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**MEDEC**CANADA'S MEDICAL TECHNOLOGY COMPANIES
LES SOCIÉTÉS CANADIENNES DE TECHNOLOGIES MÉDICALES

Support for Increased Transparency in Healthcare Procurement

Guidelines for the Publication of Contract Values in Canada

INTRODUCTION

MEDEC is committed to ensuring fairness, transparency and supporting ethical behaviour in interactions between the medical technology industry and health care providers. As such, MEDEC is committed to working collaboratively with provincial and federal governments to ensure confidence in the integrity of the healthcare system and in supporting an open, collaborative and innovative medical technology sector that is focussed on the best interest of patients.

MEDEC has consistently advocated for transparency in procurement initiatives such as:

- Making the finances of Shared Services Organizations (SSOs) and Groups Purchasing Organizations (GPOs) and transparent and accessible to the public
- Ensure that the finances of SSOs and GPOs are accountable to provincial auditors
- Adding SSOs and GPOs to public salary disclosure lists such as the Sunshine list in Ontario

MEDEC also continues to support transparency in the competitive bid and decision-making processes. As such, the purpose of this position paper is to recommend guidelines and 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 that is necessary for a company to operate fairly and effectively.

BACKGROUND

There is a growing trend in Canada to share results of procurements, including the value of the winning bid. In the province of Quebec this may be related to a legislative requirement, Bill 17¹, 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.² The CFTA article states that procuring entities shall not provide to any particular supplier any information that might prejudice fair competition between suppliers. MEDEC 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 organization, a Shared Service Organization [SSO] or Group Purchasing Organization [GPO] shares pricing or any other

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

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.

THE ISSUE

When complying with provincial transparency requirements, procurement organizations (GPOs/SSOs) may intentionally or unintentionally end up releasing detailed pricing information (including: volume-based rebates, value-adds, instrument and inventory levels, service and delivery), rather than value of the total bid. For example, in the case of a single product procurement, the value of the deal is the same as line 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. As well, there have been requests for confidential pricing information made 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 such as decreased competition and could cause damage to the bidding process by potentially inhibiting innovation.

There may also be a limited understanding of inequalities between large multi-national and small/medium enterprises and their related resources. Releasing the pricing information in such a scenario can also adversely affect the successful bidder's position in subsequent competitive bids and small and medium sized companies would be particularly vulnerable to predatory pricing. Disclosure of this information also harms smaller and/or remote hospitals as they are more difficult to support with equipment and manpower.

Exposed pricing information can lead to:

- 1) Subsequent unfair bid processes
 - 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

Affected stakeholders must work together to agree on guidelines and 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.

MEDEC 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. MEDEC recommends the following guidelines for releasing healthcare contract values in Canada:

- Only the company winning the bid and total value of the bid should be shared.
- The sole exception to the above-mentioned approach is when the bid is for a single product, then total value of the procurement should not be published so that pricing cannot be reverse engineered.
- A single line product bid process should only be used in special circumstances and not as a general practice.

In an effort to increase public trust and to ensure procurement processes provide true value for Canadians – governments should also implement the following healthcare procurement transparency initiatives:

- Make the finances of Shared Services Organizations (SSOs) and Groups Purchasing Organizations (GPOs) and transparent and accessible to the public
- Ensure that the finances of SSOs and GPOs are accountable to provincial auditors
- Add SSOs and GPOs to public salary disclosure lists e.g. the Sunshine list in Ontario