Essentials of Procurement Law
Association of Corporate Counsel
Ontario Chapter
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November 15, 2011
Overview

A. Comparison of open negotiation vs. solicitation process
B. Types of solicitations
C. Private vs. public sector solicitations
D. Solicitation drafting issues
E. Who to involve in drafting tender documents
F. Matters of concern from solicitation issuance to contract award
G. What parties to a procurement can do after bid close
H. Examples of successful claims for breach of solicitation terms
I. Ethical issues in procurement

A. Comparison of open negotiation vs. solicitation process
## Procurement process can be done in two main ways:

Open negotiation between two or more parties
- (offer and acceptance)

OR

A solicitation process with varying degrees of complexity
- (Call for Tenders, Request for Proposals, etc.)

### Open Negotiations v. Solicitation Process:

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<thead>
<tr>
<th>Open Negotiations</th>
<th>Solicitation Process</th>
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<tbody>
<tr>
<td>Parties may bargain for whatever terms they want, and are not limited to terms originally contemplated in first offer.</td>
<td>Issuer of request for tenders or proposals must advise bidders of content of contract to be awarded sufficiently clearly that they know what they are competing for.</td>
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<td>Commercial actors have no obligation to bargain in good faith.</td>
<td>Duty of fairness imposed on owner implies obligation to act in good faith.</td>
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<td>There is no such thing as an &quot;agreement to agree&quot; or pre-contract.</td>
<td>Submission of compliant bid or tender usually creates &quot;Contract A&quot;, which binds owner and bidder to abide by terms of the solicitation document.</td>
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Open Negotiations v. Solicitation Process (cont’d):

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<td>Parties cannot be forced to contract unless they have a true meeting of the minds.</td>
<td>Owners and bidders may be obliged to enter into contract of supply even if they were mistaken as to its terms.</td>
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<tr>
<td>Bargaining may result in uncertain terms, for example where there is a “battle of the forms”.</td>
<td>Risk of uncertainty is much lower because contract to be awarded must be described in tendering process.</td>
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B. Types of solicitations
Types of solicitations:

1. Request for Tenders (RFT)  
   (a.k.a. Call for Bids or Tenders, Invitation to Tender)  
   - Essentially an offer to purchase and when bid is submitted, is binding and if accepted, a contract for work exists. Usually, lowest priced compliant bid wins. Usually used where have straightforward requirements.

2. Request for Quotation (RFQ)  
   - Mini call for bids or tenders – smaller straightforward buys resulting in contracts.

Types of solicitations, cont’d:

3. Request for Proposal (RFP)  
   Can be simple or complex – usually results in contract to the proponent with the best compliant proposal.

4. Request for Standing Offer (RFSO)  
   (a.k.a. Vendor Panels)  
   To put in place a standing order contract with one or more suppliers against which actual purchase contracts can be made for defined price during defined time for defined goods and/or services.

5. Request for Supply Arrangement (RFSA)  
   To establish agreed to terms for the sale of goods and/or services with two or more suppliers as well as a ceiling price. Purchaser(s) then solicit bids from suppliers for best price not to exceed ceiling price.
6. **Request for Expression of Interest (RFEI)**
   To find out who might have an interest in being a supplier.

7. **Statement of Interest and Qualifications (SOIQ)**
   Same as RFEI but also require that qualifications be provided.

8. **Request for Information (RFI)**
   To get information about the capabilities of various suppliers.

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**Issues arising from a solicitation process depend on the nature of the process:**

Solicitation Process can either be:

- A ‘private’ process creating a binding commitment between the owner and all potential bidders.
  - Subject to common law rules of contract and tort.

