

# Broader Public Sector Procurement Directive

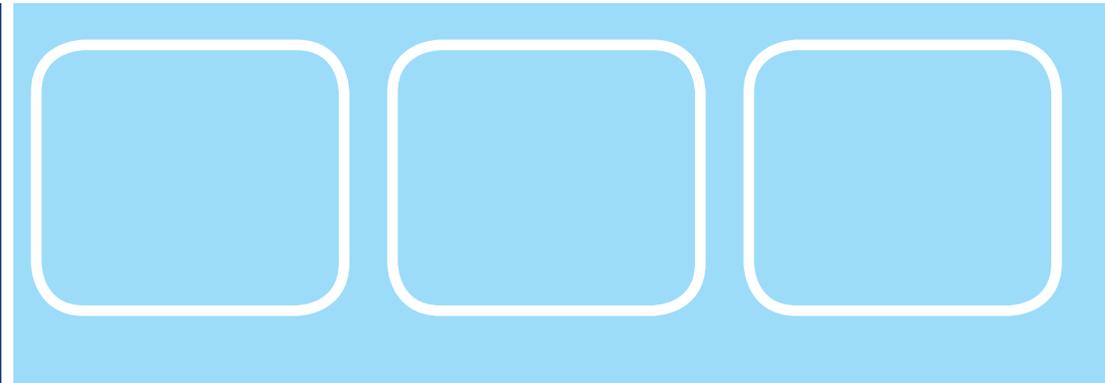
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## *Implementation Guidebook*



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## PREAMBLE

The Broader Public Sector (BPS) Procurement Directive, 2011 (Directive) replaces the Supply Chain Guideline issued by the Ministry of Finance in 2009. This Broader Public Sector Procurement Directive Implementation Guidebook (Guidebook) is designed to support implementation of the Directive.

### 1. RELATIONSHIP TO THE DIRECTIVE

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In the event of an inconsistency between a provision of this Guidebook and a provision of the Directive, the provision of the Directive prevails.

### 2. PURPOSE OF THE DIRECTIVE

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The purpose of the Directive is to:

- Ensure that publicly funded goods and services, including construction, consulting services and information technology, are acquired by BPS organizations through a process that is open, fair and transparent;
- Outline responsibilities of BPS organizations throughout each stage of the procurement process; and
- Ensure that procurement processes are managed consistently throughout the BPS.

### 3. APPLICATION AND SCOPE OF THE DIRECTIVE

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The Directive applies to all designated BPS organizations as provided for under section 12 of the Broader Public Sector Accountability Act, 2010. The Directive will be applied using a phased-in approach as outlined in the table below. The “timeline” column provides the date on which the Directive begins to apply while the “sector” column identifies the BPS group(s) to which the Directive applies. The sector groups are specified under Part I of the Broader Public Sector Accountability Act, 2010.

Timeline	Sector
April 1, 2011	Hospitals School Boards Colleges Universities Community Care Access Corporations Children’s Aid Society
January 1, 2012	Publicly funded organizations that received public funds of \$10 million or more in the previous fiscal year of the Government of Ontario.

The Broader Public Sector Accountability Act, 2010 outlines that every corporation controlled by one or more designated broader public sector organizations that exists solely or primarily for the purpose of purchasing goods or services for the designated broader public sector organization also falls under the definition of designated broader public sector organization. This may include, but not be limited to, buying groups, group purchasing organizations and shared services organizations.

The Directive applies to the above corporations as follows:

- For the corporations that exist for the purpose of purchasing goods or services for Hospitals, School Boards, Colleges, Universities, Community Care Access Corporations, and/or Children’s Aid Societies, the Directive applies starting April 1, 2011; and
- For the corporations that exist solely or primarily for the purpose of purchasing goods or services for publicly funded organizations others than Hospitals, School Boards, Colleges, Universities, Community Care Access Corporations, and/or Children’s Aid Societies, the Directive applies starting January 1, 2012.

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## 4. DIRECTIVE PRINCIPLES

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The Directive is based on five key principles that allow Organizations to achieve value for money while following procurement processes that are fair and transparent to all stakeholders.

- **Accountability**

Organizations must be accountable for the results of their procurement decisions and the appropriateness of the processes.

- **Transparency**

Organizations must be transparent to all stakeholders. Wherever possible, stakeholders must have equal access to information on procurement opportunities, processes and results.

- **Value for Money**

Organizations must maximize the value they receive from the use of public funds. A value-for-money approach aims to deliver goods and services at the optimum total life-cycle cost.

- **Quality Service Delivery**

Front-line services provided by Organizations, such as teaching and patient care, must receive the right product, at the right time and in the right place.

- **Process Standardization**

Standardized processes remove inefficiencies and create a level playing field.

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## 5. KEY DEFINITIONS

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In this Guidebook,

“Goods and services” means any goods, construction and services, including but not limited to information technology (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;

“Organization” means every organization that is in scope for the purposes of the Directive;

“Supply Chain Activities” means all activities directly or indirectly related to the Organization’s plan, source, procure, move and pay processes;

“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; and

“Consulting Services” means the provision of expertise or strategic advice that is presented for consideration and decision-making.

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## **6. EXEMPTIONS, EXCEPTIONS AND NON-APPLICATIONS UNDER TRADE AGREEMENTS**

Where an exemption, exception or non-application clause exists under the Agreement on Internal Trade (AIT) or other trade agreement, Organizations may apply this clause when conducting procurement.

An Organization asserting that procurement is subject to an exemption, exception or non-application clause under a trade agreement must formally establish applicability of this clause.

Organizations are required to comply with any amendments to applicable trade agreements approved after release of the Directive.

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## **7. VALUE OF PROCUREMENT**

When determining the value of a procurement for approval purposes as outlined in the Directive or this Guidebook, Organizations should not take into consideration applicable sales taxes.

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## **8. BUYING GROUPS, GROUP PURCHASING ORGANIZATIONS (GPOs) AND SHARED SERVICES ORGANIZATIONS (SSOs)**

Collaborative procurement is a coordinated event that facilitates purchasing on behalf of multiple organizations. Collaborative procurement may be facilitated through (but not limited to) Buying Groups, Group Purchasing Organizations (GPOs) and Shared Service Organizations (SSOs). The goals of these organizations are to 1) leverage the increased buying power of aggregating total spend with other organizations; 2) standardize processes by streamlining through one centralized buying organization; 3) minimize risks and improve process controls; and 4) generate savings/efficiencies that benefit the collective participants.

Buying Groups and GPOs include two or more members that combine the purchasing requirements and activities of the members into one joint procurement process. These organizations may represent cooperative arrangements in which individual members administer the procurement function for specific contracts for the group or more formal corporate arrangements in which the organization administers procurement for group members. Both Groups may involve a variety of entities, including public-sector, private-sector and not-for-profit organizations. Typically, group purchasing organizations have an established governance and membership framework, while buying groups may adopt a less formal governance and membership structure.

An SSO is an independent non-profit organization that leverages the collective purchasing power of its members to obtain optimum total life-cycle cost from suppliers. It also provides back-office services (such as strategic sourcing, procurement, accounts payable and logistics) that help to achieve process efficiencies.

Organizations that participate in group purchasing activities through buying groups, GPOs or SSOs must ensure that the activities of these entities are carried out in a manner consistent with the Directive.

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## 9. SUPPLY CHAIN CODE OF ETHICS (CODE)

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The Directive contains the Supply Chain Code of Ethics (Code), which sets out basic overarching supply chain principles of conduct for Organizations, their suppliers and other stakeholders.

The Code defines acceptable behaviours for individuals involved with Supply Chain Activities. The Code does not supersede codes of ethics that Organizations may have in place, but supplements such codes with supply chain-specific standards of practice.

### 9.1. Adoption of the Code

Adoption of the Code consists of the following two components.

1. Organizations must formally adopt the Code in accordance with their governance processes. The intent is to clearly establish that the conduct of all Members of an Organization involved with Supply Chain Activities must be in accordance with the Code.
2. The Code must be available and visible to the Members of an Organization, suppliers and other stakeholders involved with Supply Chain Activities.

A detailed Code compliance checklist is provided in Section 9.3.

### 9.2. Supply Chain Code of Ethics

#### **Ontario Broader Public Sector (BPS)**

**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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### 9.3. Supply Chain Code of Ethics Compliance Checklist

This checklist is designed to assist Organizations to determine whether they have successfully adopted the key elements of the Code.

The Code:

- Is formally endorsed by the board of directors or its equivalent in accordance with the Organization's governance structure;
- Is distributed to all Members of an Organization involved with Supply Chain Activities, including but not limited to individuals from such departments as:
  - Procurement;
  - Purchasing;
  - Materials/Inventory Management;
  - Planning;
  - Logistics/Distribution; and
  - Accounts Payable.
- Is communicated to all individuals outside the above departments who are involved with purchasing and other supply chain-related activities, such as requisitioning or supplier or product evaluation;
- Is visible in procurement departments or their equivalents; and
- Is easily accessible in an electronic format to all Members of an Organization, suppliers and other stakeholders of the Organization.

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## **10. PROCUREMENT POLICIES AND PROCEDURES (MANDATORY REQUIREMENTS)**

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The mandatory requirements within section 7.2 of the Directive set out how Organizations are required to conduct sourcing, contracting and purchasing activities.

### **10.1. Purpose of Procurement Policies and Procedures**

#### **10.1.1. Objective**

The mandatory requirements ensure that Organizations conduct procurement-related Supply Chain Activities in an open, fair and transparent manner.

#### **10.1.2. Benefits**

The mandatory requirements enable Organizations to:

- Focus on value for money;
- Ensure the fairness, transparency and accountability of the procurement process;
- Eliminate redundant and low value-added activities throughout the procurement cycle;
- Provide internal customers, suppliers and other stakeholders with a clear path for conducting supply chain-related activities, thus improving customer confidence and satisfaction;
- Reduce business risk and the potential for conflicts internally with colleagues and externally with trading partners;
- Make procurement decisions defensible when facing trade or legal challenges or public criticism;
- Provide all Members of an Organization with clear directions and expectations, thus improving productivity and morale; and
- Establish consistent processes related to working with suppliers, thus enhancing mutual trust and enhancing relationships.

### **10.2. Adoption of the Procurement Policies and Procedures**

#### **10.2.1. Implementation of the Mandatory Requirements of the Directive**

To achieve compliance with the mandatory requirements, Organizations should communicate to the Members of an Organization, suppliers and other stakeholders, the rationale and benefits of implementation. There are four key factors for ensuring compliance:

- **Support**

Review the mandatory requirements with key stakeholders, including the Members of an Organization and internal customers before they are implemented;

- **Communicate**

Regularly communicate the mandatory requirements as well as the benefits of their implementation to all key stakeholders;

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- **Monitor**

Implement appropriate mechanisms to ensure that Members of an Organization are complying with the mandatory requirements; and

- **Follow-up**

Regularly solicit feedback from key stakeholders regarding the existing organizational policies and procedures. Organizations should regularly review and improve their procurement policies and procedures.

