

## Position Paper

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# Industry Support for Transparency in Procurement

## Addressing the Publication of Contract Values in Canada

### Introduction

Medtech Canada is committed to ensuring fairness, transparency and supporting ethical behaviour in interactions between the medical technology industry, procurement organizations and health care providers. As such, Medtech Canada is committed to working collaboratively with governments to ensure confidence in the integrity of the healthcare system and in supporting an open, collaborative and innovative medical technology sector that is focused on the best interests of patients and taxpayers.

Medtech Canada continues to support transparency and accountability in the competitive procurement and decision-making processes. The purpose of this position paper is to discuss best practices for the publication of contract values in Canada – to ensure a balanced approach that is open about the process and total value of the winning bid and at the same time protects sensitive pricing information which is necessary to ensure fairness in competition among suppliers.

### Background

There is a growing trend in Canada to share the results of procurements including the value of the winning bid. In the province of Quebec this may be related to a legislative requirement, Bill 17<sup>1</sup>, that requires public bodies to publish the name of the bidders and the total price of the bids.



The Canadian Free Trade Agreement (CFTA) article 517 deals with the Disclosure of Information.<sup>2</sup> The CFTA article states that procuring entities shall not provide to any particular supplier any information that might prejudice fair competition between suppliers. Medtech Canada agrees with the importance of transparency and the disclosure of information relating to public markets to promote healthy competition within the market, however the confidentiality of pricing information on winning bids becomes a major concern if the results of competitive bids are published with specific product pricing rather than only stating the total value of the winning bid.

Medical devices pricing is not regulated in Canada. Prices are usually established via competitive bidding processes throughout the country, based on multi-year contracts covering the specific needs of a single hospital, a region or a whole province across a specific product category or a wide range of categories.

Pricing information that is provided by suppliers in response to a competitive bid process generally has a claim of confidentiality regarding the data provided. If the hospital procurement department or collaborative procurement organization e.g., a Provincial Authority, Shared Service Organization [SSO] or Group Purchasing Organization [GPO] shares pricing or any other proprietary information, it could be considered a breach of confidentiality unless mandated under any Provincial laws or Freedom of Information Act.

There is an opportunity to reinforce transparency in public expenditures by sharing the total value of the procurement, while at the same time maintaining that pricing should be kept confidential.

1. An Act respecting contracting by public bodies O.C.531-2008, 28 May 2008  
2. CANADIAN FREE TRADE AGREEMENT (CFTA), 2014, <https://www.cfta-alec.ca/canadian-free-trade-agreement/> Accessed Aug 22, 2018

### The Issue

When complying with provincial transparency requirements, procurement organizations may intentionally, or unintentionally, release detailed pricing information including volume-based rebates, value added incentives, instrument and inventory levels, service, and delivery, rather than the value of the total bid. For example, in the case of a single product procurement, the value of the deal is the same as single item pricing. The publication of a total value award in these instances may enable competing vendors to reverse engineer the award value back to the individual unit of measure. Additionally, requests for confidential pricing information have been issued under Freedom of Information and Protection of Privacy Act legislation. Releasing this information could lead to an environment with less than favourable competitive business practices, decreased competition and could cause damage to the bidding process by potentially inhibiting innovation.

Published pricing information, if not managed carefully, can lead to:

- 1) Unfair bid processes in future procurements
  - There have been several RFPs that state that submitted pricing is required to be within 10 or 15% of the lowest clinically acceptable bid.
  - This approach transmits pricing information and often leads to the question of how clinically acceptable performance is measured, weighed, and evaluated against other competitors.
- 2) Sharing of confidential proprietary information about the successful supplier
- 3) Less competition in the marketplace, which eventually leads to higher prices
- 4) Limited patient access to innovative healthcare solutions

Stakeholders can work together to agree on best practices that achieve the transparency goal of publishing contract award total values without compromising the adoption of medical technology and innovation by indirectly or directly releasing specific pricing information.

### Medtech Canada Position

It is important to ensure that procurement processes are transparent and fair, enabling the health system to use value-based approaches while ensuring that the integrity of process is maintained.

Medtech Canada recommends the following practices for releasing healthcare contract values in Canada:

- 1) Only the awarded proponent(s) and total value of the bid should be shared.
- 2) Exception to the above-mentioned approach is when the award is for a single product, then total value of the procurement should not be published so that pricing cannot be reverse engineered.
- 3) A single line product bid process should only be used in special circumstances and not as a general practice.

To increase public trust and to ensure procurement processes provide true value for Canadians – governments should also consider the following procurement transparency initiative as it relates to value-added initiatives:

- 4) Ensure that transactions of all collaborative procurement organizations e.g. Shared Services Organizations (SSOs), Group Purchasing Organizations (GPOs) and Healthcare groups or individual sites are transparent and accessible to the public and accountable to provincial auditors
  - This would include details and distribution of volume rebates, value added funding, etc. which may support the operations of the collaborative organizations but can increase transaction pricing. i.e. if a 10% rebate has to be provided to support procurement infrastructure, the unit acquisition price is higher and costs more for the system and taxpayer.
- 5) Further, rebates and other funds that are solicited within an RFX, offered by industry, evaluated as part of a procurement process and subsequently contracted between the industry and the healthcare providers should be transparent and should ideally contribute to the clinical area for which a contract is being negotiated.

### ABOUT MEDTECH CANADA

Medtech Canada is the national association representing the medical technology industry in Canada. Our association advocates for achieving patient access to leading edge, innovative technology solutions that provide valuable outcomes. Our members are committed to providing safe and innovative medical technologies that enhance the quality of patient care, improve patient access to health care, and help enable the sustainability of our health care system. The medical technology industry in Canada employs over 35,000 Canadians in approximately 1,500 facilities across the country.