

Purpose

The purpose of this procurement policy is to ensure all publicly funded goods and services are acquired through a process that is open, fair and transparent.

The policy is based on the following key principles:

- **Accountability** – The Agency must be accountable for the results of its procurement decisions and the appropriateness of the processes.
- **Transparency** – The Agency must be transparent to all stakeholders. Wherever possible, stakeholders must have equal access to information on procurement opportunities, processes and results.
- **Value for Money** – The Agency must maximize the value it receives from the use of public funds. A value-for-money approach aims to deliver goods and services at the optimum total lifecycle cost.
- **Quality Service Delivery** – Front-line services provided by the Agency must receive the right product, at the right time, in the right place.
- **Process Standardization** – Standardized processes remove inefficiencies and create a level playing field.

Code of Ethics

The Ontario Broader Public Sector (BPS) Supply Chain Code of Ethics (Refer to Appendix “A”) has been adopted by the Agency. The Agency will ensure that the Code is available and visible to all members of the organization and to suppliers and stakeholders involved with the Supply Chain process.

Definitions

Refer to Appendix “B” for definitions.

Application of this Policy

This policy applies to Board members, senior executives and employees of the agency.

This policy applies to all goods, construction, and services, including but not limited to Information Technology (IT) and consulting services acquired by the Agency.

Exceptions & Exemptions to this Policy

Licensed Professional, Specific Services for Agency Clients and utilities are exempt from this policy (Refer to Appendix “C” for more details).

Where the Agency has relied on an exception or exemption to this policy, the rationale for the exception or exemption must be formally documented.

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The agency must demonstrate:

- The rationale for selection of the particular supplier over available suppliers.
- How fees charged are commensurate with services being procured

Exemptions and exceptions relate to the procurement of the goods/or services only. All other requirements of the policy apply, including documentation, contract management, supplier management, etc.

Segregation of Duties

The Agency must segregate at least three of the five functional procurement roles: Budgeting, Commitment, Requisitioning, Receipt, and Payment. The roles must lie with different departments or, at minimum with different individuals.

Approval Authority Schedule (AAS)

Prior to commencement, any procurement must be approved by the appropriate approval authority.

The total value of procurement includes cost of freight, installation but not taxes. For multi-year procurements; the total projected value for the entire period of the anticipated agreement including optional renewals must be used; multiple purchases may not be used to circumvent competitive procurements.

Procurement of Goods & Non-Consulting Services

The Agency has established an approval authority schedule (AAS) for procurement of goods and non-consulting services. This schedule reflects the different dollar thresholds and the related procedure and approval authority.

For deviations from the AAS procedures for procurement of goods and non-consulting services, the level of approval authority must shift one level higher than the level as stated in the AAS.

Consulting Services

Procurement of consulting services must be approved by a Director or the Executive Director. Deviations from the AAS for procurement of consulting services must be approved as follows:

- Non-competitive procurement of consulting services up to \$50,000 must be approved by Chief Executive Officer.
- Non-competitive procurement of consulting services of \$50,000 or more requires Board of Directors approval

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Information Gathering

Where results of informal supplier or product research are insufficient, formal processes such as a Request for Information (RFI) or Request for Expression of Interest (RFEI) may be used if warranted, taking into consideration the time and effort required to conduct them.

A response to RFI or RFEI must not be used to pre-qualify a potential supplier and must not influence the chances of the participating suppliers from becoming the successful proponent in any subsequent opportunity.

Supplier Pre-qualification

Suppliers may be prequalified to:

- Gather information about supplier capabilities and qualifications for an immediate purchase
- Gather information about supplier capabilities in advance of expected future competitive procurements

In development of "Request for Supplier Qualification" the Agency must include language to ensure there is no obligation to purchase goods or services as the result of prequalification.

Competitive Bid

Competitive bid documents must be made available through an electronic tendering system that is readily accessible by all Canadian suppliers, such as MERX or Ontario Public Buyers Association.