### **10.2.2. Internal Accountability**

Organizations should identify a senior-level individual accountable for compliance. This individual should consult with advisors and work with the funding ministry to implement requirements of the Directive. The individual should be given the authority to ensure compliance throughout the Organization.

Senior management must work with the procurement department or organization (e.g., SSO) to ensure organizational compliance with the mandatory requirements and determine appropriate measures in the event of non-compliance.

### **10.2.3. Related Requirements**

Organizations must conduct procurement activities according to the law in Ontario, including contract law, law of competitive processes, privacy legislation, accessibility legislation and any other applicable legislation.

Organizations are subject to various trade agreements including, but not limited to, the Agreement on Internal Trade and the Ontario–Quebec Trade and Cooperation Agreement (Ontario–Quebec Agreement).

#### **10.2.3.1. Ontario Law**

When conducting procurement, Organizations should understand their obligations. Individuals engaged in Supply Chain Activities on behalf of Organizations must be aware of the applicable laws and the importance of professional conduct. Where necessary, Organizations should seek legal advice on procurement.

#### **10.2.3.2. Contract Law**

Contract law applies to all agreements between an Organization and a supplier. Subject to the requirements of contract law, parties are able to negotiate the terms of their agreement to suit their business purposes.

#### **10.2.3.3. Law Of Competitive Processes**

Depending on the terms of an agreement between an Organization and a supplier, the law of competitive processes may apply. The solicitation and the receipt of tenders or proposals may result in the formation of a bid contract (also called Contract A) that governs how the Organization awards the work contract (also called Contract B) to a supplier. For these and other definitions, see Sections 11.3, Glossary of Terms and 11.4, Glossary of Acronyms.

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#### 10.2.3.4. Privacy legislation

The Freedom of Information and Protection of Privacy Act (FIPPA) and Personal Health Information and Protection of Privacy Act (PHIPPA) make public bodies accountable to the public and protect personal privacy. The privacy legislation stipulates a right of access to records held by public bodies and regulates how public bodies manage personal information.

Individuals engaged in Supply Chain Activities on behalf of Organizations should be aware of the implications of the Freedom of Information (FOI) requirements of FIPPA and the resulting importance of professional conduct. Freedom of Information requests can be made for information on tendering and administration of contracts.

#### 10.2.3.5. Accessibility Legislation

Individuals engaged in procurement activities on behalf of Organizations should be aware of and ensure procurement processes comply with the requirements of the Accessibility for Ontarians with Disabilities Act, 2005 (AODA).

#### 10.2.3.6. Trade Agreements

Organizations must follow provisions of applicable trade agreements. Where these trade agreements do not require Organizations to conduct procurement through a competitive process, Organizations are strongly encouraged to utilize a competitive approach to procurement.

Organizations are required to comply with any amendments to applicable trade agreements approved after release of the Directive.

##### 10.2.3.6.1 Agreement on Internal Trade (AIT)

The AIT regulates trade between provinces in order to ensure that all Canadian suppliers have equal access to public-sector procurement. Under the AIT, Organizations must post all procurement opportunities that meet or exceed the dollar thresholds in the table below on an electronic tendering system readily accessible by all suppliers across Canada.

	Broader Public Sector
Goods and Services	\$100,000
Construction	\$250,000

##### 10.2.3.6.2 Ontario–Quebec Trade and Cooperation Agreement (Ontario–Quebec Agreement)

Organizations are subject to the 2009 Ontario–Quebec Trade and Cooperation Agreement which regulates trade between Ontario and Quebec to ensure equal access to public-sector procurement for respective local suppliers. Under the Ontario–Quebec Agreement, Organizations must make all procurement opportunities meeting or exceeding the following thresholds accessible to all Quebec suppliers.

	Broader Public Sector
Goods, Services and Construction	\$100,000

In the Directive, the threshold for construction is set to align with the lower of the two requirements as set by the AIT and the Ontario–Quebec Agreement respectively.

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## 10.3. Procurement Policies and Procedures Requirements (Mandatory Requirements)

### 10.3.1. Segregation of Duties and Approval Authority Levels

Segregation of duties and delegation of authority are essential control mechanisms within the procurement process. They ensure integrity of the process by reducing exposure to inappropriate, unauthorized or unlawful expenditures.

#### 10.3.1.1. Segregation Of Duties

##### Directive Mandatory Requirement #1: Segregation of Duties

Organizations must segregate at least three of the five functional procurement roles: Requisition, Budgeting, Commitment, Receipt and Payment. Responsibilities for these roles must lie with different departments or, at a minimum, with different individuals.

Where it is not feasible to segregate these roles, i.e., for smaller Organizations, adequate compensating controls approved by an external auditor must be put in place.

Segregation of duties prevents any one person from controlling the entire procurement process. There are five typical functional procurement roles that require segregated approval: requisition, budgeting, commitment, receipt and payment.

Functional Role	Responsibility	Accountable Party
Requisition	Authorize the procurement department to place an order	Customer requesting the product or service
Budgeting	Authorize that funding is available to cover the cost of the order	Departmental budget holder
Commitment	Authorize release of the order to the supplier under agreed contract terms	Purchasing role in the procurement department
Receipt	Authorize that the order was physically received, correct and complete	Individual receiving the goods
Payment	Authorize release of payment to the supplier	Accounts payable role within the finance team

## 10.3.1.2. Approval Authority For Procurement Of Goods And Services

### 10.3.1.2.1 Goods and Non-Consulting Services

#### Directive Mandatory Requirement #2: Approval Authority

##### Goods And Non-Consulting Services

Organizations must establish an approval authority schedule (AAS) for procurement of goods and non-consulting services. The AAS must identify, for each of the functional procurement roles identified in Section 7.2.1 of the Directive, authorities that are allowed to approve procurements for different dollar thresholds. The AAS must be approved by the board of directors of the Organization or its equivalent.

Prior to commencement, any procurement of goods and non-consulting services must be approved by an appropriate authority in accordance with the AAS of the Organization.

Prior to commencement, any non-competitive procurement of goods or non-consulting services must be approved by an authority one level higher than the AAS requirements for competitive procurement.

##### Consulting Services

Prior to commencement, any procurement of consulting services must be approved in accordance with the Procurement Approval Authority Schedule for Consulting Services.

##### All Procurements

Organizations must not reduce the overall value of procurement (e.g., dividing a single procurement into multiple procurements) in order to circumvent the approval requirements of the organizational AAS or the Procurement AAS for Consulting Services.

The table below represents an example of the commitment AAS, which outlines authorities that may be authorized to commit an Organization to a procurement. The dollar thresholds and purchasing authority levels are shown for illustrative purposes only.

Commitment Approval Authority Schedule	
Total Procurement Amount	Delegated Purchasing Authority Level
\$0 up to but not including \$10,000	Manager
\$10,000 up to but not including \$50,000	Director
\$50,000 up to but not including \$250,000	Vice-President
\$250,000 up to but not including \$1,000,000	President/CEO or equivalent
\$1,000,000 or more	Board of Directors

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### 10.3.1.2.2 Consulting Services

Non-competitive procurement of consulting services is allowed only under the circumstances outlined in Section 10.3.4.

Organizations must not conduct non-competitive procurement of consulting services without documenting the decision and obtaining the appropriate approvals.

Prior to commencement, any procurement of consulting services must be approved in accordance with the Procurement Approval Authority Schedule for Consulting Services below (i.e., approval from the Board of Directors, President, CEO, or equivalent). Procurement approvals cannot be delegated to a lower organizational level.

<b>Procurement Approval Authority Schedule (AAS) for Consulting Services</b>		
<b>Procurement Method</b>	<b>Procurement Value</b>	<b>Approval Authority</b>
Invitational Competitive	\$0 up to but not including \$100,000	Organization's AAS for goods and non-consulting services
Open Competitive	Any value	Organization's AAS for goods and non-consulting services
Non-competitive (Exemption-based only)	\$0 up to but not including \$1,000,000	President, CEO or equivalent
	\$1,000,000 or more	Board of Directors or equivalent

When appropriate approvals are received for a non-competitive procurement of consulting services, subsequent procurement activities should be consistent with the organization's segregation of duties as outlined in section 10.3.1.1.

## 10.3.2. Competitive Procurement

### 10.3.2.1. Open Competitive Procurement

Open competitive procurement is the contractual acquisition (purchase or lease) by an Organization of any good or service, which enables all suppliers to compete in a fair and open environment.

Open competitive procurement ensures the highest level of fairness, impartiality, and transparency; it maximizes suitability and the value for money of the obtained goods or services.

### 10.3.2.2. Invitational Competitive Procurement

Invitational competitive procurement is the contractual acquisition (purchase or lease) by an Organization of any good or service, which enables some but not all suppliers to compete in a fair and open environment.

Organizations conduct invitational competitive procurement by inviting three or more qualified suppliers to submit written proposals to supply goods or services as specified by the Organization.

### 10.3.2.3. Competitive Procurement Thresholds

#### Directive Mandatory Requirement #3: Competitive Procurement Thresholds

Organizations must conduct an open competitive procurement process where the estimated value of procurement of goods or services is \$100,000 or more. The exemptions must be in accordance with the applicable trade agreements.

Organizations must competitively procure consulting services irrespective of value. The exemptions must be in accordance with the applicable trade agreements.

Organizations must not reduce the overall value of procurement (e.g., dividing a single procurement into multiple procurements) in order to circumvent competitive procurement thresholds.

Organizations are strongly encouraged to utilize competitive methods for procurement of goods and non-consulting services with an estimated value of less than \$100,000.

The Directive requires Organizations to establish and document rules of procurement of goods and non-consulting services with an estimated value of less than \$100,000. The table below provides an example of such rules; in the table, mandatory total procurement value limits and means of procurement are specified as "Required."

Goods and Non-Consulting Services and Construction		
Total Procurement Value	Means of Procurement	Recommended/Required
\$0 up to but not including \$100	Petty cash	Recommended
\$100 up to but not including \$3,000	Procurement card (P-Card)	Recommended
\$3,000 up to but not including \$10,000	Purchase order	Recommended
\$10,000 up to but not including \$100,000	Invitational competitive	Recommended
\$100,000 or more	Open competitive	Required
Consulting Services		
Total Procurement Value	Means of Procurement	Recommended/Required
\$0 up to but not including \$100,000	Invitational/open competitive	Required
\$100,000 or more	Open competitive	Required

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### 10.3.3. Competitive Procurement Key Process Steps

#### 10.3.3.1. Procurement Planning

Planning should be made an integral part of the procurement process. Organizations should undertake procurement planning for their annual procurement requirements as well as for individual procurement activities.

Procurement planning allows Organizations to determine:

- The goods and services necessary to meet business requirements;
- Opportunities to aggregate spend in order to create process efficiencies and maximize value for money;
- Potential supply sources;
- Procurement methods;
- The necessary approvals and timing of when these approvals will be needed; and
- The overall time necessary to complete procurement process.

When conducting procurement planning, Organizations should target, among other objectives:

- Early identification of needs;
- Clear definition of requirements;
- Justification of the acquisition; and
- Compatibility of procurement needs with legal and business requirements as well as internal policies and processes.