- A ‘public’ process governed by laws and regulations, ministerial policies and codes of conduct, inter-provincial agreements on trade, and treaties. In Ontario, includes *Agreement on Internal Trade* and the *Broader Public Sector Accountability Act*. 
C. Private vs. public sector solicitations

**Private Sector Process: Obligations and rights of the owner in private tenders:**

- Request for bids creates expectation that all bidders will be treated fairly and equally:
  - Same information to each bidder
  - Communications through controlled processes
  - Bids will be evaluated on disclosed terms only
  - No bid repair unless allowed under RFP/RFT terms
  - No bid shopping or otherwise taking advantage of information disclosed on a confidential basis

- Private sector owner generally has discretion to award contract to bidder with lowest price or any other bidder (depending on extent of privilege clause) BUT in no event may contract be awarded to a non-compliant bid.

- Owner may also cancel RFP, even if one or more bids compliant, if privilege clause explicitly foresees this.
Bidders’ obligations and rights in private sector process:

Bidders can reasonably expect that:
• RFP/RFT, etc. terms will be respected.
• They will compete on level playing field.
• Their confidential information will not be disclosed to others.

Bidders are generally obliged to:
• Avoid unlawful or unfair trade practices.
• Maintain the bid open for acceptance for a specified period of time.
• Enter into negotiation or performance of the contract if awarded.

Bidder remedies:
• Remedies are in contract or tort.

Public Sector Process: Obligations and rights of the public (government) entities in public tenders:

• Governments at all levels have various rules contained in legislation and policies.
• Federal government procurement is subject to the Government Contracts Regulations, Treasury Board guidelines, Department of Publics Works and Government Services guidelines, policies and the ‘Supply Manual’
• Provinces have a variety of structures, from detailed laws in Quebec, to the more general approach in Ontario with the Broader Public Sector Accountability Act and Cabinet ‘Directives’.
• Municipalities are subject to statutory rules as well as their own policies.
• Overlaying these are obligations set out in trade agreements.
Public Sector Process: Obligations and rights of the public (government) entities in public tenders:

- At the Federal Government level, there are obligations in the North American Free Trade Agreement the Agreement on Internal Trade and the trade agreements between Canada and Columbia, Chile and Peru
- At the provincial and municipal level, there is the Agreement on Internal Trade
- For the most part, the statutory, policy and trade agreements impose obligations on public sector entities to use a competitive procurement process for all but small value purchases and to treat bidders in a fair and transparent manner. Indeed, the trade agreements to some extent codify the obligations on owners that have developed at common law

Bidders’ obligations and rights in public sector tenders:

Bidders can reasonably expect more or less the same as in the case of private sector tenders, being that:
- RFP/RFT, etc. terms will be respected.
- They will compete on level playing field.
- Their confidential information will not be disclosed to others. But there are Access to Information statutes to be concerned about that do not exist in private sector tenders.

Bidders generally have the same obligations as in private tenders, being to:
- Avoid unlawful or unfair trade practices, such as bid rigging.
- Maintain the bid open for acceptance for a specified period of time.
- Enter into negotiation or performance of the contract if awarded.

Bidder remedies:
- Remedies are broader than in private sector. Include contract or tort, but also recourse under the trade agreements (such as to the Canadian International Trade Tribunal for federal procurements) and judicial review applications.
D. Solicitation drafting issues

Solicitation Drafting Issues:

**Clarity of Solicitation Type**
- Ensure it is clear that what type of solicitation is being conducted an RFT, or RFP, or RFSA.

**Clarity of Terms and Conditions**
- Obligations of owner and bidders should be clearly spelled out, as well as contractual terms if relevant.
- Beware of templates and standard terms and conditions that may not suite the procurement in issue.

**Clarity of Statement of Work**
- Everyone should know what is being bought and sold.
- Be as precise as possible, especially about what is included and what is not.
- Preliminary plans and drawings if applicable
Solicitation Drafting Issues (cont’d):

Clarity of Confidentiality
• Specify whether the bids will be treated as confidential and mention any exceptions (ex. Access to Information Act requests, comparisons for benchmarking).