Response times for vendors to bid must be a minimum 15 days for procurements valued at \$100,000 or more. For procurements with a higher degree of complexity, risk or value, a minimum response time of 30 days is required. For procurements valued at \$309,100 or higher, the minimum response time shall comply with the requirements of CETA (Canada European Trade Agreement).

Competitive procurement documents must clearly identify a bid submission date and time which falls on a regular working day (Monday to Friday, excluding holidays). Submissions received after the closing time must be returned unopened.

Competitive procurement documents must include bid dispute resolution procedures to ensure that any bid disputes are handled in fair, ethical, reasonable and timely fashion. The Agency must ensure that such resolution procedures comply with similar procedures set out in the Agreements on Internal Trade.

Evaluation of Bids

Evaluation criteria must be developed, reviewed and approved at the Director level.

Competitive Procurement Documents

Competitive procurement documents must:

- Disclose evaluation criteria:
 - Must be disclosed in the procurement documents
 - Must include mandatory, rated and other criteria that will be used in evaluation of submissions, including the weight of each criterion.
 - Maximum justifiable weight must be allocated to the cost/price component of the evaluation
 - Criteria may not be structured to discriminate or provide preferential treatment to any supplier.
 - Mandatory criteria must be kept to a minimum to ensure that no bid is unnecessarily disqualified.
- Clearly state that bids not meeting mandatory requirements will be disqualified

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- Disclose the methodology that will be used to evaluate bids, including the method of resolving a tie score
- Clearly state that alternative strategies or solutions will not be considered unless specifically requested in the procurement documents
- Include any options to extend the agreement

Competitive procurement documents may request suppliers to provide alternative strategies or solutions as part of their submission. If such a request is included, the procurement documents must disclose the criterion that will be used to evaluate alternative strategies and solutions.

Evaluation Process

The Agency shall create evaluation teams for the purposes of evaluating competitive bids.

Evaluation Teams must:

- Be aware of restrictions related to use of confidential and commercially sensitive information collected through the procurement process
- Refrain from engaging in activities that create or appear to create a conflict of interest
- Individually sign a conflict of interest declaration and non-disclosure agreement
- Individually and independently complete an evaluation matrix to rate each submission
- Ensure that all commentary or ratings are fair, factual and defensible
- Not discriminate or exercise preferential treatment in awarding contracts as the result of the competitive procurement process
- Declare the winning bid according to the supplier that receives the highest evaluation score and meets all the mandatory requirements set out in the procurement documents

Establishing & Awarding Contracts

The agreement between the Agency and the successful supplier from the competitive procurement process must be formally defined in a signed written contract before the provision or supplying of goods or services commences. Where the competitive procurement documents included a form of agreement, that form is to be used to finalize the agreement. Where an alternative strategy has been used and there is no form of agreement in the procurement documents, the agreement between the Agency and the vendor must be defined formally in a signed contract, before delivery of the goods or services.

Where an immediate need exists for goods or services, and the Agency and supplier are unable to finalize the contract as described above, an interim purchase order may be used. The justification of such decision must be documented and approved by the appropriate signing authority.

Contracts must:

- Include appropriate cancellation or termination clauses
- For complex procurements including provision of professional services, the Agency should consider inclusion of assessment, cancellation or termination clauses at specific life cycle stages of the procurement
- Include dispute resolution clauses as per procurement documentation

Contracts for Services must include:

- Clear terms of reference including objectives, background, scope, constraints, staff responsibilities, tangible deliverables, timing, progress reporting, approval requirements and knowledge transfer requirements
- Include rules for expense claim and reimbursement rules which are compliant with the Broader Public Sector Expense Directive

Modifications to terms of agreements

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- May only be made when the terms of agreements and options to extend the agreement have been set out in the original procurement documents
- Must be approved at the Director level or higher.
- Extensions of agreement beyond those set out in the procurement documents where the extension affects the value and/or stated deliverables of the procurement is a non-competitive procurement and must be approved by the Executive Director.