#### 10.3.3.2. Information Gathering

##### **Directive Mandatory Requirement #4: 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.

Where the results of informal supplier or product research are insufficient, formal information gathering processes may be used, if warranted, taking into consideration the time and effort required to conduct them.

Formal information gathering is beneficial in situations where Organizations have incomplete information about the required goods or services, or where Organizations lack information about the ability of the market to deliver these goods or services.

Information collected by means of formal information gathering allows Organizations to plan a cost-effective and fair procurement process. Formal information gathering allows Organizations to clearly define procurement requirements and identify the presence of qualified and/or interested suppliers.

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### 10.3.3.2.1 Request For Information (RFI)

Organizations can use an RFI as a tool to assess market capabilities as it allows gathering of general supplier or product information. An RFI may be used when an Organization is contemplating procurement and needs to determine the characteristics of the ideal good or service (e.g., an Organization that aims to introduce an automated system needs information to understand what is available on the market and the suppliers' capabilities).

An RFI may include targeted questions about the required goods or services to gather information about leading practices, recommendations, expertise, risks and additional questions from proponents. An RFI can also include a general description of a problem or need with a request to provide advice or an alternative solution in cases where the request may be focused on an innovative technological solution.

### 10.3.3.2.2 Request For Expressions of Interest (RFEI)

An RFEI allows Organizations to gather information about supplier interest in an opportunity or information about supplier capabilities/qualifications. An RFEI may be used to clarify the ability of the supplier community to provide the necessary services or solutions.

### 10.3.3.2.3 General Guidelines on Information Solicitation

An RFI and RFEI must be used for information-gathering purposes only.

An RFI or RFEI must not:

- Contain means of evaluating or comparing the collected information;
- Result in the award of work;
- Be used to pre-qualify potential suppliers;
- Result in a legal contract (Contract A or bid contract) with a proponent. Care should be taken to avoid language that may create a commitment or liability on the part of the Organization; and
- Require suppliers to provide proprietary information. In the event that proprietary information will be included in this process, suppliers should identify any trade secrets or proprietary intellectual property and ask the Organization to sign a non-disclosure agreement. This will ensure confidentiality and protection of intellectual property. A supplier should also indicate in its proposal which part is a trade secret and cannot be disclosed under the Ontario Freedom of Information and Protection of Privacy Act or the Municipal Freedom of Information and Privacy Act.

In order to reach a large population of potential suppliers when seeking information, Organizations should use common electronic tendering methods for posting RFIs and RFEIs.

The uses of the information-gathering mechanisms are summarized in the table below.

Information Required	RFI	RFEI
General supplier or product information	X	
Information about supplier interest in an opportunity		X
Information about supplier capabilities/qualifications		X

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### 10.3.3.3. Supplier Pre-Qualification

#### 10.3.3.3.1 Request For Supplier Qualifications (RFSQ)

##### **Directive Mandatory Requirement #5: Supplier Pre-Qualification**

The Request for Supplier Qualification (RFSQ) enables Organizations to gather information about supplier capabilities and qualifications in order to pre-qualify suppliers for an immediate product or service need or to identify qualified candidates in advance of expected future competitions.

Terms and conditions of the RFSQ document must contain language that disclaims any obligation of the Organization to call on any supplier to provide goods or services as a result of pre-qualification.

The purpose of an RFSQ is to gather information about supplier capabilities and qualifications in order to narrow the field of potential suppliers for an immediate goods or services need or identify qualified suppliers in advance of expected future competitions. An RFSQ allows Organizations to reduce subsequent competitive procurement effort (e.g., bid preparation by the suppliers and evaluation by the Organization), as outlined below:

1. An RFSQ can be used for the purpose of a single procurement — as the first pre-qualifying stage in a two-stage competitive procurement process (followed by either an RFP, RFT or RFQ), where only qualified suppliers are invited to participate in the second stage.

This approach reduces the number of second-stage responses, which makes bid evaluation more manageable for the evaluators, while allowing unqualified suppliers to avoid the effort and expense of preparing a complete response.

A pre-qualified supplier list is usually created as a result of the RFSQ process identified above.

2. An RFSQ can be used to pre-qualify suppliers who are interested in supplying goods or services to the Organization during a specified time period in the future — if requested. An RFSQ used for this purpose should contain detailed specifications of goods or services to be supplied.

A Vendor Of Record (VOR) arrangement is usually created as a result of the RFSQ process identified above.

An RFSQ should specify:

- The type and specifications of goods or services to be provided with a necessary level of detail;
- Upper limits of the value of future awards (for VOR arrangements — the ceiling price);
- Time duration the pre-qualified supplier list or VOR arrangement will be valid;
- The method(s) and time intervals by which additional suppliers can be placed on the list (for VOR arrangements); and
- That any supplier who does not participate in the pre-qualification or does not appear on the list may be excluded from opportunities.

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### **10.3.3.3.2 Vendor Of Record (VOR) Arrangements**

This section outlines the key elements of VOR arrangements and provides guidance on how Organizations may establish and utilize such arrangements.

#### **1. Purpose and benefits**

Organizations may establish VOR arrangements with suppliers to:

- Increase procurement process efficiency; and
- Obtain consistent competitive prices for the identified goods and services.

#### **2. VOR arrangements as a method of procurement**

For the purpose of the Directive, properly established, managed and utilized VOR arrangements may be utilized as an open competitive method of procurement for individual procurements that do not exceed the ceiling price of the VOR arrangement.

#### **3. VOR arrangements established by the Ontario Ministry of Government Services (MGS)**

The MGS has established VOR arrangements that are available to Organizations. Organizations may utilize VOR arrangements established by MGS to streamline the procurement process.

A list of MGS-established VOR arrangements is published at: [www.doingbusiness.mgs.gov.on.ca](http://www.doingbusiness.mgs.gov.on.ca). To view VOR-related information, Organizations must register on the website as buyers. The MGS establishes VOR arrangements on an ongoing basis; Organizations are encouraged to visit the website regularly.

When utilizing an MGS-established VOR arrangement, Organizations must follow the corresponding VOR User Guide provided by MGS.

#### **4. Organization-specific VOR arrangements**

An Organization or group of Organizations may establish VOR arrangements where there is an identified need for common goods or services. A VOR arrangement must be utilized only by the Organization or group of Organizations that established this VOR arrangement.

Prior to establishing a VOR arrangement, approval from an appropriate authority within the Organization must be received. The approval authority must be identified based on the total estimated value of procurement over the life of the VOR arrangement. Organizations must establish VOR arrangements through an open competitive procurement process.

To ensure that Organizations obtain the optimum value for money from individual procurements under VOR arrangements, they must conduct a second-stage selection process. All VOR arrangements must identify methods of conducting the second-stage selection process based on dollar thresholds of a single procurement. Where the second stage of the selection process warrants invitation of only one supplier to submit a proposal, Organizations should evenly distribute individual procurement opportunities over time between the suppliers wherever feasible.

VOR arrangements should be subject to regular contract management activities, including but not limited to monitoring and managing price, quality and service cycles.

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## 5. Establishing organization-specific VOR arrangements

Organizations should establish VOR arrangement-related policies. These policies should include, among others, dollar thresholds at which VOR arrangements may be established, necessary approvals and second-stage supplier selection.

### A. Process of establishing a VOR arrangement

Organizations should develop a standard process of establishing VOR arrangements. The process may include the following steps:

- i. Verify whether an MGS-established VOR arrangement for supplying the goods or services in question exists; if it does, utilize the arrangement where feasible;
- ii. Identify business need for the VOR arrangement (based on frequency, volume, scope, etc.);
- iii. Identify the ceiling price of the VOR arrangement — the dollar value of an individual procurement under the VOR arrangement above which the Organization must conduct procurement using a new open competitive process instead of the VOR arrangement;
- iv. Receive approval(s) from an appropriate authority; the authority should be identified based on total estimated spend expected to occur over the life of the VOR arrangement;
- v. Identify the process of conducting the second stage of the selection process, including the minimum number of suppliers to be invited to participate in the second-stage selection process based on dollar thresholds of the procurement;
- vi. Conduct an open competitive procurement process to establish the VOR arrangement (RFSQ) in accordance with Section 10.3.3.3.1 of this Guidebook. This may include:
  - Collecting information related to product, market trends and internal demand;
  - Identifying parameters, specifications and applicable standards of goods and services to be provided under the VOR arrangement;
  - Determining the terms and conditions of the master agreement (seek legal advice as necessary);
  - Identifying the term and possible extensions of the VOR arrangement (see sub-section B);
  - Identifying when an open competitive process directed at adding new suppliers to the VOR arrangement list will be held, where applicable;
  - Identifying a market-driven mechanism of price modification for specific commodities or services (e.g., fuel) over the term of the VOR, where appropriate;
  - Identifying criteria and processes to utilize when selecting suppliers for the VOR list;
  - Determining whether suppliers are required to obtain proof of insurance to provide goods or services and at what stage of the selection process the proof would be required;
  - Drafting competitive procurement documentation (ensure that the documentation specifies that submission of a response to RFSQ or placement on the VOR list does not guarantee award of work or a supply contract);
  - Obtaining all necessary approvals to post the RFSQ document;
  - Posting competitive procurement documents;
  - Collecting supplier submissions;
  - Evaluating the submissions and selecting the suppliers — vendors of record; and
  - Executing the form of agreement with the selected suppliers.
- vii. Develop the VOR user guide.

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**B. Second stage of the selection process**

Organizations must establish and document rules of conducting the second stage of the selection process. The method of the second-stage selection process should be determined based on the dollar value of procurement, including possible extensions. Typically, the second stage of selection under a VOR arrangement represents the invitational competitive procurement process.

Organizations must establish a schedule that outlines the minimum number of suppliers to be invited to submit bids based on the dollar value of procurement. The table below provides an example of such a schedule.

<b>Procurement Value</b>	<b>Minimum Number of Suppliers to be Invited to the Second-Stage Selection</b>
\$0 up to but not including \$25,000	1
\$25,000 up to but not including \$100,000	3
\$100,000 up to but not including \$250,000	5
\$250,000 up to the VOR ceiling price	7
More than the VOR ceiling price	Open competitive procurement

Organizations must not reduce the value of a procurement in order to circumvent the requirements outlined in the second-stage selection process schedule.

Where there are fewer members on the VOR list than in the schedule, all suppliers on the list must be invited to participate in the invitational procurement process.

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### **10.3.3.4 Procurement**

The following sections will assist Organizations in planning a competitive procurement process. They outline the policies and procedures to be followed when Organizations conduct competitive procurements.

#### **10.3.3.4.1 Procurement Lead**

A procurement lead is an individual assigned to ensure that a procurement is conducted in an ethical, lawful, effective and accountable manner.

Organizations should make best efforts to assign a procurement lead to procurements.

#### **10.3.3.4.2 Development of Competitive Procurement Documents**

To conduct a competitive procurement process, Organizations must develop competitive procurement documents to be provided to potential proponents.

The three major types of competitive procurement documents are described below.

