

THE OSGOODE CERTIFICATE IN PUBLIC PROCUREMENT LAW & PRACTICE

April 9-13, 2018
5 Days
In Person

Now in its eighth year, our expert faculty will bring clarity to this demanding area by discussing topics such as:

- The new trade agreements with the European Union and among the provinces themselves
- The critical legal trends in public procurement
- Remedies and dispute resolution

PLUS! Receive a copy of Paul Emanuelli's brand new 4th Edition of *Government Procurement*.

Register today at:
osgoodepd.ca/procurement

Program Director

Paul Emanuelli
General Counsel and
Managing Director,
Procurement Law Office

Location

Osgoode Professional
Development
1 Dundas St. West, 26th Floor,
Toronto, ON



Drawing on the expertise and experience of leading lawyers and experts, including:

Program Director



Paul Emanuelli

General Counsel and Managing Director,
Procurement Law Office

Paul Emanuelli is recognized by *Who's Who Legal* as one of Canada's leading procurement lawyers. He is the General Counsel and Managing Director of the Procurement Law Office, which was recently ranked by *Global Law Experts* as Canada's top public procurement law firm. Paul has an extensive track record of public speaking, publishing and training. His portfolio focuses on major procurement projects, information technology transactions, outsourcing, corporate governance and supply chain management. He has in-depth experience advising institutions on the strategic legal aspects of their purchasing operations, developing procurement formats and negotiating commercial transactions. He is the author of *Government Procurement, The Laws of Precision Drafting: A Handbook for Tenders and RFPs and Accelerating the Tendering Cycle*.

Program Faculty

Heather Baker

Senior Procurement Advisor,
Procurement Office

Hartley Borst

Corporate Counsel, Connexall

Marilyn Brown

Senior Legal Counsel, Procurement
Law Office

Paul Emanuelli

General Counsel and Managing
Director, Procurement Law Office

Claire Hicks

Legal Counsel, City of Brampton

Cameron A. McCaw

McCaw Financial Consulting Inc.

Shahid Minto

Advisor, Public Sector Oversight

Sarah Neville

Legal Director, Ontario Financing
Authority



The Osgoode Certificate in Public Procurement Law & Practice

In five consecutive, intensive one-day modules, *OsgoodePD's* expert faculty will deliver the key concepts of Public Procurement Law and Practice. There will be an emphasis on the practical, and classes will be taught using a blended-delivery method that includes lectures, class discussions, case studies and small group work.

This program is only offered once every year in Toronto. Register today!

The challenges posed by greater supplier competition, the ever-increasing need for transparency and the demand for faster turnaround times, all underpinned by robust legal oversight have made public procurement a complex, high-stakes field. Given the challenges, it is not surprising that high-profile examples of procurements that have gone awry continue to make headlines, as the focus on accountable, prudent public sector spending becomes more acute. Led by Paul Emanuelli, an outstanding faculty of legal and procurement professionals will give you the knowledge and practical skills you need to competently and confidently handle today's most pressing procurement challenges.

What You Will Learn

- Compliance strategies for the new trade treaties
- Critical legal trends in public procurement
- The governing principles and common themes for proactive procurement
- Key practical strategies to build winning conditions in your purchasing operations
- Empowering the project management team: dos and don'ts
- Best practices for managing risk, enhancing flexibility and accelerating timeframes in the procurement process
- Precision drafting: what you should be doing (and what you should not be doing)
- Avoiding drafting pitfalls, and creating documents that withstand the turbulence of the tendering process
- Critical benchmarks that should be assessed when reviewing procurement documentation
- Remedies and dispute resolution
- Avoiding public purchasing paralysis: tips for surviving the red-tape revolution

Who Should Attend?

- Procurement specialists and professionals
- VPs and managers of finance from municipalities, hospitals, school boards and academic institutions
- Procurement managers, purchasing managers
- Contract/Project managers
- Government procurement officers and procurement managers
- Municipal lawyers
- Government counsel
- Lawyers advising purchasers
- Lawyers advising vendors to public institutions
- In-house counsel for vendors
- Procurement policy advisors



Agenda

Day 1 - April 9, 2018
9:00 a.m. – 5:00 p.m.

Treaty Compliance

Open and Fair Competition

Drawing on the general protocols contained in the new trade treaties, this module covers:

- Open, fair and transparent competition duties
- Contract value thresholds
- Tender call posting, disclosure and amendment rules
- Tender evaluation, award and debriefing duties
- Bidder prequalification and debarment protocols
- Buying groups, negotiated RFPs and electronic auctions

Anti-Avoidance Rules and Exemptions

Distilling the main anti-avoidance protocols contained in the new trade treaties, this module covers:

- Trade treaty rules relating to valuation and contract splitting
- Local preference and Canadian content
- Prohibited practices including unnecessarily restrictive criteria
- Standard exemptions including confidentiality, security and urgency

Debriefing Duties and Confidentiality

Protecting confidential bidder information while complying with the enhanced trade treaty debriefing duties.

Bid Disputes and the CITT

This module will cover the formal bid dispute enforcement rules contained in the new trade treaties:

- Bid protest due process rules including document disclosure and discovery rules, the right to representation, and live public hearings
- The scope of the Canadian International Trade Tribunal's jurisdiction and its procedural and financial remedies

DAY 2 - April 10, 2018
9:00 a.m. – 5:00 p.m.

Legal Foundations

Administrative Law and Judicial Review

Covering the rise of judicial review, this module explains how administrative law fair process duties are applied to government procurement and surveys the range of potential judicial review remedies including injunctions, re-evaluation rulings and contract termination orders.

