step 4 and terminate the contract.
- iii. If fraud is suspected, refer to the issue immediately to the Vice President, Administration and Finance.

e) Asset Management

- i. Departments must identify and manage any asset maintenance, risk and liability issues arising from their contracting activities.
- ii. Where assets are determined to be owned by the KPU, they must be appropriately safeguarded, controlled and accounted for. Assets being replaced due to being damaged, lost or stolen must be reported to the Director of Procurement Services at the time the procurement process is initiated.

f) Disputes

- i. Any dispute arising out of a KPU contract must be dealt with in a just prompt and cost-effective manner. All contracts must contain a clause that identifies how a dispute will be resolved. Any dispute arising out of a KPU contract must ultimately be resolved according to the terms of the contract.
- ii. Departments must settle any related disputes in accordance with the dispute resolution process provided in in the related agreement Departments will be responsible for the KPU's share of the cost of any dispute panel that is established to investigate the dispute.

11. Public Posting - Bid Opportunities, Amendments and Notice of Contract Awards

- i. Where KPU policy or applicable intergovernmental trade agreements require the advertisement of an opportunity that notice must be posted on the BC Bid[®] website. The Procurement Services is the sole agent of KPU authorized to post opportunities and solicitation amendments on BC Bid[®].
- ii. If a solicitation is found to have a material omission or error, prospective proponents must be notified by way of an amendment posted on the BC Bid[®] website. If any such change amendment should fall less than five days before responses are due, the closing time should be extended to provide respondents reasonable time to consider any such change and to revise their submissions.
- iii. Procurement Services must post all award decisions taken by KPU to a location on the KPU public website established and maintained for that purpose.

12. Intergovernmental Trade Agreements - Compliance

- i. KPU is part of the "MASH sector" that includes municipalities, publicly funded post-secondary academic institutions and school boards, and health regions. As a member of

the provincial public sector, broadly defined, it must therefore comply with four intergovernmental trade agreements.

- ii. Canada-Europe Comprehensive Economic Trade Agreement (CETA). CETA covers acquisitions by MASH sector with the following expected full-term contract values: (See Treasury Board Of Canada Secretariat Trade Agreements – Threshold Updates)
- iii. The federal-provincial intergovernmental Canada Free Trade Agreement (CFTA) came into effect on July 1, 2017, as a successor to the Agreement on Internal Trade (AIT). CFTA covers acquisitions by MASH sector with the following expected full-term contract values*:
 - \$100,000 or more for goods;
 - \$100,000 or more for services; and
 - \$250,000 or more for construction.

(*See Treasury Board Of Canada Secretariat Trade Agreements – Threshold Updates for annual adjustments)

- iv. The British Columbia-Alberta Trade, Investment and Labour Mobility Agreement (TILMA) went into effect on 01 April 2007. TILMA applies to MASH sector acquisitions with expected full-term contract values of:
 - \$75,000 or more for goods;
 - \$75,000 or more for services; and
 - \$200,000 or more for construction.

Exceptions to TILMA are listed in Part V of the agreement.

- v. British Columbia-Alberta-Saskatchewan New West Partnership Trade Agreement (NWPTA) supplements TILMA. Its provisions began to be implemented on 01 July 2010 and will be fully in place by 01 July 2013. The NWPTA applies to MASH sector acquisitions with expected full-term contract values of:
 - \$75,000 or more for goods;
 - \$75,000 or more for services; and
 - \$200,000 or more for construction.

Exceptions of the NWPTA are listed on Part V of the agreement.

13. Privacy - Disclosure of Contract Information

- i. The Freedom of Information and Protection of Privacy Act and KPU's own privacy rules govern the disclosure of contract information. The Freedom of Information and Protection of Privacy (FOIPP) Policy and Procedures Policy contains specific guidance.

14. Vendor Complaint Review

- i. In order to ensure fairness and transparency of the procurement process, KPU procuring entities are required to respond to supplier complaints through impartial and timely complaint consultations as outlined in the dispute resolution protocol Appendix A (Vendor Complaint Review)

RELATED POLICY

Refer to Policy AD3 *Procurement*.

