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PURPOSE

The objective of this policy is to ensure that Metrolinx receives best value for the goods and services required for its operations maximizing the number of eligible Vendors participating in competitive bidding processes through proper prevention and management of Conflicts of Interest in a transparent, consistent, timely and efficient manner. To ensure compliance with this objective, the principles of responsibility, accountability, transparency, fairness and non-discrimination are to guide the management of Conflicts of Interest through Metrolinx procurement processes. Both Metrolinx and the Vendors are to take measures to avoid, neutralize or mitigate any Conflicts of Interest which take away from the integrity of the procurement process.

Decisions relating to Conflicts of Interest will require an application of the principles to the facts and circumstances of each case. Accordingly, the management, mitigation and outcomes of a Conflict of Interest situation will differ on a case-by-case basis due to the specific concerns, circumstances and interests arising in each situation. While Metrolinx shall refer to the principles set out in this policy when reviewing a Conflict of Interest, the general examples in Part 'B' and Part 'C' are provided for guidance only and shall not be determinative or predictive of the outcome.

SCOPE

Unless otherwise stated in this policy, this policy shall apply to all Metrolinx procurements and all Vendors providing or proposing to provide goods and services to Metrolinx through such procurements.

DEFINITIONS

Conflict of Interest (COI)	A circumstance arising out of a Vendor's past or current activities, business interests, commercial relationships or organizational structure giving rise to a potential, perceived or actual, unfair competitive advantage or a reasonable apprehension of bias which compromises or could be seen to compromise the integrity of a current or future Metrolinx procurement process. Conflicts of Interest may arise where there is unequal access to information or impaired objectivity. This definition shall be in addition to, and be read together with any definition of Conflict of Interest contained in Metrolinx's procurement documents.
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Conflict Committee	A group led by Metrolinx's Procurement Services consisting of representatives from the project team(s) or business unit(s) relevant to the contract(s) or procurement processes being reviewed, Procurement Services (including Client and Vendor Relations) and Legal Services, which makes determinations on Conflict of Interest matters, including advance determinations prior to the commencement of a procurement process, appropriate mitigation measures and possible disqualifications of Vendors from a procurement process or award as a result of a procurement process.
Vendor	Any person, corporation, firm, proponent, consultant, partnership, joint venture, contractor, supplier, bidder or any other entity making a Submission to provide goods or services to Metrolinx in response to a Metrolinx procurement process, including any of the Vendor's subcontractors, current or former employees, advisors, parent entities, subsidiaries, business partners and affiliates.
Submission	A bid remitted by the Vendor, proposing to provide products or services to Metrolinx, in response to a Metrolinx procurement process.

PRINCIPLES

1. Metrolinx and the Vendors have a shared **responsibility and accountability** for identifying and managing Conflicts of Interest.
 - i. Metrolinx shall strive to ensure that Conflicts of Interest are identified, mitigated or avoided as early on in the procurement process as commercially reasonable. Accordingly, Metrolinx may be compelled to impose conditions on Vendors for a procurement process or preclude or disqualify a Vendor from a procurement process. If such steps are determined to be necessary, Metrolinx shall strive to notify Vendors as soon as commercially reasonable.
 - ii. Metrolinx currently requires, and will continue to require, any Vendor making a Submission to declare all Conflicts of Interest.
 - iii. Vendors must disclose any Conflicts of Interest, its proposed or implemented mitigation strategies, if any, to Metrolinx in a timely manner.
 - iv. Should circumstances or facts arise during a procurement process which is brought to Metrolinx's attention such that Metrolinx may not reasonably rely

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on a Vendor's representation of a Conflict of Interest, Metrolinx shall make reasonable efforts to investigate such representation and may disqualify the Vendor from a procurement process.

- v. Metrolinx has the right to reject Submissions based on Conflicts of Interest, and that right itself does not have to be expressly stated as an evaluation criteria to be enforced.