- Request For Proposal (RFP). The purpose of an RFP is to request suppliers to provide solutions for the delivery of complex goods or services, or, where explicitly required, to provide alternative options or solutions. This process uses multiple predetermined evaluation criteria, including price.
- Request For Tender (RFT). The purpose of an RFT is to request suppliers to submit bids to provide goods or services based on stated delivery requirements, performance specifications, terms, and conditions. An RFT focuses the evaluation criteria predominantly on the price and delivery requirements.
- Request For Quotation (RFQ). An RFQ is a document similar to an RFT. In an RFQ, Organizations describe exactly the goods and services to be provided; the proposal evaluation is based solely on price.

The competitive procurement documents should include:

- Name, telephone number and location of the person to contact for information about the procurement documents. Suppliers should be cautioned that contacting any other person from the Organization regarding the competition may lead to their disqualification. Individuals within the Organization should also be cautioned against providing any information related to the procurement to a third party;
- Clear description of required goods or services. Goods or services must be described in generic and/or functional terms specific to the business needs. Where it is necessary to provide specifications in non-generic and/or non-functional terms, the specifications must set out the performance requirements in a manner that would not unfairly favour certain suppliers;
- Conditions that suppliers must meet before obtaining procurement documents, such as conflict-of-interest declarations, confidentiality agreements and non-disclosure agreements;
- Submission rules and other competitive procurement clauses to follow in order for a bid to be compliant. These may include bid format, language, number of copies to be submitted, attendance at a bidder's conference, etc;
- Process and time deadline for the submission of questions regarding the procurement documents, including a description of how the answers will be provided (see Section 10.3.3.4.5);
- Address and time deadline for bid submissions, including a caution that submissions received after the deadline will be returned unopened;
- Time, place and method of bid opening;

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- Mandatory criteria (e.g., technical standards) that must be met. Competitive documents must clearly outline that submissions that do not meet the mandatory criteria will be disqualified;
  - Full disclosure of the evaluation criteria (including weights), process and methodology to be used to assess submissions;
  - Request for a list of subcontractors to be used to complete the procurement, where applicable. To ensure that the full responsibility for completing the contract rests with the primary supplier, Organizations may specify that the request is for information purposes only;
  - Period of bid irrevocability (typically 120 days from closure of the competitive process);
  - A statement that the procurement is subject to the AIT annex 502.4;
  - Notice that any confidential information supplied to the Organization may be disclosed by the Organization where it is obliged to do so under FIPPA and/or PHIPPA, by an order of a court or tribunal, or otherwise required by law; and
  - A draft form of agreement to be signed in the event of procurement award.

#### **10.3.3.4.3 Posting Competitive Procurement Documents**

##### **Directive Mandatory Requirement #6: Posting Competitive Procurement Documents**

Calls for open competitive procurements must be made through an electronic tendering system that is readily accessible by all Canadian suppliers.

When posting competitive procurement documents, Organizations must use accepted mediums to uphold the principles of fairness, openness and transparency. This will encourage higher levels of supplier response and maintain high BPS reputation in the supplier community.

#### **10.3.3.4.4 Timelines for Supplier Response**

##### **Directive Mandatory Requirement #7: Timelines for Posting Competitive Procurements**

Organizations must provide suppliers a minimum response time of 15 calendar days for procurement of goods and services valued at \$100,000 or more.

Organizations must consider providing suppliers a minimum response time of 30 calendar days for procurements of high complexity, risk, and/or dollar value.

Organizations should give potential proponents sufficient time to prepare bids. The goal of publishing the competitive procurement documents is to receive the highest possible number of quality bids, thus achieving the optimum value for money.

Organizations should select a bid response time that is reflective of such factors as procurement complexity, risk, seasonality and time necessary for suppliers to prepare and submit bids.

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#### **10.3.3.4.5 Communications During Competitive Process**

The competitive process begins when the competitive procurement documents are issued (Start Date) and ends when an Organization signs an agreement with a supplier (End Date). Throughout the competitive procurement process, all communications with suppliers involved in the process must occur formally, through the contact person identified in the competitive documents.

From the Start Date to the deadline for submitting bids (Closing Date), Organizations must use two types of formal communication: addendum and question-and-answer (Q&A) response. Addenda and Q&A must be posted in the same manner as the competitive procurement documents in order to be available to all proponents, thus ensuring a level playing field.

##### **1. Addendum response**

Addenda are prepared where the posted competitive procurement documents need to be modified (e.g., amending, adding or deleting information due to errors, conflicts or omissions in the documents). Addenda must be posted at least seven days before the Closing Date. If an addendum is issued within seven days of the Closing Date, the bid submission date must be moved accordingly.

Addendum allows modifying the competitive documents by:

- Inserting new or omitted provisions or drawings; and/or
- Revising or deleting provisions or drawings.

##### **2. Question-and-answer response**

Q&A responses are prepared where the posted competitive procurement documents require clarification, but there is no need to modify these documents. Answers that change any aspect of the competitive procurement documents must be addressed by making corresponding modifications to the documents through an addendum.

Questions should be submitted at least seven days before the Closing Date; however, questions submitted after that may also be considered. If warranted, the bid submission period may be extended to ensure that all proponents receive as much relevant information as possible.

##### **3. Communications during proposal evaluation**

During the evaluation period (Closing Date to the End Date), Organizations must not communicate with suppliers on matters related to the competitive procurement process unless it is to seek clarification of a bid or notify the successful supplier. To ensure that the above bid clarification does not amount to bid repair, Organizations may seek legal advice. All competitive process-related communications that occur during this period must be documented.

##### **4. Communications after proposal evaluation**

Once the evaluation process is completed and an agreement with a supplier is signed, Organizations may, subject to confidentiality requirements, discuss the competition with the participants of the competition. Where the procurement value is \$100,000 or more, Organizations must inform unsuccessful suppliers about the outcome of the competitive procurement (see Directive Mandatory Requirement #19). Organizations may also notify unsuccessful suppliers by letter (see Section 10.3.3.6.2).

Where the procurement value is \$100,000 or more, Organizations must offer suppliers a debriefing (see Directive Mandatory Requirement #20). The requirements to supplier debriefings are outlined in Section 10.3.3.6.3.

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#### **10.3.3.4.6 Bidder's Conference**

Organizations may hold a bidder's conference where there is important information pertaining to the procurement in question that suppliers may understand better if it is presented to them (e.g., a request to outfit a building with electricity is easier to respond to after touring the site). Bidder's conferences are usually held shortly after the competitive documents are posted. This is done to give the proponents sufficient time to draft bids based on the information given at the bidder's conference.

Where an Organization is set to conduct a bidder's conference, the competitive documents must contain information about the conference, including but not limited to:

- Time and location;
- Items to be covered; and
- Whether attending the bidder's conference is mandatory. Where an Organization makes attendance of a bidding conference mandatory, it must specify in the competitive documents that bids of all proponents who did not attend the conference will be returned unopened.

During a bidder's conference, only the procurement in question may be discussed.

Questions and answers provided at a bidder's conference must be communicated to all proponents, irrespective of whether they attended the conference, through an addendum or Q&A.

#### **10.3.3.5. Proposal Evaluation**

##### **10.3.3.5.1 Bid Receipt**

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#### **Directive Mandatory Requirement #8: Bid Receipt**

Bid submission date and closing time must be clearly stated in competitive procurement documents. Organizations must set the closing date of a competitive procurement process on a normal working day (Monday to Friday, excluding provincial and national holidays).

Submissions that are delivered after the closing time must be returned unopened.

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Competitive documents that allow or require responses to be submitted in a hard-copy format should identify bid opening information, including place, time and attendance.

The process for opening bids submitted in a hard-copy format should be as follows:

1. Stamp each bid, as it arrives, with the date, time, location, company name and contact information;
2. Open the bids only after the closing time specified in the competitive documents has lapsed;
3. Ensure there is at least one witness to view the bid openings; and
4. When opening the bids, follow the process outlined in the competitive documents.

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### 10.3.3.5.2 Evaluation Criteria

#### **Directive Mandatory Requirement #9: Evaluation Criteria**

Evaluation criteria must be developed, reviewed and approved by an appropriate authority prior to commencement of the competitive procurement process.

Competitive procurement documents must clearly outline mandatory, rated and other criteria that will be used to evaluate submissions, including weight of each criterion.

Mandatory criteria (e.g., technical standards) should be kept to a minimum to ensure that no bid is unnecessarily disqualified.

Maximum justifiable weighting must be allocated to the price/cost component of the evaluation criteria.

All criteria must comply with Section 7.2.14, Non-Discrimination, of the Directive.

The evaluation criteria are to be altered only by means of addendum to the competitive procurement documents.

Organizations may request suppliers to provide alternative strategies or solutions as a part of their submission. Organizations must establish criteria to evaluate alternative strategies or solutions prior to commencement of the competitive procurement process. Alternative strategies or solutions must not be considered unless they are explicitly requested in the competitive procurement documents.

Organizations must use the evaluation criteria outlined in the competitive procurement documents when selecting the winning submission.

Organization may utilize price, quality, quantity, transition costs, delivery, servicing, environmental considerations, the capacity of the supplier to meet requirements of procurement, experience, financial capacity of the supplier as well as any other factor directly related to the procurement as evaluation criteria. Organizations must allocate the maximum justifiable weighting to the price/cost component of the evaluation criteria.

Where feasible, Organizations are recommended to perform a sensitivity analysis on the selected criteria and assigned weighting prior to finalizing the criteria.

Organizations should not request the suppliers to provide information that will not be evaluated as such information may affect the outcome of the evaluation process.

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### **10.3.3.5.3 Evaluation Methodology**

#### **Directive Mandatory Requirement #10: Evaluation Process Disclosure**

Competitive procurement documents must fully disclose the evaluation methodology and process to be used in assessing submissions, including the method of resolving a tie score.

Competitive procurement documents must state that submissions that do not meet the mandatory criteria will be disqualified.

Description of the evaluation methodology and process must include:

1. Clear articulation of all mandatory requirements. Organizations must indicate that the mandatory requirements will be assessed on a pass/fail basis, outline how suppliers can achieve a passing grade, and state that where a submission is found not to comply with a mandatory requirement, no further evaluation of this submission will take place;
2. All weights, including sub-weights, for the rated criteria (where applicable);
3. Description of short-listing processes, including any minimum-rated score requirements.
4. The role and weight of other criteria, including reference checks, oral interviews and demonstrations; and
5. Descriptions of the price/cost of ownership evaluation methodology, including scenarios of the evaluation process (where appropriate), to determine costs for specific volumes and/or service levels. This evaluation should take place after evaluation of the mandatory requirements and rated criteria for all bids.

### **10.3.3.5.4 Evaluation of Mandatory Requirements**

The evaluation process should begin with the assessment of submission compliance with mandatory requirements. Where a submission substantially complies, certain clarifications may be sought to confirm compliance. To ensure that the above clarifications do not amount to bid repair, Organizations should seek legal advice.

Submissions that do not comply with one or more mandatory requirements must be rejected. Once all compliant submissions are identified, an Organization should proceed with the balance of the evaluation process.

### **10.3.3.5.5 Evaluation Team**

#### **Directive Mandatory Requirement #11: Evaluation Team**

Competitive procurement processes require an evaluation team responsible for reviewing and rating the compliant bids.