Appendix A: Vendor Complaint Review

1. Vendor Complaint Review

The objectives of this procedure are to define a vendor complaint review process (VCRP) that is accessible, consistent, fair, impartial and timely, and to identify ways to make improvements in the manner in which procurement is undertaken by KPU.

a) General

- i. The VCRP is designed to ensure that there is a process for the review of vendor complaints about a KPU procurement process. The intent of the VCRP is to assist KPU in identifying and responding to problems in the establishment and application of KPU procurement policy and procedures.
- ii. This VCRP requires that Departments, Procurement Services and vendors provide full access to all information pertinent to complaints.

b) Definitions

- i. Procurement means those processes, including direct awards, related to the purchase of goods, services and construction.
- ii. Complaint means a written objection submitted by a complainant regarding a competition, direct award, contract award or proposed contract award for goods, services or construction.
- iii. Complainant:
 - For the purpose of a vendor complaint relating to a competition or direct award, means an actual or prospective bidder or proponent whose business interest would be affected by the award of a contract, or by the failure to award a contract.
 - For the purpose of submitting a vendor complaint relating to a contract award, means a proponent who actually submitted a proposal in response to the competition for the contract.

c) Scope of VCRP

- i. A complaint may be made with respect to the process used to evaluate proposals and how the evaluation criteria were applied but may not include issues pertaining to individual point ratings given by an evaluation committee to specific evaluation criteria.

- ii. The application of this VCRP is limited to KPU and its Departments whose procurement is subject to this KPU procurement policy.
- iii. This VCRP is limited to issues of procurement policy and procedures. This VCRP is not available for issues related to vendor or Department/Procurement Services performance or conduct during a contract. These issues are to be dealt with through the dispute resolution processes identified in the contract document.
- iv. This VCRP does not limit or impair the rights of any vendor to seek remedies of law through the judicial or other process including dispute resolution under applicable trade agreements.

2. Vendor Complaint Review - Roles and Responsibilities

a) Departments including the Procurement Services

Departments, including the Procurement Services, are responsible for:

- i. Establishing and managing an accessible and fair process for responding to vendor complaints related to procurement activities undertaken by Departments or Procurement Services.
- ii. In case of those complaints submitted, providing all pertinent and required information.
- iii. Recording information on all vendor complaints managed under their vendor complaint review process and providing reports to the Vice President, Finance and Administration.
- iv. Implementing changes required to Department/Procurement Services procurement processes identified through their complaint review process.
- v. Implementing any outcomes recommended and any subsequent remedial action.
- vi. Making all reasonable efforts to review complaints and where reasonable to resolve them amicably.

b) Vice President, Finance and Administration

The Vice President, Administration and Finance is responsible for:

- i. Receiving and recording all complaints.
- ii. Ensuring that Departments and Procurement Services s have a vendor complaint review process as described in these policies and procedures.

- iii. Managing a last resort process for complaints not satisfactorily concluded through KPU/Procurement Services vendor complaint review process.
- iv. Providing guidelines regarding the information and reporting requirements for Departments and Procurement Services.
- v. Monitoring and reporting on KPU-wide VCRP activity and outcomes of complaint reviews.
- vi. Implementing changes required to KPU procurement proficiencies and procedures and to procurement training methods and tools identified through the complaint review process.

c) Vendors

Vendors are responsible for:

- i. Making reasonable efforts to review the complaint with Department or Procurement Services by contacting the entity and following their complaint review process.
- ii. Providing all pertinent and required information related to a complaint.
- iii. If appropriate complaints should be lodged after a debriefing session is completed following completion of procurement

3. Vendor Complaint Review - Process

- i. Departments and Procurement Services have primary responsibility for reviewing vendor complaints regarding their procurement processes. They must establish and administer a process for reviewing, recording, managing and reporting vendor complaints and must make the process known to vendors by posting it on a readily accessible KPU public website.
- ii. The Vice President, Finance and Administration must establish and administer a process that deals with complaints that have not been satisfactorily concluded by Departments or Procurement Services.
- iii. Where a serious flaw in the procurement process has been detected, legal counsel will be requested to review any correspondence to be sent to a complainant, and as appropriate, take the lead in that regard.

- iv. If a vendor submits a request for information related to procurement under the freedom of Information and protection of Privacy Act, the timeframes for the VCRP may be extended, due to resource limitations, until after the FOI request is completed.
- v. The VCRP is not intended to detract from a vendor's access to legal resource. However, VCRP complaints will not generally be considered concurrently with a litigation process.
- vi. No compensation will be awarded to a complainant under the VCRP.

A decision of the Vice President, Finance and Administration shall be the final determination on a complaint registered with the VCRP process.