Contract awards must be publicly posted for procurements valued at \$100,000 or more. In the same manner as the procurement documents. This award notification will:

- Be posted after the agreement for delivery of goods/services has been finalized
- Include the name of the successful supplier
- Include the start and end dates of the agreement
- Include information on extension options

For procurements valued at \$100,000 or more, the Agency must inform all unsuccessful suppliers concerning their entitlement to a supplier debriefing. The Agency must allow unsuccessful suppliers 60 calendar days following the contract award notification date to request a briefing.

Contract Management

The Agency shall ensure that:

- All procurements and the resulting contracts are managed responsibly and effectively.
- Payments are made in accordance with the terms of the contract; invoices must contain detailed information sufficient to warrant payment; and, any overpayments are recovered in a timely manner.
- Supplier performance is managed and documented.
- Contracts for services include terms as outlined in this policy and that expense claims:
 - Are compliant with contract terms and with Broader Public Sector Expenses Directive
 - Are claimed only as explicitly permitted by the contract
- All competitive procurement documentation and other pertinent information is retained in a recoverable format for seven (7) years including but not limited to:
 - Procurement justification or business case
 - All approvals
 - Evidence of receipt of deliverables
 - Where purchase was via a Vendor of Record, information concerning the process used to select the vendor
 - Advertisements, RFI, vendor prequalification
 - All responses and submissions
 - Vendor consultations
 - Evaluations
 - Awards
 - Contracts
 - Payments
- The Agency shall handle, store and maintain Supplier confidential and commercially sensitive information:
 - Staff handling and having access to this information are aware of the Agency's requirement to protect commercially sensitive information

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Conflict of Interest

The Agency must monitor any conflict of interest that may arise as a result of any employee or other organization member, advisor, supplier or other stakeholder's involvement with supply chain activities. Individuals involved with supply chain activities must declare actual or potential conflicts of interest. Where a conflict arises, it must be evaluated, and appropriate mitigating action taken.

Bid Dispute Resolution Process:

For open competitive procurements over \$100,000, unsuccessful proponents may appeal the decision to the Agency. The Agency shall form a panel to hear the appeal. The composition of the panel shall consist of staff more senior than the most senior person on the evaluation panel. If the competitive process was found to be unfair, the Agency may cancel the competition or compensate the proponent with the cost of preparing for the proposal.

Appendix “A”

Ontario Broader Public Sector Supply Chain Code of Ethics

Goal: To ensure an ethical, professional and accountable BPS supply chain.

I. Personal Integrity and Professionalism

Individuals involved with Supply Chain Activities must act, and be seen to act, with integrity and professionalism. Honesty, care and due diligence must be integral to all Supply Chain Activities within and between BPS organizations, suppliers and other stakeholders. Respect must be demonstrated for each other and for the environment. Confidential information must be safeguarded. Participants must not engage in any activity that may create, or appear to create, a conflict of interest, such as accepting gifts or favours, providing preferential treatment, or publicly endorsing suppliers or products.

II. Accountability and Transparency

Supply Chain Activities must be open and accountable. In particular, contracting and purchasing activities must be fair, transparent and conducted with a view to obtaining the best value for public money. All participants must ensure that public sector resources are used in a responsible, efficient and effective manner.

III. Compliance and Continuous Improvement

Individuals involved with purchasing or other Supply Chain Activities must comply with this Code of Ethics and the laws of Canada and Ontario. Individuals should continuously work to improve supply chain policies and procedures, to improve their supply chain knowledge and skill levels, and to share leading practices

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Appendix “B”

Definitions

“Goods and services” means any goods, construction, and services, including but not limited to IT and consulting services;

“Members of an Organization” means all trustees, members of the board of directors, senior executives, and employees of the Organization, or their equivalent;

“Supply Chain Activities” means all activities directly or indirectly related to the Organization’s planning, sourcing, procurement, moving, and payment processes.