Evaluation team members must be made aware of the restrictions related to utilization and distribution of confidential and commercially sensitive information collected through the competitive procurement process and refrain from engaging in activities that may create or appear to create a conflict of interest.

Evaluation team members must sign a conflict-of-interest declaration and non-disclosure of confidential information agreement.

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The competitive procurement process requires that an evaluation team responsible for reviewing and rating bids be established. When selecting members of an evaluation team, Organizations should consider the following:

- An evaluation team lead responsible for the evaluation process must be appointed;
- Evaluation team members should be selected and their participation confirmed before the competitive documents have been posted. Ideally, evaluation team members should be included in the development of the specifications, evaluation criteria and weighting;
- An evaluation team may include supply chain experts, subject-matter experts, financial experts and representatives of the procurement function of the Organization. An evaluation team should possess qualifications necessary for proper bid evaluation; and
- A representative of the procurement division should participate in the evaluation team or, at a minimum, in process oversight. Where feasible, the representative of the procurement division should assume the role of the evaluation lead.

Organizations should develop an evaluation process guide for evaluation teams, outlining the roles and responsibilities of team members.

#### **10.3.3.5.6 Evaluation Process**

##### **Directive Mandatory Requirement #12: Evaluation Matrix**

Each evaluation team member must complete an evaluation matrix, rating each of the submissions. Records of evaluation scores must be retained for audit purposes.

Evaluators must ensure that everything they say or write about submissions is fair, factual, and fully defensible.

##### **Directive Mandatory Requirement #13: Winning Bid**

The submission that receives the highest evaluation score and meets all mandatory requirements set out in the competitive procurement document must be declared the winning bid.

During the selection process, Organizations should also consider the following:

1. Organizations may ask proponents to clarify their bid, but should seek legal advice to ensure that such clarification does not change the bid in any way; and
2. Where competitive procurement documents provide for cancellation of a competition, the competition may be cancelled and a new solicitation may be issued if received bids exceed the allocated budget, do not respond to the requirements or do not represent fair market value.

Any proponent whose submission is rejected during the evaluation process must be notified about the rejection in writing within reasonable time after completion of the evaluation.

With the exception of any pricing that was made publicly available at the time of a public opening, all submission evaluation details must be kept confidential.

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### 10.3.3.5.7 Non-Discrimination

#### **Directive Mandatory Requirement #14: Non-Discrimination**

Organizations must not discriminate or exercise preferential treatment in awarding a contract to a supplier as a result of a competitive procurement process.

#### **1. Discriminatory procurement practices**

Organizations must not differentiate between suppliers, or goods or services on the basis of geographic location in Canada.

Organizations must not adopt or maintain any forms of discrimination based on the province of origin of goods, services, construction materials or the suppliers of such goods, services or construction materials in their procurement practices.

Discriminatory procurement practices include, but are not limited to, the following:

- Registration requirements and restrictions on calls for bids based upon the location of a supplier and its subcontractors, or the place where the goods or services are produced and, generally, qualification procedures that discriminate between suppliers by province of origin;
- The biasing of specifications in favour of, or against, a particular good or service for the purpose of circumventing the Directive;
- The timing of bid opening and closing dates so as to prevent qualified suppliers from submitting bids;
- The specification of quantities and delivery schedules of a scale and frequency that may reasonably be judged as deliberately designed to prevent qualified suppliers from meeting the requirements of the procurement;
- The division of required quantities or the diversion of budgetary funds to subsidiary organizations in a manner designed to circumvent the requirements of this section;
- The consideration, in evaluating bids, of provincial or local content or economic benefits that favour a supplier or good;
- The giving of preference to selected bids after bids have been submitted and without any mention of the intended preference in the competitive procurement documents;
- The use of price discounts or preferential margins to favour certain supplier;
- The unjustifiable exclusion of a qualified supplier from bidding; and
- The requirement that a construction contractor or subcontractor use workers, materials or suppliers of materials originating from the Province where the work is being carried out.

#### **2. Legitimate objectives**

Where it is established that a measure is inconsistent with sub-section 1 – Discriminatory procurement practices, that measure is still permissible where it can be demonstrated that:

- The purpose of the measure is to achieve a legitimate objective;
- The measure does not operate to impair unduly the access of persons, goods, services or investments of a Province that meet that legitimate objective; and
- The measure is not more trade restrictive than necessary to achieve that legitimate objective.

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In this Guidebook, “legitimate objective” means one of the following objectives:

- Public security and safety;
- Public order;
- Protection of human, animal or plant life or health;
- Protection of the environment;
- Consumer protection;
- Protection of the health, safety and well-being of workers; or
- Affirmative action programs for disadvantaged groups.

### **10.3.3.6. Contract Award**

Upon completion of the competitive process, Organizations should send a formal contract award notification letter to the supplier selected as a result of the competitive process.

#### **10.3.3.6.1 Executing the Contract**

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##### **Directive Mandatory Requirement #15: Executing the Contract**

The agreement between the Organization and the successful supplier must be formally defined in a signed written contract before the provision of supplying goods or services commences.

Where an immediate need exists for goods or services, and the Organization and the 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 authority.

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##### **Directive Mandatory Requirement #16: Establishing the Contract**

The contract must be finalized using the form of agreement that was released with the procurement documents.

In circumstances where an alternative procurement strategy has been used (i.e., a form of agreement was not released with the procurement document), the agreement between the Organization and the successful supplier must be defined formally in a signed written contract before the provision of supplying goods or services commences.

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##### **Directive Mandatory Requirement #17: Termination Clauses**

All contracts must include appropriate cancellation or termination clauses. Organizations should seek legal advice on the development of such clauses.

When conducting complex procurements, Organizations should consider, as appropriate, the use of contract clauses that permit cancellation or termination at critical project life-cycle stages.

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### **Directive Mandatory Requirement #18: Term of Agreement Modifications**

The term of the agreement and any options to extend the agreement must be set out in the competitive procurement documents. An approval by an appropriate authority must be obtained before executing any modifications to the term of agreement.

Extending the term of agreement beyond that set out in the competitive procurement document amounts to non-competitive procurement where the extension affects the value and/or stated deliverables of procurement.

#### **10.3.3.6.2 Contract Award Notification**

### **Directive Mandatory Requirement #19: Contract Award Notification**

For procurements valued at \$100,000 or more, Organizations must post, in the same manner as the procurement documents were posted, contract award notification. The notification must be posted after the agreement between the successful supplier and the Organization was executed. Contract award notification must list the name of the successful supplier, agreement start and end dates, and any extension options.

After signing a contract, Organizations must notify all suppliers who participated in the competitive process that a contract has been signed and the competitive process is complete.

It is a good practice to send letters to all unsuccessful proponents, communicating to them that the decision was made and thanking them for participating in the competitive process.

#### **10.3.3.6.3 Supplier Debriefing**

### **Directive Mandatory Requirement #20: Supplier Debriefing**

For procurements valued at \$100,000 or more, Organizations must inform all unsuccessful suppliers about their entitlement to a debriefing.

Organizations must allow unsuccessful suppliers 60 calendar days following the date of the contract award notification to request a debriefing.

The details of supplier debriefings must be provided in the competitive documents, including the process of requesting a debriefing upon the conclusion of the competitive process.

When conducting supplier debriefings, Organizations must:

- Confirm with each supplier the date, time and location of the debriefing session in writing;
- Conduct separate debriefings with each supplier;
- Conduct debriefing sessions in a consistent manner. Ideally, the same participants from an Organization would participate in all debriefings related to a competitive process. If an Organization used a Fairness Commissioner in a competitive process, the Fairness Commissioner may participate in the debriefing but must not conduct the debriefing;
- Not disclose information concerning other suppliers, other than the names and addresses of suppliers who participated in the competitive process. Information about other suppliers may be confidential, commercially sensitive or proprietary information that Organizations are not authorized to disclose;

- 
- Not answer questions unrelated to the competitive process; and
  - Retain all correspondence and documentation related to debriefing sessions.

When conducting supplier debriefings, Organizations should:

- Provide a general overview of the evaluation process set out in the procurement document;
- Discuss strengths and weaknesses of a supplier's submission in relation to the specific evaluation criteria. Where the price is not the only evaluation criterion, Organizations may provide supplier's evaluation scores and ranking (e.g., third of five);
- Provide suggestions on how the supplier may improve future submissions;
- Be open to feedback from the supplier on existing procurement processes and practices;
- Address questions and issues raised by the supplier in relation to their submission; and
- Where a supplier threatens to take legal action, record details and notify the appropriate authority within the Organization.

Suppliers can request additional information regarding the competitive procurement process, which may include information provided by other suppliers, through an FOI request made to the Organization. Exemptions from disclosing information about other suppliers may be available under applicable privacy laws.

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### 10.3.4. Non-Competitive Procurement

#### **Directive Mandatory Requirement #21: Non-Competitive Procurement**

Organizations should employ a competitive procurement process to achieve optimum value for money. It is recognized, however, that special circumstances may require Organizations to use non-competitive procurement.

Organization may utilize non-competitive procurement only in situations outlined in the exemption, exception, or non-application clauses of the AIT or other trade agreements.

Prior to commencement of non-competitive procurement, supporting documentation must be completed and approved by an appropriate authority within the Organization.

Organizations should employ competitive procurement processes to achieve optimum value for money. It is recognized, however, that special circumstances may require Organizations to use non-competitive procurement. Organizations may use non-competitive procurement under the circumstances outlined in this section.

#### **10.3.4.1. Non-Application Of Trade Agreements**

Where a non-application clause exists under the Agreement on Internal Trade (AIT) or other trade agreement, Organizations may apply this clause as the basis for conducting non-competitive procurement.

An Organization asserting that procurement is subject to a non-application clause under a trade agreement must formally establish applicability of this clause.

As of April 1, 2011, the above-mentioned non-application clauses of the AIT are outlined below. In accordance with Sections 6 and 10.2.3.6 of the Guidebook, Organizations are required to comply with any amendments to the trade agreements approved after release of the Directive.

- Procurement of goods intended for resale to the public;
- Contracts with a public body or a non-profit organization;
- Procurement of goods and services purchased on behalf of an entity that is out of scope of the Directive;
- Procurement from philanthropic institutions, prison labour or persons with disabilities;
- Procurement of any goods the inter-provincial movement of which is restricted by laws not inconsistent with the trade agreements;
- Procurement of goods and services that is financed primarily from donations that are subject to conditions that are inconsistent with the Directive;
- Procurement of goods and services related to cultural or artistic fields and computer software for educational purposes;
- Procurement of services that in Ontario may, by legislation or regulation, be provided only by any of the following licensed professionals: medical doctors, dentists, nurses, pharmacists, veterinarians, engineers, land surveyors, architects, accountants, lawyers and notaries;
- Procurement of services of financial analysts or the management of investments by organizations who have such functions as a primary purpose;
- Procurement of financial services respecting the management of financial assets and liabilities (i.e., treasury operations), including ancillary advisory and information services, whether or not delivered by a financial institution;

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- Procurement of goods and services for use outside Canada as well as construction work done outside Canada; and
  - Health services and social services.

