

Section Procurement Services	Current Approval Date
Subject Vendor Conflict of Interest Policy	September 26, 2023

PURPOSE

The purpose of this policy is to ensure open, transparent, and non-discriminatory access is provided to Metrolinx’s procurements through proper prevention and management of Conflicts of Interest (“COIs”) in a consistent and efficient manner. Both Metrolinx and the Vendors are to take measures to avoid, neutralize or mitigate any COIs which may impact the integrity of the procurement process.

Decisions relating to COIs will require application of the principles set out in this policy, to the facts and circumstances of each case. Accordingly, the management, mitigation and outcomes of a Conflict of Interest (“COI”) 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 COI, 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.

PRINCIPLES

1. Metrolinx and the Vendors have a shared responsibility and accountability for identifying and managing COIs.
 - i. Metrolinx shall strive to ensure that COIs are identified, mitigated or avoided as early 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 will strive to notify Vendors as soon as commercially reasonable.
 - ii. Metrolinx currently requires, and will continue to require, all Vendors submitting a response to a procurement process to declare all COIs.
 - iii. Vendors must disclose the COIs, 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 where Metrolinx may not reasonably rely on a Vendor’s representation of a COI, Metrolinx shall make reasonable efforts to investigate such representation and may disqualify the Vendor from the procurement process.

- v. Metrolinx has the right to reject Submissions based on COIs, and that right itself does not have to be expressively stated to be enforced.
2. Metrolinx and the Vendors shall ensure transparency in assessing and mitigating COIs.
 - 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 COI:
 - 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 COI and a project; and
 - g. Any other factors deemed relevant by Metrolinx.
 - iii. Metrolinx shall keep complete documentation of each procurement process to preserve the integrity and transparency of the procurement process.
 - iv. 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 is required to document its implementation of such mitigation measures. Metrolinx reserves the right to audit a Vendor to confirm compliance.
 3. Metrolinx is committed to a fair and open procurement process
 - i. Metrolinx is committed to treating all Vendors fairly and equally and not knowingly allowing any Vendor to have an unfair advantage over the others.
 - ii. Metrolinx shall strive to define the circumstances that would constitute a COI.
 - 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.

REQUIREMENT OF DISCLOSURE

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

Disclosure of a COI shall not automatically result in disqualification from a procurement process. Metrolinx shall first determine whether or not such COI 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

Metrolinx may consider engaging a fairness advisor / fairness monitor for major procurements, to provide advice to the Conflict Committee on COIs as well as on the overall fairness of the procurement process. The fairness advisor should maintain a degree of independence from the project team. Metrolinx is ultimately responsible for the fairness of its procurements, however decisions may be informed by the advice of a fairness advisor. Metrolinx will clearly establish the role of the fairness advisor at the outset of any engagement and procurement process.

DETERMINATION OF COI(S)

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 COIs, 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, 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 reviewing the facts and circumstances in each case in accordance with this policy:

1. Does a COI exist, and if so, which situation it falls under Part B and/or Part C below?

The Conflict Committee shall first determine whether a COI exists, and if so, what type of COI (Unequal Access to Information or Impaired Objectivity, as set out in Parts B and C).

2. Can the COI be mitigated?

If a COI is found to exist, the Conflict Committee shall proceed to consider the feasibility 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 COI to the Appeal Committee, who shall adopt one of the recommendations of the Conflict Committee, or provide an alternative recommendation.

4. Issuance of a Decision

The decision of the Conflict Committee or the Appeal Committee shall be communicated in writing to the Vendor.

5. Vendor debrief and further review

The Vendor may request a debrief ("COI Debrief") which shall be led by Procurement Services and may include members of the Conflict Committee. The purpose of the COI Debrief is to explain to the Vendor why they are ineligible to participate in a procurement; and to request a further review of the Conflict Committee's decision. Further review may be given if the Vendor successfully presents during the COI Debrief new or previously unknown information which was not considered by the Conflict Committee.

Request for a COI Debrief shall be in writing and should be sent directly to Procurement Services no later than seven (7) calendar days from the date that the Conflict Committee's decision is communicated to the Vendor. Requests received later than seven (7) calendar days may be heard at Metrolinx's sole discretion. The request should include a statement that the Vendor wishes to have the decision reviewed, the reason the Vendor disagrees with the decision and any additional information forming the basis for the debrief request and reconsideration.

Where the Conflict Committee's decision is confirmed by the COI Debrief or through further review, it becomes final, unless the Vendor initiates the Appeal process as follows.

