

## CANCER CARE ONTARIO (CCO) PROCUREMENT POLICY

### Procedure #2 -VENDOR COMPLAINTS

**Approved By: Chief Financial Officer**

**Approval Date: May 1, 2014**

**Effective Date: May 1, 2014**

This Procedure is intended to supplement and assist in the implementation of CCO's Procurement Policy dated May 1, 2014, as amended from time to time ("*CCO's Procurement Policy*").

Pursuant to Section 9.5 of CCO's *Procurement Policy*, CCO is adopting this Procedure on Vendor Complaints to review, record, report and manage vendor complaints regarding CCO's procurement policies and processes.

For the purposes of this Procedure, a "complaint" means a written objection submitted by a vendor participating in a procurement process in respect of the applicable procurement process, contract award or proposed contract award for goods or services by CCO.

Unless otherwise defined, capitalized terms used in this Procedure have the meaning set out in CCO's *Procurement Policy*.

#### **1. Purpose**

- 1.1. ***Purposes.*** The purposes of this Procedure are
  - 1.1.1. to establish a single, transparent, accessible and consistent procedure for recording, reviewing and responding to vendor complaints arising from CCO procurements;
  - 1.1.2. to provide vendors with a mechanism for the consideration of their complaints, and to obtain a fair resolution to valid grievances, including action by CCO where necessary;
  - 1.1.3. to help identify and correct deficiencies in CCO Procurement procedures; and
  - 1.1.4. fostering CCO's good reputation and good relations with the business community by being accountable for procurement decisions.
- 1.2. ***Non-Adjudicative.*** This Procedure is not adjudicative in nature and does not establish mechanisms to adjudicate substantive disputes. This Procedure provides an opportunity for vendors to voice complaints and may sometimes help to resolve complaints that involve no significant factual or interpretative disagreements between the parties. Fundamental disputes over facts or over legal rights and obligations are beyond the scope of this Procedure.
- 1.2. ***No Compensation.*** No compensation will be awarded to a complainant under this Procedure. CCO will take action to address complaints found to be legitimate and meritorious as outlined in Section 5.7 below.
- 1.3. ***Vendor Rights.*** This Procedure does not limit or impair the rights of any vendor to seek a review through other complaint review processes or remedies of law through judicial or other process.

#### **2. Scope**

- 2.1. ***Applicability.*** This Procedure applies to all CCO procurement processes, contract awards and proposed contract awards for the supply of goods or services to CCO, whether competitive or non-competitive. A complaint may be made with respect to any CCO procurement. Complaints

which relate to a procurement which falls under CCO's *Procurement of Advertising, Public and Media Relations and Creative Communications Services Guideline* must also be reported to the Advertising and Review Board.

- 2.2. **Limits.** This Procedure is limited to issues of procurement policy and procedures, and does not apply to issues related to CCO or vendor performance or conduct during a contract.
- 2.3. **Valid Issues.** Vendor complaints arise for a number of reasons, real or perceived. Valid complaints may be made with respect to issues such as vendor qualification, unfair treatment of vendors or their submissions, undisclosed CCO conflicts of interest, the submission evaluation process, and how the evaluation criteria were applied. Examples of valid issues include:
  - (i) submission specifications in the procurement documents are vague or incomplete;
  - (ii) bid preparation time is too short to properly reply;
  - (iii) specifications perceived as unfair, predetermined or arbitrary; or
  - (iv) inconsistent application of procurement procedures.

Issues regarding the evaluation committee's allocation of points under specific evaluation criteria during the assessment of a submission are not valid consideration under this Procedure.

#### **Valid Complainants.**

- 2.3.2. Complaints relating to a procurement process will only be accepted from an eligible party that is an actual or prospective bidder and whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.
- 2.3.3. Complaints relating to a contract award or proposed contract award will only be accepted from a vendor that submitted a proposal in response to the relevant procurement process.
- 2.4. **Access to Information.** CCO and the complainant are required to provide full access to information and to disclose all information regarding complaints. All information submitted under this Procedure is subject to the *Freedom of Information and Protection of Privacy Act (Ontario)*.

### **3. Informal Complaint Resolution**

- 3.1. **Early Resolution.** Vendors should address complaints with CCO's Procurement Office at the earliest possible opportunity.
- 3.2. **First Recourse – Bid Administrator.** Prior to initiating a complaint, vendors are strongly encouraged to resolve problems by first contacting the Bid Administrator named in the procurement document. There are sometimes minor errors, omissions or other inadvertent actions which can be quickly clarified or corrected to the satisfaction of the vendor, this removing the cause of the complaint at the outset.

### **4. Formal Complaints**

- 4.1. **Submission.** Complainants must submit their complaint in writing to the CCO Procurement Office. Complaints may be submitted by mail, in-person or by email at:

CCO Procurement Office  
620 University Avenue, Suite 1500,  
Toronto, ON M5G 2L7

Attention: Director, Procurement  
E-mail address: [procurement@cancercare.on.ca](mailto:procurement@cancercare.on.ca)

- 4.2. **Timing and Limitations.** Complaints concerning a procurement process or a pending or awarded contract may be submitted at any time during the procurement process and up to 30

business days after CCO has notified vendors of the completion of the applicable procurement process. CCO reserves the right not to consider any complaint submitted after this time.

**4.2.1. Exceptions to Limitations.**

- (i) In the event that a vendor and CCO engage in an attempt to resolve a complaint informally, the 30-day limitation period will be suspended for the duration of that informal process.
- (ii) In the event that a vendor requests and participates in a debriefing session, following that session the vendor will have ten (10) business days to submit a formal complaint, regardless of whether the limitations period in Section 4.2 has expired.