2. Metrolinx and the Vendors shall strive for **transparency** in assessing and mitigating Conflicts of Interest.

- i. Vendors shall not make any misrepresentations in its Submission and any misrepresentation may lead to disqualification of a Submission or even termination of a contract.
- ii. Metrolinx may examine the following list of factors to assess a Conflict of Interest:
 - a. Vendor's past and current work for Metrolinx;
 - b. Type of goods or services required;
 - c. Particular circumstances of a project;
 - d. Metrolinx's need for specialized expertise for a project;
 - e. Metrolinx's past, present or future working relationship with the Vendor;
 - f. Time frame between the relevant Conflict of Interest and a project; and
 - g. Any other factors deemed relevant by Metrolinx.
- iii. Metrolinx shall strive to keep complete documentation of each procurement process to preserve the integrity and transparency of the procurement process.
- vi. If Metrolinx has notified a Vendor of required mitigation measures and/or if a Vendor has committed to adopting such measures for a procurement process, Metrolinx is entitled to rely on the Vendor implementing such measures in a diligent and meaningful manner. The Vendor should document their implementation of such mitigation measures. Metrolinx may audit a Vendor to confirm compliance.

3. Metrolinx and the Vendors are committed to a **fair and open procurement process**

- i. Metrolinx is committed to treating all Vendors fairly and equally and not knowingly allowing any of them to have an unfair advantage over the others.
- ii. Metrolinx shall strive to define the circumstances that they would consider to be a Conflict of Interest.
- iii. Metrolinx shall strive to apply the principles consistently in each procurement process; however, Vendors acknowledge that the specific mitigation measures and outcomes will vary depending on the circumstances.

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REQUIREMENT OF DISCLOSURE

Metrolinx is dependent on early disclosure of potential or actual Conflicts of Interest by Vendors to successfully implement the principles of this Policy. The Vendors are strongly advised to make earliest possible disclosure of both potential participation in a procurement process and of any Conflicts of Interest. Vendors are also encouraged to provide information on any proposed or implemented mitigation measures with regards to such Conflicts of Interest for consideration by Metrolinx.

Disclosure of a Conflict of Interest shall not automatically result in disqualification from a procurement process. Metrolinx shall first determine whether or not such Conflict of Interest exists, and then consider any existing, proposed or future mitigation measures before making a decision, as set out in Part 'A' Conflict Committee below.

REQUEST FOR ADVANCE DETERMINATION

Vendors may request an advance determination of a Conflict of Interest from Metrolinx before the initiation or closing of the relevant procurement process in order to assess whether to remit a Submission. Such determinations shall be made and issued by the Conflict Committee through Procurement Services for the procurement process. However, in all cases, any advance determination shall be issued on a without prejudice basis, limited to the facts and circumstances that are known to Metrolinx at the time.

Metrolinx may, if commercially reasonable and in the sole discretion of Metrolinx, also issue advance determinations to Vendors if Conflicts of Interests become apparent to Metrolinx during the preparation of a future procurement. This may result in notices to Vendors that they are precluded from specific procurements or requiring Vendors to implement mitigation measures.

FAIRNESS ADVISOR

Metrolinx may consider engaging a fairness advisor or fairness commissioner for major procurements, to provide advice to the Conflict Committee on Conflicts of Interest as well as on the overall fairness of the procurement process. The fairness advisor should maintain a degree of independence from the project team. However, as Metrolinx is ultimately responsible for the fairness of its procurements, its decision-making may be informed by the fairness commissioner's comments but Metrolinx shall not be bound by them. Metrolinx shall strive to clearly establish the role of the fairness advisor or fairness commissioner at the outset of any engagement.

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SPECIFIC DIRECTIVES

PART 'A' – DESIGNATING A CONFLICT COMMITTEE AND GUIDELINES FOR GENERAL CONFLICT MANAGEMENT

Procurement Services shall be responsible for organizing and leading a Conflict Committee to investigate and manage any Conflicts of Interest, as needed from time-to-time. The Conflict Committee should be made up of representatives from the respective project team(s) or business unit(s), Procurement Services (including Client and Vendor Relations), Legal Services and others, as required. The Conflict Committee shall document their decision-making process.