6. Appeal process

Vendors may file an appeal of the decision of the Conflict Committee directly with Procurement Services within seven (7) calendar days from the date of the COI Debrief or the date of notification of further review, if the following is met:

- i. the Vendor has new evidence to show that the work or scope change of the procurement/project has led to a change to the conflict situation; or
- ii. the Vendor has proof to show the discontinuation of a relationship upon which their ineligibility was based.

The Appeal Committee may set aside a decision of ineligibility reached by the Conflict Committee if there is new evidence that was not available at the time of the decision, the decision was unreasonable considering the information presented to the Conflict Committee or the finding of ineligibility and restriction imposed on a Vendor was unreasonable considering the information presented by the Vendor.

The decision of the Appeal Committee is final. Following the hearing of a Vendor's appeal, the Appeal Committee may take one or more of the following courses of action:

- i. Confirm a determination; or
- ii. Reverse or alter a determination including confirming applicable mitigation measure(s) or pre-requisite for eligibility.

PART 'B' – GUIDELINES TO FOLLOW TO RESOLVE AN “UNEQUAL ACCESS TO INFORMATION” COI

A COI 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 potentially 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?

The following figure and table outline the decision process:

Figure 1: Unfair Access to Information Decision Making Tool

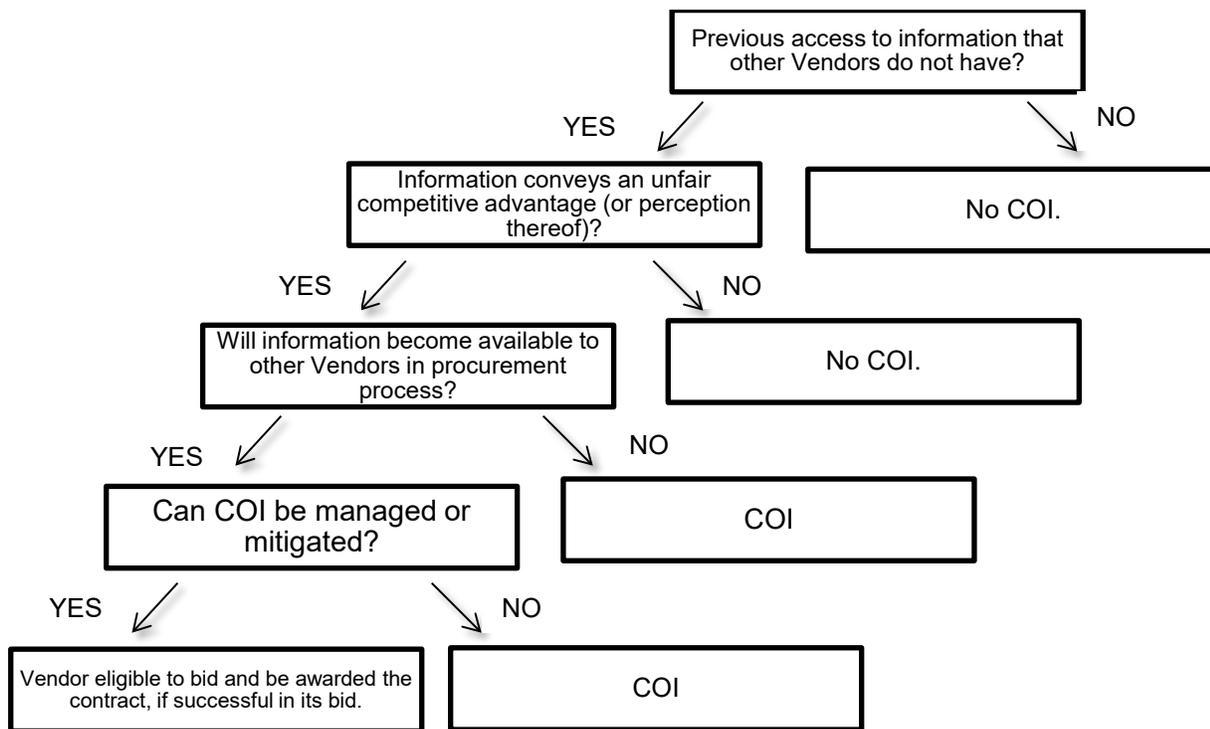


Table 1: Examples of Unequal Access to Information Assessments

	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.
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.

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 COI.