#### **10.3.4.2. Exceptions From Competitive Procurements**

Where an exception clause exists under the Agreement on Internal Trade (AIT) or other trade agreement, Organizations may apply this clause as the basis for conducting non-competitive procurement.

An Organization asserting that procurement is subject to an exception clause under a trade agreement must formally establish applicability of this clause.

The following sections outline the applicable AIT exception clauses as of April 1, 2011. In accordance with Sections 6 and 10.2.3.6 of the Guidebook, Organizations are required to comply with any amendments to the trade agreements approved after release of the Directive.

##### **10.3.4.2.1 Single Sourcing**

Organizations may conduct non-competitive procurement in the circumstances listed below (also known as single-source situations); provided that they do not do so for the purposes of avoiding competition between suppliers or to discriminate against suppliers:

- Where an unforeseeable situation of urgency exists and the goods or services cannot be obtained in time by means of open procurement procedures.  
  
Failure to plan and allow sufficient time for a competitive procurement process does not constitute an unforeseeable situation of urgency;
- Where goods or 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 government confidentiality, cause economic disruption or otherwise be contrary to the public interest;
- Where a contract is to be awarded under a cooperation agreement that is financed, in whole or in part, by an international cooperation organization, only to the extent that the agreement between the entity and the organization includes rules for awarding contracts that differ from the obligations set out in the Directive;
- Where construction materials are to be purchased and it can be demonstrated that transportation costs or technical considerations impose geographic limits on the available supply base, specifically in the case of sand, stone, gravel, asphalt, compound and pre-mixed concrete for use in the construction or repair of roads;
- Where compliance with the open tendering provisions set out in the Directive would interfere with the entities' ability to maintain security or order or to protect human, animal or plant life or health; and
- In the absence of a receipt of any bids in response to a call for proposals or tenders made in accordance with the Directive.

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#### **10.3.4.2.2 Sole Sourcing**

Where only one supplier is able to meet the requirements of a procurement, Organizations may conduct non-competitive procurement in the circumstances listed below (also known as sole-source situations) provided that they do not do so for the purposes of avoiding competition between suppliers or to discriminate against suppliers:

- To ensure compatibility with existing products, to recognize exclusive rights, such as exclusive licences, 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 for technical reasons and the goods or services can be supplied only by a particular supplier and no alternative or substitute exists;
- For the procurement of goods or services the supply of which is controlled by a supplier that is a statutory monopoly;
- For the purchase of goods on a commodity market;
- For work to be performed on or about a leased building or portions thereof that may be performed only by the lessor;
- For work to be performed on property by a contractor according to provisions of a warranty or guarantee held in respect of the property or the original work;
- For a contract to be awarded to the winner of a design contest;
- For the procurement of a prototype of a first good or service to be developed in the course of and for a particular contract for research, experiment, study or original development, but not for any subsequent purchases;
- For the purchase of goods under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases;
- For the procurement of original works of art;
- For the procurement of subscriptions to newspapers, magazines or other periodicals; and
- For the procurement of real property.

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### 10.3.5 Contract Management

#### Directive Mandatory Requirement #22: Contract Management

Procurements and the resulting contracts must be managed responsibly and effectively.

Payments must be made in accordance with provisions of the contract. All invoices must contain detailed information sufficient to warrant payment. Any overpayments must be recovered in a timely manner.

Assignments must be properly documented. Supplier performance must be managed and documented, and any performance issues must be addressed.

To manage disputes with suppliers throughout the life of the contract, Organizations should include a dispute resolution process in their contracts.

For services, organizations must:

- Establish clear terms of reference for the assignment. The terms should include objectives, background, scope, constraints, staff responsibilities, tangible deliverables, timing, progress reporting, approval requirements, and knowledge transfer requirements.
- Establish expense claim and reimbursement rules compliant with the Broader Public Sector Expenses Directive<sup>1</sup> and ensure all expenses are claimed and reimbursed in accordance with these rules.
- Ensure that expenses are claimed and reimbursed only where the contract explicitly provides for reimbursement of expenses.

Organizations must ensure that:

- The responsibilities of both the Organization and the successful supplier are defined in a signed written contract before the provision for supplying goods or services commences; and
- Contracts include appropriate cancellation or termination clauses.

Contracts include extensions to the term of the agreement as set out in the competitive documents. Extending the term of agreement beyond that set out in the competitive procurement document amounts to non-competitive procurement where the extension affects value and/or stated deliverables of procurement. In such situations, approval from an appropriate authority must be obtained prior to proceeding with the extension.

Organizations should coordinate, monitor and control efforts of the internal and external resources to ensure satisfactory completion of assignments on schedule and within budget. When applicable, transfer of knowledge should occur from consultants to staff to avoid continuous reliance on consultants.

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<sup>1</sup>As set out in the Broader Public Sector Accountability Act, 2010 (s.10).

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### 10.3.6 Procurement Records Retention

#### **Directive Mandatory Requirement #23: Procurement Records Retention**

For reporting and auditing purposes, all procurement documentation, as well as any other pertinent information must be retained in a recoverable form for a period of seven years.

Organizations must have a written policy for handling, storing and maintaining the suppliers' confidential and commercially sensitive information.

Organizations must retain all procurement documents as well as any pertinent information for reporting, auditing, and bid dispute resolution purposes.

Types of documentation to be retained by Organizations include:

- A copy of the procurement justification or business case;
- Information about supplier consultations, including requests for information, undertaken in the process of development of the procurement documents;
- Evidence that all required approvals were obtained;
- Copies of all procurement documents used to qualify and select suppliers;
- Where procurement was conducted using a non-competitive method, justification, applicable exemptions and associated approvals;
- Copies of all advertisements of procurement documents;
- Copies of all successful and unsuccessful submissions, including conflict-of-interest declarations and other attached forms;
- Information regarding any procurement process issues;
- Information regarding evaluation of all submissions;
- Information regarding all supplier debriefings, including written documentation of the offer of supplier debriefing;
- Copies of all award letters, notices and posted announcements;
- Copies of all agreements;
- Information regarding all changes to the terms and conditions of the agreement, including any changes that resulted in an increase in the agreement price;
- Information regarding supplier performance after agreement execution, including performance monitoring and management, as well as the knowledge transfer mechanisms;
- Information regarding risk assessments and contingency plans;
- Contractor security screening decisions;
- Information regarding procurement-related protests, disputes or supplier complaints, including any agreement disputes;
- Evidence of receipt of the deliverables; and
- Any other documentation related to procurement.

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### 10.3.7 Conflict of Interest

#### Directive Mandatory Requirement #24: Conflict of Interest

Organizations must monitor any conflict of interest that may arise as a result of the Members' of the Organization, advisors', external consultants', or suppliers' involvement with the Supply Chain Activities. Individuals involved with the Supply Chain Activities must declare actual or potential conflicts of interest. Where a conflict of interest arises, it must be evaluated and an appropriate mitigating action must be taken.

The following sections provide guidance on how to manage conflicts of interest that may involve procurement process participants, including Members of an Organization and suppliers.

#### 10.3.7.1 All Suppliers

Organizations must ensure that their policies, processes and procurement documentation:

- Define conflict of interest to include situations or circumstances that could give a supplier an unfair advantage during a procurement process or compromise the ability of a supplier to perform its obligations under the agreement;
- Reserve the right of the Organization to solely determine whether any situation or circumstance constitutes a conflict of interest;
- Reserve the right of the Organization to disqualify prospective suppliers from a procurement process due to a conflict of interest;
- Reserve the right of the Organization to prescribe the manner in which a supplier should resolve a conflict of interest;
- Require prospective suppliers participating in a procurement process to declare any actual or potential conflict of interest;
- Require suppliers to avoid any conflict of interest during performance of their contractual obligations to the Organization;
- Require suppliers to disclose any actual or potential conflict of interest that may arise during performance of an agreement; and
- Allow the Organization to terminate an agreement in situations where:
  - The supplier fails to disclose any actual or potential conflict of interest;
  - The supplier fails to resolve its conflict of interest as directed by the Organization; or
  - The conflict of interest cannot be resolved.

#### 10.3.7.2 Consultants

A conflict of interest is created where a consultant retained to develop competitive procurement documents has the ability to fulfill the procurement need contemplated in the procurement documents.

The terms of agreement must preclude any consultant retained to develop the competitive procurement documents from participating in the competition.

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### **10.3.7.3 Members Of An Organization**

A conflict of interest may exist that involves the Members of an Organization. Where a conflict of interest is declared, Organizations must ensure that the Members of an Organization sign a conflict-of-interest declaration.

The Members of an Organization must:

- Disclose potential and actual conflicts of interest in writing; and
- Avoid situations that may present a conflict of interest while dealing with entities doing or seeking to do business with the Organization.

Situations that may result in a conflict of interest include:

- Being engaged in outside employment;
- Having relationships that may affect or may be perceived as affecting an individual's objectivity in carrying out an official role;
- Providing assistance or advice to a supplier participating in a competitive process;
- Having an ownership, investment interest or compensation arrangement with any entity participating in a competitive process;
- Having access to confidential information that may affect or may be perceived as affecting one's objectivity or judgement in carrying out an official role; and
- Accepting favours or gratuities from those doing business with the Organization.

### **10.3.7.4 Evaluation Team Members**

In addition to the situations that might result in a conflict of interest for all Members of an Organization and advisors, Organizations must identify any additional conflicts of interest that may arise as a result of Members of an Organization and advisors participation in the evaluation of bids. Evaluation team members must sign the conflict-of-interest declaration and non-disclosure agreement before each evaluation.

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## 10.3.8 Bid Dispute Resolution

### Directive Mandatory Requirement #25: Bid Dispute Resolution

Competitive procurement documents must outline bid dispute resolution procedures to ensure that any dispute is handled in an ethical, fair, reasonable and timely fashion. Bid dispute resolution procedures must comply with bid protest or dispute resolution procedures set out in the applicable trade agreements.

Bid dispute resolution can be managed through a number of processes designed to resolve a procurement-related conflict, dispute or claim.

Organizations must establish bid dispute resolution procedures to address suppliers' concerns related to any aspect of the procurement process.

#### 10.3.8.1 Bid Dispute Resolution Types

There are a number of approaches that Organizations can use to resolve bid disputes.

While the three key approaches are described below, when determining what methods will be most suitable for each procurement, Organizations should consult their legal experts.

##### 10.3.8.1.1 Negotiation

Negotiation is a voluntary and usually informal process in which parties identify issues of concern, explore options for resolution of the issues and search for a mutually acceptable agreement to resolve the issues raised.<sup>2</sup> The disputing parties may be represented by lawyers in negotiation. Negotiation is different from mediation in that there is no neutral individual to assist the parties negotiate.

##### 10.3.8.1.2 Mediation

Mediation is a private process, where a neutral third person, called a mediator, helps the parties discuss and try to resolve the dispute. The parties have the opportunity to describe the issues; discuss their interests, understandings and feelings; provide each other with information; and explore ideas for the resolution of the dispute. The process remains "voluntary" in that the parties are not required to come to an agreement.

The mediator does not have the power to make a decision for the parties, but can help the parties find a mutually acceptable resolution. The only people who can resolve the dispute in mediation are the parties themselves.