Clarity of Evaluation and Scoring
• The rules must be clear in terms of mandatory vs. non-mandatory requirements, what requirements may be waived and when.
• Scoring system should be clearly delineated and explained – or not.

Clarity of Privilege Clauses
• If owner wants outs, say so clearly.

E. Who to involve in drafting tender documents
Who to involve in drafting tender documents:

1. Technical team –
   to make sure you understand what you need as a practical matter and to ensure that you identify truly mandatory requirements. Includes any consultants (architects, engineers, etc.).

2. Management team –
   to make sure that contract that you will award fits within your current processes.

3. Legal team –
   to identify and avoid potential problems in the tender process and to review draft documents.

You should also decide early in the process on an evaluation team to avoid situations of conflict of interest and, if necessary, a fairness monitor.

F. Matters of concern from solicitation issuance to contract award
Solicitation to Contract Award Matters of Concern:

1. Bidder’s conference(s)/Site visits
2. Question and answer periods
3. Amending solicitations requirements and terms and conditions
4. Reviewing and evaluating/ comparing bid
5. Awarding contract

Solicitation to Contract Award Matters of Concern:

1. Bidders Conferences/ Site Visits
   • Accurately Minute all Meetings
     • A point form summary is not sufficient
     • The written word will prevail over what is said at the meeting
     • Issue minutes as addendum to Solicitation document (RFP)

2. Question and Answer Periods
   • Accurately Record all Questions and Answers
     • Issue answers to all bidders by addendum to Solicitation document (RFP)
     • Instruct site personnel to refer oral questions to project office
     • Do not engage in informal discussions with bidders
     • Answers to questions can amend the solicitation
Solicitation to Contract Award Matters of Concern:

3. Amendments
   • Usually is a right of the owner up to bid closing
   • Be specific when making amendments
   • Notice must be given to all bidders
   • May require an extension to the closing date

Solicitation to Contract Award Matters of Concern:

4. Reviewing and Evaluating/Comparing bids
   • Ensuring that bids are compliant
     • Technical non-compliance v. non-compliance with mandatory requirement
     • Consequences of allowing bid repair
   • Only Consider Compliant Bids
   • Assess All Bids Objectively
   • Operate within parameters of tender documents
   • Ask About Discrepancies – do not assume that your interpretation will prevail
   • Avoid any “off the record” discussions that could be construed as bid shopping
   • Keep in mind that bidders will be looking for advantages
   • Negotiation of extras and value engineering proposals
Solicitation to Contract Award Matters of Concern:

5. Awarding the Contract

- This is the last chance to avoid mistakes: Reread the tender package before awarding the contract
- Ensure that there are no ambiguous terms, especially in the scope of work
- Use specific terms when completing the contract documents
- Ensure that the successful party knows its obligations

G. What parties to a procurement can do after bid close
What can the parties to a solicitation do after bid close?

1. When can an owner cancel an RFP or RFT?
2. When can a bidder withdraw a tender?
3. Is the owner obliged to negotiate with the next best bidder if it cannot conclude Contract B with its first choice of bidder?
4. Can the owner and selected proponent change the terms of Contract B after contract award?

1. When can an owner cancel an RFP or RFT?

• If a privilege clause in the tender documents explicitly gives the owner the right to cancel the tender, this allows an owner to do so since an implied term cannot directly contradict the stated terms of an RFP.

• If no privilege clause in tender documents, a bidder could claim that there is an implied term that a Contract B would be awarded in the absence of a change of circumstances. (Wind Power Inc. v. Saskatchewan Power Corp. (2002 Sask. Q.B.).

• If the owner cancels a tender then re-issues another one, it should take care that the second tender is not identical to the first.
2. When can a bidder withdraw?