“Accountability” means the obligation of an employee, agent or other person to answer for or be accountable for, work, action or failure to act following delegated authority.

“Agreement” means the formal written document that will be entered into at the end of the procurement process.

“Approval Authority” means the authority delegated by the Organization to a person designated to occupy a position to approve on its behalf one or more procurement functions within the plan-to-pay cycle up to specified dollar limits subject to the applicable legislation, regulations and procedures in effect at such time.

“Award” means the notification to a proponent of acceptance of a proposal, quotation or tender that brings a contract into existence.

“Best value” means the optimal balance of performance and cost determined in accordance with a pre-defined evaluation plan; best value may include a time horizon that reflects the overall life cycle of a given asset

“Blanket purchase contract” means any contract for the purchase of goods and services which will be required frequently or repetitively but where the exact quantity of goods and services required may not be precisely known or the time period during which the goods and services are to be delivered may not be precisely determined

“Bid” means a proposal, quotation or tender submitted in response to a solicitation from a contracting authority. A bid covers the response to any of the three principal methods of soliciting bids, i.e., Request for Proposal, Request for Tender and Request for Quotation.

“Bid Protest” means a dispute raised against the methods employed or decisions made by a contracting authority in the administration of a proposal, tender, or quotation process.

“Chief Executive Officer” means the head of operations at Organizations.

“Competitive Procurement” means a set of procedures for developing a procurement contract through a bidding or proposal process. The intent is to solicit fair, impartial, competitive bids.

“Conflict of Interest” means a situation in which financial or other personal considerations have the potential to compromise or bias professional judgment and objectivity. An apparent conflict of interest is one in which a reasonable person would think that the professional’s judgment is likely to be compromised.

“Construction” means construction, reconstruction, demolition, repair or renovation of a building, structure or other civil engineering or architectural work and includes site preparation, excavation, drilling, seismic investigation, the supply of products and materials, the supply of equipment and machinery if they are included in and incidental to the construction, and the installation and repair of fixtures of a building,

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structure or other civil engineering or architectural work, but does not include professional consulting services related to the construction contract unless they are included in the procurement.

“Consultant” means a person or entity that under an agreement, other than an employment agreement, provides expert or strategic advice and related services for consideration and decision-making. A consultant provides expert or strategic advice related to operational consideration and decision-making and not to clinical or case management decision making. A consultant does not include services associated with implementing projects once a strategic decision has been made by Management.

“Consulting Services” means the provision of expertise or strategic advice that is presented for consideration and decision-making. Consulting Services provide advice for operational consideration and decision making and not in relation to clinical or case management services.

“Contract” means an obligation, such as an accepted offer, between competent parties upon a legal consideration, to do or abstain from doing some act. It is essential to the creation of a contract that the parties intend that their agreement shall have legal consequences and be legally enforceable. The essential elements of a contract are an offer and an acceptance of that offer; the capacity of the parties to contract; consideration to support the contract; a mutual identity of consent or consensus ad idem; legality of purpose; and sufficient certainty of terms.

“Designated broader public sector organization” means an Organization to which section 12 of the *Broader Public Sector Accountability Act, 2010* applies.

“Electronic Tendering System” means a computer-based system that provides suppliers with access to information related to open competitive procurements.

“Evaluation Criteria” means a benchmark, standard or yardstick against which accomplishment, conformance, performance and suitability of an individual, alternative, activity, product or plan is measured to select the best supplier through a competitive process. Criteria may be qualitative or quantitative in nature.

“Evaluation Matrix” means a tool allowing the evaluation team to rate supplier proposals based on multiple pre-defined evaluation criteria.

“Evaluation Team” means a group of individuals designated/responsible to make award recommendation. The evaluation team would typically include representatives from the Organization and subject matter expert(s). Each member participates to provide business, legal, technical and financial input.

“Goods” means moveable property (including the costs of installing, operating, maintaining or manufacturing such moveable property) including raw materials, products, equipment and other physical objects of every kind and description whether in solid, liquid, gaseous or electronic form, unless they are procured as part of a general construction contract.