##### 10.3.8.1.3 Arbitration

Arbitration is a private process where disputing parties agree that one or several individuals can make a decision about the dispute after receiving evidence and hearing arguments. Arbitration is different from mediation because the neutral arbitrator has the authority to make a decision about the dispute.

The arbitration process is similar to a trial in that the parties make opening statements and present evidence to the arbitrator. After the hearing, the arbitrator issues an award.

The arbitration process may be either binding or non-binding. When arbitration is binding, the decision is final, may be enforced by a court and may only be appealed on very narrow grounds. When arbitration is non-binding, the arbitrator's award is advisory and can be final only if accepted by the parties.

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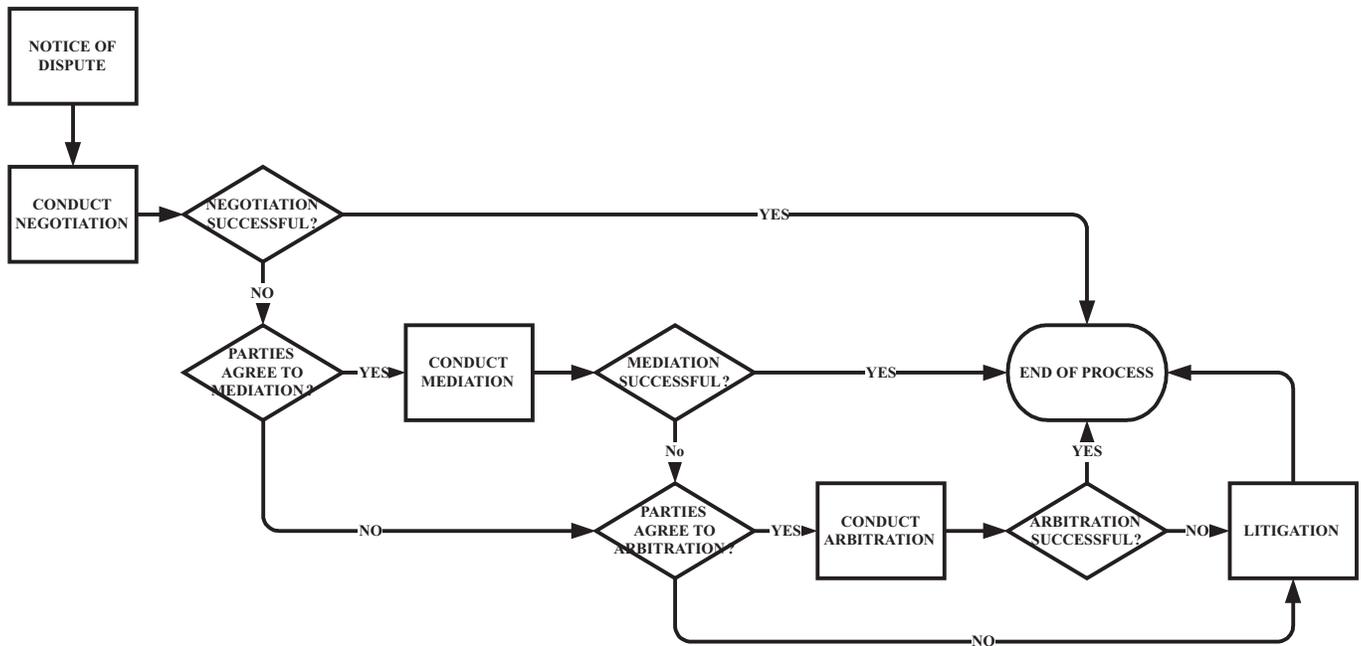
<sup>2</sup>"What You Need to Know about Dispute Resolution: The Guide to Dispute Resolution Processes," American Bar Association, 2006.

### 10.3.8.2 Bid Dispute Resolution Advantages

Dispute resolution processes may prove to be faster and more cost efficient than the traditional legal process. Certain processes can provide the involved parties with greater involvement in reaching a solution, as well as more control over the outcome of the dispute.

### 10.3.8.3 Structuring Bid Dispute Resolution Process

Dispute resolution processes are not mutually exclusive. To resolve certain disputes, a number of different resolution approaches may be used in sequence. An example of such sequence is presented below.



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## 11. SUPPORTING MATERIALS

### 11.1. Value-add incentives

A value-add incentive is an offer by a supplier, over and above the primary goods or services being purchased, with the intent to increase the total value received by the customer.

The current national practices are varied with some organizations choosing not to include value-add incentives in their procurement process and others developing specific policies regarding this practice. When not properly managed, requesting and/or evaluating value-add incentives may increase the level of risk within the procurement process and result in bid disputes.

The following rules for the use of value-add incentives have been compiled by incorporating the requirements and guidance of other provinces:

1. Value-add incentives must be directly relevant and transparently connected to the given procurement;
2. Organizations should openly state the desired enhancements. The procurement document should list the specific value-add incentives that would be considered beneficial to the organization and order of preference, such as on-site technical assistance or product upgrades;
3. Cash should never be requested as a value-add incentive and, if received, should only be used to reduce the final price of the bid;
4. Organizations must establish criteria to evaluate value-add incentives prior to commencement of the competitive procurement process;
5. The weighting assigned to value-add incentives must be stated in the competitive procurement document;
6. Organizations should ensure that the weight assigned to value-add incentives demonstrates that they are not considered a major influencing factor;
7. Value-add incentives that are outside the scope of the goods and/or services being procured or related operational improvements should not receive any points; and
8. Value-add incentives should be evaluated as a separate and final step after all other rated criteria.

Organizations should be aware that the U.S. Foreign Corrupt Practices Act prohibits U.S. citizens and entities from making payments to foreign government officials to assist in obtaining or retaining business. Under this Act, BPS purchasers are considered foreign government officials.

Organizations willing to receive value-add incentives must ensure that they maintain the principles of open, fair and transparent procurement. To maintain such transparency, value-add incentives must not be considered unless they are explicitly requested in the competitive procurement documents.

Organizations must govern their procurement practices according to multiple trade agreements. As these trade agreements are regularly being updated and new ones developed, the rules regarding value-add incentives may be impacted. This section is subject to change to align with any broader principles that may be identified through the trade agreements to ensure a coordinated approach.

## 11.2. Procurement Strategies

Each Organization is responsible for developing its procurement strategy based on business and legal requirements, the Directive and applicable trade agreements. Organizations should consult their lawyers and advisors to determine their obligations.

Organizations that procure consulting services at any value or goods and non-consulting services valued at \$100,000 or more are required to conduct a fair, open and transparent competitive procurement process. For procurement of goods and non-consulting services valued under \$100,000, Organizations should consider conducting open competitive or invitational competitive procurement. The table below describes some of the strategies that Organizations can use. The table also indicates the mandatory requirements of the Directive that Organizations are to follow when conducting procurement.

Method	Procurement Description	Intent to Enter into Contract A/ Contract B	Applicable Mandatory Requirements
<b>Competitive</b>			
RFT, RFQ	Organization sets all terms of Contract A and B; award is based on price/delivery terms	Both	All
RFP	Organization sets all terms of Contract A and B; award is based on price and other factors	Both	All
RFP, RFT, RFQ	Organization sets all terms of Contract A and specifies what terms of Contract B are negotiable*	Both	All
RFSQ	Two-stage selection process: 1. Create pre-qualified suppliers list or VOR list 2. Select a supplier from pre-qualified supplier's list or VOR list by utilizing process outlined in the RFSQ	1. Both 2. Both	All
RFI, RFEI	Market research to determine procurement strategy without committing to awarding work	Neither	1,2,4,6,7,23-24
<b>Non-Competitive</b>			
Single Source, Sole Source	Negotiation of all terms of the agreement	No Contract A	1-3; 15; 17; 21-22
*Terms that are essential or mandatory to the agreement should not be subject to negotiation. Organizations should keep the negotiable terms at a minimum level to ensure fairness, transparency and accountability.			

The procurement strategies listed above are considered leading practice. Organizations should utilize these strategies consistently with principles of openness, fairness and transparency.

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### **11.2.1. RFT/RFQ**

#### **Process Applicability**

An RFT or RFQ is used where the Organization is able to formulate clear and definite delivery and performance requirements, terms and conditions. Work is awarded based, predominantly or solely, on price and delivery requirements.

#### **Process Steps**

1. Purchase Need Identified: to determine core procurement process to initiate;
2. Planning: to define procurement scope and assemble an evaluation team;
3. Requirements: to define procurement specifications such as evaluation criteria and contract;
4. Create/Issue RFT or RFQ Document: to complete, approve and post a competitive document (RFT/RFQ);
5. Blackout Period and Bid Receipt: to ensure fair treatment of all proponents;
6. Evaluation: to determine the highest-ranking submission based on evaluation criteria;
7. Agreement: to offer a contract to the highest-ranking bidder and obtain contract signatures;
8. Award Notification: to notify all participants that a successful supplier was selected; and
9. Supplier Debriefing: to accommodate all suppliers requesting a debriefing session.

#### **Comments**

Contract A sets out the deliverable requirements, evaluation criteria and reserved rights of the Organization, determined in accordance with business and legal requirements, the Directive and applicable trade agreements.

Typically, Contract A requires the supplier to enter into Contract B, and sign the attached form of the Contract B. Terms of Contract B may be specified as negotiable or non-negotiable. In a typical RFT or RFQ, most of the terms of Contract B are non-negotiable.

### **11.2.2. RFP**

#### **Process Applicability**

An RFP is used where Organizations require solutions for the delivery of complex goods or services or, where explicitly required, to provide alternative options or solutions. Price is not the sole factor in awarding work agreements.

#### **Process Steps**

1. Purchase Need Identified: to determine core procurement process to initiate;
2. Planning: to define procurement scope and assemble an evaluation team;
3. Requirements: to define procurement specifications such as evaluation criteria and contract;
4. Create/Issue RFP Document: to complete, approve and post a competitive document (RFP);
5. Blackout Period and Bid Receipt: to ensure fair treatment of all proponents;
6. Evaluation: to determine the highest-ranking submission based on evaluation criteria;
7. Agreement: to offer a contract to the highest-ranking bidder and obtain contract signatures;
8. Award Notification: to notify all participants that a successful supplier was selected; and
9. Supplier Debriefing: to accommodate all suppliers requesting a debriefing session.

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## Comments

Contract A sets out the deliverable requirements, evaluation criteria and reserved rights of the Organization, determined in accordance with business and legal requirements, the Directive and applicable trade agreements.

Typically, Contract A requires the supplier to enter into Contract B and sign the attached form of the Contract B. Terms of Contract B may be set as negotiable or non-negotiable within the RFP.

Organizations should keep the negotiable terms at a minimum level to ensure fairness, transparency and accountability. Terms that are essential or mandatory to the agreement should not be subject to negotiation. In a typical RFP, most or all terms of Contract B should be non-negotiable.

### 11.2.3. RFSQ

#### Process Applicability

An RFSQ is used to gather information about supplier capabilities and qualifications, with the intention of creating a pre-qualified supplier list or a VOR arrangement. An RFSQ is the first stage in a two-stage selection process. The second stage consists of issuing an RFP, RFT or RFQ to the pre-qualified suppliers or vendors of record.