- Depends on whether a Contract A is formed with submission of bids.
- In *M.J.B. Enterprises* and *Martel*, the SCC emphasized that formation of Contract A is not axiomatic, nor is the irrevocability of bids always a term of such a contract.
- However, courts have consistently held that Contract A arises with submission of a compliant bid. In that case, the consideration for the owner’s obligation to treat bidders fairly is the bidders’ agreement to keep offers open for set period of time and to enter Contract B if it is awarded to them. They are therefore bound to do so, or risk liability for the increase in price that the owner may have to pay as a result of the withdrawal.
- Therefore, generally speaking, a bidder cannot withdraw its bid after bid close. Its bid must remain open during the period for acceptance set out in the tender documents or any extended period to which bidder consents.

**• Exceptions:**

- Any solicitation that cannot lead to a contract award. For example, RFEI, SOIQ.
- Any other tender where the owner has specified that no contract arises from the submission of a bid.

3. Is the owner obliged to negotiate with the next best bidder if it cannot conclude Contract B with its first choice of bidder?

- Depends on terms of tender and reasons for owner’s inability to conclude Contract B.
- In some circumstances, contract A may contain an express or implied term that the owner will negotiate with the next most successful bidder if its original contract award could not be fulfilled. (*M.J.B. Enterprises*)
- In other cases, however, the owner’s duty to treat bidders fairly may only be fulfilled by cancelling the RFP/RFT and re-tendering. (*Glenview Corp. v. Canada* (1990) F.C.T.D.).
4. Can the terms of Contract B be changed after the tendering process?

Traditional view in *Best Cleaners* (1985 F.C.A.):

“The [owner’s] obligation under contract A was not to award a contract except in accordance with the terms of the tender call. The stipulation that the lowest or any tender need not be accepted does not alter that. The respondent might award no contract at all or it might award contract B [the main contract] to [the successful bidder], but it was under a contractual obligation to [the unsuccessful bidder] not to award … something other than contract B.

Following this reasoning, an owner could not vary material elements in a contract described in tender documents without giving bidders the chance to re-bid on the modified scope of work.

However, the SCC appears to have moved radically from this position in the *Double N Earthmovers* case:

• Sureway submitted tender knowing that it could not meet terms set out in the bid documents. After Sureway won, it disclosed that it could not supply on required terms.
• City waived requirement for the purposes of Contract B.
• When losing bidder sued, a majority of Court held that the owner’s obligation to treat bidders fairly does not survive the creation of Contract B with the successful bidder. As a result, losing bidders have no right of action against the owner if it varies the terms of Contract B – this is purely a matter between the winning bidder and the owner.
4. Can the terms of Contract B be changed after the tendering process?

Impact of Double N Earthmovers:

- Obligation to award to only a compliant bidder is undermined, because compliance can be waived through negotiation of terms of Contract B.
- Facilitation of bid shopping. In the words of the minority:

A bidder can submit a bid that is either ambiguous or deliberately misleading but compliant on its face in some respects, secure in the knowledge that if it is awarded Contract B it will be in a strong position to renegotiate essential terms of the contract. And an owner can reason that it may be best not to resolve any ambiguity before awarding Contract B, since at that time all Contract A obligations towards other bidders will terminate and it can then enter into renegotiations with the successful bidder without fear of liability. This approach is not consistent with a fair and open process.

Limits of Double N Earthmovers:

Because the SCC decision was such a departure from traditional rules, courts may be willing to distinguish the case if:

- RFP requirement was truly material.
- Evidence that owner knew that bid was non-compliant.
- RFP did not allow owner to negotiate with winning bidder.
- Proceedings prior to award of Contract B.
- Lawsuit based on negligence instead of contract.
4. Can the terms of Contract B be changed after the tendering process?

- As a general rule, an owner may not vary material elements in a contract described in tender documents without giving bidders a chance to re-bid on the modified scope of work.

- In its decision in *Double N Earthmovers* in 2007, the Supreme Court of Canada ruled that the owner and successful bidder could negotiate changes to scope that were not ‘essential’ terms of the tender documents, that is, terms that would not materially affect the price or performance of Contract B.