The Conflict Committee will work together in collaboration with the appropriate parties, including the Vendors as appropriate, to apply a principled approach to gathering and review of the facts and circumstances in each case in accordance with this policy:

1. *Does a Conflict of Interest exist, and if so, which?*
The Conflict Committee shall first determine whether a Conflict of Interest exists, and if so, what type of Conflict of Interest (Unequal Access to Information or Impaired Objectivity, as set out in Parts B and C).
2. *Can the COI be mitigated?*
If a Conflict of Interest is found to exist, the Conflict Committee shall proceed to consider the feasibility and sufficiency of any existing or proposed mitigation measures of the Vendor(s) as well as other mitigation measures that may be required by Metrolinx.
3. *Decision of the Conflict Committee.* The Conflict Committee shall proceed to reach a unanimous decision on the mitigation measures required, if any, for the Vendor to proceed in the procurement process or on the disqualification of the Vendor, if the COI cannot be mitigated. In limited circumstances where the Conflict Committee cannot reach a consensus, the Conflict Committee shall convene a meeting or conference call with, and/or submit a written summary of the Conflict of Interest to, the Vice President of Procurement Services or his/her delegate, who shall adopt one of the recommendations of the Conflict Committee or proceed to further review with another senior executive.
4. *Issuance of decision.*
The decision of the Conflict Committee or the Vice President of Procurement Services shall be communicated in writing to the Vendor.

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5. *Vendor debrief and further review.*

The Vendor may request a debrief meeting or call, which shall be led by Procurement Services and include members of the Conflict Committee. The Vendor may also request an additional review of the initial decision by the Vice President of Procurement Services if the Vendor has new or previously unknown information which was not considered by the Conflict Committee. The decision of the Vice President of Procurement Services resulting from this additional review, if such review is granted to the Vendor, shall be final.

PART 'B' – GUIDELINES TO FOLLOW TO RESOLVE AN “UNEQUAL ACCESS TO INFORMATION” CONFLICT OF INTEREST

A Conflict of Interest due to unequal access to information arises when a Vendor has access to information which may provide the Vendor with an unfair competitive advantage.

The following questions should be considered:

- i. Does or will the Vendor have access to information related to the procurement that is not available to other Vendors?
- ii. Does this information create, or might it create, an unfair competitive advantage?
- iii. Is there a perception or appearance of impropriety or unfair competitive advantage?
- iv. Can the unfair advantage be mitigated?

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The following figure and table outlines the decision process:

Figure 1: Unfair Access to Information Decision Making Tool

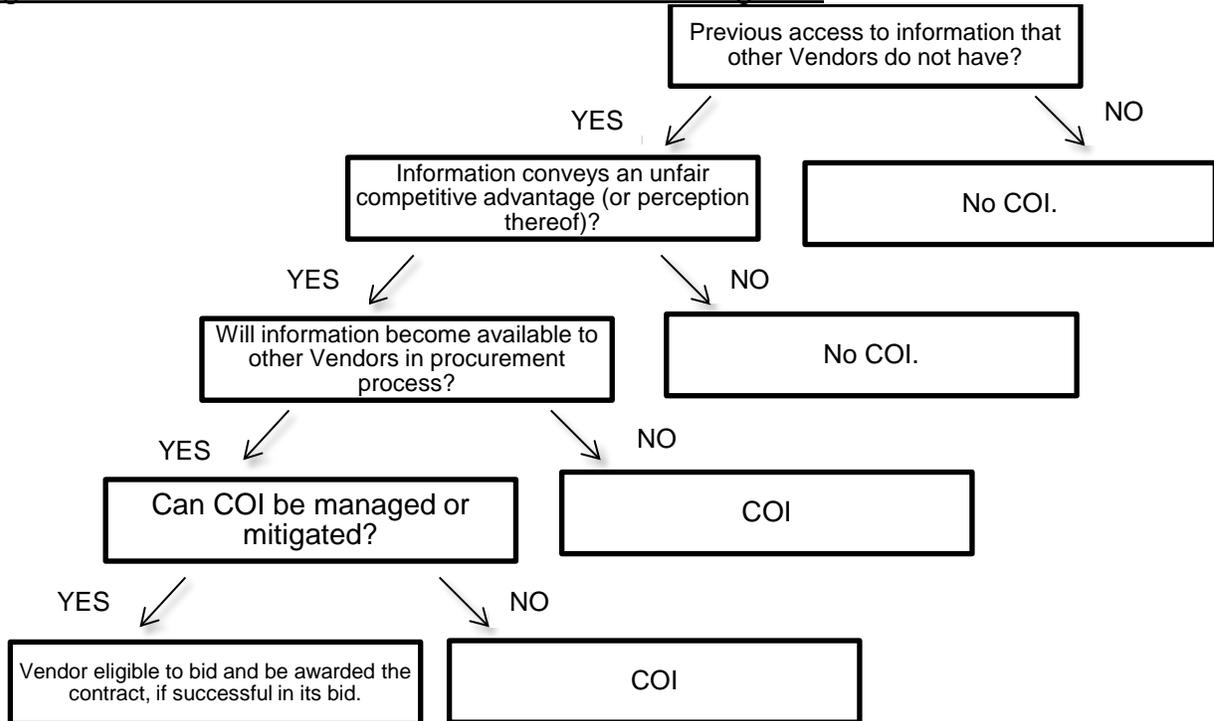


Table 1: Examples of Unequal Access to Information Assessments

	Example	Previous access?	Unfair advantage?	Not available to other Vendors?	Conclusion
1	Vendor was Metrolinx's Design Consultant	Yes	Yes	No – all disclosed by data room	COI mitigated. Vendor eligible to bid and be awarded the contract, if successful in its bid.

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2	Vendor was Metrolinx's design consultant development specifications for procurement documents	Yes	Yes	Yes – however, commercial and strategic information cannot be disclosed to others	COI exists and cannot be mitigated – disclosure of some information does not fully mitigate a potential unfair advantage. Not eligible to be awarded the contract.
3	Vendor was the Project Management Consultant participating in procurement management	Yes	Yes	Yes	COI exists and cannot be mitigated due to proximity to procurement process and decision making. Not eligible to be awarded the contract.

Proposed Mitigation Measures

An unequal access to information COI may be mitigated by:

i. Disclosure of information

Where there is an advantage flowing from unequal access to information, the advantage may be neutralized by disclosing the information to all Vendors. For example, one mitigation measure may be the use of a data room. If this measure is chosen, Vendors should be given enough time to review and make use of the information.

ii. Ethical walls

Ethical walls may also mitigate an unequal access to information COI where the information cannot be shared but the Vendor is able to physically and functionally “wall-off” the flow of such information. Individuals with access to information are physically and/or metaphorically divided from those without the information. Only those without the information are eligible to be part of the Vendor's Submission preparation. Metrolinx shall set out the specific requirements of ethical walls in a notice to the Vendor, and Vendors shall be required to provide written attestations as evidence of the implementation and maintenance of ethical walls.

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Incumbent Advantage

It is important to note that Metrolinx is under no duty to take measures to reverse any legitimate or natural incumbent advantage of an incumbent Vendor, such as the advantage flowing from the knowledge and experience obtained while performing a contract. The experience acquired by a Vendor who is providing or has provided the goods and services described in a procurement process (or similar goods or services) will not, in itself, be considered as conferring an unfair advantage or creating a Conflict of Interest.

PART 'C' – GUIDELINES TO FOLLOW TO RESOLVE AN "IMPAIRED OBJECTIVITY" CONFLICT OF INTEREST

A Conflict of Interest due to impaired objectivity may be created when the Vendor's performance has the potential to affect other interests of the Vendor. This often arises when a Vendor is effectively in the position of evaluating itself, or the Vendor contributed to the development of the procurement process such as evaluation criteria or specifications used in a tender document.

The following questions should be considered:

- i. Was the Vendor involved in any manner in the preparation of the procurement documents, technical requirements, scope or development of the evaluation criteria?
- ii. Will the Vendor (in its role with Metrolinx) be exercising subjective judgment in the performance of its activity?
- iii. Does the Vendor (in its role with Metrolinx) have a direct or indirect financial interest in the outcome of its performance, influencing how the Vendor exercises its judgment?
- iv. Will the Vendor (in its role with Metrolinx) be involved in the assessment of the Submissions?
- v. Will the Vendor (in its role with Metrolinx) be unable to render impartial assistance or advice to Metrolinx?
- vi. Can a reasonable apprehension of bias, arising from possible impaired objectivity, be mitigated?

