

## SERVICE

# Procurement

Our multi-disciplinary team has unparalleled experience in procurement law matters in Canada including public procurement.



## Related Expertise

- [Commercial Technology Transactions](#)
- [Financial Services](#)

Osler's Procurement Group has unparalleled breadth and depth in procurement law matters in Canada including public procurement.

Our multi-disciplinary team has experience advising public and private sector clients across a wide range of industries on the unique legal aspects of procurement, tendering, and requests for proposals (RFPs).

We have extensive experience in traditional "bricks and mortar" procurement as well as procurement of information technology outsourcing and other complex services. Our team members also have expertise with respect to dispute resolution and litigation arising out of competitive procurements. We have represented clients in both prosecuting and defending proceedings before all levels of courts and the Canadian International Trade Tribunal (CITT), cases involving allegations of bid non-compliance, challenges to procurement decisions, and breach of the duty of fairness. This experience has included litigating significant tendering disputes for issuers of RFPs. Of note, members of our team were involved in a successful, precedent-setting tendering case which involved an appeal to the Ontario Court of Appeal and a leave application to the Supreme Court of Canada.

We have advised and represented clients in a wide variety of procurement-related matters including:

- Drafting tender documents, RFPs, RFQs, and RFEIs;
- Drafting procurement policies;
- Administering the procurement process for clients and assisting with issues that arise through public and private procurement process;
- Bid compliance review and the evaluation of the "substantial compliance" of bids;
- Interacting with fairness monitors during the procurement process and ensuring compliance with the duty of fairness;
- Assisting with tender evaluation and awards including establishing appropriate evaluation criteria and bid selection procedures and properly documenting tender award decisions;
- Conducting debriefing sessions and managing disputes;
- Litigating tendering disputes before all levels of courts including the Canadian International Trade Tribunal (CITT);

- Litigation claims for damages and injunctive relief;
- The reconsideration of tendering awards;
- Acting for proponents in procurements including structuring joint ventures;
- Working with Infrastructure Ontario in procurement situations including representing clients in disputes with Infrastructure Ontario.

## Industry Expertise

- **Public Sector** We are thoroughly familiar with the requirements of Ontario's Broader Public Sector Procurement Directive (BPS Procurement Directive), and have advised clients with respect to updating procurement policies, tender documents, and contract documents to comply with the BPS Procurement Directive. We also provide advice on complying with the federal government's "Standard Acquisition Clauses and Conditions" manual in procurement documents, government policies on IP ownership and related license rights in the procurement context and electronic tendering including MERX, Biddingo and reverse-auction tendering.
- **Healthcare** We have advised and represented hospital and healthcare organizations in a wide variety of procurement matters including: drafting procurement policies for hospitals and other institutions; ensuring compliance with Ontario's BPS Procurement Directive; bid compliance review; the evaluation of the "Substantial Compliance" of bids; establishing appropriate evaluation criteria and bid selection procedures; properly documenting tender award decisions; advising owners on compliance with the Duty of Fairness; advising on procuring equipment and ongoing services in the context of a construction project; and working with Fairness Commissioners to ensure compliance.
- **Technology / Outsourcing** Osler has advised both issuers and bidders on countless technology-related requests for proposals. We have advised major technology and service vendors on an ongoing basis in best approaches to technology RFPs including those issued by governments and the health care sector. We have assisted numerous supplier clients on government procurement projects, including complex licensing and systems integration mandates. Our lawyers have particular expertise in technology outsourcing and have worked with many large, complex organizations on IT outsourcing projects including assisting large public sector and private sector customers with their technology procurement and outsourcings. These include the design, development and implementation of the RFP and related agreements and requirements documentation, evaluation of resources and competitive negotiations with bidders.
- **Construction/Infrastructure** Osler has one of the leading construction/infrastructure teams in Canada. Our lawyers advise governmental and public sector authorities and private sector owners and proponents on matters such as the planning, engineering, construction, financing, operation and maintenance of major public infrastructure projects. Lawyers on our team specialize in the negotiation and drafting of complex contracts to be included with tender or RFP documents, or to be negotiated independently. We are experienced in bringing the draft contract documents to the finish line in the form of a signed contract with the successful proponent. We also have extensive experience

advising on tender administration, dispute resolution and litigation in the construction context.

- **Energy/Electricity** Our team has unsurpassed knowledge of procurement law and processes for major energy and infrastructure projects. As a result of our experience with procurements for both public and private sector participants, we are aware of what structures and strategies are effective and ineffective in a public procurement process. Our lawyers have advised clients that have participated in energy procurement processes across Canada (including in B.C., Saskatchewan, Manitoba, Quebec, New Brunswick, and Nova Scotia), in the United States and internationally.
  - **Financial Services** The breadth and depth of our experience means that we have negotiated dozens of complex deals with virtually all of the key onshore and offshore vendors providing services to the Canadian financial services sector, enabling us to quickly resolve issues and expedite the completion of the procurement process from the initial RFP through to the executed agreement. Osler has successfully led negotiations of multiple Enterprise Master Service Agreements (EMSAs) and led negotiations of several specific service arrangements that will be governed by these EMSAs. Our role has included taking the lead on drafting and negotiating the terms of EMSAs and understanding where financial institutions are likely to succeed while emerged in the negotiation process. Other Osler lawyers have also contributed with regulatory, tax and litigation advice within the same area of practice.
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## Key Contacts



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