- Note however that this decision provides little direction on what constitutes a “non-essential” term. Also, owners would be well advised to conclude the contract prior to advising other bidders of the result, since this was another factor important to the SCC’s decision in *Double N*.

5. Legal Consequences of Owner’s Failure to Respect Tendering Rules

A. Claim for breach of contract
B. Negligence claim
Examples of successful claims for breach of solicitation terms

1. Award of contract to late or non-compliant bidder, even if owner has right to waive an irregularity (Tercon Contractors, SCC 2010; MJB, Fullercon Construction (Ont. S.C. 2002); 1243573 Ontario (F.C.T.D. 2004)).

2. Evaluation of bids using undisclosed criteria (Chinook Aggregates, (B.C.C.A. 1989)).

3. Bias in evaluation of bids (Elite Bailiff Services (B.C.C.A. 2003)).

4. Bid shopping (Stanco Projects (B.C.C.A. 2006)).

5. Award of different contract than specified in tender documents (Fullercon).

6. Otherwise not treating all bidders the same even if owner was acting in good faith (West Central Air (Sask C.A. 2004)).

Note however that an unsuccessful bidder cannot recover damages unless it can show that it would not have tendered or would have won the tender in the absence of the breach.
The *Tercon* Decision

- Owner awarded the contract to an entity that was not eligible under the terms of Contract A
- The RFP included a privilege clause that provided that no bidder shall have any right to compensation of any kind as a result of participating in the RFP
- In a 5-4 decision, the SCC upheld Tercon’s claim for damages
- Majority interpreted the privilege clause narrowly and also found that the award to an ineligible bidder breached the implied duty of fairness

Negligence Actions

Scenarios giving rise to a negligence claim against the owner:
- plaintiff is a subcontractor suing owner and therefore has no contractual claim
- a bidder is precluded from suing on Contract A.

Tort action could be based on
- negligence (*Twin City v. Bradsil* (Ont. C.A. 1999)),
- negligent misrepresentation, unlawful interference with economic interests (*Powder Mountain* (B.C.T.D. 1999); *Cavendish Promotions* (P.E.I.T.D. 1998)) or
- deceit.

Unsuccessful bidder may also sue successful bidder.
Negligence Actions

Losing bidders do not generally base claims solely in negligence because:

- Contract A/Contract B paradigm has made this approach unnecessary
- Unsuccessful bidders suing in tort in CL provinces must overcome traditional limit on recovery for pure economic loss
- SCC has recently clarified that an owner does not owe a duty of care to subcontractors

In the wake of *Double N*, however, losing bidders may try to base claims on negligence and courts may be willing to listen.

I. Ethical issues in procurement
Ethical Considerations in Procurement

Criminal Code

_Criminal Code_ prohibits offering (directly or indirectly) any form of “benefit” of any kind to a government official (municipal, provincial or federal) as consideration for any form of cooperation or assistance in connection with any form of business relating to government.

S. 121: Frauds on Government (bribery, etc)
S. 123: Municipal Corruption
S. 426 prohibits “secret commissions”

Guidelines for Interacting with Government Officials

Federal, Provincial and Municipal Conflict of Interest Legislation and Codes:

- **City of Ottawa**: “Employees shall not accept or offer gifts, hospitality or other benefits that could be construed as being given in anticipation of future special considerations, or recognition of past consideration by the City.”
- **Federal Government**: “Vendors will not offer or give public servants gifts, hospitality or other benefits that may have a real or apparent influence on their objectivity in carrying out their official duties or that may place them under obligation to the donor. This includes free or discounted admission to sporting and cultural events arising out of an actual or potential business relationship directly related to the public servants’ official duties.”
Guidelines for Interacting with Government Officials

Conflict of Interest Terms are also included in standard conditions: e.g. federal:

“...