Commercial Law and Contract A

Summarizing the Contract A tendering law analysis and remedies, this module covers:

- The creation of Contract A and the duty of fairness

- The key indicators of Contract A
- The Contract A remedies of bidder lost profits and forfeited bid security

Negligence in the Tendering Cycle

Highlighting the key factors that trigger project delays and extra cost claims, this module explains how the tort-based laws of negligent omission and misrepresentation apply to the bidding process.

Critical Legal Trends

Critical legal trends impacting public procurement across Canada.

DAY 3 - April 11, 2018
9:00 a.m. – 5:00 p.m.

Fair Competition

Disclosing Evaluation Criteria

Covering the key transparency duties that require public institutions to disclose their evaluation criteria and process rules, this module focuses on the importance of establishing and following clear and defensible evaluation and award procedures.

Tender Compliance

Summarizing the duty to reject non-compliant tenders, this module covers leading cases dealing with:

- Strict vs. substantial compliance
- Formal, contractual, procedural and technical compliance
- Rectifications, clarifications and bid repair

Agenda

- Distinguishing tender compliance criteria from contract performance requirements

Incumbent Advantage and Biased Specifications

Covering the main unfair advantage pitfalls that impact the government tendering process, this module explains the case law rules surrounding incumbent advantage, transition costs and biased specifications.

The Duty to Award

The recurring risk areas relating to:

- Reserved rights and privileges, low-bid bypass and unfair process claims
- Over-budget bids, cancellations, re-tendering, and bid shopping claims

DAY 4 - April 12, 2018
9:00 a.m. to 5:00 p.m.

Practical Considerations – Part I

Institutional Governance

Surveying institutional winning conditions, this module explains how organizations can achieve compliance with current legal requirements through the implementation of institutional policies and procedures and the adoption of advanced document drafting and bid evaluation protocols, systems and tools.

Project Governance

Covering the main due diligence duties that apply to project teams, this module addresses the importance of defining project roles and responsibilities and creating clear project plans while avoiding conflict of interest, unfair advantage and bias.

Surveying the Procurement Playbook

This interactive workshop will review the following internationally-recognized purchasing formats and assess them within the unique context of Canada's tendering law:

- Legally binding Invitations to Tender
- Binding and negotiated RFPs
- Prequalification processes
- Request for Quotation formats
- Market research methods - RFIs & IEs

DAY 5 - April 13, 2018
9:00 a.m. to 5:00 p.m.

Practical Considerations – Part II

Critical Project Details

Focusing on the core content categories contained in a properly structured bid solicitation document, this module offers:

- Insights on how to create and structure critical transactional details including:
 - The description of deliverables
 - Mandatory and rated evaluation criteria
 - Tendering process rules
 - Legal terms and conditions

Drafting Workshop

This interactive segment will help you fine tune your document drafting skills by focusing on:

- Creating clear scoping statements while avoiding recurring drafting pitfalls
- Filtering through your evaluation criteria, process rules and performance requirements

Aligning Legal and Procurement Reviews

The critical benchmarks that should be assessed when conducting a review of a procurement document.

Register today at:
osgoodepd.ca/procurement

“A very important program for people in procurement - the world across.”

Paul Sharp
Botswana Defence Force

“Paul's passion for the topic was very evident in his delivery. He is a very engaging speaker.”

Bernie Bolton
Alberta Gaming & Liquor Commission

Our past participants say it best...

“Paul is the procurement law Rock Star. He does not only have theoretical but practical knowledge and insight into the current challenges of public procurement.”

“Intense and loaded with examples of all things procurement; delivered in perfect mode by Mr. Emanuelli and partners.”

Registration Details

Fee per Delegate

\$4,295 plus HST

Fees include attendance, program materials, continental breakfast, lunch and break refreshments. Group discounts are available. Visit www.osgoodepd.ca/groupdiscounts for details. Please inquire about financial assistance.

Program Changes

We will make every effort to present the program as advertised, but it may be necessary to change the date, location, speakers or content with little or no notice. In the event of program cancellation, York University's and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.

Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute, a full refund is available if a cancellation request is received in writing 21 days prior to the program date. If a cancellation request is made with less than 21 days notice, a \$150 administration fee will apply. No other refund is available.

For Further Program-Related Information please contact:

David Mahony, Program Lawyer at 416-673-4672 or email dmahony@osgoode.yorku.ca

Certificate of Program Completion

You will receive a certificate upon completion of Certificate in Public Procurement Law and Practice. Participants must attend all program modules and pass the post-program multiple choice assessment to receive a certificate.

4 Convenient Ways to Register



Register today at:

osgoodepd.ca/procurement



OsgoodePD has been approved as an Accredited Provider of Professionalism Content by the LSUC.



Eligible CPD Hours - LSUC (ON): 33h 15m (28h Substantive, 5h 15m Professionalism); NY CLE Board: 35.0 skills credit hours for Transitional and Non-transitional lawyers.

OsgoodePD programs may be eligible for CPD/MCLE credits in other Canadian jurisdictions. To inquire about credit eligibility, please contact cpd@osgoode.yorku.ca



SCMA ACCREDITED

Students who earn a grade of B or higher in the Osgoode Certificate will be exempt from taking the Competitive Bidding and Contract Management workshop towards the Supply Chain Management Professional (SCMP) Designation Program. For more information about the SCMP designation, please visit www.scma.com/on/



Osgoode Professional Development
1 Dundas Street West, Suite 2600
Toronto, ON Canada M5G 1Z3



osgoodepd.ca/procurement



osgoodepd@osgoode.yorku.ca



416-597-9724



@OsgoodePD