PART 'C' – GUIDELINES TO FOLLOW TO RESOLVE AN "IMPAIRED OBJECTIVITY" COI

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

The following figure and table outline the decision process:

Figure 2: Impaired Objectivity Decision Making Tool

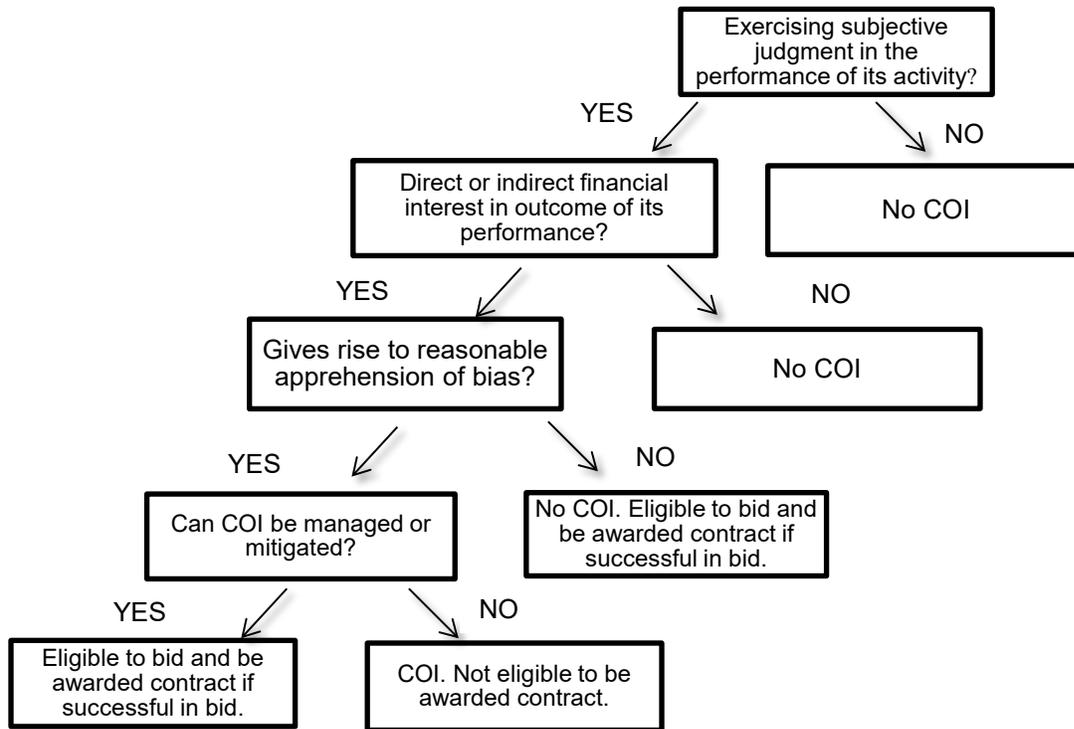


Table 2: Examples of Impaired Objectivity Assessments

	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.
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.

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 COI. Metrolinx may have to disqualify Vendors in order to avoid any potential impaired objectivity COIs.

ADMINISTRATION

Identification Name	Vendor Conflict of Interest Policy
Approved By	Chief Financial Officer
Owner	Vice President, Procurement Services
Monitor	Manager, Conflicts of Interest Management
Original Approval Date	October 17, 2017
Review Frequency	3 Years
Supersedes	All previous Policies

POLICY HISTORY

Revision / Review Date	Author	Description
September 26, 2023	Procurement Services	Revised and renamed
October 17, 2017	Procurement Services	Original policy - Vendor's Conflict of Interest Policy

DEFINITIONS

Conflict of Interest and/or Conflicts of Interest	<p>A circumstance or circumstances 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. COIs 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 COI contained in Metrolinx's procurement documents.</p>
Conflict of Interest Appeal Committee	<p>The COI Appeal Committee ("Appeal Committee") consists of representatives who are up-chain managers from the teams within the business unit(s), Procurement Services and Legal Services that form the Conflict Committee. The Appeal Committee is the final Vendor COI decision-making body who reviews vendor appeals of decisions made by the Conflict Committee.</p>
Conflict Committee	<p>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 and Legal Services. The Conflict Committee makes determinations on COI matters, including prior to the commencement of a procurement process, mitigation measures and possible disqualifications of Vendors from participating in a procurement process or being awarded a contract.</p>
Vendor	<p>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.</p>
Submission	<p>A bid or proposal submitted by a Vendor, in response to a procurement process issued by Metrolinx to provide goods or services.</p>