In order to protect the integrity of the procurement process, bidders are advised that Canada may reject a bid in the following circumstances: (a) if the Bidder, any of its subcontractors, any of their respective employees or former employees was involved in any manner in the preparation of the bid solicitation; (b) if the Bidder, any of its subcontractors, any of their respective employees or former employees had access to information related to the bid solicitation that was not available to other bidders and that would, in Canada’s opinion, give the Bidder an unfair advantage.

Guidelines for Interacting with Government Officials

Lobbying

• Federal: Lobbying Act
• Ontario: Lobbying Act
• Kingston:

All Prospective Vendors are prohibited from Lobbying any member of Council, City staff and consultants, appointed members and staff of any City Boards, agency, commission, task force or related organization, including the Kingston Economic Development Corporation, during the period commencing at the City’s issuing the Offer to Procure and ending at the time of the award of the contract.

• Ottawa: None at present
• Toronto: Yes
Guidelines for Interacting with Government Officials

Best Practices: Marketing

• Cup of coffee permissible
• Inexpensive working lunch usually acceptable, but varies – ask official
• No golf, concert or sports tickets
  – Federal government since 2006
  – Ottawa since June 2007: Waste Management and Senators Box

Communicating with Competitors

All Communications With Competitors Must Be Closely Scrutinized.

• There are broad prohibitions against agreements or conspiracies to substantially lessen competition, as well as bid rigging and other collusion amongst competitors and supplier.
• Main laws are the *Competition Act* and common law restraint of trade law
Communicating with Competitors

Conspiracy Provisions: Section 45 Competition Act

The following type of agreements are prohibited:

• to enhance unreasonably the price of a “product” (goods and services), e.g. price fixing,
• to prevent or lessen, unduly, competition in the sale or supply of a product, e.g., dividing up customers or territories, or
• to otherwise restrain or injure competition unduly.

Agreement can be verbal or written, e-mails

Best Practices:

• Do not have discussions or enter into agreements with competitors about pricing, markets, costs of production, etc.
• Keep to public information
• If competitor is also a supplier, restrict pricing discussions to bid in issue
• Be careful at trade associations and avoid pricing and cost discussions, other than public information (e.g. public announcements of contract awards)
Communicating with Competitors

Bid-rigging: Section 47 Competition Act

Definition of “bid-rigging”

47. (1) In this section, “bid-rigging” means
(a) an agreement or arrangement between or among two or more persons whereby one or more of those persons agrees or undertakes not to submit a bid in response to a call or request for bids or tenders, or
(b) the submission, in response to a call or request for bids or tenders, of bids or tenders that are arrived at by agreement or arrangement between or among two or more bidders or tenderers, where the agreement or arrangement is not made known to the person calling for or requesting the bids or tenders at or before the time when any bid or tender is made by any person who is a party to the agreement or arrangement.

Exception:
• This section does not apply in respect of an agreement or arrangement that is entered into or a submission that is arrived at only by companies each of which is, in respect of every one of the others, an affiliate.

Consequences:
• Every one who is a party to bid-rigging is guilty of an indictable offence and liable on conviction to a fine in the discretion of the court or to imprisonment for a term not exceeding five years or to both
Communicating with Competitors

Best Practices to Avoid Bid-rigging:

• Do not enter into discussions or agreements with competitors (i.e., other potential bidders) regarding whether or not to submit a bid
• Do not enter into discussions or agreements with competitors regarding the pricing of bids
• Do not agree with competitors to a joint bid unless the joint bid arrangement will be fully disclosed to the person issuing the tender

Prohibition Against Paying Contingency Fees

• Federal government requires contractors to certify that they have not, directly or indirectly, paid or agreed to pay, directly or indirectly, a contingency fee for the solicitation, negotiation or obtaining of a contract to any person, other than an employee of the contractor acting in the normal course of the employee’s duties. Also now one of deemed terms in the Government Contracts Regulations.

“contingency fee” means any payment or other compensation that depends or is calculated based on a degree of success in soliciting, negotiating or obtaining the contract and “person” includes consultant lobbyists.