“Goods and Services/Goods or Services” means all goods and/or services including construction, consulting services and information technology.

“Information Technology” means the equipment, software, services and processes used to create, store, process, communicate and manage information

“Invitational Competitive Procurement” means any form of requesting a minimum of three (3) qualified suppliers to submit a written proposal in response to the defined requirements outlined by an individual/organization.

“Non-discrimination” means fairness in treating suppliers and awarding contracts without prejudice, discrimination or preferred treatment.

“Offer” means a promise or a proposal made by one party to another, intending the same to create a legal relationship upon the acceptance of the offer by the other party.

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“Procurement” means acquisition by any means, including by purchase, rental, lease or conditional sale, of goods or services.

“Procurement Card (P-Card)” means an organizational credit card program primarily used for low-cost, non-inventory, non-capital items, such as office supplies. The card allows procurement or field employees to obtain goods and services without going through the requisition and authorization procedure. P-cards may be set up to restrict use to specific purchases with pre-defined suppliers or stores and offer central billings.

“Procurement Policies and Procedures (PPP)” means a framework and mandatory requirements to govern how Organizations conduct sourcing, contracting and purchasing activities, including approval segregation and limits, competitive and non-competitive procurement, conflict of interest and contract awarding.

“Procurement Value” means the estimated total financial commitment resulting from procurement, taking into account optional extensions.

“Professional service supplier” means a supplier of services requiring professional skills for a defined service requirement including: Lawyers, Psychologists, management and financial consultants; and firms or individuals having specialized competence in planning or other disciplines

“Purchase Order (PO)” means a written offer made by a purchaser to a supplier formally stating the terms and conditions of a proposed transaction.

“Purchase requisition” means a written or electronically produced request in an approved format and duly authorized to obtain goods or services

“Request for Expressions of Interest (RFEI)” means a document used to gather information on supplier interest in an opportunity or information on supplier capabilities/qualifications. This mechanism may be used when a BPS organization wishes to gain a better understanding of the capacity of the supplier community to provide the services or solutions needed. A response to a RFEI must not pre-qualify a potential supplier and must not influence their chances of being the successful proponent on any subsequent opportunity.

“Request for Information (RFI)” means a document issued to potential suppliers to gather general supplier, service or product information. It is a procurement procedure whereby suppliers are provided with a general or preliminary description of a problem or need and are requested to provide information or advice about how to better define the problem or need, or alternative solutions. A response to an RFI must not pre-qualify a potential supplier and must not influence their chances of being the successful proponent on any subsequent opportunity.

“Request for Proposal (RFP)” means a document used to request suppliers to supply solutions for the delivery of complex products or services or to provide alternative options or solutions. It is a process that uses predefined evaluation criteria in which price is not the only factor.

“Request for Supplier Qualifications (RFSQ)” means a document used to gather information on supplier capabilities and qualifications, with the intention of creating a list of pre-qualified suppliers. This mechanism may be used either to identify qualified candidates in advance of expected future competitions or to narrow the field for an immediate need. Organizations must ensure that the terms and conditions built into the RFSQ contain specific language that disclaims any obligation on the part of the Organization to call on any supplier to provide goods or services as a result of the pre-qualification.

“Requisition” means a formal request to obtain goods or services made within an Organization, generally from the end-user to the procurement department.

“Sealed bid” means a formal sealed response received as a part of a quotation, tender or proposal

“Segregation of Duties” means a method of process control to manage conflict of interest, the appearance of conflict of interest, and errors or fraud. It restricts the amount of power held by any one individual. It puts a barrier in place to prevent errors or fraud that may be perpetrated by one individual.

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“Services” means intangible products that do not have a physical presence. No transfer of possession or ownership takes place when services are sold, and they (1) cannot be stored or transported, (2) are instantly perishable, and (3) come into existence at the time they are bought and consumed.