The Conflict Committee should look to the substance of the Vendor's work, the Vendor's relationships, affiliates, organization, corporate structure and business interests, to make a determination on impaired objectivity.

Reasonable Apprehension of Bias

Reasonable apprehension of bias means that an informed person, viewing the matter realistically and practically, and having thought the matter through, would conclude that it is

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more likely than not that the individual, whether consciously or unconsciously, would not decide fairly.

The following figure and table outlines the decision process:

Figure 2: Impaired Objectivity Decision Making Tool

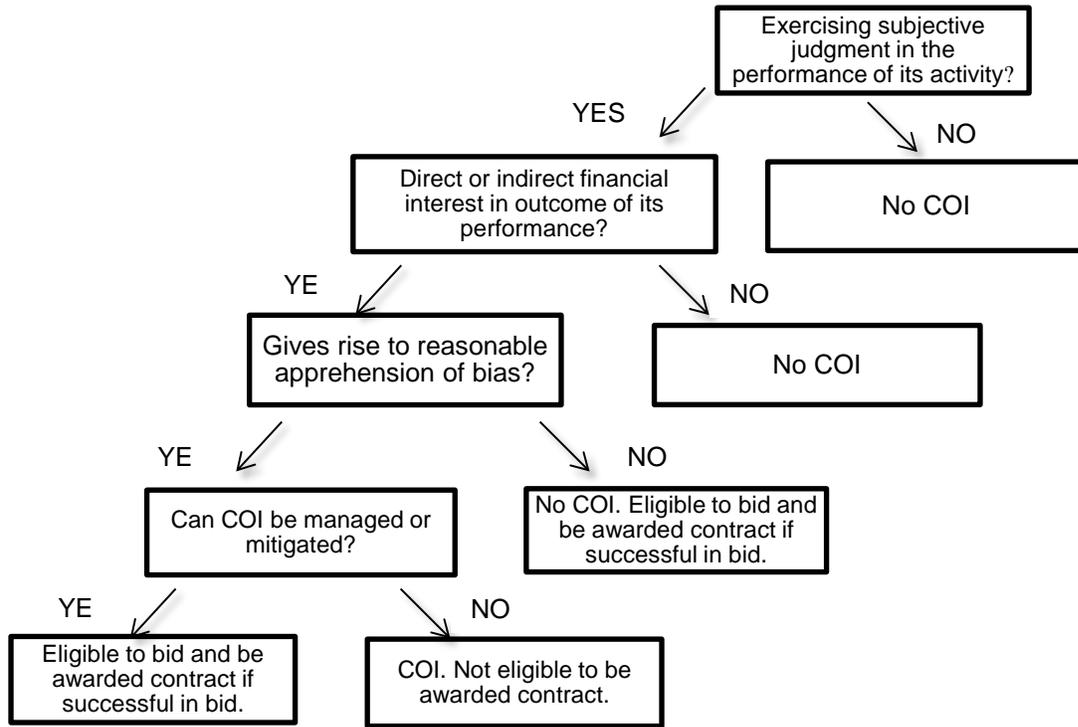


Table 2: Examples of Impaired Objectivity Assessments

	Example	Subjective judgment?	Financial interest and bias?	Can be managed or mitigated?	Conclusion
1	Vendor was previously Metrolinx's Design Consultant, asked to draft procurement specifications	Yes	Yes	No	COI exists and cannot be mitigated due to proximity to procurement process and decision making. Not eligible to be awarded the contract.

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2	Vendor is evaluating Submissions on behalf of Metrolinx	Yes	Yes	No	COI exists and cannot be mitigated due to proximity to procurement process and decision making. Not eligible to be awarded the contract.
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Proposed Mitigation Measures

In a situation where the issue of impaired objectivity arises due to the Vendor's prior or current relationships and business concerns, an ethical wall arrangement will likely not be sufficient to resolve the Conflict of Interest. Metrolinx may have to disqualify Vendors in order to avoid any potential impaired objectivity Conflicts of Interest.