Consequences

• Termination for default
Prohibition Against Paying Contingency Fees

Best Practices:

• Ensure that arrangements with suppliers that assist with Government sales are structured to comply with this provision.
• Do not hire consultant lobbyists on a contingency fee basis.

Ethical Scenarios for Discussion

Scenario #1:

- A government entity is expected to issue a tender for a product your company supplies
- An employee of your company has been provided with a copy of the draft solicitation and invited to comment
- Other bidders are not being provided with the same opportunity
- Concerns?
Ethical Scenarios for Discussion

Scenario #2:

- Your company has a contract with a government entity
- A review of employee expense claims indicates that the employee has taken the government client golfing and for dinner
- Concerns?

Ethical Scenarios for Discussion

Scenario #3:

- Your company sales team has approached you seeking approval for a product demonstration expenditure
- Your team wants to pay travel and accommodation expenses for the two government employees to attend a demonstration of a newly developed product
- Concerns?
Ethical Scenarios for Discussion

Scenario #4:

- Your company is pursuing a government business opportunity in Africa
- A local agent has been hired to assist in developing the opportunity
- The local agent is seeking $5,000 reimbursement for unspecified expenditures
Procurement Expertise

Paul Conlin

Partner, Norton Rose OR LLP

Paul Conlin focuses on international trade and investment, business ethics and anti-corruption, and government contracting. He advises clients on all aspects of federal, provincial and municipal government contracting in Canada, including teaming agreements, strategic planning, bid preparation, contract negotiation, regulatory compliance, contract audits, bid challenges and litigation. He has advised government and private sector clients and represented clients in several of the largest dollar-value procurements in Canada over the past decade.

Mr. Conlin is chair of our Canadian business ethics and anti-corruption team. He develops anti-corruption policies and programs, conducts internal investigations and counsels companies on all aspects of business ethics and anti-corruption issues.

Mr. Conlin has broad experience representing clients that produce controlled goods and technology, assisting them with developing compliance programs, responding to customs audits, obtaining security clearances and export permits, and satisfying other regulatory requirements. He also advises on Canadian foreign ownership and control restrictions in regulated sectors such as communications and cultural industries.

Sally Gomery

Partner, Norton Rose OR LLP

Sally Gomery regularly advises companies involved in tendering processes in the private and public sector across Canada. She has expertise on procurement law at the federal, provincial and municipal level. She assists her clients in drafting tender documents and submissions and in ensuring that practices are consistent with tender documents and legal requirements. Ms. Gomery also regularly represents clients involved in contractual disputes, and advises them on managing conflict of interest and lobbying issues.

Ms. Gomery’s recent experience includes: conducting an audit of procurement policies and practices for a private sector client; assisting a major telecommunications company with in developing and implementing new national standards for business sales activities; advising a Crown corporation on NAFTA obligations; and advising both bidders and owners in the private sector on their rights and obligations during RFQ/RFP/RFT processes.

Ms. Gomery also regularly acts for clients in courts in Ontario and Quebec.

Richard Wagner

Partner, Norton Rose OR LLP

Richard Wagner focuses on Canadian federal administrative and regulatory laws that affect business, with particular emphasis on customs, international trade law, competition/antitrust law and government procurement law. His customs and international trade law experience includes advising and representing clients in matters regarding the import and export of goods and services, trade remedies and recourse under trade treaties. His competition law experience includes mergers and acquisitions, reviewable practices such as refusal to deal and abuse of dominant position, as well as conspiracy and restraint of trade issues.

His federal government procurement law experience includes advising clients on structuring government contracts, contract tender issues and procedures and advising and representing clients in negotiations with government departments and agencies, as well as in regard to bid challenges.

Mr. Wagner regularly advises and represents Canadian and foreign clients regarding customs, trade, competition and procurement issues before government departments and agencies, tribunals such as the Canadian International Trade Tribunal, and the courts.
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