**4.3. Format of Complaint.** Complaints must be made in writing and should include the following information:

- (i) full contact information for the vendor name and address, and the a contact person's name, title, email address, fax and telephone number(s);
- (ii) date and vendor's authorized signature;
- (iii) procurement document or process number being complained of;
- (iv) a detailed description of the complaint, including the background leading to the complaint, actions of involved parties, positions taken, issues raised, etc.;
- (v) copies of all relevant documents;
- (vi) name of the contact person named in the applicable procurement document, details of any communication with that person, and the results of that communication;
- (vii) a description of all actions taken by a vendor;
- (viii) CCO action being requested;
- (ix) affirmation that the vendor is a valid complainant as per Section 2.3; and
- (x) a statement that the complainant is not engaged in any other process with regards to this complaint.

**4.4. Response to Vendor.** CCO will take all steps necessary to evaluate a complaint and will issue a written reply to the complainant within thirty (30) days of receiving a completed *Vendor Complaint Registration Form*.

**5. Complaint Review Process**

**5.1. Investigator.** All complaints will be investigated by the CCO Director of Procurement or his/her delegate, who shall be responsible for assessing the merits of the complaint, gathering and considering the evidence and making recommendations for appropriate actions.

**5.2. Preliminary Assessment.** The Investigator will consider the merits of the complaint and may, at his/her sole discretion, dismiss a complaint on the grounds that:

- (i) the vendor does not have sufficient interest in the subject matter of the complaint;
- (ii) the complaint is, on its face, frivolous or invalid;
- (iii) the complainant's intent is to delay the procurement process or the award of a contract due to matters unrelated to the procurement process being complained of;
- (iv) the vendor was not a participant in the applicable procurement process;
- (v) the complaint is unsubstantiated;
- (vi) the complaint was made more than 30 business days after the vendor received notification from CCO of the completion of the applicable procurement process; OR
- (vii) the complainant has initiated actions leading to another review process, tribunal or has commenced legal action.

- 5.3. **Evidence.** In responding to a complaint, the Investigator will gather and consider the procurement documents, correspondence between the complainant and CCO, the report of the Fairness Monitor (if any), and other information related to the complaint at his/her discretion.
- 5.4. **Meeting.** The Investigator may request a meeting with the complainant, the Bid Administrator, the Fairness Advisor (if any) and/or other CCO representatives as necessary.
- 5.5. **Co-operation.** Both the Complainant and all CCO employees are expected to co-operate with the Investigator and to comply with all reasonable requests pursuant to review of the complaint in a timely fashion. Complainant's failure to co-operate may result in dismissal of the complaint.
- 5.6. **Assessment** Based on the evidence gathered pursuant to Article 5.3, the Investigator will determine whether or not CCO policy or procedure have been breached during the procurement process, or if the policy or procedure that is the subject of the complaint is deficient. The Investigator may consider the circumstances relevant to the complaint including, but not limited to,
- (i) the seriousness of any breach or deficiency found and its impact on the procurement;
  - (ii) whether the complainant was treated unfairly; and
  - (iii) whether the parties acted in good faith.
- 5.7. **Actions.** If it is determined that the complaint has merit, possible CCO actions may include:
- (i) Acknowledgement of the validity of the complaint and a renewed commitment to procedure and policy,
  - (ii) Additional training and education for staff regarding procurement competency,
  - (iii) Recommendation for review of signing authority and changes as appropriate,
  - (iv) Recommendation for change in CCO procurement procedure,
  - (v) Enhanced communication or interpretation of policy up to and including policy changes,
  - (vi) Recommendation for cancellation or amendment of the procurement process or contract where a serious flaw has been identified.

## **6. Reporting, Response and Record-Keeping**

- 6.1. **Investigation Report.** The Investigator will produce a report to be issued to the Chief Financial Officer. The report will also be provided to the Advertising and Review Board when a complaint is made with respect to a CCO procurement which falls under CCO's *Procurement of Advertising, Public and Media Relations and Creative Communications Services Guideline*. The report will contain:
- (i) finding regarding the merit of the complaint;
  - (ii) reasons for the finding, including references to the documentary evidence gathered during the investigation, if and when appropriate; and
  - (iii) recommendations for CCO action.
- 6.1.2. **Legal consultations.** In the event that the Investigation Report contains findings that CCO acted unfairly, illegally, or in contravention of a policy or Trade Agreement, the Investigator shall notify and consult with CCO's Legal Department prior to preparing a response to the complainant.

- 6.2. **Response to complaint.** The Chief Financial Officer will review the Investigation Report, consider any recommendations, render a decision and issue a response to the complainant in writing within 30 business days following receipt of a complaint by CCO.
- 6.2.1. **Extension.** When unable respond to the complainant within 30 business days, CCO will notify the complainant of the delay and will advise of when a response may be expected.
- 6.3. **Escalation.** In the event that the complainant is not satisfied with CCO's response to the complaint, the complainant shall refer to the alternative dispute resolution provisions set out in the applicable procurement document, if any.
- 6.4. **Records.** CCO shall ensure that complete documentation and records on each formal complaint received, including a record of all communications with the vendor, are maintained in a Complaint Log in order to allow later verification by third parties. Records shall contain a copy of each of the following:
- (i) the complaint, including the vendor's name, address and the nature of the complaint;
  - (ii) the procurement documents, including the specifications or portions thereof relevant to the complaint;
  - (iii) any other documents relevant to the procurement complained of and the complaint including vendor submissions received, if any;
  - (iv) any additional evidence or information that was used to review the complaint;
  - (v) a copy of the investigation report; and
  - (vi) a copy of CCO's response to the complainant.
- 6.5. **Annual Report.** A report will be prepared annually listing all formal vendor complaints and the outcome of those reviews. This report will be provided to the CCO Audit and Finance Committee for information purposes.