#### Process Steps

##### STAGE 1

1. Purchase Need Identified: to determine core procurement process to initiate;
2. Planning: to define procurement scope and assemble an evaluation team;
3. Requirements: to define procurement scope and specifications, as well as determine evaluation criteria for suppliers to be placed on the pre-qualified supplier list or VOR list;
4. Create/Issue RFSQ Document: to complete, approve and post a competitive document;
5. Blackout Period and Bid Receipt: to ensure fair treatment of all proponents;
6. Evaluation: to determine qualified suppliers based on evaluation criteria;
7. Agreement: obtain contract signatures and enter into contract with suppliers and create pre-qualified supplier list or VOR arrangement;
8. Award Notification: to notify all participants that a VOR list was selected; and
9. Supplier Debriefing: to accommodate all suppliers requesting a debriefing session.

##### STAGE 2

1. Create/ Issue second-stage competitive procurement documents (RFT/RFQ or RFP) – see Sections 11.2.1 and 11.2.2.

#### Comments

Directive Mandatory Requirement #5 requires Organizations to specify in an RFSQ that there is no guarantee that work will be awarded to any supplier who responds to an RFSQ. It is important to specify the selection process in an RFSQ to ensure that the rules are clear to suppliers submitting responses.

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### **11.2.4. RFI and RFEI**

#### **Process Applicability**

An RFI and RFEI are used to assess supplier capabilities or to conduct market research, without the intention of evaluating the responses or awarding a contract.

#### **Process Steps**

1. Purchase Need Identified: to determine core procurement process to initiate;
2. Planning: to define procurement scope and assemble an evaluation team;
3. Requirements: to define procurement specifications;
4. Create/Issue RFI/RFEI Document: to complete, approve and post a competitive document (RFI/RFEI);
5. Blackout Period and Bid Receipt: to ensure fair treatment of all proponents;
6. Analysis: to review all eligible submissions; and
7. Refine Requirements: to refine procurement specifications to inform a subsequent competitive document (RFP/RFQ/RFT).

#### **Comments**

Directive Mandatory Requirement #4 states that a response to an RFI/RFEI must not pre-qualify a potential supplier and must not influence their chances of being the successful proponent on any subsequent opportunity. The information received in response to an RFI or RFEI may be used for the purposes of a subsequent competitive process.

### **11.2.5. Non-Competitive Procurement**

#### **Process Applicability**

Non-competitive procurement of goods and non-consulting services valued at \$100,000 or more or consulting services of any value may take place only in the circumstances identified in Section 10.3.4 of this Guidebook.

#### **Process Steps**

1. Purchase Need Identified: to determine core procurement process to initiate an approval to bypass competitive process (single or sole sourcing);
2. Planning: to define procurement scope;
3. Requirements: to define procurement specifications and receive sign-off;
4. Quote: to obtain a quote and corresponding documentation;
5. Evaluation: to perform necessary evaluation; and
6. Agreement: to offer an agreement to the supplier and obtain signatures.

#### **Comments**

Non-competitive procurement involves negotiating the terms of the agreement.

### **11.2.6. Alternative procurement strategies**

Organizations may use procurement strategies that are not listed above, as long as these strategies do not contradict the requirements of the Directive. Entering into binding agreements under the Contract A/ Contract B is not the only strategy that Organizations can use. When adopting an alternative procurement strategy, Organizations are encouraged to consult with their procurement advisors and legal experts to ensure compliance with the Directive.

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### 11.3. Glossary of Terms

Accountability	The obligation of an employee, agent or other person to be accountable for work, action or failure to act following delegated authority.
Agreement on Internal Trade (AIT)	A national agreement that regulates trade between the provinces to ensure equal access to public-sector procurement for all Canadian suppliers. The agreement aims to reduce barriers to the movement of persons, goods, services and investments within Canada. <a href="http://www.ic.gc.ca/eic/site/ait-aci.nsf/eng/home">http://www.ic.gc.ca/eic/site/ait-aci.nsf/eng/home</a>
Approval Authority	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.
Approval Level	Criteria, often dollar levels, that define which approvals are needed for various business transactions. Limits are set on the size and nature of the business transactions and are assigned to the individual or job role authorized to execute based on the appropriate level of responsibility.
Award	The notification to a proponent of acceptance of a proposal, quotation or tender that brings a contract into existence.
Bid	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	A dispute raised against the methods employed or decisions made by a contracting authority in the administration of a proposal, tender or quotation process.
Bidder's Conference	A meeting chaired by the soliciting Organization to discuss with potential proponents, technical, operational and performance specifications, and/or the full extent of financial, security and other contractual obligations related to a bid solicitation.
Bid Repair	A term used to describe the improper alteration or modification of a bid either by the bidder or by the procuring entity after the deadline for the receipt of bids has passed.
Broader Public Sector (BPS)	As defined in the Broader Public Sector Accountability Act, 2010.
BPS Procurement Directive	BPS Procurement Directive, which replaces the BPS Supply Chain Guideline issued by the Ministry of Finance in 2009.
Ceiling Price of VOR Arrangement	Dollar value of an individual procurement under the VOR arrangement above which Organizations must conduct procurement using an open competitive process instead of utilizing the VOR arrangement.
Chief Executive Officer	Refers to the head of operations at organizations.

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Competitive Procurement	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	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	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, 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	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.
Consulting Services	The provision of expertise or strategic advice that is presented for consideration and decision-making.
Contract	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.
Contract A	<p>Contract A is a contract that may arise between an organization and a supplier after the supplier submits a response to an RFP, RFQ or RFSQ and sets the terms for awarding Contract B to a supplier.</p> <p>Contract A is a binding agreement on both the organization and a supplier who submits a bid response. It sets out the selection process, evaluation criteria and any other terms that the parties must follow during the competitive procurement process.</p> <p>Whether Contract A is formed will depend on the intent of the parties to enter into contract and can be determined by the terms of the competitive procurement documents. Terms that tend to indicate the intent include: 1) irrevocability of a bid; and 2) a non-refundable deposit.</p>
Contract B	<p>Contract B is a contract between the organization and the supplier that was selected pursuant to the competitive procurement process for the supply of goods or services.</p> <p>Contract B sets out the terms of the work project such as price, timeframe and any other terms that the parties must follow for the duration of the project.</p>
Directive	See BPS Procurement Directive.

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Electronic Tendering	A computer-based system that provides suppliers with access to information related to open competitive procurements.
Equipment	All capital equipment, supplies, operational and service documents to be delivered, including all parts provided during the warranty period, and further includes all work necessary to deliver and install the equipment.
Evaluation Criteria	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	A tool allowing the evaluation team to rate supplier proposals based on multiple pre-defined evaluation criteria.
Evaluation Team	A group of individuals designated/responsible to make an award recommendation. The evaluation team would typically include representatives from the purchasing organization and subject-matter expert(s). Each member participates to provide business, legal, technical and financial input.
Evaluation Team Lead	The individual responsible for coordinating the evaluation process
Fair Market Value	The price that would be agreed to in an open and unrestricted market between knowledgeable and willing parties dealing at arm's length who are fully informed and not under any compulsion to transact.
Goods	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	All goods and/or services including construction, consulting services and information technology.
Information Technology	The equipment, software, services and processes used to create, store, process, communicate and manage information.
Invitational Competitive Procurement	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	Fairness in treating suppliers and awarding contracts without prejudice, discrimination or preferred treatment.
Offer	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.
Organizations	All organizations listed in Application and Scope, Section 3.

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Procurement	Acquisition by any means, including by purchase, rental, lease or conditional sale of goods or services.
Procurement Card (P-Card)	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 Lead	An individual assigned to each procurement to ensure that it is conducted in an ethical, lawful, effective and accountable manner.
Procurement Policies and Procedures	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	The estimated total financial commitment resulting from procurement, taking into account optional extensions.
Purchase Order	A written offer made by a purchaser to a supplier formally stating the terms and conditions of a proposed transaction.
Request For Expressions of Interest (RFEI)	A document used to gather information about supplier interest in an opportunity or information about 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)	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 on 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)	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 Quotation (RFQ)	A document similar to an RFT where an Organization describes exactly what needs to be purchased and the evaluation is based solely on price.

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Request For Supplier Qualifications (RFSQ)	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..
Request For Tender (RFT)	A document used to request supplier responses to supply goods or services based on stated delivery requirements, performance specifications, terms and conditions. An RFT usually focuses the evaluation criteria predominantly on price and delivery requirements.
Requisition	A formal request to obtain goods or services made within an Organization, generally from the end user to the procurement department.
Segregation of Duties	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 individual. It puts a barrier in place to prevent errors or fraud that may be perpetuated by one individual.
Service	An intangible product that does 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 or consumed.
Single Sourcing	A non-competitive method of procurement of goods or services from a supplier in situations where there is or may be another supplier or suppliers capable of delivering these goods or services.
Sole Source	The use of a non-competitive procurement process to acquire goods or services where there is only one available supplier for the source of the goods or service.
Supplier/ Vendor	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 Management	The full range of processes that manage the flow of goods, services, information and funds between suppliers and end users, as well as the supporting infrastructure required to enable these processes.
Supply Chain-Related Activities	All activities, whether directly or indirectly related to the organization's plan, source, procure, move and pay processes.
Total Cost of Ownership	Total cost of ownership includes items such as the purchase price, implementation fees, upgrades, maintenance contracts, support contracts, licence fees and disposal costs.
Total life-cycle cost	The total cost of using goods, equipment or services over the entire time of use or service including initial, operating and maintenance costs.

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Trade  
Agreements

Any applicable trade agreement to which Ontario is a signatory (e.g., Agreement on Internal Trade and Ontario-Quebec Trade and Cooperation Agreement).

Value for Money/  
Best Value

A value-for-money approach aims to deliver products and services with a lower total life-cycle cost while maintaining a high standard.

Vendor-of-  
Record (VOR)  
Arrangement

A procurement arrangement that authorizes organizations to select a supplier from pre-qualified supplier(s) through a formal second-stage process, for a defined period, on terms and conditions set out in the VOR arrangement.

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## 11.4. Glossary of Acronyms

AIT – Agreement on Internal Trade

AODA – Accessibility for Ontarians with Disabilities Act

BPS – Broader Public Sector

CEO – Chief Executive Officer

FIPPA – Freedom of Information and Protection of Privacy Act

FOI – Freedom of Information

GPO – Group Purchasing Organization

HVAC – Heating, Ventilation and Air Conditioning

MEDU – Ministry of Education

MGS – Ministry of Government Services

MOHLTC – Ministry of Health and Long-Term Care

MTCU – Ministry of Training, Colleges and Universities

PHIPPA – Personal Health Information and Protection of Privacy Act

Q&A – Question and Answer

RFEI – Request For Expression of Interest

RFI – Request For Information

RFP – Request For Proposal

RFQ – Request For Quotation

RFSQ – Request For Supplier Qualifications

RFT – Request For Tender

SSO – Shared Services Organization

VOR – Vendor Of Record



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