“Supplier/Vendor” means any person or organization that, based on an assessment of that person’s or organization’s financial, technical and commercial capacity, is capable of fulfilling the requirements of procurement.

“Supply Chain Activities” means all activities whether directly or indirectly related to organizational plan, source, procure, move, and pay processes.

“Trade Agreements” means any applicable trade agreement to which Ontario is a signatory.

“Supplier Debriefing” means a practice of informing a supplier why their bid was not selected upon completion of the contract award process.

“Vendor of Record” (VOR) is a procurement arrangement resulting from a fair, open, transparent and competitive process that authorizes one or more qualified vendors to offer specific goods or services for a defined period of time on terms and conditions, including pricing and/or discounting, as set out in a particular VOR agreement

Appendix “C ”

Exemptions and Exceptions to Competitive Procurement Requirements

The agency should employ a competitive procurement process to achieve optimum value for money. It is recognized however that certain circumstances and activities may require the agency to use non-competitive procurement. The circumstances and activities that will be excluded from the competitive procurement requirements of this policy are noted below. These exceptions are generally consistent with the *Agreement on Internal Trade (AIT)* or other trade agreements.

The exception is for a non-competitive procurement of the good or service that falls within the categories listed and is not an exemption with respect to the administration, documentation, contract management, or other requirement of the procurement policy.

Licensed Professional and Specific Services for Agency Clients:

The procurement of services from licensed professionals including medical doctors, dentists, pharmacists, nurses, psychologists, lawyers, accountants and architects are exempted from competitive procurement requirements.

Boarding rate expenditures including reimbursable expenses paid to Foster Parents and Outside Paid Resources; and support services for the care of children and youth that have been placed by the agency; and services for other individuals and families who are clients of the agency are also exempted from competitive procurement requirements.

Single Source Supply:

Where only one supplier is available to meet the requirements of the agency's procurement including the following circumstances:

- to ensure compatibility with existing products, to recognize exclusive rights, such as exclusive licenses, copyright and patent rights, or to maintain specialized products that must be maintained by the manufacturer or its representative;
- where there is an absence of competition where the goods or services can be supplied only by a particular supplier and no alternative or substitute exists;
- for work to be performed on the behalf of the agency through a building lease agreement where the lessor will invoice costs back to the lessee;
- for work to be performed according to provisions of a warranty or guarantee held in respect of the original work;
- for the procurement of a prototype or a first good or service to be developed that may be needed for research purposes, a particular study or other original purposes;
- for the purchase of goods under duress such as bankruptcy or receivership, where the Agency has clearly documented the advantageous value that would be received;
- for the procurement of real property;

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Limiting Circumstances:

Limiting circumstances may exist where inherent factors limit the procurement process that can be undertaken. Under limiting circumstances, the Agency can deviate from competitive procurement requirements provided it does not do so for the purpose of avoiding competition between suppliers or in order to discriminate against suppliers. Limiting circumstance may include:

- where goods or consulting services regarding matters of a confidential or privileged nature are to be purchased and the disclosure of those matters through an open tendering process could reasonably be expected to compromise the Agency confidentially, cause economic disruption or otherwise be contrary to the public interest;
- where compliance with open tendering provisions would interfere with the Agency's ability to maintain security or order;
- in the absence of a receipt of any bids in response to a call for tenders made in accordance with the directive;

Emergency Situations:

For the purpose of this procedure, an "Emergency" means a situation where the immediate purchase of goods and services is essential to prevent serious delays in service delivery or to prevent or remedy damage to agency property or to restore an essential service.

An "Emergency" includes an imminent or actual danger to the life, health or safety of an official or an employee while acting on the agency's behalf (e.g. emergency boiler repairs or replacement), an imminent or actual danger of injury to or destruction of real or personal property belonging to the agency. Under emergency circumstances, the Chief Executive Officer has the authority to take the necessary steps to address the emergency and will subsequently inform the Board of Directors of the actions taken setting out the details of any purchases made pursuant to this authority and the circumstances justifying the action taken.